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THE KENYA COMMUNICATIONS REGULATIONS, 2001L.N. 68/2001,
L.N. 28/2010,
L.N. 29/2010,
L.N. 30/2010.

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THE KENYA COMMUNICATIONS REGULATIONS, 2001

PART 1 — PRELIMINARY

Citation.

1. These Regulations may be cited as the Kenya Communications Regulations, 2001.

Interpretation.
1 of 2009, s.3.

2. In these Regulations, unless the context otherwise requires —

Cap. 411A.
2 of 1998.

“Act” means the Kenya Information and Communications Act;

“basic telecommunications service” means a service offered to subscribers which provides such subscribers with a telephone connection to, and a unique local telephone number address on a licensed local access provider and which enables such subscribers to place calls to, or receive calls from, other telecommunications stations on those systems and shall include residence and business line services;

“basic telephone service” means a service provided to the public which allows end users to transmit and receive real time voice communications, including voice telephony service, public pay telephone service, operator assisted services, local, domestic and international long distance telephone services whether by wire or wireless means as well as basic, non-packet switched data communications, such as facsimile transmissions but does not include advanced or enhanced telephone services or dedicated data communications services such as paging services;

“basic telephony” means fixed or mobile communications service in which a two-way connections are established without any deliberate removal or addition to the information content transmitted over that connection or any additional service having been provided thereof;

“circuit” means the physical connection or path of channels or conductors and equipment between two given points through which an electric current may be established;

“contract” means any agreement, arrangement, bond, commitment, franchise, indemnity, indenture, instrument, lease, concession, licence or understanding, whether in writing or not in writing;

“communications” shall, where used in these Regulations refer to telecommunication, postal and radio communications services;

“Commission” means the Communications Commission of Kenya established under section 3 of the Act;

“confidential business information” means a proprietary information of a trade, commercial or financial nature that is —

(a) of a kind that would customarily not be released to the public by

the person from whom it is obtained; and

(b) the disclosure of which is likely to impair the Commission's ability to obtain similar necessary information in the future or to cause substantial harm to the competitive position of the person from whom the information is obtained.

"global navigation system" means an arrangement of technical apparatus by means of which an end user can determine location parameters of latitude, longitude and altitude at any instant of time anywhere on the earth surface;

"international call completion rate" means the minimum percentage of international telephone calls originating within a licensee's network completed per total of international call attempts measured during the peak traffic hour;

"international telephone call" means an effective or completed telephone call exchanged with a telecommunications station outside the country in which the calling telecommunications station is situated;

"ITU" means the International Telecommunications Union;

"leased line" means a telecommunications line that is made available to a subscriber for his exclusive use;

"licensee" means the holder of a licence issued by the Commission under the Act or these Regulations;

"line" means a transmission medium between terminal locations and includes associated repeaters;

"local service provider" means a telecommunications licensee licensed to provide local basic telephone service excluding international and long distance services but include value added services in accordance with the relevant licence issued by the Commission;

"local call completion rate" means the minimum percentage of local telephone calls completed per total of local call attempts measured during the peak traffic hour which originate and terminate from the licensee's network;

"local telephone call" means an effective or completed telephone call exchanged with a telecommunications station within the local charging area in which the calling telecommunications station is situated;

"mobile radio-communication system" means a telecommunications system consisting of mobile service switching centers each of which typically serves a number of "cells" which establish calls to and from mobile subscribers in their respective call service areas, thereby allowing calls to be transferred from one cell to another cell without interruption and established or to be established by an operator under a licence to provide mobile radio communications Services;

"mobile radio-communication service" means a telecommunications

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service that operates through a mobile radio-communications system employing a network architecture in a “cell” configuration in which low-powered radio transmissions allow for the re-use of the same frequency simultaneously in multiple cells and shall include both voice telephony services and non-voice telephony services but shall unless otherwise expressly provided in a licence, exclude video, paging and high speed data services;

“national long distance telephone call” means an effective or completed telephone call exchanged with a telecommunications station outside the local charging area in which the calling telecommunications station is situated;

“national long distance call completion rate” means the percentage of national long distance telephone calls completed per total of national long distance call attempts measured during the peak traffic hour which originate and terminate within a licensee’s network (internal national long distance call completion rate), or which terminate outside the licensee’s network (external national long distance call completion rate);

“non-service specific interfaces” means a shared boundary between two functional units that is not specific to any one telecommunications service;

“operational subscriber’s line” means an operational subscriber’s line connecting a subscriber’s premises to the exchange;

“paging service” means a telecommunications services that provide subscribers with radio messages, through portable radio equipment used in a given zone, which may be accompanied by a verbal or codified visual message;

“private telecommunications services” means telecommunications services established by any person for the sole purpose of satisfying his own communications needs within Kenya and may include telephony service or value added services, radio communication and cable services;

“roaming services” means a type of telecommunications or radio communications service that enables subscribers of one mobile cellular communications system to utilize the facilities of another mobile radio communications system with which the subscriber has no direct pre-existing service or contractual relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call;

“satellite mobile telecommunications service” means a service which allows for voice or data communications through the use of mobile terminal equipment and capable of maintaining a direct uplink to or direct downlink from a satellite-based telecommunications network;

“satellite telecommunications service” means a telecommunications service provided through connections from earth stations to authorised public or private satellite-based telecommunications system;

“service agreement” means any agreement between an operator and a subscriber or subscribers relating to the provision and use of a

telecommunications service;

“service quality requirements” means conditions of licence established by the Commission pursuant to section 25 of the Act for the purpose of improving the quality and delivery of telecommunications services in Kenya;

“store and forward messaging service” means a service whereby messages can be exchanged between subscribers using storage and retransmission devices;

“subscriber” means any person provided with a telecommunications service by a licensee, and who is responsible for payment of all charges and rentals;

“subscriber line” means a telecommunications link connecting the local telecommunications center to the subscriber’s premises or telephone instrument or system;

“tariffs” means the charges by a telecommunications service operator or its subscribers;

“telex service” means a telecommunications service that provides for the interactive telecommunication of texts between subscribers through teleprinting devices interconnected by a telex network via transmission of codified information;

“third party private network service” means a service over a user-dedicated network supplied by a licensee providing such services, whether directly or indirectly, to the user of such services;

“Tribunal” means the Appeals Tribunal established under section 102 of the Act;

“trunk capacity resale service” means a type of telecommunications service which, using a trunk capacity resale system, provides the necessary capacity to carry and route telecommunications signals constituting the main interconnection between telecommunications systems and networks and which allows the provision of final services, distribution services and value added services;

“value added services” means such services as may be available over a telecommunications system in addition to voice telephony service, and specifically those services listed as “value added services” in these Regulations, including the following—

- (a) “videotext” means a service involving a two-way interactive computer-based information system in which a subscriber is linked to a database by telephone line or cable;
- (b) “teletex” means a service whereby a subscriber can exchange office correspondence in the form of documents containing teletex coded information on an automatic memory-to-memory basis;

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- (c) “teleaction” means a service used to send short messages at very low transmission speeds between the subscriber and a communications network;
- (d) “telecommand” means a service whereby a supervised system is controlled from a remote control device;
- (e) “telealarm” means a service whereby an electric signal is sent to a remote control device each time there is a threshold change of conditions in the supervised system;
- (f) “store and forward messaging service” means a service whereby messages can be exchanged between subscribers using storage and retransmission devices;
- (g) “teleprocessing and data processing” means an interactive service used for the processing of data and exchange of messages between the terminals of geographically distant subscribers;
- (h) “electronic mail services” means a service whereby subscribers may send messages to one or more addressees and receive messages using a combination of data storage and retransmission techniques so that the final subscriber may recover the message. This service may be used as follows —
 - (i) electronic mail (X.400): a service allowing a subscriber to send messages instantaneously to another subscriber’s directory or electronic “mailbox” (i.e., person-to-person messaging, according to the ITU X.400 international standards);
 - (ii) electronic document interchange (EDI): person-to-person messaging, according to electronic data interchange fact (EDIFACT);
 - (iii) electronic fund transfer;
 - (iv) electronic voice mail: a storage and retrieval service whereby voice messages from one subscriber are digitally stored in order to be received by another subscriber;
- (i) “voice messaging” means a service whereby the subscriber transmits a brief message by calling one or more telephone numbers at a given time or by answering the call of another subscriber;
- (j) “voice telephony service” means a telecommunications service which provides subscribers with the ability to conduct real-time two-way speech conversation via a fixed or mobile network;
- (k) “information services” means an interactive service that provides access to information stored in database centers and which may be sent to the world wide web subscriber only upon request;

- (l) “packet switching service” means without using the systems network, data signals called packages are split up according to a sequence of signals arranged in a specific format, in accordance with the ITU X.25 and X.75 standards and such other generally recognised standards as may be approved for use over the public communications network by the Commission;
- (m) any other service as may be classified as such in the Gazette by the Commission.

PART II—OPERATING PROCEDURES

3. (1) Any person who communicates with the Commission, and whose communication includes confidential business information, may submit a written request to the Commission that the specific portion of that communication consisting of such confidential information be protected from disclosure. Protected information.

(2) Any request made under paragraph (1) of this regulation that is deemed by the Commission to be valid shall entitle the person who has made such a request to—

- (a) protection of confidential business information from being referred to in any writing or communication issued by the Commission;
- (b) non-publication of the confidential information in its entirety in any writing or communication issued by the Commission and, to the extent that the confidential information quoted or referred to by the Commission in any writing or communication, it shall be identified as such, together with directions on how the full text of the information may be obtained by the public.

(3) Trade secrets and other confidential or proprietary information pertaining to the commercial interests of any person, which are submitted in connection with a communication by any person to the Commission, may be entitled to treatment as confidential business information.

(4) A person seeking to have information or materials treated as confidential business information may submit the information or materials to be considered separately from the other communications to the Commission, together with a written request that the Commission treat such information as confidential business information.

(5) The Commission may on its own motion determine that the information or materials should not be routinely available for public inspection.

(6) In the absence of a request referred to in paragraph (4), materials or information that are submitted may be made available for inspection upon request, even though such information or materials may contain trade secrets or confidential information.

(7) The presence of confidential business information within the body

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of a communication to the Commission shall not entitle the entirety of those communications to confidential treatment, but that portion of the communications which is entitled to confidential treatment as confidential business information may be extracted from the main body of the communication made available for public inspection.

(8) The disclosure of confidential business information may be compelled pursuant to a parliamentary, judicial or other lawful process.

PART III—FINANCIAL PROVISIONS

Payment to the
Commission.

4. (1) The Commission may from time to time prescribe fees payable in respect of any licence issued or service performed under the Act or these Regulations.

(2) Every fee payable to the Commission in connection with applications for licences, frequency spectrum assignments, or any other matter shall be paid in full before the licence is granted or the frequency is assigned by the Commission.

(3) Unless otherwise prescribed by the Commission, all licensees shall make yearly payment of the annual operating fees due for the current year by the 1st day of July of each calendar year, but not later than three months after the end of the licensee's financial year.

(4) Where any licensee is required to pay fees to the Commission on the basis of information or records in the custody of such licensee, the licensee shall submit a declaration to the Commission in the manner prescribed by the Commission, attesting to the completeness and accuracy of the information upon which such computation of fees is based.

(5) Where a licence requires that payment of a licence or an annual operating fee be based on a percentage of a licensee's gross annual revenues, the base for calculating a licensee's gross annual revenues shall include—

- (a) payments from subscribers and other users; and
- (b) the amount billed including uncollected payments from subscribers and other customer accounts.

PART IV—(Revoked by L.N. 29/2010)

PART V—TELECOMMUNICATIONS LICENCES

Licences required.

9. The Commission shall issue telecommunications licences in accordance with the provisions of the Act.

Licensing.

10. (1) The Commission shall prescribe the terms and conditions of all licences, as it considers consistent with the objectives of the Act, these Regulations and such other circumstances as the Commission may consider appropriate, including the terms and conditions upon which the licence is granted, the services to be provided by the licensee and the network to be

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operated by the licensee.

(2) The Commission may issue licences for the provision of local access services, national long distance services, international services, very small aperture terminal services, internet backbone, global mobile personal communications services (GMPCS) and customer premises wiring, terminal equipment and maintenance, repair workshop services and radio station licence.

(3) Local access services shall be provided by a licensed local access provider or a regional telecommunications operator.

(4) Licences granted shall contain an obligation to provide services efficiently and at reasonable costs.

(5) Licences may include the provision of services to rural or sparsely populated areas or other specified areas and other conditions as the Commission may deem necessary.

11. The Commission may require licensees to comply with international conventions or agreements relating to communications services to which Kenya is a signatory.

International
Conventions.

12. (1) A licence granted under the Act may not be transferred without the written consent of the Commission.

Transfer of Licence.

(2) An application for the transfer of a licence shall be accompanied by an application in the prescribed Form 1 set out in the First Schedule, completed by the person to whom the licensee intends to transfer the licence.

(3) The Commission shall in considering an application for transfer have regard to the same terms and conditions as in considering a grant of a new licence, provided that the Commission may in its discretion refuse to approve such an application for transfer under this regulation.

13. (1) An application for renewal of a licence shall be made in accordance with the conditions of each licence.

Lapse and renewal of
licence.

(2) In considering an application for renewal of a licence, the Commission shall have regard to the fulfilment by the licensee of the obligations contained in the licence in the previous licence period.

(3) The process for renewal of a licence for telecommunications services shall be contained in each licence and each application process shall be considered as part of these Regulations.

PART VI—RADIO COMMUNICATIONS

14. The regulations in this part are meant to regulate radio transmissions and issuance of licences for radio stations.

Basis and purpose.

15. In this Part, unless the context otherwise requires—

Definition of terms.

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“authorised frequency” means the frequency assigned to a radio station by the commission;

“authorised power” means power assigned to a radio station by the commission;

“fixed service” means a service of radio-communication between specified fixed points;

“fixed station” means a station in the fixed service;

“harmful interference” means any radiation or induction which endangers the functioning of a radio-navigation service or of a safety service or obstructs or repeatedly interrupts an authorised radio or telecommunication service;

“radio communication service” means service involving transmission, emission or reception of signs, images, signals, writings, and sounds or intelligence of any nature by radio waves;

“station authorisation” means any construction permit, licence, or special temporary authorisation issued by the Commission;

National Spectrum
management policy.

16. (1) The Commission shall manage and control the use of or emissions from the radio electromagnetic spectrum and use of geostationary orbital slots within the territory of Kenya and shall have the power to withdraw, suspend, or prohibit any such use or emissions.

(2) The Commission shall, in accordance with the Act, have the power to negotiate with the International Telecommunication Union, its affiliated bodies and other countries’ regulatory bodies or entities performing such functions.

(3) The Commission shall be responsible for, frequency planning and engineering, frequency assignment and licensing, frequency monitoring and inspection of radio stations, and the implementation of the Kenya government policies on radio communications.

Application criteria
for approval.

17. (1) The Commission, in considering applications for frequency assignment shall take into consideration—

- (a) spectrum availability for the type of service and proposed location;
- (b) whether the proposed service can be satisfied by any other means of communications; and
- (c) the distress and safety radio communication services which require special protection from harmful interference.

(2) The Commission may assign the use of a frequency or frequencies to the applicant, and shall for that purpose take into account all technical data of the

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equipment and associated accessories proposed to be used by the applicant.

18. (1) The Commission may, upon application in a prescribed Form No. 5 set out in the First Schedule, assign frequencies when it is satisfied that such assignment will not cause harmful interference to any station or licensee operating in accordance with the Kenya table of frequency allocations:

Assignment of frequencies.

Provided that in the event of non-availability of the frequencies applied for, the Commission may consider assigning frequencies in alternative frequency bands.

(2) A person licensed to operate and provide mobile radio communication—systems and services shall apply to the Commission in the prescribed form No. 6 set out in the First Schedule for assignment of the necessary frequencies. Provided that in the event of non availability of the frequencies applied for, the Commission may consider assigning frequencies in alternative frequency band.

(3) When the Commission is satisfied with an application, the applicant may be assigned a frequency or frequencies, which shall be used in accordance with the prescribed technical and operating parameters.

(4) The Commission may impose any conditions on the use of the assigned frequencies.

19. (1) All licensees assigned the use of frequencies or frequency bands shall—

Obligations of the licensee.

(a) maintain and provide, at the Commission's request, an inventory of frequencies assigned;

(b) keep the licence in force by regular payment of annual fees as may be prescribed from time to time by the Commission; and,

(c) guard against unauthorized emission, harmful interference or illegal use of the spectrum.

(2) The Commission may where it considers expedient so to do require a licensee to migrate to a new frequency band.

20. (1) A frequency licence shall not confer any ownership rights of the frequency to the licensee.

Ownership of frequencies.

(2) The commission may require licensees to share a frequency band.

21. Frequencies assigned to be used by a licensee and the rights therein granted by such authorisation shall not be transferred, without the written consent of the Commission.

Transfer and assignment of station authorization.

22. The Commission may at its discretion grant a temporary frequency assignment.

Temporary authorization.

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Change in
equipment.

23. (1) No material change may be made in a licensed station, including change of station parameters as specified in the licence without written authorisation from the Commission.

(2) Without prejudice to the generality of this regulation, a licensee shall seek the approval of the Commission where such licensee proposes a change which is likely to increase the height of a structure supporting the radiating portion of the antenna or decrease the height of a lighted antenna structure or in the location of an antenna when such relocation involves a change in the geographic co-ordinates of latitude or longitude by as much as one second, or when such relocation involves a change in street address.

Station identification.

24. All licensees shall ensure that each class of station, unless exempted by the terms of a stations authorisation, transmits assigned call sign at the end of each complete transmission:

Provided, that the transmission of the call sign at the end of each transmission shall not be required in cases of projects requiring continuous, frequent or extended use of the transmitting apparatus, if, during such periods and in connection with such use, the call sign is transmitted at least once every thirty minutes.

Type approval and
inspection.

25. (1) No frequency spectrum shall be assigned unless a radio equipment in respect of which an assignment is sought has been duly type approved by the Commission.

(2) Upon installation of the radio communication system, the licensee shall ensure that the system is inspected and certified by the Commission to be operating in accordance with conditions of assignment.

Monitoring and
Inspection.

26. (1) The Commission shall monitor all emissions from licensed stations for the purpose of ensuring efficient utilisation and compliance with licensed parameters.

(2) The licensee shall provide unlimited access to the Commission's authorised officers to the licensees' installations for purposes of inspection and verification of operational parameters.

(3) All records of stations shall be made available for inspection by the Commission's authorised officers at any time while the station is in operation.

(4) Any interference experienced by the licensee shall be reported to the Commission in writing.

(5) All frequency licensees shall comply with directions from the Commission that will assist in the resolution of frequency interferences.

Inspection and
maintenance of
towers and control
equipment.

27. (1) A licensee of any radio station which has an antenna structure required to be painted and illuminated pursuant to the provisions of any written law shall perform all inspections and maintenance of the tower marking and lighting, and associated control equipment, required thereto.

(2) All licensees shall ensure full compliance with directions given by the Commission in consultation with the government agency responsible for civil aviation, in regard to antenna towers.

28. (1) Any licensee who uses a frequency or frequencies assigned, or provides a radio communications service other than the service or services for which he holds a licence shall be guilty of an offence. Misuse of frequencies.

(2) Any licensee who uses an unauthorized frequency or equipment to offer radio communication service shall be guilty of an offence.

29. Where a licensee intends to permanently discontinue operating a radio communication station, the licensee shall forward the station licence, together with a request for cancellation of the licence, to the Commission. Discontinuation of station operation.

30. (1) The Commission may disable or confiscate any radio communication apparatus or stations operated in contravention of the condition of licence or in contravention of the Act and these Regulations. Measures against violations.

(2) The confiscated equipment or apparatus shall be disposed of according to the applicable procedures.

31. (1) The Commission may revoke a license if—

Revocation of licenses.

(a) the licensee contravenes any part or parts of the license conditions;

(b) the service provision license or permit is not in force;

(c) the licensee fails to renew the license within the specified period;

Provided the Commission may revoke a licence in accordance with the circumstances that are detailed in each licence.

(2) An order revoking a frequency licence shall be in writing and shall be availed to the licensee.

(3) Any person aggrieved by the decision of the Commission made under this regulation may appeal to the Tribunal within fifteen (15) days of the date of making such a decision.

PART VIII—TYPE APPROVAL OF TERMINAL EQUIPMENT

50. Regulations in this Part shall ensure that the connection of apparatus to the telecommunications networks does not damage or jeopardise the integrity of the telecommunications network. Purpose.

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Categories of network and terminal equipment requiring type approval.

51. (1) All telecommunications and radio communication equipment shall prior to their installation or connection to any public switched telecommunication network in Kenya be submitted to the Commission for type-approval.

(2) The Commission shall grant type-approval for each type of equipment once and subsequent users of the same model of equipment shall not apply to the Commission for type approval:

Provided that any changes in models, design or specification of any equipment which has been type approved by the Commission shall be resubmitted for type approval.

(3) The categories of network and terminal equipment that require type approval shall include—

- (a) telephone equipment;
- (b) fax machines;
- (c) private automatic branch exchange (PABXs) (including small business systems and key systems);
- (d) telex equipment;
- (e) modems;
- (f) cordless telephones;
- (g) cellular telephones;
- (h) radio communication equipment; and
- (i) any other customer premises equipment to be attached to any part of licensed telecommunications or radio communication network.

Type approval Procedure.

52. (1) All applications for type approval of any equipment shall be submitted in the prescribed Form No. 2 set out in the First Schedule and shall be accompanied by—

- (a) the prescribed fee;
- (b) technical specifications and manuals of the equipment; and
- (c) where required, a sample of the equipment in quantities as may be determined by the Commission.

(2) The Commission shall not be obliged to return to the applicant any samples of equipment and associated literature submitted for the purposes of type approval.

(3) Where the equipment submitted for type approval is a single channel low capacity radio equipment, the Commission shall evaluate the application

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and convey its decision to the applicant within thirty (30) working days of receipt of the application:

Provided however that where the equipment submitted for type approval is a switch or switches of over one thousand (1000) ports, the Commission shall convey its decision to the applicant within sixty (60) days of receipt of the application for type approval.

53. An application for type approval shall provide for—

Applications for type approval.

- (a) the name of the equipment;
- (b) the name of the manufacturer;
- (c) the intended use within Kenya;
- (d) the name, address, and authorized representative of the individual or organization that will hold the type approval certificate; and
- (e) any other information that the Commission may require.

54. All applications for any licence and all other documentation submitted therewith shall be in English language.

Language.

55. (1) The Commission may type accept any equipment that has received type approval from another country or jurisdiction that is recognized by the Commission:

Submission of samples of equipment for testing.

Provided however that the applicant for type acceptance shall submit a sample or samples of the equipment and copies of test results and type approval certificate from that country or jurisdiction at the time of the submission of the application for provisional acceptance.

(2) The Commission may, on its own motion or upon an application, institute proceedings to determine whether technical standards from other countries or jurisdictions should be recognized in Kenya for purposes of exempting any equipment from type approval or testing requirements.

56. (1) Any person may submit to the Commission an equipment for provisional type approval.

Provisional type approval.

(2) Where the Commission has determined that an equipment which is the subject of an application for provisional type approval complies with the requirements for type approval, it may grant provisional type approval for a period of six (6) months on terms and conditions as it may determine.

(3) The Commission may, where it deems necessary, when granting provisional type approval to any equipment limit the number of units of such equipment that an applicant can hold until final type approval is given.

(4) The Commission may extend the grant of the provisional type approval for one further period of six (6) months when it is of the view that

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the performance of such equipment within the provisional type approval period is satisfactory.

Final type approval.

57. (1) All applications for final type approval shall be submitted in the prescribed Form No. 3 set out in the First Schedule five months after the grant of provisional type approval and shall indicate the date of grant of provisional approval:

Provided that no provisional type approval shall lapse or expire while an application for final type approval is pending with the Commission.

(2) Final type approval shall be granted where the Commission is of the view that the grant of such final type approval—

(a) is in the public interest; and

(b) will not lead to harmful interference to any telecommunications and radio communication network or be a risk to human health or the environment.

(3) The Commission shall inform the applicant in writing of the final type approval of an equipment or apparatus and shall issue the applicant with a registration number to display on the equipment or apparatus when the equipment or apparatus is being sold and used.

(4) Where the Commission is of the view that an equipment or apparatus should not be type approved, it shall notify the applicant in writing of its decision not to type approve the equipment or apparatus and shall provide reasons for such refusal.

Revocation of type approval.

58. (1) The Commission may, on its own motion or upon a complaint by any person, conduct investigations regarding the working or use of any equipment or apparatus which has been given provisional or final type approval and may cancel such type approval where it is of the view that—

(a) a licensee has violated provisional type approval conditions;

(b) the equipment or apparatus is causing or is likely to cause harmful interference to telecommunications network or is a risk to human health or the environment.

(2) Any person who is aggrieved by the decision of the Commission made under this Part may appeal to the Tribunal.

Complaint procedures.

59. (1) Any person may make a representation in respect of the working of any equipment that has been type approved or may object to the type approval of any equipment and may submit such representation or objection to the Commission in writing stating—

(a) the name and address of the complainant;

(b) the name (and address if known) of the person against whom the

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complaint is made; and

- (c) facts, including supporting data, where available, showing that the apparatus does not conform to the requirements of this Part and that the apparatus may cause harmful interference to telecommunications and radio communications network or is a risk to human health or the environment.

(2) The Commission shall forward a copy of the representation or objection to the applicant or holder of a type approval certificate and give the applicant or holder an opportunity to give evidence to rebut the representation or objection.

(3) The Commission shall consider such representations or objections when considering the grant of type approval or in evaluating the working of any equipment or apparatus for which has been type approved.

60. The Commission may, in consultation with the Kenya Revenue Authority, restrict the importation into or sale within Kenya of any telecommunications or radio communication equipment or any other apparatus if it is of the opinion that such equipment or apparatus can cause damage or harmful interference to telecommunications or radio communication networks or is a risk to human health or the environment.

Import and sale restrictions.

61. The Commission may, where it deems expedient, exempt any telecommunications or radio communication equipment that is temporarily imported into Kenya from type approval requirements.

Exemptions from type approval.

PART IX—NUMBERING

62. The Commission shall be for responsible managing and administering the national numbering plan.

Management and administration of national numbering plan.

63. Prior to the assignment and publication of any numbering plan, the Commission shall ensure that such numbering—

Considerations when assigning or publishing numbers.

- (a) allows sufficient numbers to be made available to a licensee;
- (b) are allocated without undue delay;
- (c) allows for the inclusion of as few digits as practicable;
- (d) does not confer an undue advantage on any operator;
- (e) keeps the cost of changing any of the telecommunications systems in order to accommodate the number plan within reasonable limits; and
- (f) minimize any inconvenience that may be caused by implementation

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of the numbering plan to a licensee and to persons using the telecommunications systems.

(2) The numbering scheme of each licensee shall comply with the Commission's guidelines concerning the implementation of the national numbering plan.

(3) The Commission may in assigning or allocating numbers to licensees charge fees for such allocation or assignment.

(4) For purposes of this Part—

“numbering plan” means the method of assigning NNX codes to provide a unique telephone addresses or identities to a user-network interface.

PART X—POSTAL AND COURIER SERVICES

Application.

64. The Regulations in this Part shall apply to all postal service licensees.

Interpretations.

65. In this Part, unless the context otherwise requires—

“basic postal services” means reserved postal services such as postal stamps, private letterboxes and acceptance, conveyance and delivery of letters weighing up to 350 grams;

“commemorative stamps issue” means the issuance of postage stamps as a mark of honour to events or matters of national or international importance and mainly used for philatelic purposes with a validity period of five years from the date of issue;

“course of transmission” means in case of, for a postal article, the time from the delivery of the postal article to the licensed postal service operator until the time of its delivery to the addressee, its return to the sender, or its disposal under the applicable provisions of these Regulations;

“definitive stamp issue” means stamps depicting nature or natural heritage and which are valid for a maximum of ten years from the date of issue;

“postal services licensee” means the Postal Corporation of Kenya and all organizations licenced to provide unreserved postal services, including courier companies, transporters, freight, forwarders, delivery companies and direct marketing companies which handle postal articles;

“reserved postal services” means—

- (a) the collection, transport, sorting, and delivery, for hire or reward of letters and postcards weighing up to 350 grams, but not including exempted letters sent by licensed courier, letters accompanying goods at the time of delivery, newspapers, magazines, books, non-addressed leaflets, catalogues, and trade announcements letters delivered otherwise than for reward letters delivered by an

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employee of the sender letters containing any writ or proceeding out of court or any legal instrument of any kind and, letters carried to the premises of a provider of electronic mail service for the purpose of transmission by electronic mail;

(b) the production and issuance of postage stamps, pre-stamped envelopes, aerograms, and international reply coupons bearing the official national coat of arms or the words “Republic of Kenya”, “Kenya”, or “Kenya Post”; and

(c) the rental or lease of private letter boxes or bags;

“universal postal services” means consistent supply of basic postal services at affordable prices at all points within the country;

“universal service obligations” means obligations assumed by the public postal licensee by virtue of a licence granted by the Commission under the Act to provide, as far as possible, basic postal services to all persons within Kenya at affordable prices that are not necessarily cost-based;

“unreserved postal services” means courier services, counter services, money orders, electronic bill paying, parcel collection transport and delivery, expedited mail service, overnight mail services, and other handling of postal articles.

66. (1) The provisions in this Part shall be carried out in accordance with the terms of any international or regional convention or agreement to which Kenya is a party.

International and regional arrangements.

(2) Where a postal licensee conduct international postal services, the Commission shall ensure that such a licensee conduct their operations in accordance with the rules, regulations and procedures of the conventions and agreements to which Kenya is a party, except to the extent that Kenya’s adherence thereto is limited by a reservation.

67. (1) A postal article shall be deemed to have been delivered—

Delivery of Postal articles.

(a) to the addressee, if it is delivered into a private letter box or bag of the addressee, leaving it at the house, or office of the addressee as set out thereon, or with the employee or agent or other persons authorised to receive it and, where the addressee is a guest or is a resident at a hotel, hostel or lodgings, if it is left with the proprietor or manager thereof or with his agent; or

(b) to a postal service licensee if it is deposited into a posting box or handed over to an employee or agent of a postal service operator authorised to receive it.

68. (1) No person shall operate a reserved or unreserved postal service except in accordance with a licence issued under the Act.

Licensing of postal services operators.

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(2) The Commission shall prescribe the terms and conditions of all licences, as it considers consistent with the provisions of the Act, these Regulations and such other circumstances as it may deem necessary.

Applications for licence.

69. (1) Any person may, subject to the provisions of the Act and these Regulations, apply for a licence from the Commission to operate postal services.

(2) Applications for postal service licences shall be made in writing in the prescribed form No. 1 set out in the First Schedule.

(3) In considering any application for a postal licence, the Commission may require the applicant to produce such evidence or information to show his or her capacity to operate postal services as the Commission may deem necessary.

(4) The Commission may require applicants for postal licences to provide evidence of ownership of the firm or company applying for the licences in support of the application and any person who knowingly gives false information shall be guilty of an offence.

(5) Applicants for a postal licence shall submit to the Commission—

(a) particulars as to the services to be operated; and

(b) the geographical area for which postal services are proposed to be carried out.

(6) All applications for a postal license shall be accompanied by the prescribed fees.

(7) All licences issued under this regulation shall be in writing and unless previously revoked in accordance with any terms contained in the licence or as a result of a contravention of the Act or these Regulations or the terms of the licence, shall continue in force for such period as may be specified therein.

Conditions of Licence.

70. (1) A postal service licence shall set out the terms and conditions upon which it is granted and shall require the provision by the licensee of such postal services as are specified in the licence and may include the provision of services to rural or sparsely populated areas or other specified areas.

(2) Postal licences shall not be used for purposes other than for which it is issued and any other use of the licence, or contravention of the conditions stated therein, shall constitute an offence.

Non-discrimination.

71. (1) Postal licensees shall not take any action in the provision of postal services that has or is likely to have the effect of giving an undue preference to, or causing undue discrimination against, any person or category of persons.

(2) If it appears to the Commission that a licensee is taking or intends to take any action which has or is likely have the effect of giving undue preference to, or causing undue discrimination against any person or category of persons,

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the Commission may, after having given such licensee an opportunity to be heard, direct the licensee through a written notice to cease or refrain from taking such action, as the case may be.

(3) Failure to comply with a order of the Commission issued under this regulation shall constitute an offence.

72. (1) If the Commission is satisfied that an applicant has fulfilled all the conditions for granting a licence and upon payment to the Commission of the prescribed fees, the Commission shall issue such an applicant with a licence. Licence fees.

(2) Every postal licensee shall, within the prescribed time, pay the Commission the fees specified in the licence and any licensee who fails to pay such fees shall be liable to pay such penalties as the Commission may prescribe.

73. All postal licences issued under the Act shall be valid for the period stated in the licence or for such period as may be determined by the Commission. Licence terms.

74. (1) Pursuant to section 82 of the Act, the Commission may, modify the conditions of any licence if it considers such modification necessary— Licence modification and renewal.

(a) to achieve the objectives of the Act;

(b) in the public interest;

(c) in the best and justified interests of the licensees; and

(d) in order to ensure fair competition and equal treatment.

(2) Where the Commission intends to modify all or any condition of a postal licence, the Commission shall publish a notice in the Gazette stating the reasons for the intended modification and giving not less than sixty days period for the licensee or other interested parties to make any written representation regarding the intended modification.

(3) The Commission shall give due consideration to any representations made by the licensee.

(4) Where the modification of a licence condition is at the instance of the Commission and such modification is likely to cause undue harm to the licensee, the Commission may grant such licensee a reasonable period to comply with the modification terms of the licence.

(5) The Commission may, if it considers appropriate to do so in furtherance of the objectives of the Act, modify the terms of a postal licence on application of a postal licensee:

Provided that where such modification is at the request of a postal licensee, such licensee shall meet the costs of the modification.

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(6) Any person who is aggrieved by the decision of the Commission made under this regulation may appeal to the Tribunal within fifteen (15) days from the date on which the decision is made.

Suspension and
cancellation of
licences.

75. (1) Every postal licence shall contain provisions for the suspension or revocation of the licence.

(2) Notwithstanding the provisions of paragraph (1), the Commission may suspend or revoke a licence on grounds of—

- (a) serious and repeated breach of the licence conditions;
- (b) discovery of any fraud or intentional misrepresentation by a licensee at the time of applying for the licence;
- (c) engagement in or support of unlawful activities by the licensee;
or
- (d) cessation of the licensee to be a person who is eligible to hold such licence; or
- (e) failure to pay the prescribed fees.

(3) Unless provided otherwise in the licence, the Commission shall give a licensee sixty (60) days written notice of its intention to suspend or cancel a licence and shall specify in such notice the reasons for the intended suspension or cancellation of the licence.

(4) The licensee or any interested party may make representations against such suspension or cancellation to the Commission.

(5) After due consideration of such representations, the Commission may—

- (a) prescribe the time during which the licensee may remedy the offending act or conduct; or
- (b) require the payment of a penalty or fee as specified in the Act or these Regulations.

(6) Where a licensee has not complied with the conditions set by the Commission in paragraph (5) of this regulation, it may—

- (a) suspend the licence for a specified period of time; or
- (b) revoke the licence.

(7) Any person aggrieved by the decision of the Commission, under this regulation may within fifteen (15) days from the date on which the decision is made appeal to the Tribunal.

76. (1) No postal licence shall be transferred or leased without the written consent of the Commission.

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Transfer or lease of
licence.

(2) Where a licensee intends to transfer or lease a postal licence, he shall make an application to the Commission.

(3) An application for the transfer or lease of a license shall be in the prescribed form completed by the person to whom the licensee intends to transfer or lease the licence.

(4) The Commission shall in considering an application for transfer or lease of a licence have regard to the same terms and conditions as when considering the grant of a new licence:

Provided that the Commission may at its discretion reject an application made under this regulation.

77. (1) An application for renewal of a licence shall be made in accordance with the provisions of each licence.

Lapse and renewal of
Licence.

(2) In considering an application for renewal of a licence, the Commission shall have regard to the fulfillment by the licensee of the licence terms and conditions in the previous licence period.

(3) An application for renewal of a public postal licence shall be made at least six months before the expiry of the licence.

(4) A licensee may, during the prescribed period, apply for the renewal of his or her licence.

(5) Where a licensee has complied with the Act, these Regulations and the licence, a licence shall continue to be valid until such time as a decision has been made regarding the application for the renewal.

78. (1) The Commission may from time to time require a person licensed to provide reserved postal services to provide such services to areas which are not adequately served.

Operation of reserved
postal services.

(2) A licensee for the provision of reserved postal services may provide such services through a contract, agency or franchise without such agent or franchisee being required to hold a licence under the Act.

(3) A licensee designated as a public postal licensee shall maintain separate books of account for reserved postal services and unreserved postal services and shall not cross-subsidise the prices for any service it offers in the market for unreserved postal services with revenue from the sale of reserved postal services.

79. (1) All postal licensees shall have the power to set tariffs for postal services which are open to competition.

Tariffs for unreserved
postal services.

(2) All tariffs for unreserved postal services shall be made available to

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the public by displaying them in conspicuous places in post offices or in the offices of licensees.

(3) It shall be an offence under this regulation not to display tariffs for postal services at all or in a conspicuous place.

Tariffs for reserved postal services.

80. (1) Tariffs applicable to reserved postal services and the standard of delivery of such services shall be determined by the Commission from time to time.

(2) Any review of tariffs relating to reserved postal services shall be implemented upon approval by the Commission.

(3) In considering review of tariffs for reserved postal services, the Commission shall ensure that the tariffs are based on the cost of providing efficient service in accordance with the licence and shall further ensure that such tariffs do not include—

- (a) surcharges prevailing solely as a result of the public postal licensee's exclusive right to provide reserved postal services;
- (b) anti-competition discounts likely to be prejudicial to licensees for unreserved postal services;
- (c) variation in rates that create any advantage for individual users within the same class of service in relation to users of postal services of the same type; and
- (d) any other consideration as the Commission may deem necessary;

Provided that the Commission may authorise the levying of tariffs that are not based on costs of providing such service where the public postal licensee presents a case to the Commission that such charges are justifiable due to any statutory obligation or other objectively verifiable criteria.

(4) The Commission shall, at least thirty (30) days before approving any tariffs, give notice to customers in the Gazette and in such manner as the Commission may consider necessary—

- (a) specifying the name and particulars of the licensee or class of licensees providing the postal service to which the tariffs relate;
- (b) stating the reasons for the proposed review of the tariffs and setting out the proposed tariffs;
- (c) specifying the time within which representations or objections may be made to the Commission on the proposed reviews;
- (d) informing the customers of the new tariffs at least fourteen (14) days before implementation.

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81. (1) All licensees of unreserved postal services shall operate at least one physical address which shall be registered with the Commission and any change of such registered office shall be notified to the Commission within a period of fourteen (14) days of such change.

Unreserved postal services fees and operations.

(2) Subject to the Act, these Regulations and licences, the Commission shall have the power to categorise postal licensees and to prescribe fees payable to the Commission by such licensees.

82. (1) All licensees shall provide a mechanism through which consumers may lodge complaints concerning the services given by such licensee.

Consumer complaint procedures.

(2) Notwithstanding the generality of paragraph (1), the procedures for lodging complaints shall provide for—

- (a) notification to customers of the right to complain;
- (b) availability of complaint form or any other written method for raising complaints;
- (c) maintenance of a log of consumer complaints.

(3) All licensees shall file with the Commission within sixty days after the grant of licence their complaint handling procedures.

83. (1) The Commission shall from time to time provide targets to facilitate the achievement of universal service obligation.

Universal service obligation.

(2) In providing targets for the fulfillment of universal service obligations by postal licensees, the Commission shall have regard to—

- (a) measurable quantity and quality of service standards for postal services in relation to customer satisfaction;
- (b) speed, reliability and security of the service; and
- (c) accessibility to and affordability of universal postal services.

(3) The provision of universal postal services shall be the responsibility of the public postal licensee:

Provided that the Commission may require any licensee for unreserved postal services to provide any or all universal postal services.

(4) In providing universal postal service obligations, the Commission may require the public postal licensee to provide such services in accordance with standards as may be prescribed by the Commission from time to time.

(5) The public postal licensee shall produce at least bi-annually directories of private letter boxes and bags and failure to produce such directories shall constitute a violation of a licence condition for which the Commission may levy a penalty.

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(6) Any postal licensee who fails to provide universal postal services as stated in the licence or as required by the Commission shall be liable to a penalty of six thousand shillings for every month or part thereof during which such failure continues.

Issuance of postage stamps.

84. (1) The public postal licensee shall ensure that all postage stamps are engraved with subjects that are consistent with the broad philatelic objectives of Kenya.

(2) No reproduction of stamps shall be undertaken without the approval of the Commission.

(3) In considering any expedient issuance of definitive, commemorative and special stamp issues and related activities such as exhibitions, the public postal licensee shall foster fairness amongst all interested parties such as stamp collectors.

(4) All definitive stamp issued shall—

- (a) run for between five and ten years;
- (b) concern subject matters approved by the Commission;
- (c) bear face values to be chosen by the public postal licensee; and
- (d) be issued once every five years.

(5) All commemorative stamps shall be issued not less than six times but not more than six times annually and shall—

- (a) concern a subject matter approved by the Commission; and,
- (b) bear face values to be chosen by the public postal licensee.

(4) Failure to comply with this regulation shall constitute an offence punishable by a fine of not less than six thousand shillings.

Reporting requirements.

85. (1) At the times stated in the licence or as may be prescribed by the Commission, postal licensees shall annually submit to the Commission a report containing—

- (a) an annual report of accounts;
- (b) pricing and tariff implementation fourteen (14) days before the prices or tariffs are implemented;
- (c) quality of service performance;
- (d) business plans;
- (e) the new services introduced;

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

(2) Save as may be agreed between the Commission and any licensee, all information provided pursuant to this regulation shall be treated as confidential business information and shall be dealt with in accordance with Part II of these Regulations.

86. (1) The Commission may require a postal licensee to produce or furnish the Commission at the time and place specified accounts, records and other documents or information as the Commission may require. Production of records and inspections.

(2) Upon identification and production of a written authority from the Commission, any officer from the Commission, may in order to determine whether the provisions of the Act or these Regulations are being complied with, at any reasonable time and without prior notice enter the premises of a postal licensee and—

(a) inspect and make copies of or extracts from books, records or other documents;

(b) demand the production of and inspect the relevant licence; and

(c) inspect facilities and premises.

(3) Any person who obstructs an officer of the Commission from performing his or her duties and functions as provided in the Act or these Regulations shall be guilty of an offence and shall, if convicted, be liable to a fine not exceeding six thousand shillings or to imprisonment for a term not exceeding six months or to both.

87. (1) The Commission may, in accordance with the provisions of the Act or these Regulations suspend or cancel any postal licence. Suspension or cancellation of licences.

(2) Upon the suspension or cancellation of a licence by the Commission, no licensee shall be entitled to a refund of any fees paid in respect of such licence.

88. (1) A postal licensee may enter into any written agreement with another postal licensee to interconnect their postal services. Interconnection.

(2) An interconnection agreement referred to in paragraph (1), shall be filed with the Commission within thirty (30) days after the date of such agreement.

(3) No postal or courier licensee shall use a public postal licensee's network to deliver mail outside Kenya except with prior written consent of that public postal licensee.

(4) No postal licensee shall bundle letters and insert into a public postal licensee's network with the intention of having such bundles conveyed by that

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public postal licensee except with the written consent of that public postal licensee.

Disposal of
undeliverable postal
articles.

89. (1) Letters or other postal articles that are undeliverable due to an unreadable or non-existent address may be opened by a postal licensee and where the letter or articles is capable of being delivered based on information in the letter or article, the letter or article shall be delivered accordingly.

(2) Where a letter or postal article opened as provided in paragraph (1), is incapable of being delivered, but contains the sender's address, it shall be returned to such sender.

(3) Where a letter or postal article is incapable of being delivered but has a sender's address on it, it shall be returned to such a sender unopened.

(4) Every undeliverable postal article that has been opened and remains undeliverable may be kept for a minimum period of three months and may thereafter be destroyed:

Provided that where such a letter or postal article contains any thing of value or a saleable article, it shall be safely kept and a record thereof opened and maintained by any postal licensee for a period of six months and if unclaimed, the contents shall be disposed off in accordance with any written law.

(5) Where a letter or postal article is returned to a sender by reason of being undelivered as addressed and that sender refuses to take delivery of the same, the letter or postal article shall be dealt with as provided for in paragraph (4).

PART XI—TARIFFS REGULATION

Scope.

90. (1) Except as provided in regulation 97, this Part shall apply to licensed services which are not open to competition and whose tariffs are subject to regulation by the Commission.

Price cap.

91. (1) All licensees whose tariff rates are subject to review by the Commission pursuant to the price cap condition provided for in respective licences shall file with the Commission applications for the adjustment of such tariff rates.

(2) All licences for services that are subject to price cap condition shall contain the period in which such tariffs may be adjusted once a year.

(3) The obligation to comply with the terms and conditions of the price cap shall extend from the date on which a licence becomes effective up to the period when the services whose tariffs are regulated are open to competition as provided for in the relevant licences or as may be determined by the Commission.

Applications for tariff
approval.

92. All applications for approval of tariffs shall be filed with the Commission and shall—

- (a) conform to the methodology and formula defined in the relevant licence or such other terms as the commission may prescribe; and
- (b) contain relevant documentation, including all calculations and other information in support of the application.

93. (1) The Commission shall, at least sixty (60) days before approving any proposed tariffs submitted to it under regulation 93, give notice in the Gazette and in such other manner as it considers necessary— Notice on tariffs.

- (a) specifying the name and particulars of the licensee or class of licensees providing the service to which the tariffs relates;
- (b) stating the reasons for the proposed review of the tariffs and the new tariffs;
- (c) specifying the time within which representation or objections may be made to the proposed new tariffs.

(2) The Commission shall in considering the application for review of the tariffs take into account such written representations or objections received under paragraph (1) (c).

94. (1) Any proposed tariffs under the price cap condition shall be deemed approved if the Commission does not communicate its disapproval of the same to the applicant within sixty (60) days after receipt of the application or within fifteen (15) days after the applicant has furnished the Commission with any information sought and the Commission has not indicated its approval of the proposed tariffs. Decision on tariffs.

(2) The Commission may reject an application for the imposition of proposed tariffs if it is of the view that the proposed rates are unjustifiable.

(3) A decision of the Commission rejecting the imposition of proposed tariffs shall—

- (a) be in writing;
- (b) state the reasons for the rejection; and
- (c) be made available to the licensee.

(4) Upon approval by the Commission of any new tariffs, a licensee shall notify its customers of the new tariffs through publication in the Gazette or in such other publications as the Commission may determine and shall in such notice provide for a grace period of not less than fourteen days before implementing the new tariffs.

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Investigation and
suspension of tariffs.

95. (1) The Commission may, on its own motion or pursuant to a complaint made under this regulation, investigate any tariffs charged by a licensee.

(2) An application for investigation, suspension or rejection of any tariffs brought under subsection (1) shall—

- (a) be in writing;
- (b) specify the name and address of the petitioner and state the interest of such petitioner; and
- (c) the reasons why such tariffs should be investigated, suspended or rejected.

(3) Where after the investigations, the Commission is of the view that the tariffs should be suspended or rejected, it may reject or suspend such tariffs:

Provided that in case of a suspension of the tariffs the Commission shall notify the licensee and give such licensee twenty (20) days to respond to the intended cancellation.

Tariffs (file and use).

96. (1) All licensees under the Act who provide services to the public shall file with the Commission schedules of their tariff rates including those of their agents and correspondents.

(2) All licensees whose services are not subject to the price cap condition shall file with the Commission changes to existing tariffs, including the terms and conditions applicable thereto but excluding special offers and other promotions.

(3) All licensees, unless exempted by the Commission, shall only charge their customers the filed tariffs and shall further ensure that all filed tariff rates are printed and kept open for public review and inspection and shall furnish its customers upon request with such schedules.

(4) In this Part unless the context otherwise requires—

“price cap” means a methodology where the price charge for a service is allowed to change by the rate of inflation over the initial price with an adjustment factor (X) based on factors such as technological changes, need to finance development infrastructure and need to adopt efficient working systems; and

“tariff-regulated services” means services offered by a licensee which are not open to competition and whose tariffs are subject to regulation by the Commission.

PART XII—(Revoked by L.N. 28/2010)

PART XIII—MISCELLANEOUS PROVISIONS

Roaming agreements.

101. (1) Mobile cellular telecommunications licensees may enter into

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agreements to provide roaming services on a reciprocal basis to every other licensee of mobile cellular service that requests such service.

(2) An agreement to provide roaming services shall, upon request, require a licensee to provide mobile cellular telecommunications to all subscribers of another licensee of a mobile cellular telecommunications system, while such subscribers are located within any portion of the licensee's authorised geographic service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

102. (1) Any person who intends to be a contractor of telecommunications wiring or a vendor of a telecommunications or vendors of such equipment or apparatus shall register with the Commission upon payment of the prescribed fees.

Registration of telecommunications contractors and vendors.

(2) Upon application and registration, the Commission shall issue such contractor or vendor with a registration certificate in the prescribed form.

(3) Any person who conducts any business of wiring, installing or maintaining customer premises equipment or vending of telecommunications equipment without a registration certificate from the Commission shall be guilty of an offence.

103. The fees structure set out in the Second Schedule shall be applicable in respect of any application made under these Regulations and may be reviewed from time to time by the Minister.

Fees.

FIRST SCHEDULE—PRESCRIBED FORMS

Form No 1

Regulations 12, 69 and 77.

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR LICENCES

1. NAME OF COMPANY/PERSON TO BE LICENSED

(The Company or person's name should be stated in full)

2. ADDRESS AND TELEPHONE NUMBER OF THE COMPANY/ PERSON TO BE LICENSED

(The physical address, postal address, telephone and fax numbers should be stated)

Physical address: Town Street/Road LR No

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FIRST SCHEDULE—(Contd)

Name of Building Floor Room
Postal Address P.O. Box Town
Telephone Fax

3. INCOME TAX PERSONAL IDENTIFICATION NUMBER (PIN)

4. SHORT DESCRIPTION OF THE APPLICATION'S
LICENSABLE SERVICE

(A single sentence description of what aspect of postal
service the applicant is applying to be licensed in)

5. NAME OF COMPANY/PERSON TO BE LICENSED

(Give full details of the proprietors or partners owning
the business or if the applicant is a Company the names of the
directors and shareholders of the Company)

Where the Applicant is not a company

Name of proprietor	Nationality	Address	Passport/ID No.
1
2
3
4
5
6
7

Where the Applicant is a Company

i) Name of Shareholder Nationality No. of shares held Passport/ID No.

1 .....	.....	.....	.....
2 .....	.....	.....	.....
3 .....	.....	.....	.....
4 .....	.....	.....	.....

ii) Name of Director Nationality Address Passport/ID No.

1
2
3
4

6. SHARE HOLDING

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FIRST SCHEDULE—(Contd)

- (i) Local% Foreign%
- (ii) Authorised Shares Issued Shares
- (iii) Is the company listed in the Nairobi Stock Exchange? If yes, state the date on which it started trading.

7. REGISTRATION CERTIFICATE

Certificate No. Date

8. NAME AND ADDRESS OF THE BANK OR FINANCIAL INSTITUTION WHERE BUSINESS ACCOUNT IS MAINTAINED**9. DETAILS OF THE SERVICES PROPOSED AND MARKET TO BE SERVED**

(Use separate sheet where necessary)

10. PERSONAL DETAILS

- i) State whether any of the partners/directors/shareholders is undischarged bankrupt.

(If so, indicate the names)

.....

.....

.....

.....

- ii) State whether any of the partners/directors/shareholders have a beneficial interest in any other business licensed to provide or operate postal services.

.....

.....

.....

.....

- iii) Has any previous application by you been rejected under the Act? (If so, give details)

.....

.....

.....

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FIRST SCHEDULE—(Contd)

.....
.....
.....
.....

iv) Has any previous licence granted to you under the Act been cancelled, suspended or modified? (If so, give details)

.....
.....
.....
.....
.....

11. MANDATORY REQUIREMENTS

- i) Certified copy of proof of shareholding from the Registrar of Companies
- ii) Certified copy of proof of registration or incorporation in Kenya
- iii) Certified copy of PIN card
- iv) Non-refundable licence application fee of Kshs 10,000/=
- v) Letter of application with Company seal (where applicable)

(All documents attached to this application should be certified as true copies of the originals)

12. COMPLETED APPLICATION FORMS SHOULD BE RETURNED TO:—

Director-General

Communications Commission of Kenya

13. DECLARATION

I/We hereby certify the information we have provided in this application is true and correct. I/We also understand that it is an offence under the Penal Code to give false information in support of any application.

Name

Designation

Signature

Date

FIRST SCHEDULE—(Contd)

[Subsidiary]

FOR OFFICIAL USE ONLY

The applicant **MEETS/DOES NOT MEET** the Commission’s requirements and is hereby **RECOMMENDED/NOT RECOMMENDED** for approval of licensing as

a

The reasons for not recommending the applicant are as follows:—

.....

.....

.....

.....

.....

.....

Name Designation

Signature Date

Official stamp

[Subsidiary]

FIRST SCHEDULE—(Contd)

FORM NO. 2

Regulations 52 and 57

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR TYPE APPROVAL/ACCEPTANCE

1. PARTICULARS OF VENDOR

(i) Full names of Company/Business
.....
P.O. Box Tel No.:
Fax No..... E-mail

(ii) Physical Address:
Town Estate Street/Road
Name of building Floor Room

2. DESCRIPTION OF EQUIPMENT

ITEM NO	TYPE	MANUFACTURER	7MAKE AND MODEL	SERIAL N U M B E R / IMEI	COUNRTY OF ORIGIN

3. REQUIRED ITEMS

- (i) Letter of Agency from manufacturer or principal distributor.
- (ii) Non-refundable approval/acceptable fee of Ksh vide Receipt
No of
- (iii) Sample of equipment/instrument model complete with associated accessories and attachments.
- (iv) Detailed technical documentation (operation, programming, service, technical, circuitry) in English language.
- (v) Test report (Results) from manufacturer or accredited laboratories and test schedules.
- (vi) List from manufacturer stating other countries where the equipment is type approved and in service.

4. DECLARATION

I hereby apply for provisional Type Approval/Acceptance/authority to market the equipment(s) specified above in Kenya on behalf of my company. I certify that all the information I have given in this form is correct to the best of my knowledge.

FIRST SCHEDULE—(Contd)

[Subsidiary]

Applicant's

Name Sign Date.....

Contact Tel No

5. FOR OFFICIAL USE ONLY

- (i) Case No.
- (ii) Evaluating officers name Sign
- (iii) Approval Recommended/Not Recommended (Delete where not applicable).
- (iv) TAC No.....Approved/Not Approved/Deferred (Delete where applicable)

FORM NO. 3

Regulation 57

COMMUNICATIONS COMMISSION OF KENYA**APPLICATION FOR FINAL TYPE APPROVAL/ACCEPTANCE****1. PARTICULARS OF VENDOR**

- i) Full names of Company/Business
.....
P.O. Box..... Tel No.: Fax No
Email
- ii) Physical Address:
Town Estate Street/Road
Name of Building Floor..... Room.....

2. DESCRIPTION OF EQUIPMENT

ITEM NO	TYPE	MANUFACTURER	MAKE AND MODEL	SERIAL NUMBER/IMEI	COUNTRY OF ORIGIN

3. DETAILS OF INSTALLATIONS

[Subsidiary]

FIRST SCHEDULE—(Contd)

ITEM NO	MAKE, MODEL, TYPE OF EQUIPMENT	D A T E DATE OF PROVISIONALLY APPROVED BY CCK & R E F E R E N C E NUMBER	DATE OF INSTALLATION	POSTAL, TELEPHONE, FAX, E-MAIL & PHYSICAL ADDRESS OF REFERENCE	CONTACT PERSON & RANK IN ESTABLISHMENT

Please continue on a separate sheet. Also attach details of employees and their qualifications and details of workshop.

4. DECLARATION

I hereby apply for Final Type Approval/Acceptance/authority to market the equipment(s) specified above in Kenya on behalf of my company I certify that all information I have given in this form is correct to the best of my knowledge.

Applicant's Name Sign Date
Contact Tel No

5. FOR OFFICIAL USE ONLY

- (i) Case No
- (ii) Evaluating officers name Sign
- (iii) Approval Recommended/Not Recommended (Delete where not applicable).
- (iv) TAC No./Item No Approved/Not Approved/Deferred (Delete where applicable).

COMMUNICATIONS COMMISSION OF KENYA**APPLICATION FOR INDIVIDUAL AUTHORITY TO USE TELECOMMUNICATION
TERMINAL EQUIPMENT****1. PARTICULARS OF APPLICANT**

- (i) Full names of Applicant/Company
.....
P. O. Box Tel No
- (ii) Physical Address where the equipment will be used
Town Road/Street/Estate Building
- (iii) Details of Network in which the equipment is to be connected (i.e.
Radio/Data etc)
- (iv) Type of service for which the equipment is intended to be used (e.g.
ISP access, Bureau, Residential voicemail, etc)
.....
- (v) Telephone/Circuit number(s) to which the equipment will be connected
(where applicable)
.....

2. DESCRIPTION OF EQUIPMENT

ITEM NO	TYPE	MANUFACTURER	MAKE AND MODEL	SERIAL NUMBER/IMEI	COUNTRY OF ORIGIN

3. REQUIRED ITEMS

- (i) Sample of equipment/instrument model complete with associated accessories and attachments.
- (ii) Technical Manuals (Operation, Programming, specifications).
- (iii) Non-refundable approval/acceptance fee of Kshs vide Receipt No..... of
- (iv) Maintenance contract letter from registered Contractor (where applicable).
- (v) Copy of purchase/import ownership documents.

[Subsidiary]

FIRST SCHEDULE—(Contd)

4. DECLARATION

I hereby apply for authority to use the equipment specified above in Kenya. I certify that all information I have given in the form is correct to the best of my knowledge.

Applicant's

Name Sign Date

Contact Tel No

5. FOR OFFICIAL USE ONLY

(i) Case No

(ii) Evaluating officers name Sign

(iii) Approval Recommend/Not Recommended (Delete where not applicable).

(i) TAC

No..... Approved/Not

Approved/Deferred (Delete where applicable).

FORM NO. 5

Regulation 18

COMMUNICATIONS COMMISSION OF KENYA**APPLICATION FOR FREQUENCY ASSIGNMENT AND LICENCE IN RADIO
COMMUNICATION SERVICE****1. Administrative details:**

a) Name of the organization (or individual)

Nationality ID/PP

No

Postal address

Business Telephone Fax

Physical Location: Road/Street Building LR No.....

b) Name and postal address of the local supplier (if any)

Postal address

Business Telephone Fax

c) Type of radio communication service
service:

• HF

• MF

• FM

(delete as appropriate)

d) Authorised broadcast
area(s)

FIRST SCHEDULE—(Contd)

[Subsidiary]

(attach certified copy of broadcasting permit)

- e) Name of person/organization responsible for payment of bills

2. **Transmit Site Details:**

- i) Name
- ii) Land registration number.
- iii) Road/Area
- iv) Geographical co-ordinates:
Latitude: Degrees..... Minutes Seconds (N/S)
Longitude: Degrees Minutes Seconds(E)
- v) Altitude above sea level (in meters)
- vi) Relative height around 15 kilometer radius

3. **Transmitter Equipment Details:**

- a) Equipment and performance characteristics.
 - i) Name
 - Model
 - Serial number
 - ii) Carrier output power
 - iii) Effective Radiated Power (dBW)
 - iv) Transmission system (applicable to FM systems only):...
 - System 1: Monophonic, max deviation +/-75 kHz
 - System 2: Monophonic, max deviation +/-50 kHz
 - System 3: Stereophonic, polar modulation, max deviation +/-50 kHz
 - System 4: Stereophonic, pilot tone system, max deviation +/-75 kHz
 - System 5: Stereophonic, pilot tone system, max deviation +/-50 kHz
 - v) RF bandwidth Hz
 - vi) IF bandwidth at – 3dB level Hz
 - vii) RF Filter Loss dB
- b) **Transmit antenna details:**
 - i) Type of antenna
 - ii) Antenna height above ground level
 - iii) Relative antenna height around a 15 kilometer radius
 - iv) Radiation pattern:
 - a) Omnidirectional: (YES or NO)
 - b) If not omnidirectional provide the following details:
 - (1) Azimuth of the main lobe
 - (2) Angular beam width of the main lobe at the 3

[Subsidiary]

FIRST SCHEDULE—(Contd)

- dB point
- (3) Radiation suppression at every 10° (use a separate sheet of paper)

v) Antenna gain in dBi

c) Feeder:

- i) Feeder type
- ii) Attenuation per meter dB
- iii) Total feeder lossdB

4. **Miscellaneous data:**

- a) Hours of operation: From Hours To Hours.
- b) Proposed date of commencement of service

Date

Signature of applicant:

Name:

Designation:

Official Stamp

Form No 6

Regulation 18

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR FREQUENCY ASSIGNMENT AND LICENCE IN THE FIXED AND MOBILE RADIO COMMUNICATION SERVICE.

1. **Administrative details:**

- a) Name of the organization (or individual)
- Nationality ID/PP No.
- Postal address
- Business Telephone Fax
- Physical location: Road/street Building LR No.
- b) Purpose for which this service is required
-
-
- c) Name of person/organization responsible for payment of bills
-
-

2. **Transmit Station:**

- a) Transmitter site details (for fixed station):

i) Name

[Subsidiary]

FIRST SCHEDULE—(Contd)

- ii) LR No.
 - iii) Road/Area
 - iv) Geographical co-ordinates:
 - Latitude: deg min.....
 - sec(N/S)
 - Longitude: deg min..... sec(E).
 - v) Altitude above sea level (in metres)
 - vi) Radius of service area in kms.
- b) Equipment details:
- i) Station Configuration: Fixed/Mobile (delete as appropriate)
 - ii) Make
 - Model
 - Serial number
 - iii) Name and postal address of the local supplier (if any)
 -
 - Postal address
 - Business Telephone
 - Fax
 - iv) Channel capacity
 - v) Carrier output power
 - (Watts)
 - vi) Duplex spacing
 - vii) Adjacent channel spacing
 - viii) Power to antenna
 - ix) System deviation (or equivalent for digital systems)
 - x) FM noise and hum level (in case of analogue systems)
 - xi) Bit error rate (in case of digital systems)
 - xii) Conducted spurious emissions.
 - xiii) Radiated spurious emissions.
 - xiv) Audio frequency harmonic distortion.
 - xv) Emission designation.
 - xvi) Operating frequency band
 - xvii) RF bandwidth
 - xviii) IF bandwidth at -3dB level
 - xix) Receiver sensitivity rated at 12 dB SINAD
 - xx) Receiver adjacent channel selectivity
 - xxi) Desensitisation
 - xxii) Threshold/squelch level
 - xxiii) RF Filter Loss
- c) Transmit antenna details:
- i) Type of transmit antenna
 - ii) Antenna height above ground level
 - iii) Relative antenna height around a 15 kilometre radius

[Subsidiary]

FIRST SCHEDULE—(Contd)

- iv) Directivity
- v) Azimuth of the main lobe
- vi) Angular beam width of the main lobe at the 3 dB point
- vii) Antenna gain in dBi

d) Receiving antenna details (if different from transmitting antenna):

- i) Type of receiving antenna and its directivity
- ii) Azimuth of the main lobe
- iii) Angular beam width at the 3 dB power point
- iv) Receiving antenna gain in dBi

e) Feeder:

- i) Feeder type
- ii) Attenuation per metre
- iii) Total feeder loss

3. Associated Receiving Station.

a) Receiver site details:

- i) Name
- ii) LR. No.
- iii) Road/Area
- iv) Geographical co-ordinates:
Latitude: deg min..... sec(N/S)
Longitude: deg min..... sec(E).
- v) Altitude above sea level (in metres)
- vi) Antenna height above ground level
- vii) Relative antenna height around a 15 kilometre radius

4. Miscellaneous data.

- a) Maximum hours of operation
- b) Class of station Nature of service
(Insert prefix, see NOTE 1 & 2)
- c) Proposed date of putting into use
- d) Path length in kms (for FIXED service)
- e) Radius of service area in kms (for MOBILE service).
- f) Registration numbers of vehicles to be fitted with mobiles

Date Signature of applicant:
Name
Designation:

SECOND SCHEDULE – FEES**COMMUNICATIONS COMMISSION OF KENYA****LICENCE FEES PAYABLE BY VARIOUS TYPES OF
TELECOMMUNICATIONS NETWORK OPERATORS AND
SERVICE PROVIDERS IN KENYA****(A) FACILITY –BASED NETWORK OPERATORS**

CATEGORY OF LICENCE	APPLICATION FEE	ANNUAL OPERATING LICENCE FEE
Operation of local systems and the provision of local services.	10,000/-	0.5% of audited annual gross turnover
Operation of Long distance systems and provision of long distant services	10,000/-	0.5% of audited annual gross turnover
Operation of international systems and provision of international services	10,000/-	0.5% of audited annual gross turnover
Operation of cellular mobile systems and provision of mobile cellular services	10,000/-	0.5% of audited annual gross turnover
Operation of paging systems and provision of paging services	10,000/-	100,000/-
Internet service provider (ISP)	10,000/-	100,000/-
Existing private network operators (e.g. KPL's, KP&LC's, KR's etc).	10,000/-	100,000/-

**(B) VENDORS, CONTRACTORS, INSTALLERS AND
MAINTAINERS OF TELECOMMUNICATIONS**

[Subsidiary]

SECOND SCHEDULE—(Contd)

WIRING AND TERMINAL EQUIPMENT

CATEGORY	APPLICATION FEE	REGISTRATION FEE	ANNUAL FEE
Telecommunications Vendor (V)	1,000	5,000	2,000
Telecommunications Terminal Equipment Installation Contractor (I)	1,000	5,000	2,000
Telecommunications Terminal Equipment Maintenance Contractor (M)	1,000	5,000	2,000
Internal Telecommunications Wiring Contractor (W)	1,000	5,000	2,000
External Telecommunications Wiring Contractor (E)	1,000	5,000	2,000

(C) TECHNICAL PERSONNEL

SECOND SCHEDULE—(Contd)

[Subsidiary]

CATEGORY	APPLICATION FEE	REGISTRATION FEE	ANNUAL FEE
Telecommunications Terminal Equipment Installer (Installation Engineer/Technician) (I)	500	Class A 2,000 Class B 2,000 Class C 2,000	Not Applicable
Telecommunications Terminal Equipment Maintainer (Maintenance Engineer/Technician) (M)	500	Class A 2,000 Class B 2,000 Class C 2,000	Not Applicable
Internal Telecommunications Wiring Engineer/Technician) (W)	500	2,000	Not Applicable
External Telecommunications Wiring Engineer/Technician) (E)	500	Class A 2,000	Not Applicable

[Subsidiary]

SECOND SCHEDULE—(Contd)

(D) MOBILE SATELLITE SERVICES

	APPLICATION	INSPECTION FEE	ANNUAL FEE
Inmarsat A	1,000	N/A	N/A
Inmarsat B	1,000	N/A	N/A
Inmarsat C	1,000	N/A	N/A
Inmarsat M	1,000	N/A	N/A
Inmarsat mini-M	1,000	N/A	N/A
Inmarsat AERO	1,000	N/A	N/A
Inmarsat HSD option (standard)	1,000	N/A	N/A
Inmarsat HSD option (64 Kb/s)	1,000	N/A	N/A
VSAT interactive (Single user)	1,000	25,000	100,000
VSAT interactive (Multi-user)	1,000	25,000	100,000
VSAT Receive only	1,000	25,000	50,000
Radio Determination & Related services	1,000	1,000	5,000
Space Research & Related Services	1,000	25,000	500,000
Amateur Satellite Services	1,000	25,000	50,000

COMMUNICATIONS COMMISSION OF KENYA

SECOND SCHEDULE—(Contd)

FREQUENCY SPECTRUM FEES

	SERVICE.	DESCRIPTION	ANNUAL FEES PER STATION PER FREQUENCY IN Kshs.	
			MF/HF	VHF/UHF
1.	AERONAUTICAL STATION LICENCE	A licence to establish a radio station for carrying radiocommunication with aircraft station.	Kshs. 4,800	Kshs. 4,800
2.	AIRCRAFT STATION LICENCE.	A licence to establish a mobile station aboard an aircraft, to operate in the aeronautical mobile service.	Kshs. 4,800	Kshs. 4,800
3.	LICENCE FOR FIXED STATION OPERATING IN MOBILE SERVICE.	A licence to establish a radiocommunication station at a fixed location for carrying on a Mobile Radiocommunication Service.	Kshs. 18,700.	Kshs. 5,000
4.	MOBILE STATION LICENCE	A licence to install and use radio apparatus for transmitting and receiving aboard a vehicle, aircraft, or a ship.	Kshs. 5,610	Kshs. 2,900
5.	PORTABLE STATION LICENCE	A licence to a portable radio communication apparatus to operate in the mobile service.	Kshs. 5,610	Kshs. 2,900
6.	COAST STATION LICENCE.	A licence to establish a station and land for carrying on a service with ship stations.	Kshs. 5,610	Kshs. 2,900
7.	SHIP STATION LICENCE.	A licence to install and use radio apparatus aboard ships.	Kshs. 5,610	Kshs. 2,900

[Subsidiary]

SECOND SCHEDULE—(Contd)

	SERVICE.	DESCRIPTION	ANNUAL FEES PER STATION PER FREQUENCY IN Kshs.	
			MF/HF	VHF/UHF
7.	SHIP STATION LICENCE.	A licence to install and use radio apparatus aboard ships.	Kshs. 5,610	Kshs. 2,900
8.	RADIO AMATEUR LICENCE.	A licence to install and operate an amateur radio station.	Kshs. 2,000	Kshs. 2,000
9.	CITIZEN BAND RADIO LICENCE.	A licence to operate a low power radio apparatus operating in the frequency bands 26925 kHz to 27403 kHz.	Kshs. 1,000	Not applicable.
10.	PRIVATE PAGING SERVICE.	A licence to operate a radio paging service for private use.	N/A	Kshs. 25,000
11.	PUBLIC PAGING SERVICE.	A licence to operate a radio paging service for public use (base station)	N/A	Kshs. 140,000
12.	RADIO PRESS RECEPTION LICENCE	A licence for a radio station to receive press messages from stations transmitting multi-destination radio press messages.	Kshs.10,000.	Kshs. 10,000.

13. Alarm systems—

The basic charge for each alarm unit is Ksh.1250, but the specific charges for each particular customer will be determined by the applicable charge grouping.

14. Broadcasting Stations & fixed satellite earth stations

The fee payable for broadcasting stations and fixed satellite earth stations is commensurate with the power and the occupied bandwidth, and calculated on the basis of these parameters using the following formula:—

Fees per transmitter or carrier in Kenya shillings is :

SECOND SCHEDULE—(Contd.)

$$= K_1 \log_{10} \left[\frac{P_{\text{nom}} (\text{watts}) + K_2 \log_{10} \left(\frac{P_{\text{tot}} - 1000}{25 \text{ watts}} \right)}{25 \text{ watts}} \right] \times \left[\frac{BW(\text{kHz})}{8.5 \text{ kHz}} \right] \times 574.10$$

Where,

- a) $K_1 = 1$ for the first 1 kW of radiated carrier power
- b) $K_2 = 0.2$ for additional power above 1 kW.
- c) **25 watts** is the maximum power allowable for VHF base stations.
- d) **8.5 kHz** is maximum allowable RF bandwidth for VHF base stations.
- e) P_{nom} is the nominal transmitter power.
- f) P_{tot} is the effective isotropically radiated power.
- g) **Bandwidth** is the width, of frequency band that is just sufficient to ensure that transmission of information at a rate and with the quality acceptable under specific conditions'

15. Terrestrial Links (Fixed station Licence)

A licence to establish a radio communication station at a fixed location for carrying on a Fixed Radiocommunication Service to provide a public service.

This category of license is drawn for radio stations used to interconnect two specified fixed points.

The fee payable for this licence is based on the occupied bandwidth, and is calculated using the following formula:—

The fee, F (KShs.) per transmitter per location is:

$$F(\text{Kshs}) = \left[\frac{\text{RF Bandwidth (kHz)}}{8.5 \text{ kHz}} \right] \times \left[\text{Number of RF channels} \right] \times K_1 \times \text{Unit fee}$$

Where, unit fee = 574.10, as Kshs. 574.10 is the unit spectrum fee for a 8.5kHz band.

K1 = 0.6 for frequency band <1700mhz
= 0.5 for frequency band 1700 to 10000 Mhz
= 0.4 for frequency band > 10000 Mhz.

Where **RF** means Radio Frequency, and other parameters are as defined above.

Transmitter shall include terminal and repeater stations.

The formula is applicable to point-to-point links, microwave radio relay equipment, studio-to-transmitter links etc.

16. Cellular Networks and Fixed Wireless Access networks

Licence to establish a fixed radio station to operate a mobile cellular radio service and Fixed wireless Access.

$$Fee F (Kshs) = \frac{2 \times RF Bandwidth (kHz.)}{8.5 kHz} \times (number of cell sites) \times 1043.65$$

The parameters are as defined above.

17. Trunked Network (Mobile Trunked Radio Licence)

A licence to operate a private trunked radio network

The fee, *F* per transmitter per location is:

$$F (Kshs) = \left[\frac{RF Bandwidth (kHz.)}{8.5 kHz} \right] \times (number of cell sites) \times 574.10$$

The parameters are as defined above.

18. Alarm Systems

The basic charge for each alarm is Kshs 1250, where the specific charges for each particular customer will be determined by the applicable charge grouping.

19. Single channel radios

SECOND SCHEDULE—(Contd)

[Subsidiary]

The fee, F per transmitter per location is:

$$F \text{ (Kshs)} = \left[\frac{\text{RF Bandwidth (kHz)}}{8.5 \text{ kHz}} \right] \times 1043.65$$

20. The Commission is not bound to use any or all of the above formulas if in its opinion the service involved require technical or other considerations. Spectrum fees for radio equipment not covered in the above schedule shall be determined at the time of application.

COMMUNICATIONS COMMISSION OF KENYA

TYPE APPROVAL /ACCEPTANCE FEES**(A) GENERAL**

EQUIPMENT	DESCRIPTION	FEES (Ksh)	
		Type approval of equipment for <i>individual use</i> by the applicant.	Type approval of equipment for purposes of <i>marketing</i> .
Telephony Instrument	a) Ordinary	600	10,000
	b) Executive	900	15,000
	c) Cordless	1,000	15,000
Telephony Terminals	a) 2 line Executive	1,200	20,000
	b) Cordless with Executive telephone	1,200	20,000
	c) Intelligent executive telephone	2,000	30,000
	d) Private payphone	2,000	15,000
Facsimile Transceiver	a) Without Integral answering/recording facility	3,000	20,000
	b) With integral answering/recording facility	3,500	24,000
Teleprinter	All types	3,000	15,000

[Subsidiary]

SECOND SCHEDULE—(Contd)

Answering systems	Answering machine	400	8,000
	a) Ordinary Answer Phone	1,100	14,000
	b) Executive Answer phone.	1,400	19,000
Data terminals, PADS & MUXs	All types	8,000	18,000
Data Modems	a) Data only	1,000	15,000
	b) Data/fax/voice	2,000	20,000
Radio Communications	a) HF/VHF/UHF for use in private radio networks.	3,000	25,000
	a) HF/VHF/UHF for use in public radio network.	3,000	30,000
	b) Radio alarm transmitter.	2,300	23,000
	c) Citizen band	1,600	23,000
	d) Amateur	3,000	27,000
Paging systems	e) Wide area Paging transmitter.	4,000	30,000
	f) Pager receiver unit for use in wide area paging networks.	1,600	15,000
	g) On site paging transmitter.	3,000	20,000
	h) Pager receiver unit for use in on-site paging system	1,500	15,000
Broadcast transmitters	i) Radio broadcast Transmitters	40,000	40,000
	j) Television Broadcast Transmitters	40,000	40,000
Integrated Answer/Recording facility.	All types (NB. Mark up loaded to secretarial sets with this facility).	500	4,000
Subscriber's Private Meter	All types	600	8,000
Call barring units	All types	600	8,000

[Subsidiary]

SECOND SCHEDULE—(Contd)

Bureau meters/Public Call office monitors	All types	1,000	12,000
Cellular Telephones	GSM, GMPCS, ETACS.	10,000	40,000
Fixed Wireless Local Loop Terminals	All types	3,000	30,000
Inmarsat Mobile Earth Terminals	All types	10,000	40,000

(B) CALL ROUTING EQUIPMENT:—PMBXs, PABXs, VOICE MESSAGING SYSTEMS, AND SBSs.

CAPACITY (PORTS)	INDIVIDUAL	MARKETING
PRIVATE MANUAL BRANCH EXCHANGES:		
ALL TYPES	4,800	9,700
PRIVATE AUTOMATIC BRANCH EXCHANGES:		
ONE LINE SYSTEMS, MAX 1+4	2,500	5,000
>1 EXCH. LINE ≤ 10 PORTS	6,200	12,500
> 10 PORTS ≤ 20 PORTS	10,000	20,000
>20 PORTS ≤ 40 PORTS	17,500	35,000
>40 PORTS ≤ 120 PORTS	30,000	60,000
>120 PORTS ≤ 200 PORTS	37,500	75,000
>200 PORTS ≤ 300 PORTS	42,500	85,000
>300 PORTS ≤ 500 PORTS	45,000	90,000
>500 PORTS	50,000	100,000
VOICE MESSAGING SYSTEMS		
AS ABOVE		

Notes:

- (a) A telephone shall be deemed to be executive if it has both loop disconnect and dual tone multi frequency dialing modes and any two of the following features:
- (i) memories for storing telephone numbers;
 - (ii) liquid crystal display; and
 - (iii) full hands free facility.
- (b) Answering facility means an in built answering and recording facility

[Subsidiary]

SECOND SCHEDULE — (Contd)

for voice and fax messages.

(C) OTHER SERVICES**(i) General Information Services**

List of Type Approved equipment Ksh. 50 per equipment type

(ii) Technical Information

Technical specifications Ksh. 200 per equipment type

(iii) Miscellaneous services

Exhibition/Demonstration of equipment/System:

♦ Registered vendor: Ksh. 1,000 first day
 Ksh. 500 each
 consecutive day

♦ Non-registered vendor: Ksh. 2,000 first day
 Ksh. 1,000 each
 consecutive day

Copy of Type Approval certificate/Ksh. 250

Change of name on certificate

Letter of no objection to import equipment. Ksh.250

POSTAL LICENCE AND OPERATING FEES

Regulation 81

Category	Annual Licence Fees
(i) Public Postal Licensee	1% of Gross Annual Turnover
(ii) Dominant International Operators	US D 25,000 or equivalent
(iii) International Inbound Only	US D. 2000 or equivalent
(iv) Other International Operators	US D. 7000 or equivalent
(v) Dominant Regional/Intercountry Operators	US D 8000 or equivalent
(vi) Other Regional/Intracountry Operators	US D 2500 or equivalent
(vii) Intracity Operators	US D 1200 or equivalent
(viii) One off Licence Application Fees	KSHS 10,000/

[Subsidiary]

**THE KENYA INFORMATION AND COMMUNICATIONS
(BROADCASTING) REGULATIONS, 2009**

L.N. 187/2009.

1. These Regulations shall be cited as the Kenya Information and Communications (Broadcasting) Regulations, 2009. Citation.
Corr. 2010.

PART I—PRELIMINARY

2. In these Regulations, unless the context otherwise requires— Interpretation.
Corr. 2010.
“Act” means the Kenya Information and Communications Act, 1998; No. 2 of 1998.

“advertise” means to broadcast any item in return for payment or other valuable consideration to a broadcaster with the intention of—

- (a) selling to a viewer or listener, any product or service;
- (b) convincing a viewer or listener of a belief or course of action;
or
- (c) promoting a product, service, belief, course of action, person or organisation;

“broadcasting licence” means a license issued by the Commission permitting the licensee to provide broadcasting services;

“broadcast market” means the area, specified in the broadcasting licence by the Commission, within which a licensee is licensed to operate;

“child” means any human being under the age of eighteen years;

“disaster” means a serious disruption of the functioning of the society causing widespread human, material or environmental damage and losses which exceeds the ability of the affected community to cope using their own resources, and includes any event or circumstance arising out of accidents, natural phenomena, fires, floods, explosions, or incidents involving exposure or potential exposure to radioactive or toxic materials;

“infomercial” means any advertising broadcast in visual or audio form, lasting for more than two minutes, which may contain demonstrations of the use of the product or service advertised, and includes direct offers to the public in return for payment, and results in the broadcaster receiving payment in monetary terms or otherwise;

“licensee” means holder of a broadcasting services licence;

“local content” means the total of all television or radio programmes which fulfil any five of the following conditions:

- (a) the production is made in either Kenya’s native languages or official languages of Kenya;

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- (b) production was done in Kenya;
- (c) the content deals with issues that are unique and relevant to Kenyan audiences;
- (d) at least twenty per centum of the share of the production company are owned by Kenyans;
- (e) a majority of the artistes are Kenyans;
- (f) the location of shooting, in case of audiovisual programmes or performance was in Kenya;
- (g) the author thereof must be a Kenyan national and in case of co-authorship or multi-authorship fifty per centum or more of the authors must be Kenyan;
- (h) the production is made under Kenyan creative and technical control,

but does not include news and commentaries;

“national emergency organizations” include the police force, security forces, fire brigade, ambulance services, medical services, veterinarian services and environmental disaster agencies, whether or not such organizations are owned and managed on a private or public organizations;

No. 10 of 2007.

“political party” means a party registered by the Registrar of Political Parties as a political party in Kenya under the Political Parties Act, 2007;

“polling period” means the period covering the period of national general elections are held, including election campaigns and post-election and referendum period;

“programme” means a body of live or recorded material consisting of images, sounds or both embodied in signals emitted for the purpose of ultimate broadcasting’;

“programme segment” means a programme which, in audio-visual sense, presents one whole unit, with a beginning and end, clearly separated from other segments and content;

“public broadcaster” means the public broadcaster designated under section 46E of the Act;

“public emergency service” means broadcasting services offered in the event of a disaster emergency on the request of person authorized by the government;

“re-broadcasting” means the simultaneous or subsequent broadcasting by one broadcasting organization of the broadcasts of another broadcasting

organization;

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“satellite broadcasting service” means a broadcasting service that is broadcasted through transmitters situated on a satellite;

“sponsored programme” means a programme which all or part of its costs are paid by a sponsor, with a view to promoting that sponsor’s, or another sponsor’s name, product or service;

“station programming format” means an arrangement of programmes which are presented on a broadcasting station;

“subscriber” means a person who, in relation to subscription television and or radio broadcasts, has entered into an agreement with a provider of subscription radio or television services;

“subscription broadcasting services” includes, among other services, cable broadcasting and multi-channel satellite distribution services from foreign territories that are offered through subscription;

“subscription management services” means a service which involves the provision of support services to a subscription broadcasting service which may include, among other services, subscriber management support, subscription fee collection, call centers, sales and marketing, and technical and installation;

“terrestrial broadcasts” means the services that are broadcast from a transmitter situated upon the earth’s surface within the country;

“terrestrial digital signal distributor” means any person who provides network facility operator services for multimedia broadcasting;

“watershed period” means the time between 5.00 am and 10.00 pm, or such other time as may be prescribed by the Commission by Notice in the Kenya Gazette, within which content intended for an adult audience is not to be aired.

PART II—LICENSING

3. (1) Any person who wishes to provide broadcasting services in Kenya shall apply to the Commission for the licence through the prescribed procedure.

General
requirements.
Corr. 2010.

(2) The Commission shall provide information relating to the availability of broadcasting frequencies, the application requirements and the selection criteria for issuance of a licence.

(3) A person who wishes to provide broadcasting services in more than one station shall apply for a licence for every broadcasting station it wishes to operate.

(4) The Commission may require an applicant to provide additional documentation or information which that is directly relevant to assessing

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whether the applicant meets the criteria established in the Act and regulations for the grant of the licence.

(5) The Commission shall publish applications received for broadcasting licences in the Gazette and invite the public to comment before it issues a licence.

(6) The Commission shall grant successful a applicant a broadcasting services licence and require the licensee to establish the necessary broadcasting infrastructure and commence broadcasting within a period of twelve months.

(7) The commission shall revoke the licence of a licensee who does not establish the necessary broadcasting infrastructure within the period specified in paragraph (6).

Application for
a Commercial
broadcasting services
license.

4. (1) A person applying for a licence for a free-to-air commercial broadcasting service or services shall furnish the Commission with a business plan which shall include the—

- (a) evidence of technical capacity in terms of personnel and equipment to carry out the broadcasting services;
- (b) evidence of relevant experience and expertise to carry out the broadcasting services;
- (c) evidence of the capacity to offer broadcasting services for at least eight continuous hours in a day;
- (d) programme line-up or schedule for the broadcasting services which the licence is sought; and
- (e) such other information or requirement as the Commission may from time to time prescribe.

(2) A person who applies for a licence to provide subscription television or radio service shall, unless it is otherwise prescribed by the Commission, comply with paragraph (1) and satisfy the Commission that it has the capacity to offer a minimum of ten channels to each subscriber.

Application for
a community
broadcasting licence.

5. (1) A person applying for a community broadcasting licence shall furnish the Commission with—

- (a) information on the service for which the community broadcasting licence is sought for;
- (b) the minutes of the meeting where it was resolved to establish a community broadcasting station;
- (c) proof of the sources of funding and sustainability mechanisms;
- (d) weekly programme schedules for the broadcasting services which

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the licence is sought; and

- (e) such other information or requirement as the Commission may from time to time prescribe.

6. (1) The Commission shall —

- (a) ensure that broadcasting services reflect the national identity, needs and aspirations of Kenyans;
- (b) ensure that broadcasting services are delivered using the most efficient and effective available technologies;
- (c) develop a frequency plan which sets out how the frequencies available for broadcasting services in Kenya will be shared equitably and in the public interest among various tiers of broadcasting;
- (d) ensure that every applicant secures relevant permission or entered into agreements or arrangements necessary for the operation of the broadcasting service.

Obligations relating to broadcasting services.

(2) All broadcasters shall —

- (a) annually file with the Commission documents showing their station identity and any changes thereto;
- (b) ensure that their station identity is unique and does not cause confusion;
- (b) keep such records as the Commission may prescribe from time to time;
- (c) reveal their station's identity at intervals of sixty minutes during the period which broadcasts are made from that station; and
- (d) state, at least twice within a period of twenty four hours, all the frequencies and channels on which the broadcasting station is licensed to operate state.

(3) In the case of free-to-air broadcasting services the Commission shall ensure that the services —

- (a) provide the amount of local content as specified in the licence;
- (b) include news and information in their programming, as well as discussions on matters of national importance; and
- (c) adhere to strictly to the Commission's or subscribed programme codes in the manner and time of programming schedules .

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Broadcasting licence fees.

7. The Commission may—

- (a) prescribe fees payable for, among others, the broadcasting services licence, application, renewal, transfer, annual licence fee and any other fees related to the services; or
- (b) exempt the public broadcasting services and any other licence category from payment of any fees prescribed pursuant to paragraph in (1).

Commencement of broadcasting service.

8. A licensee shall, not later than fourteen days before commencement of broadcasting services publish a notice in a newspaper, with wide circulation in the licensee's coverage area, containing—

- (a) a statement on the licensee's intention to transmit a broadcasting service from a station in the licensee's coverage area;
- (b) the commencement date and time of transmissions;
- (c) the assigned frequency or channel that the station shall operate from;
- (d) the station programming format;
- (e) a statement inviting the members of the public to contact the licensee in case any transmission by the licensee causes interference with the services provided by other licensees; and
- (f) the address and telephone number of the licensee.

Renewal of licences.
Corr. 2010.

9. (1) A licensee may, within a period of six months before the expiry of its licence apply to the Commission for the renewal of the licence in such manner as the Commission may prescribe.

(2) Where a licence is renewed, the applicant shall prior to the issuance of the licence pay such fees as the Commission may prescribe.

Ownership and control.

10. (1) No persons other than the public broadcaster shall be directly or indirectly, entitled to more than one broadcast frequency or channel for radio or television broadcasting in the same coverage area.

Provided the Commission shall prescribe a timeframe for existing stations to comply with this requirement.

(2) The shareholding of a licensee shall at all times comply with the Government's Communications Sector Policy, as may be published from time to time.

(3) A licensee shall, at least ninety days prior to effecting such change, notify the Commission of any proposed change in ownership, control or proportion of shares held in it.

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 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 the refusal, within thirty days of receipt of the application for the consent.

(4) A notification of change in ownership, control or proportion of shares held in a licensee shall state—

- (a) the date when the intended transfer of ownership or part thereof is to be effected;
- (b) the name and address of the acquirer;
- (c) the names, nationality and addresses of persons who are in control of the business; and
- (d) any change in the name or address of the business.

(5) In considering an application for a written consent for transfer of ownership or change of person in control or change in shareholding of a broadcasting licensee the Commission shall consider—

- (a) the capacity of the acquiring entity to roll out the broadcasting services;
- (b) the nature of broadcasting services and programming that the acquiring entity intends to roll out;
- (c) the extent to which the allocated frequency resource(s) of the entity to be acquired have been utilized;
- (d) the possible impact on promotion of pluralism and diversity that the transfer may have;
- (e) the effect or impact of the transfer on competition or promotion of competition in the sector;
- (f) whether the transfer conformity with the stipulations of the sector policy;
- (g) the past and current compliance record, relating to the conditions of the current licences, of the acquiring and acquired entities; and
- (h) any other matter as the Commission may consider relevant.

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(6) A broadcaster shall not lease or transfer broadcast frequencies or channels assigned to it to any other person without the written authority of the Commission.

Cap. 485A.

(8) For companies that are listed in the stock exchange, the Capital Markets Authority Act shall apply.

PART III — BROADCASTING SERVICES

Public broadcasting
service.

11. (1) A Public Broadcaster shall—

- (a) provide independent and impartial broadcasting services of information, education and entertainment in English and Kiswahili and such other languages as the broadcaster may decide;
- (b) conduct the broadcasting services impartially and consider to the interests and susceptibilities of the different communities in Kenya;
- (c) provide and receive from other persons material to be broadcast:

Provided that in acquiring such material, the public broadcaster shall have regard to the need to maintain the distinctive character of the public broadcasting service and to cater for the expectations of audiences who are not generally catered for by other broadcasting services.

(2) The public broadcasting service shall be supported by revenues from the exchequer, grants, donations and its commercial services but shall not draw from advertising and sponsorship.

(3) The public broadcaster shall not lease or transfer the broadcast frequencies or channels assigned to it for use in public broadcasting.

(4) The Commission may, on application by the public broadcaster, grant the public broadcaster a licence to provide broadcasting services on a commercial basis.

(5) Where the public broadcaster is granted a licence to provide broadcasting services on a commercial basis, it may be required to maintain and keep separate accounts for its public and commercial broadcasting services.

(6) The public broadcaster may, when providing its commercial services, enter into public private partnership:

Provided that the public private partnership complies with the law relating to public procurement.

(7) The Commission shall give priority and ensure equitable allocation of resources for the public broadcasting services.

Commercial free-

12. A commercial free-to-air broadcaster shall—

[Subsidiary]

to-air broadcasting service.

- (a) be issued with a broadcasting service licence which includes the frequency or channel licence for each broadcast station that utilizes a frequency or channel resource ;
- (b) provide a diverse range of programming that reflects the identity, needs and aspirations of people in its broadcasting area;
- (c) where the commercial broadcaster provides national coverage, berequired, without prejudice to paragraph (a) and (b), to provide programming that reflects the identity and needs of the people of Kenya;
- (d) commence broadcasts within twelve months after being issued with a licence;
- (e) not acquire exclusive rights for the non-commercial broadcast of national events identified to be of public interest as may be determined by the Commission from time to time;

(2) The Commission shall, in consultation with the Minister in charge of information, license foreign commercial broadcasters, subject to availability of frequencies or channels.

13. (1) A Community broadcaster shall—

Community broadcasting services.

- (a) reflect the needs of the people in the community including cultural, religious, language and demographic needs;
- (b) deal specifically with community issues which are not normally dealt with by other broadcasting services covering the same area; and
- (c) be informational, educational and entertaining in nature; Provide a distinct broadcasting service that highlights community issues.

(2) The Commission shall, through the frequency plan, ensure that an equitable number of frequencies or channels are reserved for community broadcasting.

(3) A community broadcaster shall ensure all the funds generated from the operations of a community broadcasting station are reinvested in activities benefiting the Community.

(4) The Commission shall monitor community broadcasters to ensure that the funds generated from operations of a community broadcasting station are re-invested in activities benefiting the community.

(5) The Commission shall allow community broadcasting licensees to advertise, on their stations, adverts that are relevant and specific to that community within the broadcast area.

[Subsidiary]

Subscription
broadcasting
service licenses
and subscription
management
services.
Corr. 2010.

14. (1) The Commission may upon application, in the prescribed form, grant a subscription broadcasting services licence for—

- (a) satellite broadcasting services;
- (b) cable broadcasting services; and
- (c) subscription Management services.

(2) The Commission may require a licensee granted a licence under paragraph (1) to—

- (a) distribute broadcasting services, whether through cable or satellite within the borders of the Kenya or from Kenya to other territories;
- (b) provide a prescribed minimum number of Kenyan Broadcasting channels;
- (c) provide diversity in programming;

Provided that a satellite subscription broadcasting service provider whose signal originates from outside Kenya and who wishes to provide their broadcasting services in Kenya shall have landing rights authorization from the Commission and be licensed as subscription service provider or provide their services through a subscription management service provider.

(3) The Commission may require licensee to offer subscription management services to provide the following services on behalf of a multi-channel satellite provider broadcasting from outside Kenya—

- (a) subscription fee collection;
- (b) marketing and sales;
- (c) technical and installation support;
- (d) operation of a national call centre;
- (e) guarantees of quality of service and customer protection; and
- (f) any other services as the Commission may require.

(4) A subscription management services provider shall not enter into contractual arrangements with a foreign multi-channel satellite provider unless the foreign multi-channel satellite provider has landing rights in Kenya.

(5) A subscription management services licensee shall be required to have minimum local equity participation of twenty per centum.

[Subsidiary]

15. (1) A person licensed to provide subscription broadcasting service or subscription management services shall provide a subscriber with information, in writing, relating to the—

Obligations for subscription broadcasting services licensees and subscription management services.

- (a) products and services offered;
- (b) cost of subscription including installation and maintenance;
- (c) options of programming service available;
- (d) conditions under which the service is supplied;
- (e) instructions regarding to usage of the service in the official languages;
- (f) number and allocation of channels carried on the system and the programming available on each channel;
- (g) billing and complaints procedures;
- (h) address and telephone number of the licensee's business office.
- (i) notice period of at least fourteen days to be given before effecting to any changes in the programming service or channel allocation, in writing.

(2) A person licensed to provide subscription broadcasting service or subscription management services shall provide means that parents or guardians may use to control access to broadcast content that is accessible and that they may consider inappropriate.

16. (1) The Commission may upon application in the prescribed form grant a licence for the provision of terrestrial digital broadcasting signal distribution services.

Terrestrial digital broadcasting signal distribution services.

(2) The Commission may require a person granted a licence under paragraph (1) to—

- (a) distribute on its digital platform free to air and subscription broadcasting services and related data on behalf of other licensed broadcasters;
- (b) submit to the Commission for approval any contractual agreements entered into with other licensed broadcasters for the distribution of broadcasting services prescribed under its license;
- (c) provide its services on such terms and conditions as to access, tariffs and quality of service as the Commission may prescribe.
- (d) terminate the provision of services to a broadcaster within fourteen days of notification by the Commission.

[Subsidiary]

(3) A person granted a licence under this regulation may impose charges in respect of—

- (a) any contractual arrangements entered into under paragraph (2);
- (b) reception of broadcastings services requiring conditional access;
- (c) the provision by of any apparatus or device enabling the reception of digital broadcasting services, including free-to-air broadcasting services.

(4) A person granted a licence under this regulation shall, in consultation with other broadcasters, prepare an electronic programme guide for audiences to use to access information relating to the schedules of programme materials for all broadcasting services it carries.

(5) A licensee shall ensure that an electronic programme guide prepared in paragraph (4) shall be user friendly and that its easy to navigate through programme materials which are the subject of a broadcasting service.

Other broadcasting services.

17. The Commission may issue other broadcasting service licences as it may find necessary from time to time.

PART IV—CONTENT

Minimum standards.

18. Content prescribed in this part shall form the basis upon which the Commission or a recognized body of broadcasters shall prepare their respective programme codes.

General requirements.
Corr. 2010.

19. (1) A licensee shall ensure that no broadcasts by its station:—

- (a) contains the use of offensive language, including profanity and blasphemy;
- (b) presents sexual matters in an explicit and offensive manner;
- (c) glorifies violence or depicts violence in an offensive manner;
- (d) is likely to incite, perpetuate hatred, vilify any person or section of the community, on account of the race, ethnicity, nationality, gender, sexual preference, age, disability, religion or culture of that person or section of the community; or
- (e) has no program rating from Kenya Films Classification Board indicated prior to the commencement of such programs.

Protection of children.

20. A licensee shall—

- (a) ensure that due care is exercised in order to avoid content that may disturb or be harmful to children, that has offensive language,

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explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence;

(b) not broadcast programmes with the content specified in paragraph (a) during the watershed period;

(c) request for permission to conduct an interview with a minor from the minor's parents or guardian before conducting an interview with a minor.

21. A licensee shall ensure that news and information are broadcast and presented in a balanced manner, without prejudice or negligent departure from facts through distortion, exaggeration, misrepresentation and material omissions give fair reporting regardless of its context and importance.

News reporting.
Corr. 2010.

22. A licensee shall ensure that—

Unconfirmed
reporting.
Corr. 2010.

(a) reports or broadcast from its station are based on fact and that are not founded on opinion, rumour supposition, or allegation unless the broadcast is carried out in a manner that indicates these circumstances clearly;

(b) it does not broadcast any report where there is sufficient reason to doubt its accuracy and it is not possible to verify the accuracy of the report before it is broadcast.

23. A licensee shall broadcast correction of any factual error—

Correction of errors
in reports.

(a) without reservation, as soon as it is reasonably possible after it has been established that there was an error; and

(b) with such degree of prominence and timing and shall be broadcast during a similar time-slot as the original error as soon as is reasonably possible and where appropriate shall include an apology.

24. A licensee shall endeavour to ensure that when broadcasting controversial issues of public interest during live broadcasts,

Reporting on
controversial issues.

(a) a wide range of views and opinions are represented.

(b) a person or organisation whose views on any controversial issues of public interest have been criticised during a broadcast, and who wishes to reply to such criticism is given an opportunity by the licensee to reply to such criticism within a reasonable time;

(c) a reply to criticism under subparagraph (b) is given a similar degree of prominence and shall be broadcast on a similar time-slot, as soon as is reasonably possible.

25. During a polling period, a licensee shall—

Polling period.

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- (a) provide equitable coverage and opportunities to registered political parties participating in an election and in particular to presidential candidates;
- (b) ensure that the name of the political party or sponsor, if any, on whose behalf a broadcast is made, is announced, immediately before the commencement and immediately after such broadcast;
- (c) permit any broadcast sponsored by or made on behalf of a political party other than an advertisement thereof to be dramatized; and
- (d) ensure that the employees of a licensee who wish to be candidates for any elective position(s) resign from their employment with the licensee during polling period.

Conduct of interviews.

26. (1) A licensee shall ensure that any person who is to be interviewed in any of the licensee's broadcast is—

- (a) advised of the subject of the interview; and
- (b) informed, before the interview takes place, to determine whether the interview is to be recorded or broadcast live.

(2) A licensee shall exercise sensitivity in conducting interviews with bereaved persons, survivors of traumatic incidents or witnesses thereof.

Commentaries.

27. A licensee shall ensure that any commentaries that are broadcast by a licensee, whether as comments are made by the licensee or by any person invited by a licensee, are presented in a manner that clearly indicates that they are based on facts which are clearly stated.

Sexual offences.

28. A licensee shall—

- (a) not disclose, in a broadcast, the identity of a victim of a sexual offence unless such victim consents in writing to the disclosure of his or her identity.
- (b) avoid the use of unnecessary or repetitive detail when broadcasting the circumstances of a sexual offence.

Consent to broadcast.

29. A licensee shall not broadcast any information acquired from a person without that person's consent, unless the information so acquired is essential to establish the credibility and authority of a source, or where the information is clearly in the public interest.

Programme sponsorship.
Corr. 2010.

30. A licensee—

- (a) shall not accept sponsorship of news broadcasts;
- (b) shall not accept sponsorship of weather broadcasts, financial broadcasts or traffic reports:

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Provided that the licensee shall retain ultimate editorial control of the sponsored programme;

- (c) shall ensure that sponsorship of an informative programme does not compromise the accuracy and impartiality of the programme's contents;
- (d) shall not unreasonably discriminate against or favour a particular sponsor;
- (e) shall not broadcast any programme which has been sponsored by a political party save for an advertisement by a political party in which case the advert must be distinctly identified so as not to be confused with normal programming;
- (f) shall acknowledge the sponsorship of a programme immediately before and after the programme is broadcasted, and identify any connection between the programme's subject-matter and the sponsor's commercial activities.

31. (1) A licensee shall not broadcast an infomercial—

Infomercials.

- (a) for a period exceeding three and half hours of the performance period in any day;
- (b) during prime-time; or
- (c) during any break in the transmission of a children's programme.

(2) A licensee shall ensure, through visual or audio form, that the broadcast of any infomercial is distinguishable from any broadcast programme material.

(3) A licensee shall ensure that all infomercials that are broadcast by its station are lawful, honest, decent and conform with the principles of fair competition.

(4) The provisions of paragraphs (1) and (2) shall not apply to stations which exclusively broadcast infomercials.

32. A licensee shall not knowingly pay any person involved in a crime or any person who has been convicted of a criminal offence, in order to obtain information.

Payment of criminals.

33. (1) A licensee shall ensure that it only broadcasts advertisements that are lawful, honest, decent and conform with the principles of fair competition.

Advertisements.

(2) A licensee shall ensure that advertisements broadcast by its station do not—

- (a) contain any descriptions, claims or other material which may,

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directly or by implication, mislead members of the public in relation to the product or service advertised, or about its suitability for the purpose recommended; and

- (b) unfairly attack or discredit, directly or by implication, any other advertisers, products or advertisements.

(3) A licensee shall, before broadcasting an advertisement, ensure that any descriptions or claims in the advertisement have been adequately substantiated by the advertiser.

(4) A licensee shall not unreasonably discriminate against or favour any advertiser.

(5) A licensee shall exercise responsible judgment when scheduling advertisements that may be unsuitable for children during periods when large numbers of children are expected to be watching or listening to programmes.

(6) A licensee shall ensure that—

- (a) any advertising breaks are clearly distinguishable from broadcast programmes; and
- (b) its presenters, when reading advertisements, make a clear distinction between the programming material and the advertisements they deliver.

Watershed period.

34. (1) A licensee shall ensure that—

- (a) content which depicts or contains scenes that are rated by the Kenya Film Classification Board as adult, or are of the language intended for adult audiences are not aired during the watershed period;
- (b) all programmes broadcast during the watershed period are suitable for family audiences and the transition from family-oriented to a more adult programming after the watershed period is gradual;
- (c) consumer advice such as warnings, labelling, classification details and other announcements are given prior to the telecast of a programme or its trailers.
- (d) all trailers and promotional material shown before the watershed time comply with paragraph (b) and (c).

(2) All licensees shall exercise responsibility in scheduling of programmes to reduce the risk of causing offence.

Local content.

35. (1) The Commission may require a licensee to commit the minimum amount of time, as may be specified in the licence, to broadcast of local content or as may be prescribed from time to time by the Commission by notice in the gazette:

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Provided that where a broadcaster is, unable to comply with the foregoing, the Commission shall require such broadcaster to pay such an amount of money, as may be prescribed by the Commission into the Fund.

(2) The Commission shall from time to time prescribe a minimum local content quota for foreign broadcasting stations that broadcast in Kenya.

36. (1) the Commission shall require broadcasters to take specific steps to promote the understanding and enjoyment of programmes transmitted through its stations by persons who are physically challenged and in particular, persons who are deaf or hard of hearing, or who are blind or partially sighted.

Content for the physically challenged.

(2) The Commission shall prescribe by notice in the gazette the manner, time and percentage of programmes targeting persons referred to in paragraph (1) shall be broadcast.

PART V — PROGRAMME CODE

37. (1) The Commission shall prescribe a Programme Code that sets the standards for the time and manner of programmes to be broadcast by licensees.

Setting standards for programmes.

(2) A licensee shall be subject to the Programme Code prescribed by the Commission or by a duly recognized body of broadcasters under regulation 38.

38. (1) Pursuant to section 46H of the Act, any registered body of broadcasters wishing to operate under its own Programme Code shall submit such a code to the Commission for approval.

Settings standards for programmes.

(2) A body of broadcasters referred to in paragraph (1) shall satisfy the Commission that all its members subscribe and adhere to the Programme Code that has been approved by the Commission.

(3) A licensee who subscribes to a Programme Code prescribed by a body of broadcasters under paragraph (1) shall furnish the Commission with proof of membership, subscription and adherence to the Programme Code prescribed by the body.

(4) When considering a Code submitted for approval, the Commission shall have regard to the specific standards to be complied with and rules and practices to be observed as prescribed in part IV of these regulations and such other matters as the Commission may prescribe from time to time.

(5) In the event that the Programme Code is not acceptable either in part or in whole—

(a) the Commission shall notify the body of broadcasters in writing and specify the remedial measures that the broadcasting body is to undertake in order to satisfy the Commission's requirements; and

(b) the body of broadcasters shall within thirty days from the

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date of notification resubmit the revised Programme Code for reconsideration by the Commission.

(6) Once the Commission approves the Programme Code submitted under this regulation, the body of broadcasters shall publish its Programme Code and a list of broadcasters subscribing to the code, and avail both the Programme Code and list to the public.

(7) The body of broadcasters shall—

- (a) avail to the Commission such information relating to the enforcement of the Programme Code as the Commission may be require and in the form prescribed by the Commission;
- (b) inform the Commission within five days if any of its members ceases to subscribe to the Programme Code of the body of broadcasters;
- (c) cause to be published in at least one newspaper circulating in Kenya a notice of the fact that the code is available for inspection by any member of the public.
- (d) review or cause the revision of the Programme Codes and enforcement mechanisms at least once in every two years from the date of the Programme Code and mechanisms came into force;
- (e) file the reviewed programme code with the Commission for approval.

PART VI—COMPLAINTS HANDLING PROCEDURE

Complaints handling procedure.

39. (1) Every broadcaster shall develop a procedure, for handling complaints from persons who may be aggrieved by its broadcasts.

(2) The complaints handling procedure, shall, among other things cover the following—

- (a) full name of the broadcaster as it appears in the licence as well as the broadcast station identity specific to different broadcast services offered;
- (b) the physical postal and email addresses where complaints can be sent;
- (c) the contact person authorized to receive and handle complaints;
- (d) the manner in which the complaint may be lodged including the applicable languages;
- (e) details which need to be submitted when lodging a complaint;
- (f) the need for the complainant to retain a copy of every correspondence

exchanged between complainant and broadcaster;

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- (g) the manner in which the complaint shall be investigated and process of investigation;

(3) In addition to the information under paragraph (2) the complaint handling procedure shall also include information—

- (a) to listeners or viewers that the first opportunity to resolve a complaint should be given to the broadcaster to resolve the complaint;
- (b) relating to the timeframes for responding to the complainant, and resolving the complaint;
- (c) relating to how complaints from physically challenged and illiterate consumers who are not capable of providing complaints in writing, shall be addressed;
- (d) on the methods of recording and tracking of complaints, together with the associated responses;
- (e) on the duration of storage of records of complaints received and actions taken;
- (f) on the retention and production of recordings of any programme which is the subject matter of a complaint;
- (g) on the categories of complaints which the broadcaster is under no obligation to respond to or complaints considered frivolous, vexatious or an abuse of the complaint process or from complainants who choose to remain anonymous.
- (h) on any other matter as the Commission may from time to time by notice in the gazette prescribe.

40. (1) A licensee shall—

Obligations of licensees.

- (a) document its complaints handling procedure;
- (b) inform their listeners or viewers at least once a day of the existence of a complaints handling procedure and how they can lodge a complaint regarding the broadcast station;
- (c) not dispose off broadcast transcripts or recordings related to a complaint so long as it has not been summarily resolved either by the broadcaster, the Commission, the Tribunal or the High Court:

Provided that the clause in the licence stipulating the minimum duration that a licensee shall retain a copy of recordings of broadcasts shall not apply to this subparagraph; and

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- (d) on 1st July of every year, submit to the Commission a written report of all complaints received during the period and the manner in which they were addressed.

Approval of
Complaints Handling
Procedure.

41. (1) Every broadcaster shall, prior to the commencement of broadcasting services submit its Complaints Handling Procedure to the Commission for approval.

(2) In the event that the Commission does not approve the complaints handling procedure submitted under paragraph (1), in part or in whole—

- (a) the Commission shall specify the remedial measures the broadcaster should take in order to satisfy the Commission's requirements; and
- (b) the broadcaster shall within thirty days of being notified of the disapproval, resubmit the revised complaints handling procedure for reconsideration by the Commission:

Provided that in the interim, the Commission may require the broadcaster to handle any complaints submitted during that period in accordance with the procedure determined by the Commission.

(3) A broadcaster shall, after approval, publish its Complaints Handling Procedure and avail it to any person who reasonably requests.

Escalating
Complaints to the
Commission.
Corr. 2010.

42. (1) Where any person alleges that he has exhausted the broadcasters' complaints handling procedure and is not satisfied with the remedy offered or action taken, he may appeal to the Commission and such appeal shall be dealt with in accordance with the Dispute Resolution Regulations or such procedures as may be prescribed by the Commission from time to time:

Provided that the Commission may, on its own motion, investigate a matter where in its view a broadcaster has breached the provisions of the Act, Regulations or the Programme Code.

(2) A broadcaster or the Commission shall not entertain a complaint or dispute lodged pursuant to a broadcast after ninety days from the date when the material complained of was broadcast;

PART VII—GENERAL PROVISIONS

Public emergencies.

43. (1) All broadcasting service providers shall provide a public notice of an emergency or a public disaster announcement upon the request of a person authorized by the Government.

(2) The Commission shall prescribe, by notice in the gazette the manner in which broadcasters shall provide information during public emergencies or national disasters.

Offence and penalty.

44. Any person who contravenes any provision of these Regulations

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commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or both.

PART VIII—TRANSITIONAL PROVISIONS

45. (1) The Commission shall specify the following, among other conditions, in a terrestrial digital signal distribution licence—

Transition from
analogue to
digital television
broadcasting.

(a) the percentage of the multiplex capacity that shall be used for relaying broadcast content and other related data;

(b) the technical specifications of the multiplex and associated digital transmitters;

(c) the requirement that the signal distributor to file such tariffs it proposes to impose on a broadcaster for approval by the Commission; and

(d) universal service obligations.

(2) After the switchover from analog to digital broadcasting, all analog television broadcasters shall be required to relinquish the frequencies used for free-to-air television broadcasting to the Commission.

(3) Nothing in these Regulations shall be construed as preventing the Commission from requiring broadcasters on digital platform before the enactment of the Kenya Communications Amendment Act, 2009, to comply with the Act and these Regulations.

No. 1 of 2009.

46. (1) Pursuant to section 46R of the Act, all persons issued with broadcast permits prior to the commencement of the Kenya Communications (Amendment) Act, 2009 shall—

Transition of permits
to licences.
No. 1 of 2009.

(a) be required to apply for broadcast licence(s) such as a manner as may be prescribed by the Commission;

(b) pay such fees as may be prescribed by the Commission for the issuance of the broadcasting licence(s) to replace the permits and frequency licence and usage fees;

(c) retain such radio frequency resources already assigned under the same terms and conditions of issuance:

Provided that they comply with such new terms and conditions that the Commission may be impose; and

(d) in the event of failing to apply or qualify for the licence(s), cease to be a broadcaster.

(2) In addition to the requirements specified under section 46D (2), the Commission shall, when considering an application for a licence to replace a

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permit, consider—

(a) the past compliance record of the applicant relating to adherence to the conditions of the broadcasting frequency licence; and

(b) the status of frequency fee payments.

(3) Any person who holds a broadcasting permit and who has been assigned more than one broadcast frequency for either radio or television broadcasting services in the same broadcast coverage area, shall be required within a period not exceeding the licence term, to surrender all additional broadcasting frequencies to the Commission.

**THE KENYA INFORMATION AND COMMUNICATIONS
(DISPUTE RESOLUTION) REGULATIONS, 2010**[Subsidiary]
L.N. 26 /2010.

1. These Regulations may be cited as the Kenya Information and Communications (Dispute Resolution) Regulations, 2010. Citation.

2. In these Regulations, unless the context otherwise requires — Interpretation.

“consumer” any person who uses communication services or products offered by a licensee;

“dispute” means any matter that is in contention between a licensee and another, a consumer and a licensee, where one or both parties is aggrieved by the conduct of the other and the parties have failed to reach an amicable resolution after due effort has been made;

“licensee” means any person who has been licensed under the Act;

3. The Commission shall have power to resolve disputes between- Powers of the Commission.

(a) a consumer and a service provider;

(b) a service provider and another service provider; or

(c) any other persons as may be prescribed under the Act.

(3) The Commission may, for the purpose of resolving any dispute hold hearings, inquiries and investigations, it considers appropriate in the discharge of its functions under the Act.

(4) The Commission shall not emphasize on technicalities or rules of procedure in resolving disputes filed under these regulations and may waive any rule or requirement where necessary.

4. (1) A party to a dispute may, within sixty days of the occurrence of a dispute, notify the Commission and any adverse party of the dispute, in writing. Initiation of Proceedings.

Provided that where a notification is made orally or in any other form, the Commission may reduce the notification in writing and the Kenya Subsidiary Legislation, 2010 40 notification shall, if signed or attested by the complainant, be considered to be a written notification for the purposes of these Regulations.

(2) The Commission shall not seek to resolve a dispute under these Regulations unless it has been notified of the dispute in writing and has been requested by either of the party or both parties to intervene.

(3) A party shall notify the Commission of a dispute under paragraph (1) by the presenting to the Commission a letter or Memorandum of Complaint together with the prescribed fees.

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(4) The letter or Memorandum of Complaint shall set out concisely, the grounds of complaint and the facts upon which the complaint is based on, and shall be accompanied by documentary evidence supporting the complaint.

(5) The letter or Memorandum of Complaint shall be signed by the party presenting it if the party is an individual, and where the party is a corporation, by an agent or authorized officer of the corporation.

(6) The Commission shall acknowledge the receipt of a letter or Memorandum of Complaint, in writing.

(7) The Commission may decline to accept a letter or Memorandum of Complaint that—

- (a) does not raise any issue, under the Act;
- (b) does not conform to the provisions of the Act or directions given by the Commission;
- (c) is trivial, frivolous or vexatious;
- (d) is defective or which is presented otherwise than in accordance with these Regulations or the directions of the Commission; or
- (e) has been filed with any other authority or body that has jurisdiction to hear and determine the dispute.

(8) The Commission shall, before declining to accept a letter or Memorandum of Complaint, give the complainant an opportunity to be heard.

(9) The Commission shall not decline to resolve for the reason of defects in the pleadings or in the presentation, without giving an opportunity to the person filing the complaint to rectify the defects within the period the Commission specified for that purpose.

(10) Where the Commission has declined to resolve a dispute, it shall notify the parties to the dispute, in writing, stating the reasons for declining.

Response to the
Complaint.

5. (1) Where the Commission accepts to resolve a dispute, it shall, within seven days of receiving a notification, notify the party against whom the complaint was made and serve the party with the letter or Memorandum of Complaint.

(2) The party against whom a complaint has been made shall, within twenty-one days after being notified of dispute under paragraph (1), file with the Commission and serve the complainant with, a response signed by that party, or where the party is a corporation by agent or authorized official of the corporation.

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(3) The Commission may invite the complainant to file a reply to the response within a specified time.

6. (1) A complainant may, at any time before the dispute is heard, withdraw the letter or Memorandum of Complaint by notifying the Commission, in writing. Withdrawal of dispute.

(2) The Commission shall, where a complainant withdraws a letter or Memorandum of Complaint make such orders relating to costs as it considers fit.

7. (1) The Commission may, for the purpose of resolving a dispute, hold such hearings, inquiries and investigations, as it may consider appropriate. Hearing of disputes.

(2) The Commission shall not place undue regard on technicalities or rules of procedure and may waive any such rule or requirement when it considers it appropriate.

(3) The parties to a dispute shall set the date for the hearing of a dispute within fifteen days from the date of the filing of the last response or any reply to the response.

(4) Save where the parties otherwise agree, each party shall be entitled to not less than seven days notice of the time, date and place fixed for the hearing of the dispute.

(5) The Commission may determine a dispute on the basis of the documents filed by the parties or oral evidence given before it.

(6) Where the Commission considers it necessary or expedient, it may direct the parties to file written submissions upon such terms as the Commission considers fit.

(7) Where in the course of resolving a dispute a matter arises that in the opinion of the Commission requires certain expertise or competence, the Commission may call upon any person who possesses the expertise to sit with the Commission as an assessor.

(8) At the hearing, the complainant shall open its case by stating the grounds of the complaint and may support it by relevant evidence.

(9) A party to a dispute shall, unless the party has the consent of the Commission, not rely on any grounds other than a grounds stated in the letter or Memorandum of Complaint or adduce additional facts or documents that were not referred to in the letter or memorandum of complaint or copies of the documents were not annexed to the letter or Memorandum of Complaint.

(10) The complainant shall close its case by making oral or written submissions and at the close of the complainant's case, the party against whom a complaint has been made may make submissions supported by relevant evidence.

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(11) The complainant shall be entitled to reply to the submissions of the party against whom a complaint has been made and not raise new issues.

(12) The Commission may examine the parties and their witnesses when hearing a dispute.

(13) A witness called and examined by the either party may be cross-examined by the other party and after being cross-examined, the witness may be re-examined.

(14) The Commission may, at any time before making any orders relating to a dispute, require a party or any other person whom the Commission considers competent, to adduce documentary evidence or produce any material, specimen or product that the Commission may consider necessary for the determination of a dispute.

(15) The Commission may adjourn the hearing of a dispute for the production of further evidence or for other good cause, on such terms as it may determine.

(16) Where on the date of hearing any of the parties or their authorized representative does not appear when the dispute is called for hearing, the Commission may dismiss the dispute for non-appearance or proceed ex parte.

(17) Where a dispute is dismissed in default or decided ex-parte an aggrieved party may file an application within fourteen days from the date of such dismissal, for review of the order given, and the Commission may review the order if it is satisfied that there was sufficient cause for the non-appearance.

(18) No party to a dispute shall communicate, outside the hearing of the matter, with any member of the Commission with regard to matters or issues which are the subject matter of the dispute.

**Decision of the
Commission.**

8. (1) The Commission shall make its decision in writing, stating reasons for the decision, within thirty days from the date of conclusion of the hearing.

(2) The decision of the Commission shall be dated and signed by the members of the Commission who participated in the hearing and determination of the dispute.

(3) The Commission shall cause to be made a record of the proceedings of the hearing of the dispute and include that record, together with a copy of the decision, in a document to be certified and signed by the presiding officer of the Commission as a true and correct record of the proceedings and the decision.

(4) The Commission shall forward a certified copy of the document described in paragraph (3) to each party.

(5) The Commission may, given the urgency of a dispute or for other

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justifiable reason, issue temporary preservation orders and reliefs pending the hearing and determination of the dispute.

(6) Any party dissatisfied by the decision of the Commission may Appeal to the Appeals Tribunal established under Section 102 of the Act within fifteen days of the decision.

(7) The decision of the Commission shall be binding until subsequent orders are made by the Tribunal or the determination of the Appeal.

9. (1) The Commission may on application by either party, extend the time appointed by these rules for the performance of any act or taking of any proceedings upon such terms or conditions, if any, as may appear to the Commission to be just and expedient General Provisions.

(2) Records of proceedings, except those parts which for reasons specified by the Commission are confidential or privileged or otherwise should not to be disclosed to any person, shall be open to inspection by any person after conclusion of the hearing, subject to such person complying with the terms as the Commission may prescribe from time to time in regard to time, place and manner of inspection and payment of inspection fees.

(3) The Commission may publish in the Kenya Gazette and other media, its decision on disputes it has heard and determined.

(4) Nothing in these Regulations shall prevent the parties from reaching an agreement and withdrawing the dispute by submitting the negotiated agreement to the Commission for approval.

(5) The Commission may make orders relating to costs as it considers appropriate.

[Subsidiary]
L.N. 27/2010,
L.N. 149/2010.

THE KENYA INFORMATION AND COMMUNICATIONS (TARIFF) REGULATIONS, 2010

Citation.

1. These Regulations may be cited as the Kenya Information and Communications (Tariff) Regulations, 2010.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“information and communications technology service” means any transmission of information by wire, radio waves, optical media, postal or other means between or amongst points of user’s choice;

“just and reasonable tariffs” means tariffs that enable a licensee to maintain its financial integrity, attract capital, operate efficiently and fully compensate investors for risks borne;

“licensee” means a person licensed under the Act;

“promotion or special offer” means any information, whose content is controlled directly or indirectly by a licensee, that is expressed in any language and communicated through any medium with the intention of influencing the choice, opinion or behaviour of consumers;

“tariff” means any charge, price, levy and underlying terms and conditions imposed by a licensee for the services provided;

“regulated services” means a service offered or supplied by a licensee—

(a) in a market or market segment that is uncompetitive or

(b) subject to price controls by the Commission on the basis that the provider of the service has been found to be dominant in the relevant market and the Commission has judged that the price control is appropriate, pursuant to both the Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations, 2010 and regulation 4 of these Regulations.

L.N. 29/2010.

“uncompetitive market” means market or market segment in which there is no competition in the provision of service or in which consumer choice of service provider or service is either absent, limited, impeded, obstructed or constrained.

Purpose and object.
L.N. 149/2010.

3. (1) The purpose of these Regulations is to provide a framework for the determination of tariffs and tariff structures.

(2) Without prejudice to the generality of paragraph (1), these Regulations seek to—

(a) ensure licensees maintain financial integrity and attract capital;

(b) protect interests of investors, consumers and other stakeholders;

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(c) provide market incentives for licensees to operate efficiently;
and

(d) promote efficient and fair competition within the framework for
a free market economy;

(e) ensure compliance with all competition laws.

(3) In the exercise of its powers, the Commission shall ensure that decisions made pursuant to the provisions of these Regulations are consistent with the objectives outlined in paragraph (2).

3A. (1) The Commission may declare services in specific markets to be regulated services. Commission to declare regulated services.

(2) The Commission shall, prior to making a declaration under paragraph (1)— L.N. 149/2010.

(a) identify the relevant specific market;

(b) notify all affected licensees and issue a consultation, allowing sufficient time for stakeholder comments;

(c) demonstrate that there is a competition concern as specified in regulation 8A(2) of the Kenya Information and Communication (Fair Competition and Equality of Treatment) Regulations, 2010, or that a licensee who has been declared to be in a dominant market position has been found to have abused the dominant market position, and where there is a competition concern, the Commission shall, in satisfying itself, demonstrate pursuant to a report prepared by the Commission that—

L.N. 29/2010.

(i) effective competition amongst existing licensees cannot develop;

(ii) there exists strong and non-transitory barriers to entry in the identified market segment;

(iii) there is no other competition law that is sufficient to deal with the competition concern;

(iv) in the case of a retail service, no wholesale remedies are available to address the competition concern in the identified market segment; and

(v) such other circumstances that the Commission may consider necessary from time to time;

(d) follow the guidelines contained in the Schedule to these Regulations to prepare the report mentioned in paragraph (2) (c);

(e) show that declaring the relevant service to be a regulated service

[Subsidiary]

would prevent a potential abuse; and

(f) show that the declaration would be consistent with the objectives of these Regulations.

Tariffs setting.
L.N. 149/2010.

4. (1) A licensee shall set tariffs that are—

(a) just and reasonable;

(b) sufficiently clear and enable the end-user to determine the description of the service, the details relating to the nature of service and charges payable for the service.

(c) (*Deleted by L.N. 149/2010.*).

(2) A licensee shall provide accurate billing information on tariffs to enable customers to verify whether they are billed correctly.

(3) A licensee shall not apply tariffs that prevent market entry or distort competition.

(4) A licensee who contravenes this regulation commits an offence.

(5) The tariff of a licensee shall be non-discriminatory and shall guarantee equality of treatment.

(6) A tariff shall not be in breach of this regulation if it is shown that there are legitimate commercial reasons for the tariff, such as different costs of providing the service and different identifiable market segments that have different ability to pay and different levels of usage and customer preference.

Filing of tariff rates.

5. (1) A licensee shall, on a quarterly basis, file the schedules of their tariff rates, including those of its agents and correspondents with the Commission.

(2) A licensee shall not charge its customers using tariff rates that have not been filed with the Commission under paragraph (1).

(3) A licensee shall ensure that all the tariff rates that have been filed with the Commission are available to the public for review and inspection and shall furnish its customers with the filed tariff rates, upon request.

(4) A licensee who contravenes this regulation commits an offence.

Tariff approval for
regulated services.
L.N. 149/2010.

6. (1) The Commission may from time to time publish in the Gazette a schedule of regulated services.

(2) A licensee shall charge regulated services using tariffs that have been file and approved by the Commission.

(3) Subject to regulation 7 all applications for approval of tariffs for regulated services shall be filed with the Commission and shall—

(a) conform to the form, manner and methodology prescribed by the Commission; and

(b) be accompanied by relevant documents, including all calculations, notes and any other information in support of the application.

(4) Where the Commission does not approve the tariffs proposed by a licensee for a regulated service and recommends that the licensee to makes the adjustments specified to the proposed tariffs, the licensee shall adjust the proposed tariff accordingly.

(5) *(Deleted by L.N. 149/2010.)*.

(6) A licensee shall not discontinue the provision of a regulated service without the prior written approval of the Commission.

(7) Where the Commission determines that a service no longer meets the conditions that describe a regulated service, the Commission shall through a gazette notice notify the public that the service is no longer a regulated service.

(8) *(Deleted by L.N. 149/2010.)*.

(9) A licensee who contravenes this Regulation commits an offence.

7. (1) A licensee who wishes to increase the tariffs for a regulated service shall file an application for approval of the increase with the Commission in the prescribed manner, at least forty-five days before the proposed increase is intended to come into effect.

Review of tariffs for regulated services.

(2) The obligations that relate to the provision of a regulated service shall cease when the Commission determines that tariff regulation is no longer necessary in view of market developments.

L.N. 149/2010.

8. (1) The Commission shall, within seven days after receiving an application to increase the tariff of a regulated service under these Regulations, place a notice in the Gazette and in such other manner as it considers necessary.

Notice on review of tariffs for regulated services.

L.N. 149/2010.

(2) The notice under paragraph (1) shall—

(a) contain the name and particulars of the licensee or class of licensees providing the service to which the tariffs relates;

(b) state the new tariff and the reasons for the proposed review of the tariff; and

(c) specify the period, which shall not be less than thirty days, within which written objections or representations to the proposed new tariff may be made.

(3) The Commission shall in considering the application for tariff revision take into account any written representations or objections received

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under paragraph (2) (c).

Decision on tariff
revision application.
L.N. 149/2010.

9. (1) The Commission shall, within thirty days of notification under regulation 8 (1), approve or reject such application.

(2) The Commission may reject an application for the revision of a tariff if it is of the view that the proposed tariff is unjustifiable, unfair or unreasonable.

(3) A decision of the Commission rejecting a proposed tariff shall-

- (a) be in writing;
- (b) state the reasons for the rejection; and
- (c) be made available to the provider.

(4) Where the Commission approves a new tariff, a licensee shall notify its customers of the new tariff through publication in two local daily newspapers with nation wide circulation or through any other method as the Commission may determine and shall in the notice provide for a grace period of not less than fourteen days before implementing the new tariff.

(5) A licensee who contravenes this Regulation commits an offence.

Investigation of
tariffs.
L.N. 149/2010.

10. (1) The Commission may on its own motion or pursuant to a complaint made under this regulation investigate any tariff set by a licensee where the tariff is anti-competitive.

(2) A complaint about a tariff brought under paragraph (1) shall—

- (a) be in writing;
- (b) specify the name and address of the complainant;
- (c) state the interest of the complainant; and
- (d) state the reasons why the tariff should be investigated.

(3) Where after investigations under regulation 10 (1), the Commission is of the view that the tariff is anti- competitive and should be adjusted, it may recommend to the licensee to make the necessary adjustments on the tariffs.

Provided that where the Commission intends to adjust the tariffs after investigation, the Commission shall notify the licensee and give the licensee twenty days to respond to the intended adjustment.

Promotions and
special offers.
L.N. 149/2010.

11. (1) The Commission may from time to time issue guidelines on promotions and special offers.

(2) A licensee shall apply for approval, at least four days before the date of the implementation of a promotion or special offer, and shall file all details

[Subsidiary]

of the promotion or special offer with the Commission for approval provided that if no objection is made by the Commission within four days the licensee shall proceed with the promotion or special offer.

(3) A licensee shall ensure that all Promotions and special offers —

(a) provide of information on the duration and date of the promotion or special offer, where the same is time-bound;

Provided that no promotion or special offer shall run for more than ninety days and be repeated before three months have elapsed.

(b) state clearly the threshold to be applied, where the duration of the promotion or special offer is not time-bound, but subject to attainment of a specific target;

(c) provide the terms and conditions and the details of the manner of participation;

(d) provide clear information to its customers on the terms and conditions of the promotion or special offer, through publication in two local daily newspapers with nationwide circulation and where applicable, in electronic media, sign language or any other method that the Commission may determine;

(e) indicate and publish, where the special offer or promotion requires the customer to pay a charge, the applicable rate;

(f) has obtained necessary approval from the Betting Control and Licensing Board, where the special offer or promotion involves games of chance, and inform its consumers accordingly;

(g) provide details on the minimum number and nature of any prizes, where applicable, state if prizes are to be awarded in installments or are to be shared among recipients;

(h) state whether or not any restrictions based on, among others, age or the need to obtain permission to enter from an adult or employer, to participation apply;

(i) provide the name and business address of the licensee in the case of direct promotions or, particulars of third parties in the case of indirect promotions;

(j) promoters do not overstate the consumers' chances of winning prizes; and

(k) a not discriminatory or anti-competitive.

(4) Prior to the launch of a promotion or a special offer a licensee shall submit a statement of compliance with paragraph (3) to the Commission.

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(5) The Commission may discontinue a promotion or special offer that does not comply with this regulation and state the reasons for doing so.

Offence and penalty.

12. Any person who commits an offence under these Regulations for which no penalty is provided shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or both.

Transitional provisions.

13. (1) Subject to paragraph (2) a licensee who provides a regulated service shall, within thirty days of these Regulations coming into force or the commencement of the offer of a regulated service to the public, file the tariff applicable to the regulated service with the Commission for approval.

(2) A licensee who provides regulated services at the commencement of these Regulations shall continue to provide the regulated services at the rate and subject to the terms and conditions in effect at that date.

(3) A licensee who provides non-regulated services shall, within thirty days of the commencement of these Regulations, file schedules of their tariff rates, including the terms and conditions of their agents and correspondents with the Commission.

SCHEDULE

(r. 3A (2) (d)) [Subsidiary]
L.N. 149/2010.

GUIDELINES

Guidelines to Address Regulation 3A (2) (c) (i) –

When considering whether competition cannot develop with existing players under Regulation 3A(c)(i) of these Regulations, the Commission shall consider the following factors –

- (a) Current market shares and their evolution over time;
- (b) Price trends and pricing behaviour for the services under analysis;
- (c) Control of an infrastructure non easily duplicated;
- (d) Barriers to expansion;
- (e) Product or service diversification; or
- (f) such other factors as the Commission may consider from time to time.

Guidelines to Address Regulation 3A (2)(c) (ii) –

The Commission shall consider all the factors indicated below in order to assess the existence of high and non-transitory barriers to entry under Regulation 3A(c) (ii) of the Regulations:

- (a) Existence of sunk costs;
- (b) Scale and scope economies;
- (c) Control of an infrastructure not easily duplicated;
- (d) Technological advantages;
- (e) Easy or privileged access to capital or financial resources;
- (f) Barriers to development of distribution and sales network;
- (g) Switching costs and product diversification;
- (h) Vertical integration;
- (i) Requirement for an administrative authorization or licence in order to operate in the market and conditions for obtaining such an authorization;
- (j) Limits and conditions attached to the use of spectrum;

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- (k) Effects of general regulation over new entrants.

Guidelines to Address Regulation 3A (2) (c) (iii)—

The commission shall consider all the factors indicated below in order to assess the insufficiency of competition law to address the competition concern identified in sub-regulations 4 (c), condition 3A (2) (c) of these Regulations.

- (a) Degree of generalization of non-competitive behaviour associated to the competition concern;
- (b) Degree of difficulty to address the competition concern;
- (c) Expected damaged created by non-competitive behaviour associated to the competition concern;
- (d) Need of regulatory intervention to ensure the accomplishment of the objectives stated in Regulation 3(2).

Guidelines to address Regulation 3A(2)(c) (iv)

When considering a retail service, the Commission shall consider whether the identified competition concern can be addressed with—

- (a) existing remedies imposed in related wholesale markets; or
- (b) alternative wholesale remedies.

The analysis of the alternative measures shall consider the costs and benefits associated with each option and the impact for the different undertakings, following a Regulatory Impact Assessment (RIA).

**THE KENYA INFORMATION AND COMMUNICATIONS
(COMPLIANCE MONITORING, INSPECTIONS AND
ENFORCEMENT) REGULATIONS, 2010**

[Subsidiary]
L.N. 28/2010.

1. These Regulations may be cited as the Kenya Information and Communications (Compliance Monitoring, Inspections and Enforcement) Regulations, 2010. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“contravention” means, non-compliance with or breach of any of the conditions of a licence and the provisions of the Act or Regulations;

“enforcement” includes administrative actions of the Commission and any other action taken for the purposes of ensuring compliance with of the Act or Regulations;

“licensee” means any person licensed under the Act;

“monitoring” means the powers of the Commission to verify compliance with the provisions of the Act, Regulations and Licenses.

3. The Commission shall monitor and enforce compliance with the Act, Regulations and conditions of licences by all licensees. Commission’s monitoring and enforcement powers.

4. The Commission shall issue guidelines on installation and maintenance of communication infrastructure. Guidelines.

5. When carrying out its compliance, monitoring and enforcement duties, the Commission— Principles and procedures of monitoring and enforcement.

(a) shall be guided by the Act, Regulations and the following principles—

(i) transparency, fairness and non-discrimination;

(ii) the need to provide modern, qualitative, affordable and readily available communications systems and services in Kenya;

(iii) the need to promote fair competition and investment in the information and communications technology industry;

(iv) the need to promote and improve the quality of service provided by licensees in Kenya; and

(v) any other principles that the Commission may from time to time consider necessary and in the public interest;

(b) may issue directions in writing to any person to secure compliance with the Act and these Regulations;

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- (c) may enlist and rely on the assistance of law enforcement agencies and other relevant departments, ministries and Government of Kenya and international agencies, as provided in the Act; and
- (d) may appoint a person to inquire into and report to the Commission on any matter pending before it and upon the receipt of a report the Commission may—
 - (i) give directions on the procedures for conducting such inquiries ;and
 - (ii) the person or persons appointed to carry out such inquiries shall submit a report to the Commission in the form and manner as the Commission may direct.

Commencement of the processes for monitoring and enforcement.

6. (1) The Commission shall exercise its powers under these Regulations—

- (a) on its own initiative; or
- (b) in response to a complaint made by a person or on behalf of a person whom the Commission considers to have an interest in the matter which is the subject of representation.

Licensees duty to prepare, submit and maintain reports.

7. (1) Every licensee shall, after every quarter and at the end of its financial year, prepare and submit to the Commission in the prescribed form, an annual report of its operations.

(2) Every licensee shall prepare and submit to the Commission a quarterly report of its operations and the extent to which the conditions of their licence have been adhered to.

(3) A licensee may request the Commission to treat any information contained in a report presented to the Commission under these Regulations as confidential business information that may not be disclosed to third parties other than government agencies.

Investigations by the Commission.

8. (1) The Commission may commence investigations on a licensee's compliance where it has reasonable cause to believe that a licensee has failed to comply—

- (a) with the construction, installation or service provision requirements issued by the Commission; or
- (b) has contravened any condition of the licence issued by the Commission; or
- (c) with any of the performance obligations under the Act, Regulations or its licence conditions.

(2) The Commission, shall in carrying out investigations on any matter

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under the Act or Regulations, take into account the following factors-

- (a) any representation made to the Commission by or on behalf of a person whom the Commission considers to have an interest in the matter which is the subject of the representation; or
- (b) a complaint by any customer of the licensee or a member of the public to the Commission in relating to the services provided by a licensee; and
- (c) the Commission's necessary inquiries and appropriate measures to be taken as the circumstances of the case may require.

(3) A licensee shall keep proper records in such manner as the Commission may prescribe, and shall allow the Commission to access the records for purposes of carrying out its mandate under the Act.

(4) The Commission may request a licensee to periodically submit reports, statistics, data and any other information that it considers necessary.

(5) When making any request under paragraph (4), the Commission shall ensure that it does not impose undue burden on the licensee in procuring and furnishing such information.

(6) The Commission may from time to time publish compliance or investigation reports in the Gazette, as is necessary.

9. (1) Where after an investigation by the Commission, on its own motion or subsequent to a complaint made by a third party, the Commission is satisfied that a licensee is contravening or has contravened any of the conditions of a licence, the Commission shall notify the licensee, in writing.

Compliance
information.

(2) The Commission shall, in the notification sent to a licensee under paragraph (1), specify the acts or omissions which, in its opinion, constitute a contravention of the conditions of the licence and require the licensee to remedy the contravention within, unless otherwise specified by the Commission in writing, a period of three months.

(3) A licensee shall, after remedying the contravention specified in the notification, prove to the Commission that it has sustainably remedied the contravention.

(4) If a licensee fails, without reasonable cause, to remedy the contravention referred to in paragraph (1) within the required period, the licensee shall be liable to a penalty of five hundred thousand shillings and such penalty shall be a debt owed to the Commission and recoverable summarily.

(3) Any licensee aggrieved by the decision of the Commission made under these Regulations may appeal to the Tribunal within fifteen days of receipt of notification by the Commission in that regard.

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Payment of penalty.

10. (1) Any penalty imposed by the Commission pursuant to the Act or Regulations shall become due and payable by the contravening person within fourteen days from the date of receipt of the notification in that regard by the Commission to the contravening person.

(2) The Commission may in addition to the penalty impose any other enforcement sanctions under the Act or Regulations on a licensee.

Appointment of
Inspectors.

11. (1) The Commission may appoint inspectors for the purposes of verifying compliance with the provisions of the Act and Regulations.

(2) The Commission shall issue all inspectors appointed under these Regulations with identity cards which shall be produced by the inspectors at the request of any person in charge of any place that is to be inspected.

(3) An inspector may at all reasonable times enter into any premises owned or controlled by a licensee in which the inspector has reasonable grounds to believe that has any document, information, or apparatus relevant for ensuring compliance with the Act or these Regulations and to examine such document, information or apparatus or remove the document, information or apparatus for examination or reproduction as the case may be.

(4) Where an inspector has reason to believe that there is any communication equipment or interference causing apparatus, he may examine such equipment, apparatus, logs, books, reports, data, records, documents or other papers and remove such information, document, apparatus, or equipment for examination or reproduction.

(5) An inspector shall record and sign for any information, document, article, apparatus or equipment removed by him or her and shall leave a copy of the document recording that removal.

(6) For the purpose of exercising, performing and discharging the powers, functions or duties of the Commission under the Act or these Regulations an inspector, may by notice in writing require any person to-

(a) furnish him or her within such time and at such place as may be specified in the notice, any document specified or described in the notice which is in the custody or control of such a person;

(b) produce for inspection any book, return, account or record in his possession or control; or

(c) produce for inspection any equipment, apparatus or systems.

(7) Any person who wilfully obstructs an inspector in the performance of his duties commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

Right of Access.

12. (1) All licensees and authorized persons shall allow inspectors to access their facilities at reasonable times for the purpose of enabling the

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inspectors to carry out inspection and verification, including visits to premises and facilities and the inspection of equipment and documents.

(2) An inspector shall not have the authority to compel any person, for any reason, to produce any document which he could not be compelled to produce in any civil proceedings.

13. Without prejudice to the provisions of the Act or Regulations, the Commission may, in the exercise of its powers pursuant to this Regulations and the Act, institute civil proceedings against any person for remedies that may include injunctive relief, recovery of penalties, specific performance or pecuniary awards or damages. Civil Proceedings.

14. Part XII of the Kenya Communication Regulations 2001 is hereby revoked. Revocation of Part XII of LN 68 of 2001.

[Subsidiary]
L.N. 29/2010.

**THE KENYA INFORMATION AND COMMUNICATIONS
(FAIR COMPETITION AND EQUALITY OF TREATMENT)
REGULATIONS, 2010**

Citation.

1. These Regulations may be cited as the Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations, 2010.

Interpretation.
L.N. 150/2010.

2. In these Regulations unless the context otherwise requires—

“communications services “ means all services provided for under the Act;

“licensee” means a person licensed under the Act;

“service agreement” means any agreement between a licensee and a subscriber relating to provision and use of a communications service;

“subscriber” means a person who has entered into a service agreement with a licensee and who is responsible for payment of all charges and rentals.

Purpose and object.
L.N. 150/2010.

3. (1) The purpose of these Regulations is to—

(a) provide a regulatory framework for the promotion of fair competition and equal treatment in the communications sector; and

(b) protect against the abuse of market power or other anticompetitive practices within the communications sector.

(2) Without prejudice to the generality of paragraph (1), these Regulations seek to-

(a) provide for the standards and procedures to be applied by the Commission in determining whether particular conduct is anti-competitive;

(b) clarify the agreements, conduct or practices that the Commission shall consider to be anti- competitive, and prohibited under the Act; and

(c) provide for the standards and processes that the Commission shall apply when determining whether a communications licensee is dominant in a given market.

Mandate of the
Commission over
competition matters.

4. (1) The Commission shall have the power to determine, pronounce upon, administer and enforce compliance of all its licensees with competition laws and regulations, that it relate to commercial activities in the communications sector.

(2) In so far as such matters fall concurrently under the jurisdiction of another statutory agency responsible for competition matters, the Commission shall co-operate with the said agency in matters related to fair competition.

5. (1) The Commission shall, in order to determine whether a particular agreement or conduct breaches these Regulations—

Determination of breach.
L.N. 150/2010.

- (a) evaluate the relevant market or market segment that the agreement, conduct in question or practice relates;
- (b) determine whether the market or market segment is competitive; and
- (c) establish whether a licensee is engaging in anti-competitive practices.

6. (1) The Commission shall, from time to time, by notice in the Gazette designate communications market segments.

Commission to designate market segments.
L.N. 150/2010.

(2) The Commission shall, when evaluating or designating the relevant market segments, consider—

- (a) the communications products that constitute a specific market, whose product dimension shall be assessed by analyzing—
 - (i) demand-side substitutability in order to measure the extent to which consumers are prepared or able to substitute other communications products or services for the communications products or services subject to considerations at low cost;
 - (ii) supply-side substitutability to determine the extent to which suppliers are able to supply other communications products or services in place of the communications products or services subject to consideration at low cost;
- (b) the geographic scope of the market for a given group of consumers, considering the following conditions—
 - (i) the geographic distribution of, and evolution over time of market shares;
 - (ii) the pricing of services across the area under consideration;
 - (iii) pricing of the different operators as well as its evolution over time in the relevant areas; and
 - (iv) additional supply and demand characteristics which may indicate the existence of different competitive pressures;
- (c) any other factors or issues which are, in the opinion of the Commission, relevant.

7. (1) The Commission shall from time to time develop and publish, in the Kenya Gazette, guidelines to be followed when determining whether a

Dominant market position.

[Subsidiary]

L.N. 150/2010.

licensee in a dominant market position in a specific communications market.

(2) The criteria shall among others include—

- (a) the current degree and development of market concentration or the market share of the licensee, determined by reference to revenues, numbers of subscribers or volumes of sales;
- (b) the degree to which a licensee's prices vary over time;
- (c) the ability of the licensee to maintain or erect barriers to entry to the market, including, by means of control of essential facilities, access to superior technology, privileged access to resources or capital markets or superior buying or negotiating position, amongst others;
- (d) the ability of the licensee to earn supernormal profits;
- (e) the global technology and commercial trends affecting market power;
- (f) the licensee's power to make independent rate setting decisions;
- (g) the degree of product or service differentiation and sales promotion in the market;
- (h) the ability to materially raise prices without suffering a commensurate loss in service demand to other licensees; and
- (i) any other matters which the Commission may consider relevant.

Dominant market
power reports.
L.N. 150/2010.

8. (1) The Commission may on its own motion or on the application of an interested person, prepare a dominant market power report to determine whether a licensee is dominant in a service or geographic communications markets.

(2) The Commission shall, among other factors, use the criteria in regulations 6 (2) and 7(2) when assessing or designating a communications market.

(3) The Commission may, where it determines in a dominant market report that a licensee is dominant by considering the criteria established in regulation 7 (2), it shall declare that licensee as dominant in a specific communications market.

(4) The Commission may, on its own motion or pursuant to an application by a licensee, review the dominant market power report to determine whether a licensee is still dominant and shall within, twenty-one days, make a determination that the licensee is not dominant or that the licensee shall continue to be designated as dominant.

Investigations

8A. (1) The Commission may, on its own motion or pursuant to a

complaint made by a licensee, conduct an investigation to determine if the conduct of a communications licensee gives rise to a competition concern under paragraph (2).

[Subsidiary]
in respect of
competition
concerns.

(2) Competition concerns shall arise where there is a likelihood that a licensee will engage in any of the following practices—

- (a) directly or indirectly impose purchase or selling prices or other trading conditions that unfairly prevent, restrict or distort competition;
- (b) limit production, markets or technical development to the prejudice of consumers and other licensees;
- (c) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) make the conclusion of a contract subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts; and
- (e) any other practices that the Commission may determine from time to time.

(3) Where the Commission determines that there is a competition concern, it may impose appropriate and proportionate remedies in accordance with regulation 9.

9. (1) Where the Commission has, pursuant to paragraph 8A, found a competition concern, the Commission may impose any or all of the following remedies—

Interconnection
obligations of a
dominant
telecommunications
service provider.
L.N. 150/2010.

- (a) meet all reasonable requests for access to its public telecommunications network, in particular access at any technically feasible point on its telecommunications network;
- (b) adhere to the principle of non-discrimination with regard to interconnection offered to other interconnecting licensees, particularly—
 - (i) apply similar conditions in similar circumstances to interconnecting licensees providing similar services and
 - (ii) provide interconnection facilities and information to other telecommunications licensees under the same conditions and of the same quality as it provides for its own services or those of its affiliates or subsidiaries;
- (c) make available, on request, to other interconnecting licensees considering interconnection with its public telecommunications network, all information and specifications reasonably necessary, in

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order to facilitate conclusion of an agreement for interconnection, including information on changes planned for implementation within the next six months, unless provided otherwise by the Commission;

- (d) submit to the Commission for approval and publish a Reference Interconnection Offer, sufficiently unbundled, giving the description of the interconnection offerings broken down into components according to the market needs and the associated terms and conditions including tariffs; and
- (e) provide access to the technical standards and specifications of its telecommunications network with which another interconnecting licensee shall be interconnected.

(2) Where a dominant telecommunications service provider abuses its position when negotiating interconnection agreements, the Commission shall—

- (a) require the dominant telecommunications service provider to desist, change its conduct or adopt a particular conduct; or
- (b) declare the interconnection agreement wholly or partially invalid.

(3) The Commission shall, before taking the action in paragraph (2) (b) of this Regulation, request the dominant telecommunications service provider to refrain from the conduct that is inconsistent with these regulations.

(4) A dominant telecommunications service provider shall set charges for interconnection based on an objective criteria, observe the principles of transparency and cost orientation as set out in Regulation 11.

(5) The Commission may request the dominant telecommunications service provider to prove that its interconnection charges are based on actual cost and, where necessary request an adjustment of the charges or impose default interconnection charges in the event the proposed adjustment is not implemented by the dominant telecommunications service provider.

(6) A licensee that has been declared dominant in a market segment shall—

- (a) notify the Commission in writing of any proposal to change interconnection charges in the form and manner as prescribed by the Commission from time to time;
- (b) sufficiently unbundle charges for interconnection, so that the telecommunications licensee requesting the interconnection is not required to pay for any item that is not related to the service requested;
- (c) maintain a cost accounting system that—

(i) complies with the cost accounting guidelines that may be published by the Commission from time to time;

(ii) demonstrates that its charges for interconnection have been fairly and properly calculated;

(d) avail to the Commission, on request, a description of its cost accounting system showing the main categories under which costs are grouped and the guidelines for allocation of costs to interconnection and the Commission's, or any other competent body; regulations or guidelines have been adhered to.

(7) A dominant telecommunications service provider shall promptly, on request supply financial information to the Commission to the level of detail specified by the Commission.

(8) The Commission shall upon satisfying that the dominant telecommunications service provider has fully complied with these regulations together with any other guidelines that it may have prescribed, publish a compliance report.

(9) In addition, the Commission while taking account of considerations of commercial confidentiality, may publish such financial information in order to contribute to an open and competitive telecommunications market.

10. (1) A licensee shall maintain separate books of account for each service as may be prescribed by the Commission from time to time and shall not cross-subsidize the prices for any service it offers in the market with revenue from the sale of communication systems and services. Accounts.

(2) A licensee shall maintain accounting separation techniques to be focused on the separation of revenues, costs and capital employed into categories in order to ensure that there is no discrimination between internal and external pricing in all services provided by the licensee.

(3) Where the interconnection services are not provided through a structurally separated subsidiary, a dominant telecommunications service provider shall keep separate accounts as if the telecommunications activities in question were in fact carried out by legally independent companies, to identify all elements of cost and revenue together with the basis of their calculation and the detailed attribution methods used.

(4) A dominant telecommunications service provider shall maintain separate accounts in respect of interconnection services and its core telecommunications services and the accounts shall be submitted for independent audit and thereafter published.

(5) The Commission shall from time to time develop guidelines providing for the system of transfer charges to be applied to services and products provided from one licensee to another and for the implementation of

[Subsidiary]

this regulation.

L.N. 150/2010.

(6) A licensee shall promptly, on request, supply financial information to the Commission to the level of detail specified by the Commission.

Obligations of licensees

11. (1) All licensees shall provide uniform, non-preferential service on a first-come-first-served basis to all persons within a covered geographical area or a given class who request for such service.

(2) A licensee shall not violate the principle of equal access and non preferential treatment if it—

- (a) considers the ability of a person to pay for a service when deciding whether to provide a service to the person; or,
- (b) makes other rational classifications among subscribers, such as business and residential, and to provide service on the basis of the classification.

Guidance.

12. (1) Where a licensee intends to enter into an agreement or take any action that may affect another licensee in the same market segment, it may seek guidance from the Commission at least thirty days prior to the entering into the agreement or taking of such action.

(2) The Commission's shall respond within thirty days of receiving the request under paragraph (1) stating whether the agreement or conduct is likely to contravene these Regulations;

(3) Notwithstanding the provision of these Regulations, a licensee shall ensure that all its agreements and conduct are lawful.

Investigations into complaints of unfair competition and discrimination.

13. (1) The Commission may, on its own motion or upon a complaint, investigate a licensee whom it has reason to believe has committed an act or omission, or is alleged to have committed an act or omission, or to have engaged in a practice, breaching the requirement for fair competition or equality of treatment.

(2) When conducting an investigation under section 84S and 84T of the Act, the Commission may—

- (a) require the production of any document or information that is specified or that falls within a specified category, which it considers relates to any matter relevant to the investigation, at a time and place, and in the manner or form specified;
- (b) take copies of, or extracts from any document produced;
- (c) require an explanation of any such document; and
- (d) where a document is not produced, require a statement specifying where it can be found;

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(e) enter any premises with a warrant and require the production of any document appearing to be the kind in respect of which the warrant was granted or relevant to the investigation and require any relevant information held in computer to be produced in a form in which it can be read and taken away;

(f) enter premises with a warrant search the premises and take copies of, or extracts from, any documents appearing to be the kind in respect of which the warrant was granted and require any relevant information held in a computer to be produced in a form in which it can be read and taken away.

14. (1) These Regulations shall not apply to conduct which is Exemptions.
necessary—

(a) for a licensee entrusted with the operation of essential communications services that relate to, among others, health, national security and any other circumstance that the Commission may prescribe, insofar as the application of the Regulations would obstruct the performance of the tasks assigned to the licensee;

(b) to comply with a legal requirement; or

(c) to avoid conflict with international obligations.

15. Part IV of the Kenya Communications Regulations, 2001 is
revoked.

Revocation of Part
IV of L.N 68 of
2001

[Subsidiary]

L.N. 30/2010.

**THE KENYA INFORMATION AND COMMUNICATIONS
(INTERCONNECTION AND PROVISION OF FIXED LINKS,
ACCESS AND FACILITIES) REGULATIONS, 2010**

Citation.

1. These Regulations may be cited as the Kenya Information and Communications (Interconnection and Provision of Fixed Links, Access and Facilities) Regulations, 2010.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“access” means availing facilities or services, to another service provider under specified conditions, on an exclusive or non-exclusive basis, for the purpose of providing telecommunications services;

“calling line identity” means the information generated by a telecommunications system that identifies the calling number and forwards it through the telecommunications network to a receiving communications system;

“co-location” means accommodation of two or more switches, transmission equipment, antennas or any other electronic communications equipment in, or on a single building tower or any other structure for the purpose of interconnecting communications networks;

“customer” means a user of telecommunications services provided by a telecommunications service licensee;

“end-to-end connectivity” means property that allows all nodes of the network to send information to all other nodes of the network, and do not require intermediate network elements to further interpret them;

“facilities acquirer” means a licensee who provides network services who has leased or shares facilities or has requested to lease or share facilities from a facilities provider;

“facilities provider” means a network facilities licensee who has been requested by a facilities acquirer for lease or to share facilities;

“interconnect capacity” means a transmission and switching capability and any other facility for connecting telecommunications networks of two or more telecommunications service licensees;

“interconnect licensee” means a provider of a telecommunications service who, in accordance with a licence issued by the Commission, is required to provide interconnection service to other telecommunications licensees;

“interconnecting licensee” means a provider of telecommunication services who has interconnected or has requested to interconnect its telecommunications system to the telecommunications system of an interconnect provider;

[Subsidiary]

“interconnection” means the physical and logical linking of telecommunication networks used by the same or different service licensees in order to allow the users of one licensee to communicate with users of the same or another licensee or to access services provided by another licensee;

“interconnection agreement” means an agreement, entered into, before or after the commencement of these Regulations, between an interconnect licensee and an interconnecting licensee in relation to the interconnection of their telecommunication systems;

“interconnection information” means information in the possession or control of parties to an interconnection agreement or intending to interconnect their telecommunications systems and services which may assist such parties to formulate their interconnection or plans, to establish or maintain their telecommunication systems or a telecommunication service for the purpose of interconnection, which information may include—

- (a) technical, traffic and other relevant information system and facilities specifications; and
- (b) any material changes to that information or specifications which may impact on the parties’ interconnection arrangements or the services they intend to provide to customers by means of that interconnection;

“interoperability” means the ability of communication systems, units, or elements to provide services to and accept services from other systems, units or forces and to use the services exchanged to enable them to operate effectively together;

“licensee” means a person licensed under the Act; “local access provider” means any person licensed by the Commission to provide telecommunications service within a geographical area (telecommunications region) prescribed by the Commission within which a licensee is licensed to operate telecommunications systems and services and shall include regional telecommunications service providers;

“network facility” means any element that forms part of an electronic communications network and includes any wire, cable, antenna, mast or other thing which is or may be used for or in connection with communications;

“just and reasonable charges” means charges that enable a licensee maintain its financial integrity, attract capital, operate efficiently and fully compensate investors for risks borne;

“licensee” means a person licensed under the Act; “local access licensee” means any person licensed by the Commission to provide telecommunications service within a specified geographical area (telecommunications region) within which a licensee is licensed to operate telecommunications systems and services and shall include regional telecommunications service licensees;

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“network facility” means any element that forms part of an electronic communications network and includes any wire, cable, antenna, mast or other thing which is or may be used for or inconnection with communications;

“point of interconnection” means a mutually agreed upon point where the exchange of traffic between the telecommunication system or apparatus of an interconnect provider and the telecommunications system or apparatus of an interconnecting licensee, takes place, including the exchange of traffic between a local access provider or mobile cellular communication service provider (where applicable) and another licensed telecommunications network service provider;

“private network licensee” means the licensee of a telecommunications system that provides private telecommunication services for its own use;

“public network licensee” means a provider of a public telecommunications service;

“reference access offer” means a document setting out the terms and conditions under which an interconnect licensee undertakes to permit access to its telecommunications network in a nondiscriminatory manner;

“reference interconnect offer” means a document setting out the terms and conditions under which an interconnect licensee undertakes to permit interconnection to its telecommunications network in a nondiscriminatory manner;

Application.

3. These Regulations shall apply to all interconnect licensees and interconnecting licensees, including the form and content of interconnection agreements, access and facilities.

Rights and obligations to interconnect.

4. (1) An interconnecting licensee shall, subject to compliance with the provisions of the Act and any guidelines on interconnection of telecommunications systems and services that the Commission may from time to time publish, have the right to choose its interconnection licensee to route its data traffic and calls towards customers of another licensee.

(2) Notwithstanding paragraph (1), an interconnecting licensee shall route its data traffic and calls towards international destinations through a licensee who has been licensed to provide the service.

(3) An interconnection licensee shall have the right and, when requested by an interconnecting licensee, an obligation, to negotiate the interconnection of its telecommunications system, facilities and equipment with the telecommunications system, facilities and equipment of the interconnecting licensee, in order to provide end-to end connectivity and interoperability of services to all customers.

(4) A interconnection licensee shall accept all reasonable requests for access to its telecommunications system at the network termination points offered to the majority of the interconnecting operators.

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(5) The Commission may exempt an interconnection licensee from the obligation under paragraph (1), where—

- (a) an interconnection agreement is prohibited by law;
- (b) the licence issued to a licensee does not permit a licensee to offer the services for which the interconnection is requested;
- (c) the requested interconnection is rendered impossible as a result of technical specifications; or
- (d) the interconnection would endanger the life or safety or result in injury of any person or harm to the interconnect licensee's property or hinder the quality of the services provided by the licensed service provider.

(6) The Commission shall publish any exemption granted under paragraph (5) of this Regulation.

5. (1) An interconnect licensee shall provide interconnection information to an interconnecting licensee upon receipt of written request.

Negotiation of interconnection agreements.

(2) An interconnecting licensee's request for interconnection shall be given reasonable priority over customer orders of the interconnect licensee.

(3) Parties to an interconnection agreement shall negotiate in good faith and reasonably endeavour to resolve disputes relating to the form and subject of an interconnection agreement that may arise.

(4) Parties to an interconnection agreement shall negotiate freely between themselves and each negotiating party shall not—

- (a) intentionally mislead the other party;
- (b) coerce the other party into making an agreement that it would not otherwise have made; or
- (c) intentionally delay or obstruct negotiations.

(5) The terms and conditions for interconnection of telecommunications networks shall be based on the agreement reached between the parties to an interconnection agreement and promote increased access and efficient use of telecommunications systems, services and facilities.

(6) All interconnection agreements shall facilitate end-to-end connectivity by ensuring that calls originated on the telecommunications system of an interconnecting operator can be terminated at any point on the telecommunications system of any other telecommunications service provider on a non-discriminatory basis.

(7) The telecommunication system licensees shall make all interconnection agreements between them in writing and specify—

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- (a) the scope and specification of interconnection;
- (b) access to all ancillary or supplementary services or access to and use of premises or land necessary to support interconnection;
- (c) maintenance of end-to-end quality service and other service levels;
- (d) charges for interconnection;
- (e) billing and settlement procedures;
- (f) ordering, forecasting, provisioning and testing procedures;
- (g) points of interconnection or co-location;
- (h) the amount of, or the forecast procedures to be used to determine, interconnect capacity to be provided;
- (i) transmission of call line identity;
- (j) network information;
- (k) information regarding system modernization or rationalization;
- (l) technical specifications and standards;
- (m) interoperability testing, traffic management, measurement and system maintenance;
- (n) an information handling process and confidentiality agreement;
- (o) duration for and renegotiation of the agreement;
- (p) formation of appropriate working groups to discuss matters relating to interconnection and to resolve any disputes;
- (q) formal dispute resolution procedures;
- (r) definition and limitation of liability and indemnity;
- (s) adequate capacity, service levels and reasonable remedies for any failure to meet those service levels;
- (t) force majeure;
- (u) other contractual terms and conditions; and
- (u) any other matters that the Commission may prescribe.

[Subsidiary]

(8) Interconnection agreements shall not, directly or indirectly-

- (a) preclude or frustrate the exercise of rights or privileges given under the Act or a licence or by any person;
- (b) impose any penalty, obligation or disadvantage on any person for exercising any rights under the Act or a licence;
- (c) prohibit a person from providing an interconnection service which that person is able to lawfully provide; or
- (d) frustrate the provision of a telecommunications service by a person is able to lawfully provide.

(8) The Commission may on its own initiative or upon the request of a party—

- (a) intervene in negotiations on agreements for interconnection where no agreement is reached between the negotiating parties within six weeks of the commencement of the negotiations; or
- (b) set time limits within which negotiations on interconnection are to be completed, which time limits shall not exceed six weeks unless the Commission considers that a longer period is necessary.

(10) The Commission may from time to time issue technical, costing and other relevant guidelines to guide licensees in negotiating interconnection agreements.

(11) Where a telecommunications service licensee—

- (a) enters into an interconnection agreement with another telecommunications licensee, the Commission may review the agreement to ensure that it conforms with the Act, Regulations and any guidelines on interconnection of telecommunications networks issued by the Commission; or
- (b) has not interconnected its facilities upon request by another licensee, the Commission shall require the licensee concerned to interconnect its facilities in order to protect essential public interests and may set the terms and conditions of the interconnection.

6. (1) Parties to an interconnection agreement shall file with the Commission an application for approval of the proposed interconnection agreement at least fourteen days before the date of implementation of the interconnection agreement. Approval of Interconnection Agreements.

(2) Parties to an interconnection agreement shall file with the Commission an application for approval of the renewal or extension of an existing interconnection agreement at least fourteen days prior to the expiry of the agreement.

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(3) The Commission may request for information from the parties to an interconnection agreement that it considers necessary to evaluate the terms and conditions and the charges set forth in the agreement, and request that the interconnection agreement be modified in the manner specified by the Commission, in writing.

(4) Upon receipt of a request by the Commission to modify an interconnection agreement the parties shall negotiate and submit a revised interconnection agreement to the Commission within ten days of receipt of the request by Commission.

(5) Where the parties are unable to agree on the requested modification, the Commission may, if it determines that a negotiated agreement is not achievable, provide an interconnection agreement to the parties that includes the terms and conditions and with the charges payable for the interconnection.

(6) Where licensees are in the process of negotiating an interconnection agreement or have agreed on an agreement but the agreement is pending before the Commission for approval, the parties may agree to exchange traffic based on interim conditions and notify the Commission.

Provided that the conditions agreed on in the interconnection agreement once approved by the Commission shall apply in respect of the period for which the agreement is negotiated.

(7) A party who is aggrieved by the decision of the Commission may, within fifteen days from the date of the Commission's decision, appeal to the Tribunal.

Confidentiality.

7. (1) A party to an interconnection agreement may, before the filing of the agreement with the Commission, mark provisions containing trade or operating secrets and the party shall additionally submit to the Commission for review a modified version of the agreement which does not, in that party's view, disclose the trade or operating secrets.

(2) Where the Commission considers the marking unjustified, it shall consult with the respective telecommunications service provider prior to making a decision to allow third parties to inspect the agreements in whole or in part and may subsequently restrict inspection to the modified version of the interconnection agreement.

Interconnection.

8. (1) Any transmission of calls across and within telecommunications systems shall be seamless to both the calling party and the party receiving the call.

(2) All procedures for forecasting, ordering and provisioning interconnection shall be efficient and shall occur within reasonable time frames.

(3) All facilities or systems used for interconnection shall be provided in sufficient capacity to enable the efficient transfer of information between

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interconnected telecommunication systems.

(4) A service acquired as part of interconnection may be used for any lawful purpose.

9. In similar conditions and similar circumstances, an interconnection licensee shall provide interconnection on a nondiscriminatory basis and the interconnection licensee shall ensure that—

Non-discrimination and transparency.

- (a) the rates it charges do not vary on the basis of the class of customers to be served;
- (b) it provides interconnecting licensees with interconnection facilities and information under the same conditions and in the same quality that it affords to its subsidiaries, affiliates, or other similarly situated interconnecting licensees;
- (c) it avails to interconnecting licensees all necessary information and specifications related to interconnection; and
- (d) customers of an interconnecting licensee receive treatment that is no less favourable than the treatment which it affords to its own customers or the customers of its subsidiaries, affiliates, or other similarly situated interconnecting licensees.

10. (1) Parties to an interconnection agreement shall comply with all relevant service standards of the International Telecommunications Union and other technical standards that the Commission may publish from time to time.

Quality of service.

(2) A licensee shall ensure that the prescribed quality of service is not impaired on interconnection.

11. (1) In order to achieve the quality of inter-operability to the prescribed level a licensee shall—

Network upgrading.

- (a) notify the Commission and all other licensees interconnecting in the network, of any planned change in the network capacity, technology, structure and configuration, at least three months prior to the planned change; and
- (b) provide details relating to any change in the licensee's network, including traffic forecast to the Commission at least three months prior to the planned change.

12. (1) All charges for interconnection services shall—

Interconnection charges structure.

- (a) be objective, independently verifiable and fair;
- (b) be charged for each type of telecommunications service related to interconnection;

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- (c) not be designed to facilitate cross-subsidies by an interconnect provider of its network;
- (d) be below the retail charges levied by the interconnect provider for the provision of any retail service that makes similar use of those network elements that are required by both the retail and interconnection service; and
- (e) be sufficiently below retail service charges to allow for recovery of the incremental retail costs associated with provision of the retail service supported by the interconnection service that the interconnect service provider would have to incur in order to compete effectively with the interconnect provider at the retail level.

(2) All charges for interconnection shall be structured to distinguish and separately price—

- (a) fixed charges for the establishment and implementation of physical interconnection;
- (b) periodic rental charges for use of facilities, equipment and resources including interconnect and switching capacity; and
- (c) variable charges for telecommunications services and supplementary services.

(3) A licensee shall be free to acquire services from an interconnect provider at any retail price offered by the interconnect provider without prejudice to any rights to acquire the same or similar services under an interconnection agreement.

(4) The Commission shall prescribe guidelines on interconnection charging methodology from time to time.

Interconnection
procedures.

13. (1) All requests by an interconnecting licensee for any form of interconnection shall be in writing and shall provide the interconnection licensee with information relating to—

- (a) the form of interconnection;
- (b) the date for the commencement of negotiations;
- (c) the approximate date the interconnection is required; and
- (d) an estimate of the capacity required.

(2) A copy of the request for interconnection in paragraph (1) shall be forwarded to the Commission by the requesting party within seven days of the request by the requesting party.

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(3) The interconnect licensee shall inform the interconnecting operator in writing within fourteen days of receipt of the request for interconnection of its ability and willingness to supply the form of interconnection requested within the time frames requested by the interconnecting licensee and its ability to commence negotiations on the date requested.

(4) Where the parties do not agree on the date to commence negotiations, the Commission shall facilitate negotiations to an interconnection agreement on a date specified by the Commission.

(5) Where the Commission is of the view that parties to an interconnection agreement have taken longer than necessary to negotiate and conclude an interconnection agreement, and the proposed charges to an interconnection agreement are unreasonable and do not promote effective competition the Commission shall make a determination to be applicable during the time when negotiations are going on and the time within which negotiations on interconnection are to be completed.

(6) Where a party or any other person alleges that there has been a contravention or failure to comply with the provisions of the Act, Regulations and any guidelines on interconnection or an interconnection agreement, the Commission shall investigate and make a decision.

(7) Where the interconnect licensee has informed the interconnecting licensee that it is able to provide interconnection, it shall ensure that the system conditioning and provisioning procedures required to provide such interconnection are undertaken within the time required by the interconnecting licensee.

(8) Disputes that relate to the timely provision of interconnection or notice of planned changes shall be submitted to the Commission for determination.

14. (1) Parties to an interconnecting agreement shall establish and maintain points of interconnection at any technically feasible points agreed by the parties.

Establishment and location of points of interconnection.

(2) An interconnecting licensee shall, in sufficient detail, notify the interconnection licensee of the points at which they wish to be interconnected to enable the interconnection licensee to assess the systems conditioning and other requirements for establishing such points of interconnection.

(3) Points of interconnection shall be established as soon as practicable following a request and not later than thirty days from the date of the request.

(4) Unless otherwise determined by the Commission, interconnecting licensees shall be responsible for the cost of building and maintaining the points, data fill and switching capacity to support the interconnection and for the costs of transport from their points of origination to points of interconnection.

(5) Licensees providing interconnection services may mutually agree on the point of interconnection and share the costs of establishing such points of interconnection.

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(6) Where a licensee seeking interconnection from any interconnection licensee requests that its facilities for interconnection be co-located with the facilities or premises of the interconnection licensee, such co-location may be provided and the costs of such co-location shall be mutually agreed by the parties.

Calling line identity.

15. Parties to an interconnecting agreement shall pass calling line identity and all necessary signaling data between interconnecting parties in accordance with standards prescribed and published from time to time by the Commission.

Modification,
suspension and
termination

16. (1) Parties to an interconnection agreement shall ensure that any modification, suspension or termination of the interconnection agreement does not adversely affect customers.

(2) An interconnect provider may not terminate an interconnection agreement unless—

- (a) the termination is as a result of a fundamental breach of the interconnection agreement and the interconnecting licensee after having been given an opportunity to remedy the breach, has failed to do so;
- (b) the interconnect provider gives reasonable written notice of its intention to terminate and—
 - (i) specifies the grounds for termination; or
 - (ii) gives, in the case of breach, a notice of one month, for the service provider to remedy the breach;
- (c) the Commission has been notified of the intended termination and it has given consent, in writing.

(3) A party to an interconnection agreement may only suspend interconnection in exceptional circumstances and only where such suspension is intended to address a material degradation of telecommunications systems or services and the Commission notified of the intended suspension and it has given its consent.

(4) Parties to an interconnection agreement that has been approved by the Commission may amend or modify the agreement by giving the Commission a copy of the proposed amendment not less than fourteen days prior to the effective date.

Confidentiality

17. (1) A party who receives information relating to interconnection from another party which is designated as confidential shall keep the information confidential and may disclose it—

- (a) to employees, agents or advisers who need to know that information

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for the purpose of the provision of interconnection, or giving advise thereon;

(b) to persons to whom such disclosure is authorised by that other party;

(c) where such disclosure is authorized or required by law; and

(d) to the Commission.

(2) Confidential information relating to interconnection of a party received by another party, or business information generated by the telecommunications system of a party as a result of interconnection, shall be used solely for the purpose of providing interconnection, and shall not be disclosed to any person involved in the development or provision of retail services of the other party, its subsidiaries or affiliates.

(3) The provisions relating to confidentiality of any matter in an interconnection agreement shall not prevent the disclosure by the Commission of any provisions therein due to public interest or pursuant to a legal process.

18. (1) Where the Commission issues an order requiring a dominant telecommunications service licensee to publish a reference interconnection offer or a reference access offer, the licensee shall, unless otherwise determined by the Commission—

Reference
interconnection offer
and reference access
offer obligations.

(a) submit a proposed reference interconnection or reference access offer, as the case may be, to the Commission for review and approval within three months after the issuance of the order by the Commission; and

(b) be subject to the terms and conditions of the approved reference interconnection or reference access offer approved by the Commission, subject to any amendments considered appropriate by the Commission, within three months after the issuance of the order by the Commission.

(2) Prior to approving any reference interconnection or reference access offer or any amendments thereto, the Commission may—

(a) request for additional information or clarification from the dominant telecommunications service licensee with regard to the proposed reference interconnection or reference access offer; or

(b) consult with the industry and public on the proposed reference interconnection or reference access offer.

(3) The Commission may publish guidelines or models for the uniform sector-wide application of reference interconnection or reference access offers, which shall be used by all dominant telecommunications service licensees.

(4) The reference interconnection offers shall be sufficiently unbundled

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to ensure that the interconnecting operators do not pay for network elements or facilities which are not necessary and shall contain a description of the components of the offer, associated terms and conditions, including the structure and level of prices.

(5) The reference access offers shall be sufficiently unbundled to ensure that the access seekers do not pay for network elements or facilities which are not necessary and shall contain a description of the components of the offer, associated terms and conditions, including the structure and level of prices.

(6) Where applicable, the reference access offers shall, where applicable, include detailed information related to access to—

- (a) network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means;
- (b) physical infrastructure including buildings, ducts and masts;
- (c) relevant software systems including operational support systems, access to number translation or systems offering equivalent functionality;
- (d) fixed and mobile networks, in particular for roaming, access to conditional access systems for digital television services; and
- (e) access to virtual network services.

Co-location.

19. (1) Where a licensee has the right to install facilities on, over or under private land or take advantage of a procedure for the expropriation or use of property, the Commission shall encourage the sharing of such facilities and property with other licensees, in particular, where other licensees do not have access to viable alternatives.

(2) A service provider providing such co-location shall—

- (a) file with the Commission a schedule of fees charged for co-location;
- (b) agree on a meet-point with another licensee seeking interconnection and designating location for interconnecting the network;
- (c) provide reasonable, just, and non-discriminatory rates, terms and conditions for physical collocation of equipment necessary for interconnection or for providing access to the unbundled network elements at the licensee's premises;
- (d) resort to virtual co-location, requiring interconnection at a place outside the licensee's usual premises such as switching, transmission, or main distribution door frame room if it is demonstrated that physical co-location is not practical for technical reasons or for space limitations;

(e) agree with a licensee seeking interconnection on a facility that is based in the central office of either party to complete the transmission; and

(f) charge a fee according to filed tariffs.

(3) The terms and conditions for co-location or sharing of facilities shall be subject to a commercial and technical agreement between the parties concerned and the Commission may intervene to resolve disputes arising from such agreements.

20. (1) A Facilities licensee shall facilitate access to network facilities in the following manner— Network access and facilities.

(a) access to network facilities shall be commercially agreed upon between the facilities acquirer and the facilities licensee;

(b) request for access to network facilities shall be reasonable and in writing;

(c) a facilities licensee and a facilities acquirer shall negotiate access to network facilities, at all times, in good faith;

(d) a facilities licensee shall submit a copy of a concluded access agreement to the Commission within thirty days after the conclusion;

(e) the Commission may authorize access to essential facilities of dominant telecommunications service providers; and

(f) a facilities licensee who has been authorized to provide access to network facilities shall be entitled to levy a charge for such access to enable it recover economic costs and ensure a reasonable rate of return;

(2) A facilities provider shall treat each —

(a) facilities acquirer on a basis that is non-discriminatory in its provision of facilities and no less favourable than the treatment which the facilities provider affords to its subsidiaries, its affiliates, or other similarly situated facilities acquirers;

(c) communication network service of a facilities acquirer on a basis that is non-discriminatory and no less favourable than the treatment which the facilities provider affords to the electronic communication network services of itself, its affiliates, or other similarly situated facilities acquirers; and

(d) customer of a facilities acquirer on a basis that is nondiscriminatory and not less favourable than the treatment which the facilities

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provider affords to its own customers of the customers of its subsidiaries, its affiliates, or other similarly situated facilities acquirers.

(3) A facilities licensee may refuse unreasonable requests for access to its network facilities.

(4) A request for access to network facilities shall be unreasonable if it-

- (a) is not economically or technically feasible; or
- (b) may result in the facilities licensee being unduly prejudiced.

(5) An access agreement shall be in writing and it shall, unless it is not relevant to the access that has been requested, specify—

- (a) the scope and specification of the facilities to be provided;
- (b) access to all ancillary or supplementary services, or access to and use of premises or land that are required to support the provision of network facilities;
- (c) service levels and the maintenance of facilities;
- (d) charges for the facilities;
- (e) billing and settlement procedures;
- (f) ordering, forecasting, provisioning and testing procedures;
- (g) the provision of co-location for facilities and the terms and conditions in accordance with which co-location is to be provided;
- (h) technical specifications, standards and inter-operability tests;
- (i) information handling and confidentiality;
- (j) duration, re-negotiation and review procedures; and
- (k) dispute resolution procedures.

(6) A facilities licensee shall not be required to provide access where, in the Commission's view, it is not reasonable to require the facilities provider to provide access including, among others, to circumstances where it is beyond its control or it is not reasonably practicable.

Provisions for leased capacity.

21. (1) A telecommunications licensee who intends to acquire leased capacity in order to provide services licensed under the Act shall request for the provision of such capacity from a facilities licensee.

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(2) A facilities acquirer who intends to acquire leased capacity shall present a request for leased capacity, in writing, to a facilities licensee specifying the requested location, quantity and other technical requirements.

(3) A facilities licensee shall respond to a request under paragraph (2), in writing within fifteen days of receipt of the request, stating whether the required capacity can be supplied in accordance with the requested technical requirements, the offered price, and the date upon which the installation of the requested capacity shall be completed, which date shall not be later than ninety days after receipt of the request.

(4) A facilities acquirer may apply to the Commission for permission to establish its own network or infrastructure—

(a) where a facilities licensee is unwilling to provide the service or

(b) upon failure by the facilities licensee to—

(i) reply to a request within ninety days of receipt;

(ii) complete the installation of the required capacity within ninety days of receiving the request; or

(iii) provide capacity at a reasonable price and at quality or technical standards which comply with telecommunication systems requirements.

(5) The Commission may, upon receipt of an application made under paragraph (4), authorize a facilities acquirer to establish the required capacity.

22. Any dispute arising out of the application of these Regulations shall be resolved in accordance with the Kenya Information and Communications (Dispute Resolution) Regulations, 2010.

Dispute resolution.

23. Part VII of the Kenya Communications Regulations, 2001 is revoked.

Revocation of Part VII of L.N 168 of 2001.

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L.N. 54/2010.

**THE KENYA INFORMATION AND COMMUNICATIONS
(CONSUMER PROTECTION) REGULATIONS, 2010**

Citation.

1. These Regulations may be cited as the Kenya Information and Communications (Consumer Protection) Regulations, 2010.

Interpretation.
Cap. 265.

2. In these Regulations, unless the context otherwise requires—

“child” means any human being under the age of eighteen years;

“commercial code of practice” means the principles, values, standards or rules that guide or govern the decisions, procedures and systems of an organization in a way that contributes to the welfare of its key stakeholders, and respects the rights of all constituents affected by its operations;

“complaint” means any statement of dissatisfaction with the services of a licensee made by a customer;

“customer” means any person who uses the services or purchases the products of a particular licensee or vendor, without necessarily being a subscriber to that licensee or vendor;

“disability” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation;

“licensee” means a person licensed under the Act;

“outage credit” means a credit to be paid to a subscriber for a period of time when the service is not operating for reasons not caused by the subscriber;

“subscriber” means any person who purchases a communications service or agrees to receive and pay for the service from a licensee through a subscriber service agreement;

“subscriber service agreement” means an agreement entered into by a licensee and subscriber for the provision of the licensed services to the subscriber;

“vendor” means a person who carries out the business of selling, reselling or distributing ICT terminal equipment used for the provision of licensed services.

Rights and
obligations of
customers.

3. (1) A customer shall have the right to—

(a) receive clear and complete information about rates, terms and conditions for available and proposed products and services;

(b) be charged only for the products and services they subscribe to;

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- (c) where possible, select a service provider and service of the customer's choice;
- (d) personal privacy and protection against unauthorized use of personal information;
- (e) accurate and understandable bills for products and services authorised by the customer, and to fair prompt redress in the event of a dispute in the provision of the products and services;
- (f) protection from unfair trade practices, including false and misleading advertising and anti-competitive behaviour by licensees; and
- (g) equal opportunity for access to the same type and quality of service as other customers in the same area at substantially the same tariff limiting variations to available or appropriate technologies required to serve specific customers.

(2) A consumer shall—

- (a) use communications systems and services in the appropriate manner, without abusing them;
- (b) familiarize with and honour their obligations under any contract entered into with a product supplier or service provider;
- (c) make reasonable decisions in exercising their right of choice; and
- (d) familiarize with and abide by any safety or security requirements pertaining to the use of communications systems and services.

4. (1) A service provider shall take appropriate technical and organizational measures to safeguard the security of its services. Safeguards.

(2) Where there is a particular risk of a breach of the security of the network, a licensee shall—

- (a) inform the subscribers of the risk; and
- (b) where the risk lies outside the scope of the measures that may be taken by the licensee, of any possible remedies, including an indication of the likely costs involved.

5. (1) A licensee shall, within the period specified in its licence or by the Commission, establish a customer care system within which customers can make inquiries and complaints concerning its services in such format and containing such details as may be required by the Commission within the time prescribed in the licence or within a reasonable time after the grant of a licence, or as may be specified by the Commission and be available upon commencement of provision of service to the public. Customer care system.

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(2) The Commission may from time to time publish guidelines relating to the customer care systems that the licensee may establish.

Provision of services and sale of ICT terminal equipment.

6. (1) A vendor shall provide all pertinent information on the equipment it offers for sale, including among others, the type-approval or type acceptance status and whether or not such equipment is new or used, to prospective buyers in a clear and unambiguous manner.

(2) A vendor shall honour all agreements entered into with a buyer, through the sale of terminal equipment and shall ensure that such equipment is in proper working order at the time of sale.

(3) A vendor shall ensure that its advertisements relating to the goods regulated under the Act are unambiguous and factual.

Complaint handling procedures of licensees.

7. (1) A licensee shall provide easily understood information about its complaint handling processes in various media and formats, including as specifically directed by the Commission from time to time.

(2) A customer who wishes to lodge a complaint shall reduce the complaint in writing and lodge it within six months from the date of the incident that the complaint arises from.

(3) A licensee shall acknowledge the receipt of a complaint filed with it.

(4) A licensee shall where possible, advise a customer at the time of making the complaint on the expected action, timing for investigation and resolution of the complaint and in the event that the service provider regards the complaint as frivolous or vexatious, the consumer shall be informed accordingly.

(5) A licensee shall resolve all complaints made by its customers within a reasonable time.

(6) A licensee shall put in place a process to provide customer with sufficient information and the means to inquire on the progress of complaints and the processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent inquiries by customers.

(7) A licensee shall inform the customer of the outcome of the investigation of their complaint, and any decision of the licensee.

(8) Where a customer is not satisfied with a decision made on a complaint, the licensee shall give the customer the option of pursuing an identified escalation process, where the decision may be examined by a suitably qualified person in the licensee's organisation.

(9) Where the consumer has already gone through the licensee's escalation process and the complaint has not been resolved to the consumer's satisfaction, the customer may refer the complaint to the Commission.

(10) The complaint handling processes shall be provided free of charge.

(11) Notwithstanding paragraph (10), where the investigation of the complaint requires the retrieval of records more than twelve months old or the retrieval results in any incremental expense or significant inconvenience to the licensee, a licensee may impose a reasonable charge for the complaint handling processes.

(12) Any such charges shall be identified by the licensee, be agreed to by the customer and referred to the Commission before being imposed.

(13) A licensee shall file, with the Commission, such information and statistics on all complaints reported, including those resolved and those outstanding, on a quarterly basis in the manner prescribed by the Commission from time to time.

8. (1) A licensee shall ensure that persons with disabilities can easily access its complaint handling processes.

Complaints by persons with disabilities.

(2) A licensee shall provide reasonable assistance to a customer who specifically requests for assistance when lodging complaints.

(3) A licensee shall take such measures as may be prescribed by the Commission to ensure that the requirements and interests of disabled customers are fully addressed.

(4) A licensee shall fulfill any specific obligations that relate to special services or special arrangements for customers with disabilities that the Commission may from time to time impose.

9. (1) A licensee shall establish mechanisms that enable parents and legal guardians to block access of children to harmful content.

Protection of children.

(2) A licensee who owns promotes, glamorises or markets alcohol and tobacco products or other harmful substances that are directed at children commits an offence.

10. (1) A licensee shall provide a clear and understandable description of available services, rates, terms, conditions and charges for such services and publish the information within such periods as may be determined by the Commission.

Information for customers.

(2) The Commission may from time to time publish information that may include, among others, tariffs and statistical information, it considers useful to customers.

(3) Without prejudice to any other information that may be required by the Commission, a service provider shall provide customers at the point of sale, where applicable with—

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- (a) the name of the service provider;
- (b) a toll free consumer service number;
- (c) the activation fee or initiation fee, including deposit requirements;
- (d) the monthly access fees or base charges tariff provisions for calculating charges including, among others —
 - (i) minimum charges, units, distances;
 - (ii) peak, and off peak rates;
 - (iii) night, weekends and holidays rates;
 - (iv) international call charges; and
- (e) any additional or different prices, rates or unit values applicable, and additional taxes or fees.

Outage credit system.

12. (1) A licensee shall, within six months from the date of the grant of the licence, submit to the Commission a system of outage credits to be given to a subscriber, which upon the Commission's approval shall become part of the licensee's standard subscriber service agreement.

(2) A licensee shall not be responsible to subscribers for scheduled outages arising in accordance with the terms and conditions of a licence, from an event or effect, which in the Commission's view was not reasonably foreseeable or preventable.

Code of commercial practice.

13. (1) A licensee shall submit to the Commission, within six months of being granted a licence for approval, a commercial code of practice in the prescribed manner.

(2) Upon receiving the code submitted under paragraph (1), the Commission may —

- (a) approve the proposed code;
- (b) approve the commercial code of practice with the recommendation that the licensee makes alterations specified by the Commission;
- (c) decline to approve the proposed code and direct that the licensee improves specified areas or further develops the proposed code; or
- (d) extend the period for the review of the proposed code.

(3) The commercial of practice shall include, among others, the licensee's complaints handling procedure, advertising policy, system of outage credit and

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the emergency safety and assistance services and any other information as the Commission may determine.

(4) A licensee shall deliver to each subscriber within three months of the commencement of the service, the commercial code of practice as approved by the Commission.

(5) The commercial code of practice shall not replace or reduce any benefit of price assurance provided to the subscriber by the subscriber service contract; and shall—

(a) supplement the subscriber service contract and not reduce a subscriber's consumer rights; and

(b) be consistent with consumer protection laws.

14. (1) A licensee shall submit to the Commission, for approval, the standard subscriber service agreement applicable to each service it offers to the public. Standard subscriber service Agreements.

(2) Where a dispute arises between a consumer and a licensee on the interpretation of the terms of a service agreement that had not been submitted to the Commission for approval prior to the dispute or complaint and the dispute is submitted to the Commission for resolution, the decision of the Commission shall prevail over the provisions in the subscriber service agreement that had not been approved by the Commission.

(3) For the avoidance of doubt, agreements entered into between terminal equipment vendors and their customers through the sale of such equipment shall be subject to these Regulations and shall be enforced by the Commission.

15. (1) Subject to the provisions of the Act or any other written law, a licensee shall not monitor, disclose or allow any person to monitor or disclose, the content of any information of any subscriber transmitted through the licensed systems by listening, tapping, storage, or other kinds of interception or surveillance of communications and related data. Confidentiality.

(2) A licensee shall, where applicable, establish mechanisms by which customers may be able to—

(a) know that information is being collected about them through their use of various telecommunications services and systems; and

(b) receive conspicuous notice that such information could be used, or is intended to be used, without authorisation, by the entity collecting the data for reasons unrelated to the original communications, or that such information could be sold (or is intended to be sold) to other companies or entities;

(3) Notwithstanding paragraph (2)(b), nothing in this regulation shall be construed to mean that a licensee may sell or offer for free, to a third party,

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any information collected by the licensee without the prior consent of the consumer concerned.

(4) In the case of children, the powers exercised in paragraph (1) and (2) shall be vested in the parents or lawful guardians on their behalf.

Operator assistance.

16. A licensee shall, where applicable, ensure that all its customers can access operator assistance services.

Unsolicited communications.

17. (1) A person who uses automated calling systems without human intervention, facsimile machines or electronic mail for purposes of direct marketing without the prior consent of the subscriber commits an offence.

(2) A person who sends electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or without a valid address to which the recipient may send a request that the communications cease commits an offence.

(3) Where a natural or legal person legally obtains from its subscribers their electronic contact details for electronic mail, in the context of a sale of a product or service, the natural or legal person may use these electronic contact details for direct marketing of his or its own similar products or services so long as he or it gives the subscriber an opportunity to object, free of charge and in a simple manner, to the use of the data when it is collected and on the occasion of each message in case the subscriber had not initially objected to the use.

(4) All automated direct-marketing schemes to be used in Kenya shall be based on an opt-in principle, in which potential subscribers shall be accorded the opportunity to accept or reject inclusion in a marketer's mailing list.

Presentation and restriction of calling and connected line identification.

18. The Commission shall, from time to time, prescribe through guidelines, the manner in which calling line identification features shall be available to subscribers through licensees whose systems have such capabilities.

Emergency services.

19. (1) A licensee shall provide free access to emergency safety and assistance services in the manner determined by the Commission from time to time, in accordance with the written laws in force and international standards.

(2) A licensee shall permit calls to internationally and nationally emergency numbers to be free of charge.

(3) A licensee shall, where technically possible, forward any useful personal data to the designated emergency services providers upon connecting emergency calls.

(4) Where there is doubt, the Commission shall determine the numbers that qualify for toll free access under paragraph (1) and (2).

Billing

20. (1) A licensee shall install a billing system that permits, upon request by a customer, issuance of bills that identify the rates charged to the subscriber,

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the number called, the duration of each call, the charge per call, applicable discounts and the class of service and any other information as may be stimulated by the Commission.

(2) The Commission may include in the billing requirements information relating to—

- (a) the name of licensee;
- (b) the billing period covered by bill;
- (c) change in licensee;
- (d) disclosure of any rate or service charge, including those implemented within the next billing cycle;
- (e) a listing of the statement or payment due date;
- (f) amount of charges debited to each billed account from the previous cycle;
- (g) amount of payments made to each billed account segregated from late payments;
- (h) terms for late payment fees and termination of service;
- (i) the licensee's toll free number or numbers by which customers may make inquiries about or dispute charges contained on the bill and the methodology used to quantify charges;
- (j) toll free number of the where customers may make inquiries or file complaints;
- (k) rental charges; and
- (l) any other information that the Commission may from time to time by require to be included.

(3) A licensee shall put in place a mechanism through which a subscriber to its service may place a request for an itemised bill, where the service is not issued as a standard offer and accord each customer the option of receiving itemised bills on a regular basis if the subscriber so wishes and upon payment of a reasonable charge.

21.(1) The Commission may issue guidelines for the implementation of these Regulations, the guidelines may, among others, relate to— Guidelines

- (a) standard of conduct for service providers; and
- (b) key performance indicators for both the sector and individual service providers.

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(2) The Commission may review the guidelines made under paragraph (1), to ensure that the guidelines remain relevant and effective.

Monitoring sector performance.

22. The Commission shall monitor sector performance, conduct consumer satisfaction surveys and publish its findings at least once in every two years.

Offences and penalties.

23. (1) A licensee who—

- (a) fails to perform the measurement, reporting and record keeping tasks within the required time;
- (b) fails to reach a target for any of the parameters stipulated under these Regulations;
- (c) fails to submit, during a time specified by the Commission, information requested by the Commission pursuant to these Regulations;
- (d) submits or publishes false or misleading information about the quality of its services;
- (e) obstructs or prevents an inspection or investigation carried out by the Commission pursuant to these Regulations;
- (f) engages in any act or omission whose effect would be to defeat the purposes of these Regulations,

commits an offence.

(3) A person who commits an offence under these Regulations shall, where no specific penalty is provided for, is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

Period of compliance.

24. (1) A licensee shall put in place such measures, processes or systems necessary to fully comply with these Regulations within six months of their coming into force.

(2) All existing contracts and codes that have not been filed with and approved by the Commission as required by these Regulations shall be filed and approval sought within six months of the coming into force of these Regulations.

**THE KENYA INFORMATION AND COMMUNICATIONS
(NUMBERING) REGULATIONS, 2010**

[Subsidiary]
L.N. 55/2010

1. These Regulations may be cited as the Kenya Information and Communications (Numbering) Regulations, 2010. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“communications addresses” means an address determined by the Commission from time to time, for use in communication;

“communication number” means the number, sign or other mark that a licensee uses for identification of communications systems when its delivering communication services in order to connect between the place of transmission and the place of reception, or for the identification of the type of content of transmission the communications system is to deliver;

“licensee” means a person licensed under the Act;

“Maritime Mobile Service Identity” means a number used for the purpose of identification while using Global Maritime Distress Service System search and rescue facilities on board ships;

“National Communication Numbering and Addressing Plan” means the plan for electronic communications numbers and addresses, postal codes and national addressing system established by the Commission under regulation 4;

“Numbering Scheme” means the procedures and criteria for the reservation, assignment, and reclamation of numbering resources.

3. The object and purpose of these Regulations is to provide a regulatory framework for the control, planning, administration and management of the numbering and addressing of network services, national plan and applications services. Object and purpose.

4. The Commission shall establish a National Communication Numbering and Address Plan and control all communication numbers and addresses to ensure fairness and efficiency by— Establishment of a National Communication and Numbering Plan.

(a) undertaking planning, allocations and monitoring;

(b) maintaining the national communication numbering and address register for all licensees in respect of resources which have been assigned;

(c) facilitating maintenance of the national electronic address and users register;

(d) managing postal codes and national addressing systems;

(e) assigning call signs to all amateur radio operators in the country;

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and

- (f) issuing maritime mobile service identity numbers for maritime vessels registered in Kenya.

Administration
and planning of
numbering and
communication
addresses.

5. (1) The Commission shall control, plan, administer and manage the numbering and addressing of communications systems and services.

(2) The Commission shall develop a numbering, and addressing plan for the communications systems and services taking into account the numbering plan subsisting immediately prior to the commencement of these Regulations.

(3) In the discharge of its functions under these Regulations, the Commission shall liaise with the relevant international organizations dealing with numbering and electronic addresses.

(4) Prior to the assignment and publication of any numbering plan, the Commission shall ensure that the numbering plan—

- (a) provides for allocation of numbers to licensees in sufficient quantities in the manner determined by the Commission;
- (b) allows for numbers to be allocated without undue delay;
- (c) allows for the inclusion of as few digits as is practicable;
- (d) does not confer an undue advantage on any licensee; and
- (e) minimizes any inconvenience and costs that may be caused by the implementation of the numbering plan to a licensee and to persons using the communication systems.

(5) The numbering scheme of each licensee shall comply with the Commission's guidelines relating to the implementation of the national numbering plan.

(6) The numbering and addressing plan may set out rules which may include—

- (a) the use of different numbers and addresses for different kinds of services;
- (b) the assignment of numbers and addresses;
- (c) the transfer of assigned numbers and addresses;
- (d) the use of assigned numbers and addresses;
- (e) the portability of assigned numbers and addresses;
- (f) the requirements that licensees maintain a plan for assigning and

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re-assigning numbers and addresses;

(g) the fees for the assignment and transfer of numbers and addresses which may be determined by the Commission; and

(h) any other matters that the Commission may, from time to time, prescribe in the Gazette.

(7) The Commission may when assigning or allocating numbers to licensees charge the prescribed fees for the allocation or assignment.

(8) The Commission shall permit any person, upon paying the prescribed fee, to inspect the numbering and addressing plan during working hours.

(9) Notwithstanding paragraph (8), any person authorized by the Commission, in writing, may inspect the numbering plan without paying the prescribed fee.

6. (1) A licensee shall apply and abide by the numbering plan prescribed by the Commission. Compliance with numbering and address plans.

(2) The Commission may, before developing a numbering plan, consult with licensees in respect of—

(a) arrangements for the allocation and re-allocation of numbers within the initial numbering plan; and

(b) additions to, or replacement of the initial numbering plan.

(3) The Commission shall, at least six months before prescribing a new numbering plan give notice to licensees and the general public in the Gazette and any other media that the Commission considers appropriate.

7. (1) All licensees shall use the communication numbers and addresses assigned by the Commission in accordance with the National Communication Numbering and Address Plan and ensure that the resources are— Obligations of licensees.

(a) utilized efficiently;

(b) limited to provision of communication services;

(c) utilized in a manner that ensures that communications systems and services are identified;

(d) utilized and paid for as prescribed by the Commission; and

(e) not transferred without the prior written consent of the Commission.

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Communications
numbering and
electronic address
plan.

8. (1) The National Communication Numbering and Address Plan shall include communication numbers and addresses used to identify—

- (a) electronic communications networks;
- (b) different carries;
- (c) terminal facilities for cellular phones;
- (d) signaling transmission equipment;
- (e) emergency and inquiry calls;
- (f) terminal transmission line facilities for data communication services;
- (g) electronic mail communications networks;
- (h) types or content of information and communication technologies;
- (i) terminal transmission line facilities for paging services;
- (j) geographical postal points of delivery;
- (k) maritime mobile service identity numbers;
- (l) radio call signs; and
- (m) such other systems and services as the commission may from time to time prescribe in the Gazette.

Assignment of
communications
numbers.

9. Where an application for communication numbers or addresses is submitted to the Commission, the Commission shall, after taking into account the National Communication Numbering and Address Plan and availability of the numbers and addresses, assign and issue a certificate of assignment together with the conditions attached to the use of the communication numbers the numbers required for the communication numbers or addresses, upon payment of the prescribed fee.

Cancellation of
assignment.

10. (1) Where a licensee fails to use the number or address assigned by the Commission within the prescribed period, fails to pay any prescribed fees or uses the number in a manner contrary to the Regulations, the licensee shall be required to submit to the Commission the reasons for such failure, after which the Commission may take such measures as it deems fit including, among others, cancellation of the assignment.

(2) A licensee who fails to utilize a number or address assigned to it by the Commission within the period prescribed in the assignment may apply, in writing, to the Commission for the extension of the time within which the licensee ought to utilize the number or address.

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(3) An application for extension of time under paragraph (2) shall include the reasons for the failure to utilize the number within the time prescribed.

11. A person shall not regenerate or use fictitious numbers or addresses.

Prohibition of generation and use of fictitious numbers and addresses.

12. (1) The Commission may appoint a person or an organization to manage or maintain an integrated public number or address database.

Delegation of Responsibility.

(2) The Commission, or a person or an organization appointed under paragraph (1) shall provide non-discriminatory commercial access to the database on terms and conditions similar to those it offers itself.

(3) The Commission may prescribe, in the Gazette, the manner in which obligations under this regulation may be undertaken.

13. A licensee who uses numbers or addresses contrary to these Regulations, commits an offence and is liable, upon conviction, to a fine of not exceeding one million shillings or to imprisonment for a term not exceeding five years or both.

Offence and penalty.

14. Part IX of the Kenya Communications Regulations, 2001, is revoked.

Revocation of Part IX of LN 68 of 2001

[Subsidiary]

L.N. 56/2010.

**THE KENYA INFORMATION AND COMMUNICATIONS
(POSTAL AND COURIER SERVICES) REGULATIONS, 2010**

Citation.

1. These Regulations may be cited as the Kenya Information and Communications (Postal and Courier Services) Regulations, 2010.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“basic postal services” means a defined set of postal services that are essential for public use including postage stamps, private letter boxes, acceptance, conveyance and delivery of letters weighing up to three hundred and fifty grams and postal financial services;

“commemorative stamps” means postage stamps used as a mark of honour for events or matters of national or international significance and for philatelic purposes with a validity period of five years from the date of issue;

“definitive stamp” means stamps depicting nature or natural heritage and which are valid for a maximum of ten years from the date of issue;

“Extra-Territorial Office of Exchange (ETOE)” means an office of exchange operated by or in connection with a postal licensee outside its national territory;

“post code” means a numeric or other code that identifies postal zones and individual post offices within the country for purposes of simplified mail distribution;

“postal licensee” means the Postal Corporation of Kenya and any other organisation licensed to provide unreserved postal services, including courier companies, transporters, freight, forwarders, delivery companies and direct marketing companies that handle postal articles;

“reserved postal services” means—

- (a) the collection, transportation, sorting, and delivery, for hire or reward of letters and postcards weighing up to three hundred and fifty grams, but not including exempted letters sent by licensed courier, letters accompanying goods at the time of delivery, newspapers, magazines, books, non-addressed leaflets, catalogues, and trade announcements letters delivered otherwise than for reward, letters delivered by an employee of the sender, letters containing any writ or proceeding from court or any legal instrument of any kind and, letters carried to the premises of a provider of electronic mail service for the purpose of transmission by electronic mail;
- (b) the production and issuance of postage stamps, prestamped envelopes, aerograms, and international reply coupons bearing the

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official national coat of arms or the words “Republic of Kenya”, “Kenya,” or “Kenya Post”; and

- (c) the rental or lease of private letter boxes or bags including use of postal addresses and post codes;

“terminal dues” means remuneration by the administration of the origin of a postal article to the administration of the destination of the postal article;

“universal postal services” means consistent supply of basic postal services at affordable prices at all points within the country;

“universal service obligations” means obligations assumed by the public postal licensee by virtue of a license granted by the Commission under the Act to provide universal postal services;

“unreserved postal services” means courier services, counter services, money orders, electronic bill payment, parcel collection, transport and delivery, expedited mail service, overnight mail services, and other ways of handling postal articles not defined as reserved postal services.

3. (1) A postal article shall be considered —

Delivery and acceptance.

(a) to have been delivered to the addressee —

(i) when it is delivered into a private letter box or bag of the addressee;

(ii) when it is left at the house, or office of the addressee as set out thereon, or with the employee, agent or any other person authorized to receive it; or

(iii) where the addressee is a guest or is a resident at a hotel, hostel or lodging, when it is left with the proprietor or manager of the hotel, hostel or lodging or with his agent; or

(b) to have been received by a postal licensee when it is deposited into a posting box or handed over to an employee or agent of a postal service operator authorized to receive it.

4. (1) A postal licensee shall submit to the Commission, for approval, the terms and conditions of the services it offers relating to—

Postal licensees to make rules

(a) letters;

(b) parcels;

(c) documents;

(d) financial services;

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- (e) registered items;
- (f) insured items;
- (g) post restante;
- (h) private boxes or bags; and
- (i) any other services as may be introduced by the licensees.

(2) A postal licensee shall, annually, publish the terms and conditions relating to the services prescribed in paragraph (1) that have been approved by the Commission.

Issuance of postage stamps.

5. (1) The public postal licensee shall issue postage stamps that—

- (a) are of the best quality;
- (b) cannot be easily replicated; and
- (c) are engraved with subjects that are consistent with the broad philatelic objectives of Kenya.

(2) When considering any expedient issuance of definitive commemorative and special stamps and related activities, the public postal licensee shall be fair to all interested parties.

(3) A definitive stamp shall—

- (a) be issued once in every five years;
- (b) run for a period of not less than five years and not exceeding ten years;
- (c) concern subject matters approved by the Commission at least fourteen days before the issue; and
- (d) bear face values chosen by the public postal licensee.

(4) A commemorative stamp may be issued at such intervals as the public postal licensee determines to be commercially viable and shall—

- (a) concern a subject matter approved by the Commission at least fourteen days before the issue; and,
- (b) bear face values chosen by the public postal licensee.

Sale of postage stamps.

6. (1) The public postal licensee may enter into arrangement with any person to sell postage stamps on its behalf.

(2) The public postal licensee shall develop standard terms and conditions

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for re-sale of stamps and submit them to the Commission for approval.

(3) The Commission shall consider the standard terms and conditions of re-sale of stamps submitted under paragraph (2) and communicate its decision to the public postal licensee within thirty days from the date of submission of the request for approval.

7. (1) Subject to section 73 of the Act, a person shall not—

Illegal manufacture and unlawful use of postage stamps.

- (a) without lawful authority, possess any dye, plate, instrument or contrivance used for the printing of postage stamps sold or used by the public postal licensee;
- (b) manufacture, or without lawful excuse, possess any dye, plate, instrument or contrivance or part of any such die, plate, instrument, or contrivance or of any materials, for making illegal stamps, or mark in imitation of, or similar to, or purporting to be any stamp or mark of the public postal licensee;
- (c) without lawful authority, make on any postage stamp any mark in imitation of or similar to or purporting to be any stamp or mark of the public postal licensee;
- (d) without lawful authority, stamp, mark, obliterate, print over or in any other way alter the original appearance of, or caused to be stamped, marked, obliterated, printed over or in any other manner to be altered the original appearance of any unused postage stamp issued by the public postal licensee.

(2) The Commission shall confiscate any dye, plate, stamp, instrument, contrivance, or materials found in the possession of any person in contravention of this regulation.

(3) For purposes of this Regulation, an illegal stamp means any facsimile, imitation or representation, whether on paper or otherwise of any stamp for denoting a rate of postage used by a licensee.

8. (1) The public postal licensee shall, at the request of the sender of an unregistered postal article intended for transmission by letter box, give the sender a certificate of posting of the postal article upon payment of the prescribed fee.

Issuance of certificates of posting.

(2) A certificate of posting of an article shall not entitle the sender to compensation or to the right of return of an already accepted article and shall not be acceptable as proof of the nature of the contents of the postal article to which it related.

9. (1) Domestic letters or other postal articles that cannot be delivered due to an undecipherable or non-existent address or post code may be opened by a postal licensee and where the letter or article is capable of being delivered based on information in the letter or article, the postal licensee shall deliver the

Disposing undeliverable postal articles.

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letter or article delivered accordingly.

(2) Where a letter or postal article opened under paragraph (1), is incapable of being delivered, but contains the address of a sender, it shall be returned to the sender.

(3) Every undeliverable postal article that has been opened and remains undeliverable may be kept for a minimum period of three months and may thereafter be destroyed.

(4) Where the letter or postal article opened contains any thing of value or a saleable article, it shall be kept safely and a record thereof opened and maintained by a postal licensee for a period of six months and if not claimed, the contents shall be disposed of in accordance with the Disposal of Uncollected Goods Act, Cap. 38.

(5) Where a letter or postal article is opened as provided by this regulation, the licensee shall affix a mark on the letter or postal article indicating the—

- (a) date and time of opening;
- (b) period it has remained undelivered;
- (c) contents ; and
- (d) manner the licensee decides to deal with the undelivered article.

(6) Where a letter or postal article is returned to the sender because of being undeliverable as addressed and the sender refuses to take delivery, the letter or postal article shall be dealt with as provided under paragraph (3).

Postal articles of
dead persons.

10. Where a postal licensee is satisfied that the addressee of a postal article is dead, it may—

- (a) retain the postal article and on production of the will or letters of administration to the estate of the addressee together with the written application of one or more of the executors or administrators, deliver or release the article in accordance with such request; or
- (b) treat the postal article in accordance with the provisions of these regulations that relate to undeliverable postal articles.

Prohibited articles.

11. (1) All postal licensees shall, where applicable before accepting any item for postage, require the sender to declare its contents.

(2) In accordance with section 58 of the Act, a person shall not send, by post—

- (a) any explosive, inflammable, dangerous, noxious or deleterious substance, filthy, sharp instrument not properly protected or any article or thing whatsoever which is likely to injure either other

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postal articles in the course of conveyance or any person handling the article;

- (b) any article for export, import or carriage which is prohibited under any law in Kenya, or which, being subject to any restriction imposed by such law, is transmitted otherwise than in accordance with that restriction;
- (c) any article which may not, under the law of the country to which it is addressed, be imported or transmitted by post;
- (d) any article sent by post in a stamped or embossed envelope wrapper, card forms or paper in imitation of the one issued under the authority of the public postal licensee;
- (e) any article of such form or colour or so made up for transmission by post or that is likely, in the opinion of the postal licensee, to embarrass the officers of the organizations dealing with the article;
- (f) any article bearing any stamp or impression of a stamping machine denoting payment of postage or fee which is imperfect or mutilated or defaced in any way or across which is written or printed or otherwise impressed.
- (g) any article whereon the payment of any postage or fees purports to be denoted by any stamp or impression which has been previously used to denote payment of the postage or fees on any other postal article or any other stamp duty or tax;
- (h) betting advertisements relating to illegal business;
- (i) fortune telling advertisements;
- (j) sweepstake or lottery tickets, or advertisement and other notices in relating to sweepstake or lottery that are unlawful;
- (k) money lenders circulars that are enclosed;
- (l) any article which infringes trade mark or copy right laws;
- (m) any sample packets consisting of literature for the blind containing any article liable to customs duty in the country or place of destination;
- (n) any living creature, other than bees, leeches and silk worms, parasites or destroyers for noxious insects; and
- (o) any other article which, is prohibited from being posted or accepted for transmission by post by the Act or these Regulations.

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(3) The prohibited postal articles may, in exceptional circumstances, be sent by post in accordance with the First Schedule to these Regulations.

(4) Any person who contravenes this regulation commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

Postal security and safety.

12. A postal licensee shall take reasonable steps to improve mail security and combat postal crimes that include among others—

- (a) mail violation;
- (b) mail bombs;
- (c) illicit drug trafficking or firearms; or
- (d) other crimes relating to postal articles and property.

Compensation.

13. (1) A Postal licensee shall develop and file with the Commission its compensation policies for loss or damage of postal articles.

(2) In the case of an insured postal article compensation shall be limited to the market value of the postal article even where it has been insured in excess of its value.

(3) A postal licensee shall not pay compensation—

- (a) where the article is a prohibited article and is not sent as provided under these regulations;
- (b) in the case is of an insured postal article, where—
 - (i) a false statement has been made by the sender or addressee for the postal article;
 - (ii) the addressee of the postal article has signed and returned the delivery note without objection;
 - (iii) any bill of exchange, bond, coupon, or other negotiable security particulars that are required to sufficiently identify the contents of the postal article are not presented to the postal licensee; or
 - (iv) the cover or seal of the article bears traces of theft or damage.

Use of technology.

14. A postal licensee shall use appropriate technology to enhance the quality of its services and diversify postal services.

Universal service obligation.

15. (1) The Commission shall from time to time provide targets to postal licensees to facilitate the achievement of universal service obligations.

(2) In providing targets for the fulfillment of universal service obligations by postal licensees, the Commission shall have regard to—

- (a) measurable quantity and quality of service standards for postal services in relation to customer satisfaction;
- (b) speed, reliability and security of the service;
- (c) accessibility to and affordability of universal postal services; and
- (d) the evolution in technological, economic and social environment.

(3) The provision of universal postal services shall be the responsibility of the public postal licensee.

(4) Notwithstanding paragraph (3) the Commission may require a licensee for unreserved postal services to provide any or universal postal services.

(5) The public postal licensee may provide universal postal services through a contract, an agency or a franchise and Commission shall not require such agent or franchisee to hold a license under the Act.

(6) The public postal licensee shall notify the Commission of any contract, agency or franchise entered into under paragraph (5).

(7) The public postal licensee shall not suspend the provision of basic postal service except in case of a force majeure event including, among others, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority.

(8) To the extent necessary to ensure the maintenance of universal service, the Commission may continue to reserve services for public postal licensees.

(9) A licensee who contravenes this regulation commits an offence and is liable on conviction fine of three hundred thousand shillings for every month or part thereof during which such failure continues.

16. (1) A foreign postal licensee shall not establish an Extra-Territorial Office of Exchange in Kenya or use the Universal Postal Union system, without the consent of the Commission.

Extra-Territorial
Offices of Exchange
(ETOEs).

(2) Postal articles originating from a foreign country shall be considered to be commercial cargo upon arrival in Kenya and shall be subject to customs clearance procedures.

(3) Postal articles delivered by a foreign postal licensee to an address in Kenya, shall pay the terminal dues applicable under the Universal Postal Union system.

17. A person who contravenes these Regulations commits an offence and

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Penalty.

is liable, where no penalty is provided, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

Revocation of Part X
of L.N. 68 of 2001

18. Part X of the Kenya Communications Regulations, 2001, is
revoked.

FIRST SCHEDULE(r. 11 (3))

Article	Qualification for acceptance
a. Dangerous drugs.	By insured box or by insured parcel post and only if sent for medical or scientific purposes to the country, which admits them when sent for those purposes.
b. Live bees, leeches silk worms, parasites or destroyers of noxious insects used for the purposes of controlling those insects.	By letter post if addressed to officially recognized institutions.
c. Any postal article enclosed in an envelope with an open panel.	By the inland service.
d. Paper money not crossed for payment solely through Post Bank.	For transmission by the inland service by registered letter or registered parcel post for transmission by the international service by registered letter post, insured letter post, or insured parcel post.
e. Jewellery and other valuables.	By registered letter post of insured parcel, or insured box.
f. Any postal article bearing the word “registered” or any other phrase to that effect and any article which by these regulations is required to be registered or subject to the provisions of these regulations and is of a monetary value.	By registered post.

[Subsidiary]

- | | | |
|----|--|---|
| g. | Deleterious liquids perishable biological substances or other similar substances. | By letter post at the letter rate of postage only if sent for medical examination or analysis to a recognized medical practitioner or qualified veterinary surgeon. |
| | | |
| h. | Inflammable liquids | Having a flash point of thirty two degrees centigrade or above but lower than sixty five degrees centigrade, maximum amount of one litre |
| | | |
| i. | Padiative liquids | Small quantities suitable packed, provided that when made up for the post radiation measured at the outside surface of a package does not exceed ten miliroentgen per twenty four hours by letter post at the letter rate of postage. |
| | | |
| j. | Any article liable to customs duty. | To countries which permit by law or regulations, the importation of such articles by post and by registered post if the law or regulations of the country or place of destination so requires. |
| | | |
| k. | Advertisements and publications relating to the treatment of general diseases or to any preparations for its prevention, care or relief. | If addressed to a qualified medical practitioner or chemist |

[Subsidiary]

L.N. 57/2010.

**THE KENYA INFORMATION AND COMMUNICATIONS
(IMPORTATION, TYPE APPROVAL AND DISTRIBUTION OF
COMMUNICATIONS EQUIPMENT) REGULATIONS, 2010**

Citation.

1. These Regulations may be cited as the Kenya Information and Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2010.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“communication equipment” means telecommunication equipment, radio communication equipment or broadcasting apparatus;

“national standards” means the Kenya standards established by consensus and approved by the Kenya Bureau of Standards, that provide, for common and repeated use, rules, guidelines or characteristics for products and services and related processes or production methods, aimed at achieving the optimum degree of order in a given context including terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method;

“operating network” means a network that can carry communications traffic in the form of voice or data;

“service provider” means a person providing communication services under the Act;

“type acceptance” means the process of evaluating communications equipment that has been type approved by a recognized foreign national regulatory authority with a view to ensure conformity of such equipment to national standards;

“type approval” means a method of checking the compatibility of communications equipment with any operating communication network and the conformance of such equipment to national standards.

Equipment subject to type approval.

3. (1) All communications terminals, network equipment and communications equipment to be used for connection or access to the public operating communication networks, wireless communications equipment and radio communications equipment intended to be connected directly or to inter work with a communications network in Kenya to send, process or receive information shall prior to their use be submitted for type approval or type acceptance by the Commission.

(2) The Commission shall grant type approval for each type of equipment once, and subsequent users of the same type of equipment shall not apply to the Commission for approval.

(3) Notwithstanding paragraph (2), where there is a change of model, design or specification of equipment which had been type approved by the Commission, the equipment shall be re-submitted for type approval.

(4) The Commission shall conduct type approval in accordance with the procedures for type approval of communication equipment in Kenya as it publishes from time to time.

4. A service provider shall submit its application for approval or type acceptance of communications equipment in prescribed forms issued by the Commission. Application for type acceptance.

5. (1) The Commission may not return to an applicant any samples of equipment and associated literature submitted for the purpose of type approval or acceptance. Evaluation.

(2) The Commission shall evaluate an application and communicate its decision to the applicant within sixty days from the date of receipt of the application.

(3) Where the Commission does not communicate its approval or refusal within the period prescribed in paragraph (2), the Commission shall be deemed to have approved the application.

6. (1) The Commission may type accept any equipment that has been granted type approval from another country or jurisdiction that is recognized by the Commission. Type acceptance.

(2) Notwithstanding paragraph (1), an applicant for type acceptance shall submit a sample or samples of the equipment and copies of test results and type approval certificate from that country or jurisdiction at the time of the submission of the application for provisional acceptance.

(3) The Commission may, on its own initiative or upon an application by a service provider, conduct inquiries to determine whether technical standards from other countries or jurisdictions should be recognized in Kenya for purposes of exempting any equipment from type approval or testing requirements.

7. (1) Any person may submit equipment for provisional type approval by the Commission. Provisional type approval.

(2) Notwithstanding paragraph (1), licensed vendors shall submit equipment intended for commercial purposes for type approval.

(3) Where the Commission has determined that equipment that is the subject of an application for provisional type approval complies with the provisional type approval requirements, the Commission may grant provisional type approval for a period not exceeding six months on such terms and conditions that it may determine.

(4) When granting provisional type approval to equipment, the Commission may, where it considers it necessary, limit the number of units of that equipment that an applicant can hold and utilize until the final type approval is granted.

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Final type approval.

8. (1) An application for final type approval shall be made before the expiry of the provisional type approval period and shall indicate the date of grant of provisional approval.

(2) No provisional type approval shall lapse or expire while an application for final type approval is pending at the Commission.

(3) The Commission shall grant final type approval where it is satisfied that the grant of the final type approval—

(a) is in the public interest; and

(b) will not lead to harmful interference to any communications and radio communication network or be a risk to human health or the environment.

(4) The Commission shall inform the applicant in writing of the final type approval of equipment or apparatus.

(5) Where the Commission is of the view that an equipment or apparatus should not be type approved, it shall notify the applicant, in writing, of its decision and state the reasons for the refusal.

(6) The Commission shall, from time to time, publish a list of all type approved equipment.

Technical evaluation.

9. (1) The Commission shall carry out technical evaluation of equipment by document examination and where applicable laboratory testing of equipment sample, and in accordance with the procedures for type approval and acceptance of communication equipment in Kenya which the Commission shall publish from time to time.

(2) The samples of equipment submitted shall be—

(a) in a good working condition;

(b) properly configured for testing and complete with the necessary test adapters; and

(c) clearly marked with the trade name, model and serial number.

(3) Where the Commission requires clarification on the technical details or other specifications of the equipment submitted for type approval or acceptance, it shall notify the applicant and require the applicant to respond in the required manner within the time specified by the Commission.

(4) An application for type approval or type acceptance shall be rejected or deemed to have been rejected by the Commission if the applicant fails to respond within three months from the date of the Commission's request for details or clarifications.

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10. (1) The Commission shall issue a provisional or final type approval certificate to the successful applicant for a specific model of equipment.

Type approval
certificate

(2) The communication equipment to be sold or used shall be of the same model that was granted the type approval and not modified in any way without the approval of the Commission.

(3) The grant of type approval under this Regulation shall not be construed as a guarantee for the proper functioning, performance or quality of the equipment by the Commission.

(4) A supplier, importer or distributor shall ensure that the approved equipment inter-works properly with the public electronic communication network.

(5) The Commission shall not be liable for interference caused to other equipment, injury, or loss of life, or damage to property, arising as a direct or indirect result of the use of any approved equipment.

(6) Where there is doubt relating to the interpretation of a type approval specification, the method of carrying out the test or the validity of the statements made by the manufacturers of the equipment, the interpretation of the Commission shall be final.

11. (1) A supplier, importer or distributor shall, before selling any communication equipment, ensure that the equipment meets the standards and specifications set out by the Commission and is compatible with the public communications networks.

Connection of type
approved terminals to
the public electronic
communications
network.

(2) A service provider shall not connect type approved communication equipment to public networks before the equipment is inspected by the Commission and network operators.

(3) A network operator shall not have the right to refuse connection to type approved equipment.

12. (1) A service provider shall affix a type approval label in all its communications terminal or network equipment.

Type approval label
for terminal or
network equipment.

(2) Every supplier, importer or distributor shall ensure that all equipment offered for sale or private use have valid type approval or type acceptance certificates issued by the Commission and is clearly affixed with a type approval label issued by a recognized Commission containing —

(a) the logo of the Commission;

(b) the type of the equipment; and

(c) the alphanumeric identifications of the equipment.

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Revocation of type approval of device.

13. (1) The Commission may, on its own motion or upon a complaint by any person, conduct investigations regarding the operation or use of equipment or apparatus that has been granted provisional or final type approval and may revoke the type approval where it is satisfied that—

- (a) the holder of a final or provisional type approval certificate has violated its conditions; or
- (b) the equipment or apparatus is causing or is likely to cause harmful interference to communications network or is a risk to human health or the environment.

(2) Any person who is aggrieved by the decision of the Commission made under this Regulation may appeal to the Appeals Tribunal.

Complaint procedure.

14. (1) Any person may make a complaint in respect of the working of any equipment that has been type approved or object to the type approval of any equipment by submitting a complaint or objection to the Commission in writing stating—

- (a) the name and address of the complainant;
- (b) the name and address, if known, of the person against whom the complaint is made; and
- (c) the facts, including supporting data, where available, showing that the apparatus does not conform to these Regulations and that the apparatus may cause harmful interference to communications network or is a risk to human health or the environment.

(2) The Commission shall forward a copy of the complaint or objection to the applicant or holder of a type approval certificate and give the applicant or holder an opportunity to give evidence to rebut the complaint or objection.

(3) The Commission shall consider any complaint or objection received when considering the application for type approval or in evaluating the operation of equipment for that has been granted type approval.

Installation of approved equipment.

15. (1) No person other than a communications technician registered with the relevant regulatory authority shall install type approved equipment.

(2) Notwithstanding paragraph (1), where the installation is done by any other person, the installation shall be certified by a communications engineer registered with the relevant regulatory authority.

Exemptions from type approval.

16. The Commission may, where it deems expedient, exempt any communications equipment that is temporarily imported into Kenya for re-export from type approval requirements.

Conditions for importation and

17. (1) A person shall not supply, import or distribute electronic communications equipment unless that person has a licence granted by the

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Commission.

distribution.

(2) A licensed supplier, importer or distributor of electronic communications equipment shall ensure that-

(a) the equipment is type approved by the Commission; and

(b) customers for radio communications equipment have radio communications licences from the Commission.

(3) Notwithstanding paragraph (1), a person may import into Kenya any type approved terminal electronic communication equipment where the equipment is solely for personal use.

(4) A person shall not sell electronic communication equipment sell at a place other than a shop or a distribution centre of a licensed supplier, importer or distributor.

18. (1) The Commission shall from time to time publish a list of prohibited equipment. Lists of equipment.

(2) A service provider shall not supply, import or distribute for use any equipment prohibited by the Commission.

19. (1) A supplier, importer or distributor who wishes to import and re-package equipment for re-exportation or transshipment shall apply for a permit from the Commission. Re-exportation of equipment.

(2) Prior to the importation of any equipment under this regulation, the supplier, importer or distributor shall furnish or cause to be furnished to the Commission full particulars of the respective equipment and the business the supplier, importer or distributor is involved in.

(3) A supplier, importer or distributor who imports and repackages equipment for re-exportation or transshipment, equipment imported without a permit issued under paragraph (1) commits an offence.

20. The Commission shall not issue a permit to a supplier, importer or distributor unless the Commission is satisfied that the supplier, importer or distributor— Capacity of the importer or distributor.

(a) is capable of conducting the business;

(b) has qualified and competent technical and supporting staff;

(c) has a suitable shop or distribution centre; and

(d) meets any other criteria determined by the Commission.

21. The Commission may in consultation with the relevant Government agencies, restrict the importation or sale within Kenya of any communications Import and sale restrictions.

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or other apparatus, where it is of the opinion that the equipment or apparatus may cause damage or harmful interference to communications networks or is a risk to human health or the environment.

Power to inspect.

22. An authorized officer of the Commission may at reasonable times enter premises on which a supplier, importer or distributor is keeping imported communications equipment for the purposes of inspecting the equipment.

Disposal of equipment.

23. (1) The equipment which has been brought for type approval and which due to destructive tests or other reasons the Commission determines as not being suitable for return to the applicant, may be destroyed by the Commission after giving thirty days notice for objection to the applicant.

(2) A person who is aggrieved by the decision of the Commission made under this Regulation may appeal to the Tribunal.

Offence and Penalty.

24. (1) A person who deals in or uses equipment without type approval or acceptance in accordance with these Regulations commits an offence.

(2) A person who is convicted of an offence shall on conviction be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

Revocation of Part VIII of LN 68 of 2001.

25. Part VIII of the Kenya Communications Regulations 2001 is revoked.

[Subsidiary]

L.N. 58/2010.

**THE KENYA INFORMATION AND COMMUNICATIONS
(RADIO COMMUNICATIONS AND FREQUENCY SPECTRUM)
REGULATIONS, 2010**

1. These Regulations may be cited as the Kenya Information and Communications (Radio Communications and Frequency Spectrum) Regulations, 2010. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“authorised frequency” means the frequency assigned to a station by the Commission;

“harmful interference” means radiation or induction which—

(a) endangers the functioning of a radio-navigation service or of a safety service; or

(b) obstructs or repeatedly interrupts an authorised radio or telecommunication service;

“licensee” means a person licensed under the Act;

“network” means two or more stations operated by a person and used or intended to be used in communication with one another;

“radio emission” means any emission of electromagnetic energy of frequencies currently less than three hundred Gigahertz without continuous artificial guide or such other frequencies as the Commission may from time to time publish in the gazette;

“spectrum assignment” means the authorization by the Commission to any licensee specific frequencies or frequency pairs for use within a given allocation, at specified geographic location;

“station” means a transmitter, receiver, a combination of transmitters and receivers or any accessory thereto which is used or intended to be used for radio-communication;

“transmitter” means anything, irrespective of its use, function or the purpose of its design, that is capable of radio emission;

“user” means any person or body of persons who uses or operates radio communication services.

3. The purpose and objective of these Regulations is to— Purpose and Object.

(a) promote and support the orderly development and efficient operation of radio communication systems and services to meet the country’s socio-economic, security and cultural needs;

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- (b) ensure proper planning, utilization and management of the spectrum resource in accordance with the Act, Government of Kenya Policy objectives, international agreements;
- (c) promote the efficient use of frequency spectrum resource through the adoption of latest technical advances and efficient spectrum allocation and management technology based on operational requirements and technical viability;
- (d) ensure the equitable and fair allocation and assignment of spectrum to benefit the maximum number of users.

Eligibility for licenses.

4. The Commission shall publish guidelines that shall specifying the persons eligible and eligibility criteria for the grant of spectrum licences from time to time.

General licensing conditions.

5. (1) A person shall not possess, establish, install or use any radio communication station which requires licensing under these Regulations in any place or on board any local vessel, aircraft or vehicle, unless that person has a valid licence granted by the Commission.

(2) A radio communication licence shall not confer any ownership rights of the frequency on the licensee.

(3) A licensee shall not transfer frequencies assigned and the rights therein without the written consent of the Commission.

(4) A licensee shall comply with the provisions of the International Telecommunications Convention.

(5) Where the authorization is for a period not exceeding one month, the Commission may grant temporary authorization for the utilization of the frequency spectrum and the minimum applicable fee will be for a period of one month.

Application criteria for approval.

6. (1) The Commission shall, when considering an application for frequency assignment, take into consideration—

- (a) spectrum availability for the type of service and proposed location;
- (b) whether the proposed service can be satisfied by any other means of communication;
- (c) the distress and safety radio communication services which require protection from harmful interference; and
- (d) the current technical advances that ensures the most efficient spectrum use.

(2) The Commission may assign a frequency or frequencies to the

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applicant, and shall for that purpose take into account all technical data of the equipment and associated accessories that the applicant is proposing to use.

7. (1) The Commission may assign frequencies when it is satisfied that such assignment will not cause harmful interference to any station or licensee operating in accordance with the Kenya table of frequency allocations. Assignment of frequencies.

(2) A person licensed to operate and provide radio communication systems and services shall apply to the Commission, for the assignment of the necessary frequencies.

(3) Where the Commission is satisfied with an application, it may assign the applicant a frequency, which the applicant shall use in accordance with the prescribed technical and operating parameters.

(4) Where the frequencies applied for are not available, the Commission may assign frequencies in an alternative frequency band.

(5) The Commission may impose such conditions as it may consider necessary for the use of the assigned frequencies.

8. (1) A licensee who has been assigned frequencies bands for use shall— Obligations of licensees.

- (a) maintain and provide, at the Commission's request, an inventory of frequencies assigned;
- (b) keep the licence in force by regular payment of annual fees prescribed by the Commission from time to time;
- (c) put into use the assigned frequencies within the period specified by the Commission;
- (d) use such measures as may be prescribed by the Commission to eliminate unauthorized emissions, harmful interference or illegal use of the spectrum;
- (e) optimize the utilization of frequency spectrum resource in the manner prescribed by the Commission from time to time; and
- (f) implement all the measures prescribed by the Commission from time to time.

(2) The Commission may where it considers it necessary, require a licensee to migrate to a new frequency band.

(3) The Commission shall implement the migration through an arrangement that shall not impose unreasonable burden to the licensee involved.

(4) A licensee shall not make material change to a licensed station or change the station parameters specified in the licence, without a written

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authorization from the Commission.

(5) A licensee shall require the written consent of the Commission where a licensee proposes to—

- (a) increase the height of a structure supporting the radiating portion of the antenna;
- (b) relocate an antenna where such relocation would involve a change in the geographic co-ordinates of latitude or longitude by as much as one second, or relocation involves a change in street address;
- (c) change in antenna parameters, including height, number of antenna elements, radiation pattern or polarization.

(6) All licensees shall, unless exempted by the terms of authorization, transmit the assigned call sign at the end of each complete transmission.

(7) The transmission of the call sign at the end of each transmission shall not be required in cases of projects requiring continuous, frequent or extended use of the transmitting apparatus, if, during the periods and in connection with the use, the call sign is transmitted at least once every thirty minutes.

Sharing of frequencies.

9. (1) The Commission may, where necessary, require a licensee to share a frequency.

(2) The Commission shall implement the sharing through an arrangement that shall not impose unreasonable burden to the licensee involved.

Frequency spectrum pricing.

10. (1) The Commission may from time to time prescribe the methods of determining frequency spectrum pricing.

(2) The Commission shall not avail frequency spectrum licences to a licensee unless the licensee has paid frequency spectrum licence fees and complies with the conditions imposed by the Commission.

(3) The Commission may recall frequencies assignments that have not been utilized within the period specified in the licence.

(4) Where a frequency assignment is recalled for non-utilization, the licence fee paid in accordance with paragraph (2) shall not be refunded.

Pricing parameters.

11. (1) The Commission shall adopt a pricing formula that reflects the economic value of frequency spectrum in order to encourage efficient use of frequency spectrum and stimulate growth.

(2) The pricing formula adopted under paragraph formula shall take into account the following factors—

- (a) size of spectrum assigned;

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- (b) frequency band and level of congestion within the band;
- (c) market demand;
- (d) power output and;
- (e) geographical usage; and
- (f) such other factors as the Commission may from time to time determine

(3) The Commission shall review and publish the pricing formula for frequency spectrum at least once in every three years.

12. (1) A licensee shall not use any frequency spectrum unless the radio equipment in respect of which an assignment is sought has been duly type approved or type accepted by the Commission. Type approval and inspection.

(2) Upon installation of the radio communication system, the licensee shall ensure that the system is inspected and certified by the Commission to be operating in accordance with the Act and the Regulations made thereunder.

13. (1) The Commission shall monitor all emissions from licensed stations to ensure the efficient utilization and compliance with licensed parameters. Monitoring and inspection.

(2) The licensee shall permit unlimited access by the Commission's authorized officers to the licensee's installations at reasonable times for the purposes of inspection and verification of operational parameters.

(3) The owners and management agents of buildings shall—

- (a) require proof of licences and authorization from the Commission before authorizing the installation of any radio communication systems in their premises;
- (b) keep records of all equipment installations; and
- (c) permit unlimited access by the Commission's authorized officers to the licensees' installations for the purposes of inspection and verification of operational parameters.

(4) A licensee shall, when requested to do so, make available all records that relate to a station's operations to the Commission's authorized officers.

(5) A licensee shall report any interference experienced to the Commission, in writing.

(6) Where the Commission, pursuant to a report made to it or on its own accord, is of the view that certain measures need to be undertaken to avoid or mitigate any interference, the Commission may require a licensee or a class of licensees, in writing, to take the measures specified.

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Inspection, sitting and maintenance of illuminated towers and control equipment.

14. (1) A licensee of a radio station that has an antenna structure shall paint and illuminate the tower, perform routine inspections and maintenance of the tower to ensure that it is properly marked and illuminated and on any other associated control equipment, required.

(2) All licensees shall comply with directions given by the Commission in consultation with the government agency responsible for civil aviation, in matters relating to antenna towers.

(3) All licensees shall ensure that the sitting of antennas and towers comply with all applicable laws to which they are subject to.

(4) All licensees shall ensure that the sitting and installation of transmitters, antennas and towers comply with the laws and guidelines relating to radiation limits that may be in force from time to time.

Radio spectrum management and monitoring facilities.

15. Where the Commission is of the opinion that a radio operation or structure may cause harmful interference to its operation, the Commission may restrict the installation or operation of radio communications apparatus or erection of structures within a specified area from the Commission's radio monitoring facilities.

Disposal of uncollected goods.

16. (1) The Commission may disable or confiscate any radio communication apparatus or stations operated in contravention of the conditions of its licence or in contravention of the Act and these Regulations.

(2) The confiscated equipment or apparatus may, if not collected by a licensee, be disposed of in accordance with laws governing disposal of uncollected goods.

Misuse of frequencies.

17. (1) A licensee who uses any radio communication station for or in furtherance of unlawful conduct, commits an offence and is liable, upon conviction, to a fine not exceeding One Million Kenya Shillings or to imprisonment for a term not exceeding five years or both.

(2) Any person who, upon receiving a request for information concerning the use of frequency spectrum from the Commission, fails to disclose the information or gives false or misleading information commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or both.

Amount of frequencies

18. The Commission may prescribe the minimum or maximum number or amount of radio communication channels or frequencies which any user or licensee may be granted.

Revocation of Part VI of L.N 68 of 2001

19. Part VI of the Kenya Communications Regulations 2001 is revoked.

**THE KENYA INFORMATION AND COMMUNICATIONS
(UNIVERSAL ACCESS AND SERVICE) REGULATIONS, 2010**

[Subsidiary]
L.N. 70/2010.

1. These Regulations shall be cited as the Kenya Information and Communications (Universal Access and Service) Regulations, 2010. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Advisory Council” means the Universal Service Advisory Council established under section 102A of the Act;

“designated population” means individuals, households, groups, communities or institutions determined by the Commission, from time to time to be the target beneficiaries of universal access;

“Fund” means the Universal Service (US) Fund established under section 84 J of the Act ;

“licensee” means any person licensed under the Act;

“operating plan” means a plan prescribed by the Commission for the implementation of specific universal service programs and projects;

“subsidies” means assistance granted to support universal service programmes and projects;

“universal access” means access of one hundred percent by a designated population that can obtain, at the minimum, public access to quality and affordable communication systems and services;

“universal service” means access of one hundred percent by a designated population that is reasonably able to privately subscribe to and use particular communication systems and services of a specified quality on an individual, household or institutional basis including, among others, to the provision of—

(a) public voice telephony;

(b) internet access; or

(c) other services by which people access efficient, affordable and modern communications systems and services;

“unserved areas” means geographic areas where no designated level of universal access is currently available;

“Universal Service Levy” means a levy charged by the Commission on licensees for purposes of the Universal Service Fund;

“universal service programs” means the general macro-level universal service initiatives aimed at achieving one or more of the universal service

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objectives.

“universal service projects” means the specific micro-level implementation activities related to each Universal Service Program.

Purpose and object.

3. (1) The purpose of these Regulations is to provide a regulatory framework for the design and implementation of universal access and service provision and for the administration of the Universal Service Fund in Kenya.

(2) Without prejudice to the generality of section 84J of the Act, the objectives of the Universal Service Fund shall be to —

- (a) encourage efficient access to and use of communications systems and services throughout the Republic of Kenya, focusing on rural, remote and under-served areas in order to promote social, and economic development;
- (b) ensure reasonable availability and affordability of basic and advanced communications systems and services to persons with disabilities, at the household and individual levels, particularly where the market is unable to deliver such services in a financially viable manner;
- (c) support the development of information and communication technologies, including related human capacity and technological innovation;
- (d) provide support for the introduction and expansion of communication services to schools, health facilities and other organizations serving public needs; and
- (e) facilitate development of and access to a wide range of local and relevant content.

Amount of the Universal Service Levy.

4. (1) The Universal Service Levy imposed under section 84J (3) of the Act shall be charged on all licensees offering communications systems and services on a commercial basis.

(2) The levy charged on licensees shall be an amount not exceeding one percent of the gross revenue of a licensee.

Purpose of the Universal Service Fund.

5. The funds from the Fund may be applied in activities that support national communications development programmes including, among others —

- (a) funding universal service programmes and projects;
- (b) identifying, approving, scheduling and financing private sector and local community investments in universal service provision projects; and

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- (c) the conduct of research and other relevant studies in information technologies.

6. The Commission may fund universal service programmes and projects through— Manner of funding.

- (a) subsidies;

- (b) loans; and

- (c) grants.

7. When identifying the projects to be funded by the Universal Service Fund, the Commission— Identification of projects to fund.

- (a) shall promote the establishment of efficient, self-sustaining projects, that will expand access to communications systems and services on their own initiative and with minimal funding;

- (b) may support projects that are not economically feasible without support of the Fund;

- (c) may support projects to the extent necessary to create adequate economic incentives for investors.

8. Pursuant to section 84J of the Act, the Commission shall collect and disburse the funds of the Fund in accordance with the Act and— Management of the Fund.

- (a) establish administrative mechanisms, systems and structures for proper management of the Universal Service Fund;

- (b) supervise and provide broad policy directions for the management of the Fund and Universal Service Programs;

- (c) develop specific indicators of communications access;

- (d) as far as practicable, apply a competitive selection process to select beneficiaries of the Fund;

- (e) develop appropriate socio-economic criteria for identifying the geographical areas, population groups, institutions and organizations that may be eligible to benefit from the Fund;

- (f) develop criteria for evaluating project proposals for funding;

- (g) monitor and evaluate the fund projects; and

- (h) formulate the annual operating plans of the Fund.

9. The Universal Service Advisory Council shall—

Universal Service
Advisory Council.

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(a) advise the Commission and provide strategic policy guidance for the implementation of the Universal Service Fund; and

(b) perform any other functions assigned to it by the Board from time to time and as necessary for the implementation of these Regulations.

Fund Accounts.

10. (1) The Commission shall deposit the funds of the Fund monies in one or more accounts established in one or more reputable banks in Kenya.

(2) The Commission shall maintain a separate account for the Universal Service Fund and shall keep proper books of accounts and records of the operations of the Fund.

(3) The accounts of the Fund may at any time and shall at the end of each financial year, be audited by an independent auditor.

Annual Report.

11. (1) The Commission shall, within three months after the end of the financial year, prepare and submit to the Minister an annual report containing—

(a) the audited financial statements of the Fund; and

(b) details of activities supported by the Fund

(2) The Annual Report shall also be available for public inspection at such times and in such manner as the Commission shall prescribe.

Investment of the funds of the Fund.

12. The Commission may invest or apply the funds of the Fund towards—

(a) fixed bank deposits;

(b) Government securities; or

(c) any other investments approved by the Commission and in accordance with applicable financial Regulations.

Power to issue guidelines.

13. The Commission may, from time to time, issue guidelines relating to the management of the fund.

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

L.N. 71/2010.

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

2. In these Regulations, unless the context otherwise requires—

Interpretation.

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

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

4. (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. Application for 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 plan for the proposed services;

(d) detailed information relating to 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

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services for which a licence is sought; and

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

Failure to submit documents or information.

5. (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 re-submitting the application.

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

Granting of licences.

6. 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.

License terms and conditions.

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.

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

Notification of change of particulars.

8. 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 brandname it intends to use at least thirty days prior to using the trade or brand name.

Change in shareholding.

9. (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

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

Transfer or assignment of a licence.

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

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

Revocation of licences.

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

Obligations of a licensee to provide quality of service.

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

Principles for developing quality of service standards.

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

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- (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.

Quality of service standards.

15. 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.

Measurement, reporting and record keeping.

16. (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. 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. Inspections and investigations.
18. The Commission may publish measurement results or the quality of service reports submitted by licensees. Publication of reports on measurements of quality of service.
19. (1) The Commission shall, before issuing a licence to a telecommunications contractor under these Regulations, consider— Telecommunications contractors.
- (a) the applicant's ability to conduct the business; and
- (b) the competence of the technical staff undertaking 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. 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. Approvals from other authorities.
21. (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. Duty of care.
- (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—

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- (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.

Validity of
Provisions.

22. 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.

Transitional
provisions.

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

(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.

**THE KENYA INFORMATION AND COMMUNICATIONS
(ELECTRONIC CERTIFICATION AND DOMAIN NAME
ADMINISTRATION) REGULATIONS, 2010**

L.N. 116/2010.

1. These Regulations may be cited as the Kenya Information and Communications (Electronic Certification and Domain Name Administration) Regulations, 2010. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“administrative contact” means the entity responsible for maintenance of a domain name;

“certification personnel” means any person who has—

(a) direct responsibility for the day-to-day operations, security and performance of any activity, relating to a certification service provider, regulated under the Act and these Regulations; or

(b) duties that directly involve the issuance, renewal, suspension, revocation of certificates, creation of private keys or administration of a certification service provider’s computing facilities;

“certification practice statement” means a statement of the practices that a certification service providers employs when approving or rejecting certificate applications, or issuing, managing or revoking certificates.

“country code Top Level Domain (ccTLD) administrator” means the entity managing the .ke ccTLD;

“ccTLD namespace” means a collection of uniquely-assigned identifiers within the Kenya country code Top Level Domain;

“licensee” means a person licenced under the Act;

“registrant” means a domain name holder;

“registrar” means an entity that is authorized under the Act to administer the process of registration and modification of domain names;

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“relying party” means an individual or organization that acts on the basis of a certificate;

“subdomain administrator” means an entity managing a sub domain in the .ke ccTLD;

“subscriber” means a certificate holder;

“subscriber identity verification method” means the method used to verify and authenticate the identity of a subscriber;

“technical contact” means the entity responsible for maintaining the primary name server for a domain name and for effecting technical changes to a domain name;

“time-stamp” means a cryptographical digital attestation that a document or data existed at a particular time and has not been altered since a particular point in time and serves as a trusted third party witnessing the existence and particulars of electronic data;

“time-stamp services” means issuance of time-stamps.

License for
electronic
certification services.

3. The Commission may, upon application in the prescribed manner and subject to such requirements as it may consider necessary, grant a licence to a person to provide electronic certification services.

Application for a
licence.

4. A person applying for a licence shall, in addition to the requirements prescribed in the Act and any Regulations made thereunder—

- (a) submit for approval a certification practice statement, which fulfils the requirements prescribed in these Regulations;
- (b) undergo and pass an initial audit; and
- (c) fulfill other requirements relating to qualification, expertise, manpower, financial resources and infrastructure facilities necessary to issue an advanced electronic signature certificate as may be prescribed by the Commission from time to time.

Recognition of
foreign certification
service. Providers.

5. (1) The Commission may recognize a foreign certification service provider as a certification service provider for the purposes of these Regulations, where the foreign certification service provider—

- (a) is duly licensed or authorized by the relevant government authority in the country in which it operates;
- (b) complies with internationally acceptable standards and requirements under the Act and these Regulations; and
- (c) has established a local agent to provide the certification services

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in Kenya.

(2) A certificate issued by a certification service provider recognized under paragraph (1) shall be valid for the purposes of the Act and these Regulations.

(3) Where the Commission is satisfied that a foreign certification service provider has contravened any of the conditions and restrictions of recognition under paragraph (1), it may revoke the recognition.

6. (1) A certification service provider shall, before commencement of its operations, prepare a certification practice statement, in accordance with these Regulations and guidelines issued by the Commission from time to time and submit it, for approval by the Commission.

Certification practice statement.

(2) A certification service provider shall not change the certification practice statement without the prior written approval of the Commission.

(3) A certification service provider shall specify, in its certification practice statement-

(a) any limitation of its liabilities and particularly, the implication of reliance limitations specified; and

(b) the subscriber identity verification method for the issuance, suspension, revocation and renewal of a certificate.

(4) A certification service provider shall file, with the Commission, a copy of its certification practice statement and specify its effective date and publish it on its website.

(5) A certification service provider shall log all changes to the certification practice statement and specify the effective date of each change.

(6) A certification service provider shall keep, in a secure manner, a copy of each version of its certification practice statement and record the date it came into effect and the date it ceased to have effect.

7. (1) A certification service provider shall —

(a) issue and renew certificates;

(b) suspend, reinstate or revoke certificates;

(c) conduct personal identification of subscribers;

(d) publish accurate information relating to certificates;

(e) provide a repository service listing all published certificates, records of revoked certificates that may be used to verify the validity of published certificates;

Responsibilities of a certification service provider.

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- (f) ensure protection of private information and safekeeping of data security; and
- (g) provide time-stamp services.

Records management.

8. (1) A certification service provider shall, keep securely all records relating to—

- (a) issuance, renewal, suspension or revocation of certificates, including the identity of any person requesting for a certificate;
- (b) the process of generating key pairs by the subscribers or the licensed certification service provider;
- (c) the administration of its computing facilities; and (d) such other information as may be determined by the Commission from time to time.

(2) A certification service provider may keep its records in paper- based form, electronic form or any other form approved by the Commission from time to time.

(3) A certification service provider shall index, store, and preserve the records kept under paragraph (2) in a form that the records may be reproduced in an accurate, complete, legible manner and a manner accessible to the Commission or to any authorized officer.

(4) A certification service provider shall retain copies of all the certificates it has issued and preserve them so that they shall be accessible for a period of not less than seven years.

(5) A certification service provider shall retain all records required to be kept under paragraph (1) and all the logs of the creation of the archive of certificates required under paragraph (3) for a period of not less than seven years.

Issuance of certificates.

9. (1) A certification service provider shall issue a certificate containing—

- (a) information identifying the certification service provider;
- (b) information identifying the signature owner;
- (c) signature-verification data which corresponds to signature- creation data;
- (d) the commencement and expiry date of the certificate;
- (e) information regarding the authorization of the subscriber, if a subscriber is acting on behalf of another person;
- (f) information regarding the conditions of usage of the certificate and

limits on the value of transactions, where applicable;

(g) the secure electronic signature of the certification service provider that verifies the information in the certificate;

(h) sufficient information that can be used to locate or identify one or more repositories in which notification of the revocation or suspension of the certificate would be listed, if the certificate is suspended or revoked; and

(i) any other information as may be determined by the Commission from time to time.

(2) A certification service provider shall determine, based on official documents, the identity of the person to whom a certificate is issued and shall specify, in the certification practice statement, the subscriber identity verification method applied in the issuance of certificates.

(3) A certification service provider shall give a subscriber an opportunity to verify the contents of the certificate before the subscriber accepts it.

(4) A certification service provider shall inform a subscriber, in writing, the legal effect of an advanced electronic signature, the limitations on use of certificates and the dispute resolution procedures, applicable.

(5) A certification service provider shall warn subscribers, in writing, not to allow third parties to use signature creation data associated with signature verification data in the certificate.

(6) Where the subscriber accepts the issued certificate, the certification service provider shall publish a signed copy of the certificate in a repository in accordance with regulation 8.

(7) Where the subscriber does not accept the certificate, the certification service provider shall not publish the certificate.

(8) Once a certificate has been issued by the certification service provider and accepted by the subscriber, the certification service provider shall notify the subscriber, within a reasonable time, of any fact that subsequently becomes known to the certification service provider that may significantly affect the validity or reliability of the certificate.

(9) A certification service provider shall log and keep in a secure manner the date and time of all transactions relating to the issuance of a certificate.

(10) Where a certification service provider issues an additional certificate to a person on the basis of a valid certificate held by the same person and subsequently the original certificate is suspended or revoked, the certification service provider shall investigate and determine whether the new certificate should also be suspended or revoked.

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Obligations of a subscriber.

10. (1) Where a subscriber has accepted a certificate, the subscriber shall generate a key pair by applying the relevant security procedure.

(2) A subscriber shall be deemed to have accepted a certificate if he publishes or authorizes the publication of the certificate to any person, in a repository; or otherwise demonstrates his acceptance.

(3) A subscriber certifies, by accepting a certificate, to all who wish to reasonably rely on the information contained in the certificate that—

- (a) the subscriber holds and is entitled to hold the private key corresponding to the public key listed in the certificate;
- (b) all representations made by the subscriber to the certification service provider and all the information contained in the certificate are true; and
- (c) all information in the certificate is within the knowledge of the subscriber is true.

(4) Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his certificate and take the necessary steps to prevent its disclosure to any person who is not authorized to affix the advanced electronic signature of the subscriber.

(5) In the event that the subscriber becomes aware that the private key has been compromised, the subscriber shall, notify the certification service provider of such compromise within twenty four hours.

Liability of certification service providers.

11. (1) A certification service provider shall, by issuing or guaranteeing a certificate to the public, accept liability for damage caused to any person who reasonably relies on the certificate unless the certification service provider can prove that it was not negligent.

(2) The liability of a certification provider under paragraph (1) shall be limited to issues relating to—

- (a) the accuracy, at the time of issuance, of all information contained in the certificate and the fact that the certificate contains all the details prescribed for the certificate;
- (b) the assurance that at the time of the issuance of the certificate, the signatory identified in the certificate held the signature-creation data corresponding to the signature- verification data given or identified in the certificate;
- (c) assurance that the signature-creation data and the signature-verification data can be used in a complementary manner in cases where the certification service provider generated both of them; and
- (d) the failure to publish a notice of suspension or revocation of a

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certificate in the repository specified in the certificate.

(3) Where a certification service provider has specified in a certificate, the limits on the use of the certificates and the limits on the values of transactions for which the certificate may be used, it shall not be liable for any damage resulting from exceeding the limits.

12. (1) The provisions of regulation 9 shall apply *mutatis mutandis* to the renewal of certificates. Renewal of certificates.

(2) The subscriber identity verification method employed for renewal of certificates shall be specified in the certification practice statement.

(3) A certification service provider shall log and keep, in a secure manner, the date and time of all transactions relating to the renewal of a certificate.

13. (1) A certification service provider shall maintain facilities that can receive and respond to requests for suspension of certificates at all times of the day and on all days of every year. Suspension of certificates.

(2) A certification service provider shall, upon receiving a valid request under paragraph (1) suspend a certificate and publish a notice of the suspension in the respective repository.

(3) The subscriber identity verification method employed for suspension of certificates shall be specified in the certification practice statement.

(4) Where a request for suspension is received and a certification service provider determines the revocation of the certificate would be justified in the light of all the evidence available to it, the certificate service provider may revoke the certificate.

(5) A certification service provider may, regardless of the subscriber's consent, suspend a certificate that it has issued if it has reasonable grounds to believe that the certificate is unreliable.

Provided that the certification service provider shall conduct and complete its investigation into the reliability of the certificate and decide within a reasonable time whether to reinstate or revoke the certificate.

(6) A certification service provider shall, within a reasonable time, terminate a suspension initiated through a request, upon discovering and confirming that the request for suspension was made without the authorization of the subscriber.

(7) A certification service provider shall, after suspending a certificate, consult with the subscriber or his authorized agent on whether to reinstate or revoke the certificate.

(8) The provisions of regulation 11 shall apply where the suspension of a certificate leads to the revocation of the certificate.

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(9) A certification service provider shall log and keep in a secure manner the date and time of all transactions relating to the suspension of certificates.

(10) A party who wishes to rely on any certificate shall, before relying on a certificate, establish the status of the certificate.

Revocation of
certificates.

14. (1) A certification service providers shall revoke a certificate upon —

- (a) receiving a request for revocation from a subscriber or his authorized agent;
- (b) detecting forgery or falsification of the information existing in the database or changes in the information in database ; and
- (c) detecting the incapacity, bankruptcy or death of the subscriber:

Provided that where it is practicable, a certification service provider shall afford the subscriber a reasonable opportunity to be heard, before the revocation is effected.

(2) A certification service provider shall maintain facilities that can receive and act upon requests for revocation at all times of the day and on all days of every year.

(3) A certification service provider shall use the subscriber identity verification method specified in the certification practice statement to confirm the identity of the subscriber or authorized agent who makes a request for revocation.

(4) A certification service provider shall, after revoking a certificate, give a notice of revocation to the subscriber and publish the notice in the respective repository.

(5) A certification service provider shall log and keep in a secure manner the date and time of all transactions relating to the revocation of a certificate.

(6) A party who wishes to rely on any certificate shall, before relying on a certificate, establish the status of the certificate.

Performance audits.

15. The Commission shall, at least once in every year, audit the operations of a licensed certification service provider to monitor compliance with the Act and these Regulations.

Security guidelines.

16. (1) A certification service provider shall comply with the security guidelines that may be issued by the Commission.

(2) A certification service provider shall provide every subscriber with a secure and trustworthy system to generate his key pair.

(3) A certification service provider shall establish a mechanism that generates and verifies advanced electronic signatures in a secure and trustworthy manner and indicates the validity of a signature.

(4) Where the advanced electronic signature is not valid, the mechanism established under paragraph (3) should indicate the reason for invalidity and the status of the certificate.

(5) Where a verification mechanism is established by any person who is not a certification service provider, the resulting signature shall not be considered secure unless a licensed certification service provider endorses the implementation of mechanism and its certificate.

(6) A licensed certification service provider shall store the keys, including the subscriber's and the certification service provider's keys, in a secure and trustworthy manner.

17. (1) A certification service provider shall establish an incident management plan to address, among others, incidents relating to- Incident handling.

- (a) compromise of key;
- (b) penetration of certification service provider's system and network;
- (c) unavailability of infrastructure; and
- (d) fraudulent registration and generation of certificates, certificate suspension and revocation information.

(2) Where any incident referred to in paragraph (1) occurs, a certification service provider shall report the incident to the Commission within twenty four hours.

18. (1) A certification service provider shall not collect personal data directly from the subscribers or their authorised agents, unless the personal data is necessary for the purposes of issuance of a certificate. Confidentiality.

(2) A certification service provider shall keep all information relating to a subscriber confidential.

(3) A certification service provider shall not disclose any information relating to a subscriber unless the disclosure is authorized by the subscriber:

Provided that a certification service provider may, pursuant to an order of the court, disclose information relating to a subscriber without the consent of the subscriber.

(4) The obligation to maintain confidentiality shall not apply to information relating to a subscriber which—

- (a) is contained in the certificate and is available to the public for inspection;
- (b) is otherwise provided by the subscriber to the licensed certification

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service provider for disclosure to the public; or

(c) relates to the revocation or suspension of a certificate.

(5) Where a certification service provider has permitted a subscriber to use a pseudonym, the certification service provider shall, at the request of law enforcement authorities, disclose data relating to the subscriber that is required to prosecute offences or to protect against threats to public safety or public order.

Winding up of
operations of a
certification service
provider.

19. (1) A certification service provider may, where the certification service provider intends to discontinue its operations—

- (a) arrange for its subscribers to re-subscribe to another licensed certification service provider;
- (b) make arrangements for its records and certificates to be archived in a secure manner; and
- (c) transfer its records to another licensed certification service provider in a secure manner.

(2) A certification service provider shall, where the certification service provider intends to discontinue its operations—

- (a) give the Commission and its subscriber a minimum of six months notice, in writing, of its intention to discontinue its operations; and
- (b) publish, in at least one local daily newspaper with nationwide circulation and in such other manner as the Commission may determine, at least two months notice of its intention to discontinue its operations.

Licensing for
updating of a
repository and
administering a sub
domain in the .ke
ccTLD.

20. (1) The Commission may, upon application in the prescribed manner and subject to such conditions as it may consider necessary, grant a licence for updating a repository or administering a subdomain in the Kenya country code top level domain.

(2) A person shall not create a new sub-domain under the Kenya country code Top Level Domain without the approval of the Commission.

(3) The Commission may issue guidelines for assignment of sub domains under the ccTLD namespace and prescribe—

- (a) words, phrases or abbreviations that may not constitute a sub-domain name; or
- (b) words, phrases or abbreviations that are reserved for special purposes.

Responsibilities
of the .ke ccTLD

21. (1) The administrator of the .ke ccTLD shall—

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- (a) be the administrative technical and contact for the ccTLD;
- (b) administer the .ke ccTLD;
- (c) maintain the operational stability and utility of the ccTLD;
- (d) notify the Commission of any change in the ccTLD data;
- (e) provide name service for the ccTLD and ensure that the database is secure and stable;
- (f) comply with the Commission's guidelines for the administration of the ccTLD; and
- (g) allow the Commission to access ccTLD zone files.

administrator.

22. The administrator of the ccTLD shall, where the administrator intends to discontinue its operations—

Winding up of operations of the .ke ccTLD administrator.

- (a) give the Commission and administrators of sub domains in the ccTLD a minimum of a six months, notice in writing, of its intention to discontinue its operations;
- (b) publish, in at least one local daily newspaper with nationwide circulation and in such other manner as the Commission may determine, at least four months notice of its intention to discontinue its operations;
- (c) furnish the Commission with an up-to-date copy of its zone files; and
- (d) seek the Commission's approval for the transfer of the zone files to another entity, in a secure manner.

23. (1) The administrator of a subdomain in the .ke ccTLD shall—

Responsibilities of a subdomain administrator.

- (a) administer a subdomain in the .ke ccTLD;
- (b) at all times, maintain a website that contains registration information;
- (c) maintain the operational stability and utility of the subdomain in the .ke ccTLD;
- (d) notify the Commission of any change in the data of a subdomain;
- (e) provide the name service for a subdomain and ensure that the database is secure and stable;
- (f) provide a domain registration system for the subdomain;

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(g) allow the Commission to access the zone files and registration data for the subdomain; and

(h) comply with the Commission's guidelines for the administration of sub domains in the .ke ccTLD;

Winding up of operations of a sub domain administrator.

24. The administrator of a subdomain shall, where the administrator intends to discontinue its operations—

(a) give the Commission and its registrants a minimum of six months notice, in writing, of its intention to discontinue its operations;

(b) publish, in at least one local daily newspaper with nationwide circulation and in such other manner as the Commission may determine, at least four months notice of its intention to discontinue its operations;

(c) furnish the Commission with an up-to-date copy of its zone files; and

(d) seek the Commission's approval for the transfer of the zone files and registration data to another administrator of a sub domain in the .ke ccTLD, in a secure manner.

Performance audits.

25. The Commission shall, at least once in every year, audit the operations of the administrator of the .ke ccTLD and subdomain administrators, to evaluate compliance with the Act and these Regulations.

Limitation of liability.

26. A registrant shall bear liability for the infringement of third party rights and interest arising from holding or using a domain name in the ccTLD.

Confidentiality.

27. A subdomain administrator shall use the information obtained from its registrants for the purpose of domain name registration except where the law requires otherwise.

Offences and penalties.

28. (1) Any licensee who contravenes the provisions of these Regulations commits an offence.

(2) Any person who commits an offence under these Regulations for which no penalty is expressly provided shall be liable on conviction to imprisonment for term not exceeding five years or a fine not exceeding one million shillings or both.

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THE KENYA INFORMATION AND COMMUNICATIONS
(REGISTRATION OF SUBSCRIBERS OF
TELECOMMUNICATION SERVICES) REGULATIONS, 2012

L.N. 1/2013

Short Title.

1. These Regulations may be cited as the Kenya Information and Communications (Registration of Subscribers of Telecommunication Services) Regulations, 2012.

Interpretation.

2. In this Order unless the context otherwise requires—

“subscriber” means a person who has subscribed to a telecommunication service and is able to use such a service;

“Commission” means the Communications Commission of Kenya;

“deactivate” means to disable a telecommunications service to a subscriber by a licensee;

“identification particulars” means details given by a subscriber to a licensee or a licensee’s agent for the purpose of registration of the subscriber;

“licensee” means a person or entity licensed under the Act to own and operate a telecommunications system or to provide telecommunications services or both;

“registration” means the recording of identification particulars of a subscriber by a licensee or a licensee’s agent;

“proxy registration” means registration on behalf of a subscriber by a person not being the subscriber;

“subscriber” means a person who uses a telecommunication service provided by the licensee;

“subscription medium” includes a Subscriber Identity Module and any such device that contains a subscriber’s telephone number, encoded network identification details, personal identification number and any other user data that may be provided from time to time by a licensee for the provision of telecommunication services to a subscriber;

“suspend” means to temporarily disable a telecommunications service to a subscriber by a licensee.

3. The object of these Regulations is to provide a process for the registration of existing and new subscribers of telecommunication services provided by telecommunication licensees in Kenya. Object.

4. (1) A licensee shall register a subscriber as specified in these Regulations. Requirement for registration.

(2) Despite sub-paragraph (1), any subscriber who has not registered

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at the commencement of these regulations shall be registered by the licensee.

(3) A licensee shall only sell a subscription medium to a subscriber after complying with these Regulations.

(4) Where a licensee relies upon the services of an agent to comply with the provisions of these Regulations—

- (a) such agent shall also comply with the provisions of these Regulations;
- (b) the licensee shall notify the Commission in writing of this relationship; and
- (c) the licensee shall keep a record of all registrations of subscriptions made by the agent and provide a copy of this record to the Commission upon request by the Commission.

Method of
registration.

5. (1) Where a subscriber wishes to register a subscription medium that subscriber shall provide the following particulars to the licensee—

- (a) the subscriber's telephone number;
- (b) the subscriber's official name;
- (c) the subscriber's date of birth;
- (d) the subscriber's gender;
- (e) the subscriber's physical address;
- (f) the subscriber's postal address, where available;
- (g) the subscriber's national identity card number or passport number;
- (h) a copy of the subscriber's certificate of incorporation, where relevant;
- (i) a copy of the subscriber's certificate of registration, where relevant;
- (j) the subscriber's work permit number, where relevant; and
- (k) the subscriber's alien card number, where relevant.

(2) Where there is a change in any of the details provided by a subscriber under sub-paragraph (1), the subscriber shall inform the licensee of the change within thirty (30) days of the change taking place and the licensee shall alter the relevant registration particulars of the subscriber.

(3) The licensee or the licensee's agent shall not register a subscription medium unless the subscriber complies with these Regulations.

Verification of

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6. A licensee shall rely on the following documents to verify the registration details of a subscriber—

identification
particulars.

(1) for a Kenyan citizen—

- (a) original identity card;
- (b) original and valid passport;
- (c) original driving license;
- (d) military identity card; or
- (e) student identity card from an accredited educational institution;

(2) for a foreign national—

- (a) work permit;
- (b) passport;
- (c) or alien card.

(3) For a corporate person or a statutory body, certified copies of the following documents shall be used for verification—

- (a) certificate of incorporation;
- (b) certificate of registration; or
- (c) enabling legislation or Gazette notice.

7. The registration process shall involve the recording of data by the licensee or the licensee's agent in the following manner—

The registration
process.

- (a) by entering the registration particulars in an electronic or physical form;
- (b) by requiring the person submitting the registration particulars to appear before the licensee or licensee's agent in person; and
- (c) by keeping and protecting the registration particulars collected in a secure form.

8. (1) A licensee shall maintain a physical or electronic record of registration particulars of a subscriber.

Record of
registration.

(2) Where a subscription has been deactivated the licensee shall keep the records of the relevant subscriber for a period of one year from the date of

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the deactivation of the subscription.

Confidentiality
and disclosure of
personal information
of a subscriber.

9. (1) A licensee shall not disclose the registration particulars of a subscriber to any person without the written consent of the subscriber.

(2) Despite sub-paragraph (1), a licensee may disclose the registration particulars of a subscriber—

- (a) for the purpose of facilitating the performance of any statutory functions of the Commission;
- (b) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings; or
- (c) for the purpose of any civil proceedings under the Act.

(3) A licensee shall ensure that the registration details of a subscriber are kept in a secure and confidential manner.

(4) A licensee shall notify the Commission of the steps taken and processes introduced to ensure the security and confidentiality of the registration particulars of its subscribers within ninety (90) days of the commencement of these Regulations.

Registration period.

10. All licensees shall be required to ensure that—

- (a) every subscriber is registered; and
- (b) all necessary steps are taken to ensure full compliance with these Regulations within thirty days of the coming into force of these Regulations.

Suspension and
notification of
deactivation of
unregistered
subscriber.

11. (1) A licensee shall suspend a telecommunication service to an unregistered subscriber if the unregistered subscriber fails to comply with these Regulations at the expiry of the registration period provided under paragraph 10.

(2) A licensee may reactivate a suspended telecommunication service to a subscriber if the subscriber complies with these Regulations during the period of suspension of the service.

(3) All licensees shall notify all their unregistered subscribers that the subscribers' telecommunications services will be suspended if they do not comply with these Regulations.

(4) A notice under this paragraph may take the form of—

- (a) an advertisement in a newspaper of national circulation;
- (b) an advertisement in an electronic medium that broadcasts throughout the country;

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(c) any other form as may be permitted in writing by the Commission.

12.(1) A licensee may deactivate a subscriber's telecommunication service if the service has been suspended for at least ninety (90) days.

Deactivation of unregistered subscriber.

(2) A licensee shall deactivate a subscriber's subscription medium if—

(a) the licensee or the Commission establishes that the subscriber has provided false information for registration; or

(b) upon request by a subscriber after verification and confirmation of the subscriber in the subscription medium.

(3) Despite sub-paragraph (2) (b), any other person who establishes that the subscriber has provided false information for registration shall lodge a complaint with the Commission and ask the Commission to deactivate the subscription medium and the Commission shall notify the licensee of the complaint and the proposed deactivation of the subscriber's subscription medium within a reasonable period.

(4) A licensee shall only deactivate a subscriber's subscription medium where a complaint has been made to the Commission by another person after verifying the particulars of the complaint and giving the subscriber a reasonable opportunity to be heard.

(5) The licensee shall reactivate a suspended subscription medium where a subscriber complies with these Regulations.

13. There shall be no proxy registration of any subscription medium.

Prohibition of proxy registration.

14. (1) A subscriber shall be liable for activities carried out using a subscription medium registered in that person's name.

Liability for activities using a subscriber's subscription medium.

(2) Despite sub-paragraph (1), a subscriber shall not be held liable if that subscriber can prove that when the activities were being carried out the subscriber was not in control of the subscription medium.

15. Any notice required to be given by a licensee to a subscriber may also be given using any electronic means permitted by the Commission.

Notice.

