



## Public consultation on intention to merge license

The coming to an end of TKL's exclusivity on 30th June 2004 marked the end of a semi-liberalized telecommunications environment in Kenya and the emergence of additional opportunities for investments in various market segments as well as new regulatory challenges associated with convergence. In addition additional regulatory challenges emerged particularly those associated with the maintenance of a balanced and fair competitive framework.

It was for this reason that in 2004 the Commission found it necessary to reconsider its approach in licensing additional players and indeed went ahead to establish and implemented a framework for licensing additional players in particular those to provide international gateway services, broadcast signal distribution services, Internet backbone services and commercial VSAT services within the framework of full liberalization.

In addition, the Commission also went ahead to authorize Public Data Network Operators (PDNOs), upon application and meeting the licensing conditions, to establish International Gateways for data communications services in order to extend their reach and the benefit to their customers of end-to-end high quality international connectivity managed from one platform.

The Commission went further to review the challenges presented by technological advancements in the Information and Communications Technology (ICT) environment and the global trend in response to the said challenges and resolved to take appropriate measures in addressing the same through a progressive approach of restructuring of the market structure and the associated licensing and regulatory strategies.

It is indeed due to the aforementioned reasons that the Commission announced in 2004 its intentions to adopt in the long run a unified and technology neutral licensing framework that permits any form of communications infrastructure to be used to provide any type communications services that is technically capable of providing and to structure the market by creating the following distinct market categorization:

**Network Facilities Provider (NFP)** – who shall own and operate any form of communications infrastructure (based on satellite, terrestrial, mobile or fixed)

**Applications Service Provider (ASP)** – to provide all forms of services to end users using the network services of a facilities provider

**Contents Services Provider (CSP)** – to provide contents services such as broadcast (TV&Radio) material, and other information services including data processing services.

The implementation of the above strategy will, however, be progressive and shall be subject to the outcome of a comprehensive study and implementation of an appropriate policy, legal and regulatory framework.

### **Market Structure**

The current telecommunication market structure contains a number of licenses with overlapping scopes which need to be aligned and or merged. A full list of the license categories contained in the market structure can be accessed from the following link:

### **Convergence of Licenses**

The justification for progressively merging licences is based on the growing demand for diversified services and the rapid technological advancement which has led to convergence and integration of voice and data service. For example, both voice and data services can now be delivered over a single access and transmission network often utilizing Internet Protocol (IP) technology. Convergence in technology has challenged sustainability of the current licensing approach which is based on the current telecommunication market structure.

It is the Commission's view that Internet Backbone and Gateway Operators (IBGOs), Broadcast Signal Distributors (BSDs), Commercial VSAT Operators (CVOs) and Public Data Network Operators (PDNOs) with international gateways, enabled by technology are all capable of carrying any form of multimedia traffic including radio and Television signals, Data traffic, Internet traffic, etc in a very similar way.

Fortunately, the terms of entry for players in these market segments, particularly with regard to licence fees, have been aligned with the difference only remaining in the scope of services the licensees are authorized to provide and the type of customers they are allowed to serve, as prescribed in their licenses.

Consequently, the Commission intends to merge the following four licences, to encompass provisioning of both National and International data communications services, broadcast voice/data/video services as well as Internet services including VoIP.

Commercial VSAT Network Operator License (CVO)  
Internet Backbone and Gateway License (IBGO)  
Broadcast Signal Distribution License (BSD)  
Public Data Network Operator (PDNO) international gateway licence.

The combined licence shall be called **DATA CARRIER NETWORK OPERATOR (DCNO)**.

#### **Main areas of the consultation and response**

Respondents are encouraged to submit any general or specific comments regarding the Commission's intention as described in this consultative document. The Commission, however, specifically invites comments on the issues highlighted below which should be kept in view with regard to the proposed merger of the said licenses.

#### **Licensing**

The current regulatory framework provides for unlimited competition in the four aforementioned license categories. Currently, there are six (6) licensed IBGOs, six (6) licensed CVOs and no licensed BSD.

Respondents may therefore wish to give comments on the following licensing issues among others;

What will be the scope of the DCNO licence with regard to licensed service and end-users served?

Currently the Commission issues station licenses to end-users/customers of the CVOs. Should this procedure continue or how can it be enhanced?

How shall the end-users of the converged DCNO be connected to the hub?

How will the merging modalities be undertaken for the already licensed operators?

Is it desirable to provide flexibility in respect of the licensed DCNO services and thereby avoid foreclosure of future options of adopting or adapting to newer technologies? If yes, what flexibility should be provided?

What other future convergence strategies should be adopted and how would the implementation be carried out.

#### **Licence Fees**

The Commission attempted to harmonize and applies almost uniform market entry terms for the four licenses (CVOs, IBGOs, BSDs and PDNO gateway) which consist of an application fee of KShs 10,000, an initial license fee of KShs 15 million and an annual operating fee of KShs 1 million or 0.5% of the annual gross turnover whichever is higher.

It is the Commission's intention to maintain the same level of licence fees for the converged DCNO licence.

The issues for consultation in relation to the license fee include;

What should be the licence fees for converged DCNO licence compared to that of the constituent licences such as IBGO, BSD and CVOs?

What licence fees if any should the end-users of the DCNO pay for their satellite station (VSAT) licence?

The public and the industry are hereby invited to submit written comments to the Commission on the above proposal to reach the following address on or before 20<sup>th</sup> November 2005.

**Director-General  
Communications Commission of Kenya  
P. O. Box 14448  
Nairobi 00800 Kenya**