

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;

“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;

“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;

“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 non-discriminatory 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 non-discriminatory 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.

(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.

Negotiation of interconnection agreements.

5. (1) An interconnect licensee shall provide interconnection information to an interconnecting licensee upon receipt of written request.

(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-

- (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.
- (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.

interconnection agreement at least fourteen days before the date of implementation of the interconnection agreement.

(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.

(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 interconnected telecommunication systems.

(4) A service acquired as part of interconnection may be used for any lawful purpose.

Non-discrimination and transparency.

9. In similar conditions and similar circumstances, an interconnection licensee shall provide interconnection on a non-discriminatory basis and the interconnection licensee shall ensure that-

- (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 licensees 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.

Quality of service.

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.

(2) A licensee shall ensure that the prescribed quality of service is not impaired on interconnection.

Network upgrading.

11. (1) In order to achieve the quality of inter-operability to the prescribed level a licensee shall-

(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.

Interconnection charges structure.

12. (1) All charges for interconnection services shall-

(a) be objective, independently verifiable and fair;

(b) be charged for each type of telecommunications service related to interconnection;

(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.

(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.

Establishment and location of points of interconnection.

14. (1) Parties to an interconnecting agreement shall establish and maintain points of interconnection at any technically feasible points agreed by the parties.

(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.

(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 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 authorised 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.

Reference
interconnection
offer and reference
access offer
obligations.

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-

- (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 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.

Network access and facilities.

20. (1) A Facilities licensee shall facilitate access to network facilities in the following manner-

- (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 non-discriminatory and not less favourable than the treatment which the facilities 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 interoperability 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.

(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.

Dispute resolution.

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.

Revocation of Part VII of L.N 168 of 2001.

23. Part VII of the Kenya Communications Regulations, 2001 is revoked.

Made on the, 2010.

SAMUEL POGHISIO,
Minister for Information and Communications.