

COMMUNICATIONS (ACCESS AND FACILITIES SERVICES) REGULATIONS, 2022

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Right to access and facility services
4. Obligation to provide access and facilities
5. Procedure for concluding an access and facility services agreement
6. Terms and conditions of access and facilities services agreement
7. Obligations of dominant licensees
8. Filing and review of access and facility service agreements
9. Dispute resolution
10. Commencement, suspension and termination of agreements
11. Regulatory sanctions
12. General penalty

COMMUNICATIONS ACT

(CAP.68:01)

COMMUNICATIONS (ACCESS AND FACILITIES SERVICES)  
REGULATIONS, 2022

IN EXERCISE of the powers conferred by section 200 of the Communications Act, I, GOSPEL KAZAKO, Minister of Information, on the recommendation of the Authority, make the following Regulations—

- Citation                    **1.**        These Regulations may be cited as the Communications (Access and Facilities Services) Regulation, 2020.
- Interpretation            **2.**        In these Regulations, unless the context otherwise requires—
- “access provider” means a licensee who supplies or is requested to supply facility services or access to another licensee;
- “access seeker” means a licensee that seeks facility services or access from another licensee;
- “access and facilities information” means information that is in the possession or control of an access provider which may assist an access seeker to formulate a request for access and plan, establish, or maintain its electronic communications network or electronic communications service, and includes—
- (i)        technical specifications of the access provider’s network; and
- (ii)       details of the facility services including locations;
- “co-location” means giving access to premises, facilities or land owned or controlled by a licensee and used to provide accommodation for any part of that licensee’s network, to another licensee to house its own separate network equipment;
- “dominant licensee” means a licensee who has a status of a dominant market player as defined under section 2 of the Act;

“facility service licence” means a licence entitling the holder to provide one or more facility services;

“licensee” means a person holding an electronic communications licence, as defined in the Act;

“network service licence” means a licence entitling the holder to provide one or more network services;

“reference access offer” means standard terms and conditions of an access provider’s access and facility service agreement as prescribed by the Authority; and

“relevant market” means a distinct electronic communications service market that has been formally determined by the Authority.

**3.**— When determining the list of electronic communications networks of licensees to be published under section 68(1) of the Act, the Authority shall consider the following:

- (a) the capacity of the electronic communication network;
- (b) whether the electronic communications network can easily be substituted or duplicated.

**4 - (1)** A licensee may request access and facility services from:

- (a) any network service licensee whose electronic communications network has been included in the list published under section 68(1) of the Act as a network whose access may be shared with other licensees;
- (b) any facility service licensee.

**(2)** A request for access and facilities services shall include the following—

- (a) the type of access or facility services required;
- (b) the specifications, and location, of the access or facility services required;
- (c) the date when access or facility services are required; and
- (d) whether any associated services are required.

Obligation to provide access and facilities

**5.—** (1) A network services licensee that is listed in terms of section 68(1) of the Act or a facility service licensee shall, on request, and subject to subregulation (2), provide access or facility services as the case may be, to any other licensee.

(2) A licensee that is an access provider shall, on request, from an access seeker and at no charge, provide relevant information that will enable a feasibility study on the access provider's network or facilities.

(3) An access provider may refuse an access or facility services request for not being technically or economically feasible in accordance with section 68(4) or 71(3) of the Act.

(4) Where a request for access is refused, the access provider shall communicate the refusal to the access seeker within fourteen days from the date of request.

(5) Where the access provider refuses the request for access or facility services under subregulation (3), the access provider shall inform the Authority and show why the request is not technically or economically feasible.

(6) Notwithstanding subregulation (5), an access seeker may inform the Authority that an access provider has refused a request for access of facility services.

(7) Upon receiving the access provider's decision under subregulation (5), the Authority shall review the decision, and shall within 30 days from receiving the decision, make a determination and give an appropriate direction.

Procedure for concluding an access and facility services agreement

**6.—** (1) An access seeker and an access provider shall commence negotiations for an access and facility services agreement within seventeen days from the date of the request by the access seeker.

(2) Where the parties fail to reach an agreement within forty-two days from the date of request for access, the Authority shall declare a dispute.

(3) The negotiations for an access and facility services agreement shall be in accordance with the following principles:

(a) access and facilities services shall be provided on a first come first served basis;

(b) access and facilities services shall be provided on the basis of impartiality and non-discrimination.

(4) The access provider shall, on request, provide to the access seeker, any other relevant information.

Terms and  
conditions of access  
and facilities  
services agreement

7. An access and facility services agreement shall, where applicable, include the following matters—

- (a) scope and specification of network elements or facilities and collocation to be provided or infrastructure to be shared including —
  - (i) specific geographic location of sites, equipment or facility type and type of collocation required;
  - (ii) mechanisms for changes to the purpose, scope and specifications of the network elements or facilities; and
  - (iii) details regarding ancillary services to be provided including air-conditioning and power;
- (b) billing and settlement including—
  - (i) billing procedures;
  - (ii) payment terms and conditions; and
  - (iii) billing and settlement dispute procedures;
- (c) charges including—
  - (i) detail charges per service provided; and
  - (ii) mechanisms for review of charges;
- (d) service level agreement with the following—

Obligations of dominant licensees

- (i) quality of service obligations;
- (ii) penalties;
- (iii) maintenance and security of sites and equipment; and
- (iv) fault reporting; and

(e) commencement, termination and dispute resolution.

**8.—** (1) The Authority shall determine essential facilities in consultation with relevant stakeholders.

(2) The Authority shall call for representations from relevant stakeholders which shall be taken into consideration in determining the list of essential facilities.

(3) The Authority shall publish a final list of essential facilities in a newspaper of nationwide circulation and website of the Authority.

(4) The Authority shall, after conducting a market analysis under section 57(1) of the Act, deem dominant licensee that has control of one or more essential facilities.

(5) A licensee deemed to be dominant in terms of section 57 of the Act shall submit to the Authority for approval, a reference access offer that sets out in detail the terms and conditions on which the licensee shall provide access and facility services of essential facilities to access seekers.

(6) The Authority shall approve the reference access offer within fourteen days from the date of submission.

(7) The Authority may require the licensee to modify the reference access offer and the licensee shall, if so required, modify and resubmit the offer to the Authority within fourteen days.

(8) Any dominant licensee that already has an access and facility service agreement shall amend the agreement where necessary, to align with the reference access offer approved by the Authority, within ninety days of the date of commencement of these Regulations, and shall submit the amended agreement to the Authority for approval.

(9) Nothing in this Regulation shall require an access

provider to construct new facilities or acquire new sites in any location.

Filing and review  
of access and  
facility service  
agreements

**9.—** (1) Each party shall file with the Authority an access and facility service agreement within fourteen days of the conclusion of the agreement.

(2) The Authority shall review the access and facility services agreement submitted under subregulation (1) in order to ensure that it is consistent with the Act and these Regulations.

(3) The Authority shall notify the parties in writing within thirty days of submission of the agreement whether or not the agreement is consistent with the Act or with these Regulations, and—

(a) where the Authority approves the agreement, the Authority shall issue a compliance notice in writing to the parties and the Authority shall register the agreement; and

(b) where the Authority determines that the agreement or any term or condition of it is not consistent with the Act or these Regulations, the Authority shall notify the parties and direct them to agree on new terms and conditions that are consistent with the Act and these Regulations, within thirty days.

(4) Where the parties are unable to agree on new terms and conditions after receiving notice from the Authority under subregulation (3)(b), the parties shall notify the Authority accordingly and the Authority shall declare a dispute.

Dispute resolution

**10.—** (1) Upon declaration of a dispute, the Authority shall require each party to submit within fourteen days, written representations on the matters on which they cannot agree.

(2) Each party shall provide to the other party a copy of the written representations submitted under subregulation (1).

(3) Upon receipt of the representations, the Authority shall determine the terms of the agreement to apply between the parties.

Commencement,  
suspension and  
termination of  
agreements

**11.—** (1) An access and facility services agreement shall commence on a date agreed upon by the parties, which date shall be after the date of issue of a compliance notice by the Authority under Regulation 9(3)(a).



(2) An access and facility services agreement shall provide for suspension and termination procedures that minimise any adverse effect of that suspension or termination on subscribers.

(3) Either party may terminate the agreement on the following grounds—

- (a) material breach of the agreement which has not been remedied by the defaulting party;
- (b) force majeure that persists for more than thirty days;
- (c) liquidation, deregistration or insolvency of one of the parties to the agreement; or
- (d) agreement by both parties.

(4) A party intending to terminate an agreement shall give the Authority thirty days' written notice of such intention.

Regulatory  
sanctions

**12.** Where a licensee fails to comply with these Regulations, the Authority may issue one or more of the following orders—

- (a) an order to cease and desist from doing an act or omission constituting the non-compliance;
- (b) an order to take specific remedial action such as restitution of monies received as revenue;
- (c) an order to pay an administrative fine; or
- (d) any other order that the Authority may determine as appropriate to remedy the non-compliance in a fair and just manner.

General penalty

**13.—(1)** A person who fails to comply with a provision of these regulations, commits an offence.

(2) A person who commits an offence under these regulations for which no punishment has been provided for shall, upon conviction, be liable to a fine of K5,000,000.

Made this            day of    , 2022.

G. KAZAKO  
Minister of Information

(File Ref. No. MICTCE/A/1/01)

DRAFT 2