

GOVERNMENT NOTICE NO 429 published on 9/12/2011

THE ELECTRONIC AND POSTAL COMMUNICATIONS ACT
(CAP.306)

REGULATIONS

THE ELECTRONIC AND POSTAL COMMUNICATIONS (ACCESS, CO-LOCATION AND
INFRASTRUCTURE SHARING) REGULATIONS, 2011

ARRANGEMENT OF REGULATIONS

Regulation *Title*

PART I
PRELIMINARY PROVISIONS

1. Citation
2. Application
3. Interpretation

PART II
GENERAL DUTIES ON FACILITIES CO-LOCATION

4. Provision of access, infrastructure sharing and co-location
5. Co-location or Infrastructure sharing on commercial terms
6. Co-locations to Internet Exchange Points (IXPs)
7. Connectivity between Internet Exchange Points (IXPs)
8. Sharing agreement negotiation procedure
9. Mandate on Co-location
10. Non-discrimination treatment
11. Refusal of Co-location
12. Obligation on dominant licensee
13. Facilities Charging Structure
14. Content of Co-location and Infrastructure sharing Agreements

15. Limitations of Co-location or Infrastructure Sharing
16. Capacity or Space Issues
17. Rights and Obligations
18. Infrastructure Sharing
19. Performance Measures
20. Penalties
21. Revocation

THE ELECTRONIC AND POSTAL COMMUNICATIONS ACT
(CAP.306)

REGULATIONS

(Made under section 165)

THE COMMUNICATIONS (ACCESS, CO-LOCATION AND
INFRASTRUCTURE SHARING) REGULATIONS, 2011

PART I
PRELIMINARY PROVISIONS

- Citation. 1. These Regulations may be cited as the Electronic and Postal Communications (Access, Co-location and Infrastructure sharing) Regulations, 2011.
- Applica-
tion 2. These Regulations shall apply in relation to provision of electronic communications services and communications networks.
- Interpre-
tation
Cap.306 3. In these Regulations, unless the context otherwise requires-
“Act” means the Electronic and Postal Communications Act;
“access” means the technically feasible means of reaching network facilities for purposes of interconnection, leasing or sharing of network facilities;
“Authority” means the Tanzania Communications Regulatory Authority established under the Tanzania Communications Regulatory Authority Act;
- Cap.172 “co-location” means the accommodation of two or more licensee’s switches, antennas or other electronic communications equipment in, or on a single

- building, tower or other structure;
- “dominant licensee” means a licensee who has been determined by the Authority to have more than thirty five percent of the electronic communication or postal services market;
- “essential infrastructure” means an electronic communication facility of a communication network licensee which cannot feasibly, whether economically or technically be substituted and is declared to be an essential facility by the Authority;
- “facilities” means network facilities or other facilities which facilitate the provision of network services or applications services, including content services;
- “firm” means a licensed or non licensed person who hosts contents for electronic accessibility or carries internet traffic;
- “infrastructure” means an electronic communications network facility whether tangible or intangible used for the provision of network services or application services; and for the avoidance of doubt-
- (a) tangibles include lines, cables, or wires whether fibre optic or other, equipment, apparatus, towers, masts, tunnels, ducts, risers, hotels, pits, poles, landing stations, huts, lands, buildings or facilities and
 - (b) intangibles include agreements, arrangements, licences, franchises, rights of way, easements and other such interests.
- “infrastructure acquirer” means a network service licensee who has leased or shared facilities or has requested to lease or share facilities from a facilities provider;
- “infrastructure provider” means a network facilities licensee who has been requested by a facilities acquirer to lease or share facilities;
- “infrastructure sharing” means the provision to licensees the Co-location to tangibles used in connection with a

public electronic communications network or intangibles facilitating the utilization of a public electronic communications network; and for the avoidance of doubt-

- (a) tangibles include lines, cables, or wires whether fibre optic or other, equipment, apparatus, towers, masts, tunnels, ducts, risers, hotels, pits, poles, landing stations, huts, lands, buildings or facilities and
- (b) intangibles include agreements, arrangements, licences, franchises, rights of way, easements and other such interests.

“network facilities” means any element, or combination of elements, of physical infrastructure used principally for, or in connection with, the provision of one or more network services, but not including customer premise equipment;

“network facilities licence” means an electronic communications licence entitling the holder to construct, maintain, own and make available one or more network facilities;

“network facilities licensee” means a holder of a network facilities licence;

“network service” means a service for the carrying of information in the form of speech or other sound, data, text or images, by means of guided and/or unguided electromagnetic energy but does not include services provided solely on the customer side of the network boundary;

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

“network service licensee” means a holder of a network service licence;

“physical co-location” means a type of co-location where the party controlling the building, tower, or other structure in or on which another party switches, antennas, or other electronic communications equipment are accommodated, also allows the other party to operate those switches, antennas, or other electronic communications equipment;

“remote co-location” means co-location where the equipment of the interconnection demanding operator is installed in a location near the premises of the interconnection providing operator and a transmission medium is used to realize the physical interconnection;

“site” means a place where a wireless communications network facility or group of similar facilities are located;

“sharing agreement” means an agreement between an infrastructure provider and a infrastructure acquirer for sharing the infrastructure provider’s communication network facilities;

“sharing request” means a written request from the infrastructure acquirer to the infrastructure provider to share a communications network facilities;

“virtual co-location” means co-location where equipment is placed in the equipment line-up of the interconnection providing operator and is maintained by that operator.

**PART II
GENERAL DUTY ON ACCESS, CO-LOCATION AND
INFRASTRUCTURE SHARING**

Provision
of
infrastruc-
ture
sharing
and co-

4.-(1) Any licensee who owns, leases or manages infrastructure is obliged to negotiate and enter into a sharing agreement, upon request with respect to access, co-location and sharing of tangible or intangible communications facilities.

location

(2) Infrastructure provider shall be obliged to share communication facilities with infrastructure acquirers on first-come first served basis.

(3) Facilities sharing shall be provided based on the principles of impartiality and non-discrimination.

(4) Access, co-location and infrastructure sharing shall be commercially agreed between the infrastructure acquirer and the infrastructure provider.

(5) All negotiations for sharing agreements shall be conducted by all parties in good faith such that the infrastructure provider shall not-

(a) obstruct or delay negotiations;

(b) refuse to provide information relevant to an agreement, including information necessary to identify facilities needed.

Co-
location/
infrastru-
cture
sharing on
comercial
terms

5.-(1) Licensees who host other licensed network facilities providers shall commercially negotiate on co-location or infrastructure sharing of their respective network facilities.

(2) Every infrastructure sharing agreement shall be in writing and shall, specify the contractual terms and conditions agreed on by the parties.

Co-
location to
Internet
Exchange
Points
(IXPs)

6. Any licence who hosts contents for electronic accessibility or transmits or carries internet traffic shall make available within the nearest located Internet Exchange Point premises, an interface or equipment or facility that shall enable connectivity with the Internet Exchange Point.

Connecti-
vity
between
Internet
Exchange
Points
(IXPs)

7.-(1) All Internet Exchange Points deployed in the United Republic of Tanzania shall be directly connected to one another.

(2) Any licence who hosts contents for electronic accessibility or transmits or carries Internet traffic shall connect

to the nearest located Internet Exchange Point.

Sharing
Agreement
Negotia-
tion
procedure

8.-(1) An infrastructure acquirer is required to submit an infrastructure sharing request to an infrastructure provider providing relevant details and any other information required by infrastructure provider to start the feasibility study on its network to allow the infrastructure sharing.

(2) Within twenty one working days from the date of receipt of the infrastructure acquirer's request, the infrastructure provider is required to complete the feasibility study and provide its decision to the infrastructure acquirer in writing on any of the following-

- (a) confirming the availability of the facilities and proposal to start the procedure to complete a sharing agreement;
- (b) confirming the availability of the facilities with suggested amendments to the application and proposed date to start the procedure to complete a sharing agreement;
- (c) rejecting a sharing request.

(3) After negotiation of sharing agreement, parties are required to sign the sharing agreement within twenty one working days from-

- (a) the date of the acceptance letter of the infrastructure provider; or
- (b) the date the infrastructure provider receives the letter from the infrastructure acquirer accepting the suggested amendments.

(4) The infrastructure sharing agreement shall be submitted to the Authority for approval.

Mandate
on co-
location

9.-(1) The Authority may direct network facilities licensee to enter into co-location arrangements.

(2) An infrastructure provider who has been mandated to provide co-location to network facilities shall be entitled to

levy a charge for such co-location which will allow recovery of economic costs and ensure a reasonable rate of return.

Non-discrimination treatment

- 10.-(1) An infrastructure provider shall treat each-
- (a) infrastructure acquirer on a basis that is non-discriminatory in its provision of network facilities and no less favorable than the treatment which the infrastructure provider affords to its subsidiaries, its affiliates, or other similarly situated communications service providers;
 - (b) communication network service of an infrastructure acquirer on a basis that is non-discriminatory and no less favorable than the treatment which the infrastructure provider affords to the electronic communications network services of itself, its affiliates, or other similarly situated communications licensees; and
 - (c) customer of an infrastructure acquirer on a basis that is non-discriminatory and no less favourable than the treatment which the infrastructure provider affords to its own customers of the customers of its subsidiaries, its affiliates, or other similarly situated communications licensees.

Refusal of co-location

11.-(1) An infrastructure provider may refuse unreasonable requests for co-location or infrastructure sharing to its network facilities.

(2) A request for co-location to network facilities shall be unreasonable if it-

- (a) is not economically or technically feasible;
- (b) may result in the infrastructure provider being unduly prejudiced;
- (c) infrastructure sharing would endanger life or safety or irreparable damage property or threaten the integrity, security or interoperability of public

- electronic communications network and service;
- (d) there is insufficient capacity.

Obligations of dominant licensee

12.-(1) The Authority may impose any access-related obligations on a licensee declared to hold a dominant position in a relevant market.

(2) Where such other access-related obligations are imposed, the Authority shall provide written reasons to the licensee.

(3) The Authority may review obligations imposed on licensees under these Regulations when it conducts its periodic reviews under the methodology for determining market power.

(4) The Authority shall, in complying with the provision of sub-regulation (3), consider whether to amend or withdraw any obligations that are in force and whether to impose additional obligations.

(5) A licensee who has been declared by the Authority to hold dominant position in a relevant market shall-

- (a) continue to offer, and not withdraw access to communications networks and communications infrastructure already granted, except on reasons determined by the Authority;
- (b) negotiate in good faith with access acquirer.

(6) Where a licensee is declared to hold a dominant position in a relevant market, the authority may additionally require it to-

- (a) give other licensees access to specified elements of either or both of the licenses' communications networks and communications facilities;
- (b) provide access acquirer with access services;
- (c) provide communications services as may be specified by the authority on a wholesale basis for resale by other licensees;
- (d) grant open access to technical interfaces, protocols or other key technologies that are indispensable for

- the interoperability of communications services or virtual network services;
- (e) provide specified access services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services; and
 - (f) provide access to operational support systems or similar software systems.
- (7) Where a licensee is declared to hold a dominant position in a relevant market, the Authority may require it to provide various Access services in relation to any of the following communications networks' elements or communications facilities-
- (a) wholesale leased lines;
 - (b) international capacity;
 - (c) international inbound and outbound call termination facilities;
 - (d) wholesale digital subscriber lines;
 - (e) unbundled local loops;
 - (f) main distribution frames or concentrators for bit stream access or digital subscriber line co-location;
 - (g) dark fibre; and
 - (h) narrowband dial-up facilities.
- (8) The Authority may, by way of a determination, amend the list of communications networks' facilities or for which access services may be required to be provided by licensed operators.
- (9) When considering whether to impose any access obligation, the Authority shall take into account-
- (a) the technical and economic viability of installing competing facilities, in light of the level and rate of market development;
 - (b) the feasibility and efficiency of providing the form of Access, particularly in light of the available capacity; and

- (c) the Authority's duty to safeguard and encourage the long-term development of competition and the long-term interests of end users.

Facilities charging structure

13.-(1) Charges for the provision of network tangible or intangible facilities shall be structured to distinguish and separately price the following aspects-

- (a) the establishment and implementation of the facilities including testing;
- (b) rental charges for use of tangible facilities, equipment and resources;
- (c) variable charges for ancilliary and supplementary services.

(2) The infrastructure acquirer shall be obliged to pay to the infrastructure provider a payment to compensate for the proportion of costs efficiently incurred by the infrastructure provider in carrying out the upgrade and alteration works to the facilities requested for sharing.

Content of co-location and infrastructure sharing agreements

14.-(1) The co-locations and infrastructure sharing agreements shall address each of the following matters unless it is not relevant to the access that has been requested including without limitation the following-

- (a) the scope and specification of facilities to be provided;
- (b) co-location to all ancillary or supplementary services or co-location 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;
- (k) dispute resolution procedures.

(2) The co-location agreement shall contain all the terms and conditions of the agreement between the parties related to co-location matters and no amendments, alterations, additions, variations or consensual cancellations shall be of any force or effect unless they are reduced to writing and signed by both parties.

(3) The infrastructure sharing services detailed in the co-location and infrastructure sharing agreement shall be sufficiently unbundled to ensure that infrastructure provider does not provide network elements or infrastructure sharing services that are neither required nor requested by the infrastructure acquirer.

(4) The information contained in an agreement document shall not be designated as confidential to the parties.

(5) The Authority may, in its discretion, direct a licensee to amend the agreement to reflect the terms of its license, relevant rules, regulations decisions, directives or standards and other guidelines which the Authority may prescribe.

Limitation
of co-
location or
infrastru-
cture
sharing

15. The licensee shall not be required to provide co-location or infrastructure sharing where in the Authority view it is not reasonable to require the licensee to provide co-location or infrastructure sharing including, but not limited to circumstances where it-

- (a) is beyond the licensee's control; or
- (b) is not reasonably practicable.

Capacity
or space
issues

16.-(1) Capacity or space shall be considered available where the existing facility or site is technically and physically capable of accommodating extra communications facilities and equipment.

(2) The infrastructure provider shall have the right to reserve reasonable capacity or space for future use, provided there is evidence showing a clear development plan to use such capacity or space within one year of reserving the capacity or space.

(3) An infrastructure provider shall remove from any space or facility that may be shared any unnecessary, abandoned or obsolete equipment or facilities which is or will be no longer necessary for any sharing purposes.

Rights and
obligations

17.-(1) Every infrastructure licensee shall have right and, when requested by other licensees, an obligation to negotiate co-location and infrastructure sharing services in order to ensure the provision and operability of services throughout the country.

(2) The infrastructure acquirer shall be responsible for the reasonable costs incurred by facility provider in processing the request.

(3) The facility provider shall acknowledge receipt of each request and provide the Authority with the copy of acknowledgement receipt within twenty one working days.

(4) The following actions or practices shall be construed to violate the obligation to act in good faith if they are-

- (a) intentionally misleading or coercing another party into entering an agreement that it would otherwise not have been made;
- (b) intentionally refusing to provide or delaying the provision of information necessary to reach an agreement;
- (c) obstructing or delaying negotiations, the provision

of services according to a final co-location and infrastructure sharing agreement, or the resolution of pre-contract disputes.

Infra-
structure
sharing

18. In promoting the efficient, economic and harmonized utilization of infrastructure, the Authority may inquire into and require modification of any agreement or arrangement entered into between licensees who have the effect of limiting either efficient and harmonized utilization of infrastructure or the promotion of competition in the provision of public electronic communication services or electronic communications networks.

Performa-
nce
measures

19. The Authority may, from time to time, require information to be filed by infrastructure providers for purposes of evaluating the provision of infrastructure sharing services to infrastructure acquirers on a non-discriminatory basis.

Penalties

20. Any person who contravenes the provisions of these Regulations commits an offence and shall, upon conviction, be liable to a fine not less than five million shillings or to imprisonment for a period not exceeding three months or to both.

Revocation
GN No.
266 of
2005.

21. The Tanzania Communications (Access and Facilities) Regulations are hereby revoked.

Dar es Salaam
29th November, 2011

MAKAME M. MBARAWA
*Minister for Communication,
Science and Technology*