

IN EXERCISE of the powers conferred by sections 27, 38, 46K and 66 of the Kenya Information and Communications Act, 1998, the Minister for Information and Communications, in consultation with the Communications Commission of Kenya, makes the following Regulations:—

THE KENYA INFORMATION AND COMMUNICATIONS (TARIFF) REGULATIONS, 2010

1. Citation.

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

2. Interpretation.

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) where the licensee has been declared dominant in the relevant market or market segment;

“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.

3. Purpose and object.

(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;
- (c) Provide market incentives for licensees to operate efficiently; and
- (d) Promote fair competition.

4. Tariffs setting.

(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; and
- (c) non-discriminatory and shall guarantee equality of treatment.

(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. Filing of tariff rates.

(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.

6. Tariff approval for regulated services.

(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) 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) The Commission may on its own motion, set or review tariffs or tariff structures for a regulated service.

(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) A dominant telecommunications service provider shall comply with guidelines that relate to regulated services that are issued by the Commission.

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

7. Review of tariffs for regulated services.

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

(2) The obligations that relate to the provision of a regulated service shall cease when a licensee ceases to be dominant or the market or the market segment becomes competitive.

8. Notice on review of tariffs for regulated services.

(1) The Commission shall, at least thirty days after the receiving an application for tariff review under these Regulations, place a notice in the Gazette and in such other manner as it considers necessary.

(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 under paragraph (2) (c).

9. Decision on tariff revision application.

(1) The Commission may approve or reject the tariffs proposed a regulated service.

(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.

10. Investigation of tariffs.

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

(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 investigation, the Commission is of the view that the tariffs should adjusted, it may adjust the tariff.

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.

11. Promotions and special offers.

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

(2) A licensee shall, at least seven days before the date of the implementation of a promotion or special offer, file all details of the promotions or special offer with the Commission.

(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) A licensee shall submit a statement of compliance to paragraph (3) to the Commission.

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

12. Offence and penalty.

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.

13. Transitional provisions.

(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.

Made on the 23rd March, 2010

Samuel Poghio,
Minister for Information and Communications.