

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

**THE KENYA INFORMATION AND COMMUNICATIONS (RADIO  
COMMUNICATIONS AND FREQUENCY SPECTRUM) REGULATIONS,  
2010**

1. Citation.

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

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“authorised frequency” means the frequency assigned to a station by the Commission;

“harmful interference” means radiation or induction which—

(a) endangers the functioning of a radio-navigation service or of a safety service; or

(b) obstructs or repeatedly interrupts an authorised radio or telecommunication service;

“licensee” means a person licensed under the Act;

“network” means two or more stations operated by a person and used or intended to be used in communication with one another;

“radio emission” means any emission of electromagnetic energy of frequencies currently less than three hundred Gigahertz without continuous artificial guide or such other frequencies as the Commission may from time to time publish in the gazette;

“spectrum assignment” means the authorization by the Commission to any licensee specific frequencies or frequency pairs for use within a given allocation, at specified geographic location;

“station” means a transmitter, receiver, a combination of transmitters and receivers or any accessory thereto which is used or intended to be used for radio-communication;

“transmitter” means anything, irrespective of its use, function or the purpose of its design, that is capable of radio emission;

“user” means any person or body of persons who uses or operates radio communication services.

### 3. Purpose and Object.

The purpose and objective of these Regulations is to-

(a) promote and support the orderly development and efficient operation of radio communication systems and services to meet the country’s socio-economic, security and cultural needs;

(b) ensure proper planning, utilization and management of the spectrum resource in accordance with the Act, Government of Kenya Policy objectives, international agreements;

(c) promote the efficient use of frequency spectrum resource through the adoption of latest technical advances and efficient spectrum allocation and management technology based on operational requirements and technical viability;

(d) ensure the equitable and fair allocation and assignment of spectrum to benefit the maximum number of users.

### 4. Eligibility for licenses.

The Commission shall publish guidelines that shall specify the persons eligible and eligibility criteria for the grant of spectrum licences from time to time.

### 5. General licensing conditions.

(1) A person shall not possess, establish, install or use any radio communication station which requires licensing under these Regulations in any place or on board any local vessel, aircraft or vehicle, unless that person has a valid licence granted by the Commission.

(2) A radio communication licence shall not confer any ownership rights of the frequency on the licensee.

(3) A licensee shall not transfer frequencies assigned and the rights therein without the written consent of the Commission.

(4) A licensee shall comply with the provisions of the International Telecommunications Convention.

(5) Where the authorization is for a period not exceeding one month, the Commission may grant temporary authorization for the utilization of the frequency spectrum and the minimum applicable fee will be for a period of one month.

#### 6. Application criteria for approval.

(1) The Commission shall, when considering an application for frequency assignment, take into consideration—

(a) spectrum availability for the type of service and proposed location;

(b) whether the proposed service can be satisfied by any other means of communication;

(c) the distress and safety radio communication services which require protection from harmful interference; and

(d) the current technical advances that ensures the most efficient spectrum use.

(2) The Commission may assign a frequency or frequencies to the applicant, and shall for that purpose take into account all technical data of the equipment and associated accessories that the applicant is proposing to use.

#### 7. Assignment of frequencies.

(1) The Commission may assign frequencies when it is satisfied that such assignment will not cause harmful interference to any station or licensee operating in accordance with the Kenya table of frequency allocations.

(2) A person licensed to operate and provide radio communication systems and services shall apply to the Commission, for the assignment of the necessary frequencies.

(3) Where the Commission is satisfied with an application, it may assign the applicant a frequency, which the applicant shall use in accordance with the

prescribed technical and operating parameters.

(4) Where the frequencies applied for are not available, the Commission may assign frequencies in an alternative frequency band.

(5) The Commission may impose such conditions as it may consider necessary for the use of the assigned frequencies.

#### 8. Obligations of licensees.

(1) A licensee who has been assigned frequencies bands for use shall—

(a) maintain and provide, at the Commission's request, an inventory of frequencies assigned;

(b) keep the licence in force by regular payment of annual fees prescribed by the Commission from time to time;

(c) put into use the assigned frequencies within the period specified by the Commission;

(d) use such measures as may be prescribed by the Commission to eliminate unauthorized emissions, harmful interference or illegal use of the spectrum;

(e) optimize the utilization of frequency spectrum resource in the manner prescribed by the Commission from time to time; and

(f) implement all the measures prescribed by the Commission from time to time.

(2) The Commission may where it considers it necessary, require a licensee to migrate to a new frequency band.

(3) The Commission shall implement the migration through an arrangement that shall not impose unreasonable burden to the licensee involved.

(4) A licensee shall not make material change to a licensed station or change the station parameters specified in the licence, without a written authorization from the Commission.

(5) A licensee shall require the written consent of the Commission where a licensee proposes to-

(a) increase the height of a structure supporting the radiating portion of the antenna;

(b) relocate an antenna where such relocation would involve a change in the geographic co-ordinates of latitude or longitude by as much as one second, or relocation involves a change in street address;

(c) change in antenna parameters, including height, number of antenna elements, radiation pattern or polarization.

(6) All licensees shall, unless exempted by the terms of authorization, transmit the assigned call sign at the end of each complete transmission.

(7) The transmission of the call sign at the end of each transmission shall not be required in cases of projects requiring continuous, frequent or extended use of the transmitting apparatus, if, during the periods and in connection with the use, the call sign is transmitted at least once every thirty minutes.

#### 9. Sharing of frequencies.

(1) The Commission may, where necessary, require a licensee to share a frequency.

(2) The Commission shall implement the sharing through an arrangement that shall not impose unreasonable burden to the licensee involved.

#### 10. Frequency spectrum pricing.

(1) The Commission may from time to time prescribe the methods of determining frequency spectrum pricing.

(2) The Commission shall not avail frequency spectrum licences to a licensee unless the licensee has paid frequency spectrum licence fees and complies with the conditions imposed by the Commission.

(3) The Commission may recall frequencies assignments that have not been utilized within the period specified in the licence.

(4) Where a frequency assignment is recalled for non-utilization, the licence fee paid in accordance with paragraph (2) shall not be refunded.

### 11. Pricing parameters.

(1) The Commission shall adopt a pricing formula that reflects the economic value of frequency spectrum in order to encourage efficient use of frequency spectrum and stimulate growth.

(2) The pricing formula adopted under paragraph formula shall take into account the following factors—

(a) size of spectrum assigned;

(b) frequency band and level of congestion within the band;

(c) market demand;

(d) power output and;

(e) geographical usage; and

(f) such other factors as the Commission may from time to time determine

(3) The Commission shall review and publish the pricing formula for frequency spectrum at least once in every three years.

### 12. Type approval and inspection.

(1) A licensee shall not use any frequency spectrum unless the radio equipment in respect of which an assignment is sought has been duly type approved or type accepted by the Commission.

(2) Upon installation of the radio communication system, the licensee shall ensure that the system is inspected and certified by the Commission to be operating in accordance with the Act and the Regulations made thereunder.

### 13. Monitoring and inspection.

(1) The Commission shall monitor all emissions from licensed stations to ensure the efficient utilization and compliance with licensed parameters.

(2) The licensee shall permit unlimited access by the Commission's authorized officers to the licensee's installations at reasonable times for the purposes of inspection and verification of operational parameters.

(3) The owners and management agents of buildings shall—

(a) require proof of licences and authorization from the Commission before authorizing the installation of any radio communication systems in their premises;

(b) keep records of all equipment installations; and

(c) permit unlimited access by the Commission's authorized officers to the licensees' installations for the purposes of inspection and verification of operational parameters.

(4) A licensee shall, when requested to do so, make available all records that relate to a station's operations to the Commission's authorized officers.

(5) A licensee shall report any interference experienced to the Commission, in writing.

(6) Where the Commission, pursuant to a report made to it or on its own accord, is of the view that certain measures need to be undertaken to avoid or mitigate any interference, the Commission may require a licensee or a class of licensees, in writing, to take the measures specified.

14. Inspection, siting and maintenance of illuminated towers and control equipment.

(1) A licensee of a radio station that has an antenna structure shall paint and illuminate the tower, perform routine inspections and maintenance of the tower to ensure that it is properly marked and illuminated and on any other associated control equipment, required.

(2) All licensees shall comply with directions given by the Commission in consultation with the government agency responsible for civil aviation, in matters relating to antenna towers.

(3) All licensees shall ensure that the siting of antennas and towers comply with all applicable laws to which they are subject to.

(4) All licensees shall ensure that the siting and installation of transmitters, antennas and towers comply with the laws and guidelines relating to radiation limits that may be in force from time to time.

#### 15. Radio spectrum management and monitoring facilities.

Where the Commission is of the opinion that a radio operation or structure may cause harmful interference to its operation, the Commission may restrict the installation or operation of radio communications apparatus or erection of structures within a specified area from the Commission's radio monitoring facilities.

#### 16. Disposal of uncollected goods.

(1) The Commission may disable or confiscate any radio communication apparatus or stations operated in contravention of the conditions of its licence or in contravention of the Act and these Regulations.

(2) The confiscated equipment or apparatus may, if not collected by a licensee, be disposed of in accordance with laws governing disposal of uncollected goods.

#### 17. Misuse of frequencies.

(1) A licensee who uses any radio communication station for or in furtherance of unlawful conduct commits an offence and is liable, upon conviction, to a fine not exceeding One Million Kenya Shillings or to imprisonment for a term not exceeding five years or both.

(2) Any person who, upon receiving a request for information concerning the use of frequency spectrum from the Commission, fails to disclose the information or gives false or misleading information commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or both.

#### 18. Amount of frequencies

The Commission may prescribe the minimum or maximum number or amount of radio communication channels or frequencies which any user or licensee may be granted.

#### 19. Revocation of Part VI of L.N 68 of 2001

Part VI of the Kenya Communications Regulations 2001 is revoked.

Dated the 14th April, 2010

*Samuel Poghiso,  
Minister for Information and Communications.*