

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 Communication, in consultation with the Communications Commission of Kenya, makes the following Regulations:—

**THE KENYA INFORMATION AND COMMUNICATIONS
(COMPLIANCE MONITORING, INSPECTIONS AND ENFORCEMENT)
REGULATIONS, 2010**

1. Citation.

These Regulations may be cited as the Kenya Information and Communications (Compliance Monitoring, Inspections and Enforcement) Regulations, 2010.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“contravention” means, non-compliance with or breach of any of the conditions of a licence and the provisions of the Act or Regulations;

“enforcement” includes administrative actions of the Commission and any other action taken for the purposes of ensuring compliance with of the Act or Regulations;

“licensee” means any person licensed under the Act;

“monitoring” means the powers of the Commission to verify compliance with the provisions of the Act, Regulations and Licenses.

3. Commission’s monitoring and enforcement powers.

The Commission shall monitor and enforce compliance with the Act, Regulations and conditions of licences by all licensees.

4. Guidelines.

The Commission shall issue guidelines on installation and maintenance of communication infrastructure.

5. Principles and procedures of monitoring and enforcement.

When carrying out its compliance, monitoring and enforcement duties, the Commission—

(a) shall be guided by the Act, Regulations and the following principles—

(i) transparency, fairness and non-discrimination;

(ii) the need to provide modern, qualitative, affordable and readily available communications systems and services in Kenya;

(iii) the need to promote fair competition and investment in the information and communications technology industry;

(iv) the need to promote and improve the quality of service provided by licensees in Kenya; and

(v) any other principles that the Commission may from time to time consider necessary and in the public interest;

(b) may issue directions in writing to any person to secure compliance with the Act and these Regulations;

(c) may enlist and rely on the assistance of law enforcement agencies and other relevant departments, ministries and Government of Kenya and international agencies, as provided in the Act; and

(d) may appoint a person to inquire into and report to the Commission on any matter pending before it and upon the receipt of a report the Commission may-

(i) give directions on the procedures for conducting such inquiries; and

(ii) the person or persons appointed to carry out such inquiries shall submit a report to the Commission in the form and manner as the Commission may direct.

6. Commencement of the processes for monitoring and enforcement.

(1) The Commission shall exercise its powers under these Regulations—

(a) on its own initiative; or

(b) in response to a complaint made by a person or on behalf of a person whom the Commission considers to have an interest in the matter which is the subject of representation.

7. Licensees duty to prepare, submit and maintain reports.

(1) Every licensee shall, after every quarter and at the end of its financial year, prepare and submit to the Commission in the prescribed form, an annual report of its operations.

(2) Every licensee shall prepare and submit to the Commission a quarterly report of its operations and the extent to which the conditions of their licence have been adhered to.

(3) A licensee may request the Commission to treat any information contained in a report presented to the Commission under these Regulations as confidential business information that may not be disclosed to third parties other than government agencies.

8. Investigations by the Commission.

(1) The Commission may commence investigations on a licensee's compliance where it has reasonable cause to believe that a licensee has failed to comply—

(a) with the construction, installation or service provision requirements issued by the Commission; or

(b) has contravened any condition of the licence issued by the Commission; or

(c) with any of the performance obligations under the Act, Regulations or its licence conditions.

(2) The Commission, shall in carrying out investigations on any matter under the Act or Regulations, take into account the following factors—

(a) any representation made to the Commission by or on behalf of a person whom the Commission considers to have an interest in the matter which is the subject of the representation; or

(b) a complaint by any customer of the licensee or a member of the public to the Commission in relating to the services provided by a licensee; and

(c) the Commission's necessary inquiries and appropriate measures to be taken as the circumstances of the case may require.

(3) A licensee shall keep proper records in such manner as the Commission may prescribe, and shall allow the Commission to access the records for purposes of carrying out its mandate under the Act.

(4) The Commission may request a licensee to periodically submit reports, statistics, data and any other information that it considers necessary.

(5) When making any request under paragraph (4), the Commission shall ensure that it does not impose undue burden on the licensee in procuring and furnishing such information.

(6) The Commission may from time to time publish compliance or investigation reports in the Gazette, as is necessary.

9. Compliance information.

(1) Where after an investigation by the Commission, on its own motion or subsequent to a complaint made by a third party, the Commission is satisfied that a licensee is contravening or has contravened any of the conditions of a licence, the Commission shall notify the licensee, in writing.

(2) The Commission shall, in the notification sent to a licensee under paragraph (1), specify the acts or omissions which, in its opinion, constitute a contravention of the conditions of the licence and require the licensee to remedy the contravention within, unless otherwise specified by the Commission in writing, a period of three months.

(3) A licensee shall, after remedying the contravention specified in the notification, prove to the Commission that it has sustainably remedied of the contravention.

(4) If a licensee fails, without reasonable cause, to remedy the contravention referred to in paragraph (1) within the required period, the licensee shall be liable to a penalty of five hundred thousand shillings and such penalty shall be a debt owed to the Commission and recoverable summarily.

(5) Any licensee aggrieved by the decision of the Commission made under these Regulations may appeal to the Tribunal within fifteen days of receipt of notification by the Commission in that regard.

10. Payment of penalty

(1) Any penalty imposed by the Commission pursuant to the Act or Regulations shall become due and payable by the contravening person within fourteen days from the date of receipt of the notification in that regard by the Commission to the contravening person.

(2) The Commission may in addition to the penalty impose any other enforcement sanctions under the Act or Regulations on a licensee.

11. Appointment of Inspectors.

(1) The Commission may appoint inspectors for the purposes of verifying compliance with the provisions of the Act and Regulations.

(2) The Commission shall issue all inspectors appointed under these Regulations with identity cards which shall be produced by the inspectors at the request of any person in charge of any place that is to be inspected.

(3) An inspector may at all reasonable times enter into any premises owned or controlled by a licensee in which the inspector has reasonable grounds to believe that has any document, information, or apparatus relevant for ensuring compliance with the Act or these Regulations and to examine such document, information or apparatus or remove the document, information or apparatus for examination or reproduction as the case may be.

(4) Where an inspector has reason to believe that there is any communication equipment or interference causing apparatus, he may examine such equipment, apparatus, logs, books, reports, data, records, documents or other papers and remove such information, document, apparatus, or equipment for examination or reproduction.

(5) An inspector shall record and sign for any information, document, article, apparatus or equipment removed by him or her and shall leave a copy of the document recording that removal.

(6) For the purpose of exercising, performing and discharging the powers, functions or duties of the Commission under the Act or these Regulations an inspector, may by notice in writing require any person to-

(a) furnish him or her within such time and at such place as may be specified in the notice, any document specified or described in the notice which is in the custody or

control of such a person;

(b) produce for inspection any book, return, account or record in his possession or control; or

(c) produce for inspection any equipment, apparatus or systems.

(7) Any person who willfully obstructs an inspector in the performance of his duties commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

12. Right of Access.

(1) All licensees and authorized persons shall allow inspectors to access their facilities at reasonable times for the purpose of enabling the inspectors to carry out inspection and verification, including visits to premises and facilities and the inspection of equipment and documents.

(2) An inspector shall not have the authority to compel any person, for any reason, to produce any document which he could not be compelled to produce in any civil proceedings. .

13. Civil Proceedings.

Without prejudice to the provisions of the Act or Regulations, the Commission may, in the exercise of its powers pursuant to this Regulations and the Act, institute civil proceedings against any person for remedies that may include injunctive relief, recovery of penalties, specific performance or pecuniary awards or damages.

14. Revocation of Part XII of LN 68 of 2001.

Part XII of the Kenya Communication Regulations 2001 is hereby revoked.

Made on the 23rd March, 2010

Samuel Poghiso,
Minister for Information and Communications