

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 57 OF 2013

The Information and Communication Technologies Act
(Act No. 15 of 2009)**The Information and Communication Technologies**
(Access) Regulations, 2013

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IN EXERCISE of the powers contained in section *ninety-one* of the Information and Communication Technologies Act, 2009, the following Regulations are hereby made:

PART I
PRELIMINARY

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|---|----------------|
| 1. These Regulations may be cited as the Information and Communication Technologies (Access) Regulations, 2013. | Title |
| 2. In these Regulations, unless the context otherwise requires | Interpretation |
- “access” means the making available, by one licensee, of electronic communications networks, or parts thereof, to another licensee, for the purpose of enabling the other licensee to—
- (a) construct, maintain or operate an electronic communications network; and
- (b) provide an electronic communications service;
- “access number” means a special code or number used to access electronic communications services;
- “Authority” means the Zambia Information and Communications Technology Authority provided for under section *four* of the Act;
- “co-location” has the meaning assigned to it in the Act;
- “competitor” means an entity providing the kind of service or similar service provided by another entity or other entities such that the entities between or among themselves are actual or potential business rivals;
- “cost-accounting system” means an accounting system designed to identify, measure and control costs;
- “cost-based tariffs” means tariffs priced according to the cost of supplying the service;
- “electronic communications apparatus” has the meaning assigned to it in the Act;
- “electronic communications service” has the meaning assigned to it in the Act;
- “emergency services” means services that are essential for the purposes of saving human life or avoiding destruction to property;

“equitable access to service” means the provision of a service in a manner that is not less favourable to any person or any class of persons entitled to it by way of tariff charged, quality of service offered or any other relevant factors;

“interconnection” has the meaning assigned to it in the Act;

“interconnection charge” means the price charged by a network licensee to another licensee for the purpose of interconnecting to the network;

“interconnection licensee” means a licensee providing or requesting access to infrastructure for the purpose of the licensee providing electronic communication services for terminal or transit destination points;

“international numbering scheme” means a standard according to the International Telecommunications Union E. 64 recommendation for numbering and dialing procedures used for making international calls and consisting of an international prefix, the country code and the national number;

“licensee” means a holder of a network licence, service licence, class licence or individual licence;

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“national numbering plan” has the meaning assigned to it in the Information and Communication Technologies (National Numbering Plan) Regulations, 2010;

“network licensee” means a licensee who owns and runs a network infrastructure for the provision of electronic communications services;

“non discrimination” means the principle by which a licensee provides equal and favourable technical and commercial services to the competitor as it would apply to itself, its subsidiary or its affiliates in the delivery of service;

“party” means a party to an interconnection agreement;

“public land mobile network” means a wireless electronic communications network intended for use by terrestrial mobile subscribers;

“public-switched telephone network” means the collection interconnection voice-oriented public telephone networks, both commercial and Government-owned;

“public value added service provider” means a supplier of value added services, including normal retail calls and line rentals, domestic and international leased circuits or very small aperture terminal ancillary services, operator services, directory and emergency services;

“quality of service” means the capability of a network to provide better service to selected network traffic over various technologies to a standard which ensures that different priority is provided to different applications, user or data flows to guarantee a determined acceptable level of end-to-end performance;

“re-sale” means the offering by an electronic communication service provider of electronic communication services obtained from another electronic communication service provider to users for profit;

“space” means available capacity on electronic communications apparatus to accommodate another licensee entrant;

“unbundling” means the provision of access by a network licensee to the interconnecting licensee in a manner that gives the interconnecting licensee the liberty to buy, lease or use only such aspects of the network licensee’s network as the interconnecting licensee requests and does not force the interconnecting licensee to buy, lease or use elements that the interconnecting licensee does not require for purposes of obtaining access;

“universal access” has the meaning assigned to it in the Act; and

“virtual collocation” has the meaning assigned to it in the Act.

3. These Regulations apply to interconnection matters in relation to the following networks: Scope

- (a) public land mobile networks;
- (b) public-switched telephone networks;
- (c) public value added service providers; and
- (d) any other licensed public service providers.

PART II

INTERCONNECTION

Filing of
interconnection
agreement

4. (1) A licensee intending to enter into an agreement for interconnection in respect of providing an electronic communications service to the public may request another licensee for the negotiation of an interconnection agreement.

(2) An interconnection licensee shall submit an interconnection agreement to the Authority for approval within seven days of entering into the inter-connection agreement.

(3) The Authority shall approve or reject an interconnection agreement within twenty days of the submission of the agreement.

(4) An interconnection agreement shall not be implemented without the prior written approval of the Authority.

Conditions
of
interconnection
agreement

5. (1) An interconnection agreement shall—

(a) be based on principles of transparency and non-discrimination;

(b) contain an undertaking by a network licensee that the network licensee shall not apply less favourable technical and commercial conditions to any competitor than it would apply to itself, its subsidiary or affiliate in the delivery of services;

(c) contain an undertaking by a party to ensure fair treatment of services originating, transiting or terminating on the other party's network;

(d) contain an undertaking by a party to offer the interconnecting party available capacity to ensure that the interconnecting party renders similar levels of quality of service; and

(e) contain a provision that the interconnecting parties have agreed on interconnection charges for the delivery of electronic communication services.

(2) An interconnection agreement shall contain a provision that the interconnecting parties shall, in implementing the interconnection agreement, comply with the interconnection guidelines issued by the Authority.

Service
provision

6. A party shall ensure that—

(a) the integrity of the public electronic communications network is maintained by remaining operational at all times;

- (b) inter-operability of services is maintained by adhering to the inter-operability guidelines issued by the Authority;
- (c) in the event of a breakdown of the network, service provision to the public is restored as soon as practicable in conformity with the quality of service guidelines issued by the Authority;
- (d) in the event that the service provided to the public is not available the highest level of service is maintained to meet emergency services; and
- (e) information stored by either party on an electronic communications network is protected and treated with confidentiality.

7. (1) An interconnection licensee shall, when negotiating an interconnection agreement, provide the necessary details in relation to a point of interconnection to the network licensee to enable the network licensee to determine the electronic communications apparatus or conditions required and estimate the costs of establishing the point of interconnection.

Cost of
interconnection

(2) A licensee requesting interconnection to an existing electronic communications apparatus shall meet the licensee's portion of the interconnection cost.

8. A party shall establish and maintain interconnection points at any technically feasible point of the licensee's electronic communications apparatus.

Points of
interconnection

PART III ACCESS

9. (1) A licensee may request another licensee for an access agreement.

Access
agreement

(2) A licensee who receives a request for an access agreement under sub-regulation (1) may decline to provide access to the requesting licensee if the licensee has reasonable grounds to believe that—

- (a) the access requested is not reasonably feasible;
- (b) the access requested is likely to lead to harmful interference with the electronic communications apparatus of the licensee; or
- (c) the requesting licensee does not appear to hold the same category of licence.

(3) A licensee shall, where the licensee refuses access to a requesting licensee notify the requesting licensee of the decision, in writing, copied to the Authority, and specify the reasons for the decision.

Network
access

10. (1) A licensee shall—

(a) install an electronic communications apparatus on, over or under any public or private land and shall, where feasible, share the electronic communications apparatus with other licensees where physical, technical and economic constraints deprive the other licensees of access to a viable alternative; and

(b) provide access to an electronic communications apparatus, land or buildings to any other entities as part of the licensee's right-of-way, except that the parties shall agree on the commercial and technical details.

(2) A licensee shall provide non-discriminatory access to an electronic communications apparatus on an unbundled basis to any requesting licensee at any technically feasible point on rates, terms and conditions that are just and reasonable for service provision.

Network
access codes

11. A licensee shall be identified by specific network access codes issued by the Authority.

PART IV CO-LOCATION

Co-location
agreement

12. (1) A licensee wishing to enter into an agreement for co-location of apparatus on, over or under public or private land, or to use private property, for the purpose of providing electronic communications services to the public, shall, where requested, in writing, by another licensee negotiate an agreement for co-location with that other licensee.

(2) A co-location agreement shall contain a provision that the co-location parties shall, in implementing the co-location agreement, comply with the co-location guidelines issued by the Authority.

(3) A party shall file a co-location agreement with the Authority within seven days of making the co-location agreement.

Principles of
co-location

13. (1) A co-location agreement shall—

(a) be based on principles of transparency and non-discrimination;

(b) contain an undertaking by a network licensee that the network licensee shall not apply less favourable technical

and commercial conditions to any competitor than it would apply to itself, its subsidiary or affiliate in the delivery of services;

- (c) contain an undertaking by a party to ensure fair treatment of services originating, transiting or terminating on the other party's network;
- (d) contain an undertaking by a party to offer any co-location party available capacity on the network to ensure that a co-location party renders similar levels of quality of service; and
- (e) contain a provision that the co-location parties have agreed on interconnection charges for the delivery of electronic communications services.

14. (1) A licensee may refuse a request for a co location agreement if the licensee has reasonable grounds to believe that— Refusal of co-location

- (a) there is insufficient space for the co location requested and no suitable alternative, including virtual co location; or
- (b) the co location service requested is likely to lead to harmful interference.

(2) A licensee shall, where the licensee rejects a request for a co-location agreement, notify the requesting licensee of the decision, copied to the Authority, and specify the reasons for the decision.

15. (1) A licensee requesting co-location to an existing electronic communications apparatus shall meet its portion of the co-location cost. Cost of co-location

(2) A licensee shall, during the negotiation of a co-location agreement, provide all necessary details in relation to a point of co-location to a network licensee to enable the network licensee to determine what electronic communications apparatus or conditions may be required and estimate the costs of establishing the point of co-location.

16. A party shall establish and maintain co-location points at any technically feasible point of the licensee's electronic communications apparatus. Points of co-location

17. (1) A licensee shall— Conditions of co-location

- (a) file with the Authority a schedule of the fees proposed to be charged for co-location;

- (b) charge fees according to the filed schedule;
 - (c) provide reasonable, just and non-discriminatory rates, terms and conditions for co-location of electronic communications apparatus necessary for inter-connection or for providing access to the unbundled network elements of the network licensee; and
 - (d) agree with a licensee seeking co-location on an electronic communications apparatus that is necessary to complete the co-location.
- (2) A party to a co-location agreement shall ensure that—
- (a) the integrity of the public electronic communications network is maintained by remaining operational at all times;
 - (b) inter-operability of services is maintained by adhering to the inter-operability guidelines issued by the Authority;
 - (c) in the event of a breakdown of the network, service provision to the public is restored as soon as it is practicable in conformity with the quality of service guidelines issued by the Authority;
 - (d) the highest level of service is maintained to meet emergency services in the event that the service provided to the public is not available; and
 - (e) information stored on the network by either party to the co-location agreement is protected and treated with confidentiality.

PART V

GENERAL PROVISIONS

- Notification of requests for agreements
18. A licensee requesting for interconnection, access or co-location from another licensee shall notify the Authority of the details of the services requested, and the licensee from which the services are requested, within one day of making the request.
- Conduct of negotiations
19. (1) A licensee intending to offer another licensee an interconnection, access or co-location agreement shall prepare and maintain—
- (a) a reference offer identifying the interconnection, access or co-location services available;
 - (b) the locations at which the services are offered;

(c) the relevant technical information, the terms and conditions of the commercial agreement to provide the services; and

(d) the tariffs applicable for the service.

(2) The parties wishing to enter into an interconnection, access or co-location agreement shall enter into negotiation in good faith.

(3) A reference interconnection, access or co-location offer shall form the basis of negotiation and agreement where a valid request for interconnection, access or co-location services is made.

(4) Where a requested licensee fails to prepare a reference offer to facilitate entry into an agreement within the time limits prescribed in regulations 4 and 12, the requested licensee shall use a model offer prepared by the Authority as the basis of negotiation and agreement.

20. (1) An agreement shall be concluded within twenty days where interconnection services are requested and the reference interconnection offer of one licensee is acceptable to the other licensee without modification of the terms and conditions and the services would utilise existing points of interconnection.

Conclusion
of
agreements

(2) An agreement shall be concluded within forty-five days where new or modified interconnection services are requested, or services are required at points in the network which have not previously been utilised to offer interconnection services.

(3) An agreement shall be concluded within twenty days where access services are requested and the reference access offer of one licensee is acceptable to the other licensee without modification of the terms and conditions and the services utilise existing points of access.

(4) An agreement shall be concluded within forty-five days from where new or modified access services are required, or services are required at points in the network which have not previously been used to offer access services.

(5) An agreement shall be concluded within twenty days from when co location services have been requested and the reference co-location offer of one party is acceptable to the other party without modification of terms and conditions.

(6) An agreement shall be concluded within forty-five days where new or modified co location services are required, or services are required at points in the network which have not previously been used to offer co location services.

Implementation
of time
frames

21. (1) Where an interconnection, access or co location agreement is based on the parties relevant reference offer and uses, where appropriate, existing points of interconnection or access, the agreement shall be implemented within forty-five days of concluding the agreement, unless the parties agree otherwise.

(2) The implementation period, referred to in sub-regulation (1), shall be extended to sixty days where an interconnection, access or co location agreement requires one or more new points of interconnection or access to be prepared, or requires a new interconnection, access or co location service to be developed.

Determination
by
Authority
on
interconnection,
access or co-
location
services

22. (1) Where the licensees fail to conclude an agreement on interconnection, access or co-location within the time limits specified in regulations 4 and 12—

(a) either licensee may refer the matter to the Authority for determination; or

(b) the Authority may, in the absence of a referral from either of the parties, intervene and make a determination.

(2) Where a requested licensee refuses to provide the interconnection, access or co-location services requested or to provide the interconnection, access or co-location services at the location requested, either licensee may—

(a) notify the Authority of the refusal giving the reasons for the refusal; and

(b) request the Authority to confirm the refusal or make any other determination.

(3) The Authority shall, where a requested licensee refuses to provide interconnection, access or co-location services, investigate the reasons given for the refusal and either confirm the reasons, or determine that the reasons given are not acceptable.

(4) The Authority may, where the Authority does not confirm the reasons given by the requested licensee, determine the interconnection, access or co location services to be provided by the licensee and the applicable terms and conditions, and shall require the licensees to conclude an agreement on that basis.

Intervention
by Authority

23. (1) A licensee may request the Authority to intervene if negotiations for an agreement are not likely to be concluded within the time limits prescribed in these Regulations.

(2) The Authority may, on the request of a licensee under sub-regulation (1), determine the terms of the agreement on behalf of the parties.

(3) The Authority may, on its own motion, intervene in negotiations between licensees where it considers that negotiations are not likely to be concluded within the prescribed period, and may determine the terms of the agreement on behalf of the parties.

24. A party shall, for the purposes of sustaining the quality of inter-operability to the prescribed level—

Interoperability
of networks
and quality
of service

(a) notify the Authority and any licensee interconnecting in the electronic communications network of any planned change in the electronic communications network's capacity, technology, structure and configuration, including a change in the standards, signalling and protocol or other elements thereof, at least nine months before effecting the change or any shorter period agreed by the parties; and

(b) provide details relating to any change in the licensee's electronic communications network, including traffic forecast to the other party and the Authority.

25. Where the parties to an interconnection, access or co location agreement enter into a dispute in relation to that agreement and the parties have exhausted the dispute resolution process set out in the relevant agreement, the parties may invoke the interconnection dispute handling procedures issued by the Authority.

Dispute
process

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Y. MUKANGA,
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