

**RESULTS OF THE PUBLIC CONSULTATIONS ON ULF LICENCE MODIFICATIONS PUBLISHED  
ON 17<sup>TH</sup> OCTOBER AND 7<sup>TH</sup> NOVEMBER 2014 VIA GAZETTE NOTICE NOs. 7407 AND 8019  
RESPECTIVELY**

|    | <b>PREVIOUS LICENCE REQUIREMENTS</b> | <b>AFFECTED LICENCE, TERM/ CONDITION</b>    | <b>MODIFICATION MADE</b>  | <b>JUSTIFICATION FOR MODIFICATION</b>   | <b>STAKEHOLDER/LICENSSEE</b> | <b>STAKEHOLDERS' FEEDBACK ON THE PROPOSED MODIFICATION</b>  | <b>POSITIONS AGREED ON WITH STAKEHOLDERS AFTER ENGAGEMENT</b>  |
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| 1. | General                              | Nomenclature                                | Change from CCK to CAK  | Amendment necessary to comply with KICA amendment Act 2013.   | Kenya Commercial Bank        | <p>The lay out of the document appears to suggest that clauses 1-10 are the license terms and clauses 11 – 26 are license conditions. This appears to be an artificial distinction as terms and conditions mean one and the same thing.</p> <p>Do away with the distinction between license terms and license conditions and make the document one continuous document.</p> | The proposal is noted but the format will be maintained for now. No change considered by CA at the moment. |
| 2. | Date of the License                  | License Term<br>1 ASP, NFP,<br>CSP and IGSS | Amendment seeks to align the license dates; effective date, issuance date and renewal date to show historical aspects of the licenses | Amendment necessary to align the renewal date relative to license (effective) date and future renewal dates | No feedback                  | No feedback   | Proposed Modification was Adopted  |

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| 3. | Period of the License | License Term<br>2 ASP and CSP | Specify the new period of the license relative to commencement date taking into account 2 above      | Amendment necessary to clarify on the direction of future renewal or otherwise and the clarity of intentions under this term.             | No feedback | No feedback | Proposed Modification was Adopted |
| 4. | License Scope         | License Term<br>3<br><br>ASP  | The license scope includes "Broadcasting" yet there is an elaborate market structure in Broadcasting | Amendment necessary to remove "Broadcasting" in telecom licenses given the elaborate market segmentation in Broadcasting market structure | No feedback | No feedback | Proposed Modification was Adopted |

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| 5. | To obtain authorization for use of numbering resources. | NFP Term 4<br>IGSS Term 4<br>ASP Condition 9<br>CSP Condition 4 | Amendment introduces assignment of resources subject to terms and conditions defined by the Authority from time to time. Also increases scope of NFP-T3 to county instead of District | Provide flexibility for the Authority to vary assignment procedures, including but not limited to, the Auction as an assignment method. | No feedback           | No feedback   | Proposed Modification was Adopted  |
| 6. |   | CSP Term 6  |   |   | Kenya Commercial Bank | <p>With respect to approved devices, the obligation of the content service provider (CSP) should be to communicate to customers the type of device that has been approved for provision of the service. The content service provider would not be in a position to enforce compliance with usage of approved devices unless it is disseminating the same to the customers.</p> <p>Amend the clause to provide 2 alternatives</p> <ol style="list-style-type: none"> <li>1. An obligation to communicate the device type to customers;</li> <li>2. An obligation to disseminate the correct device type to the customers if the CSP is involved in dissemination.</li> </ol> | <p>The standards envisaged here are standards for the licensee's own systems to be connected to other licensee's systems and therefore the clause is still relevant as it is.</p> <p>Proposed Modification was Adopted</p> |

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| 7. | Utilization of resources | NFP and IGSS term 5<br><br>And ASP and CSP term 7 | Additional licence term added on use of authorized resources (spectrum and Numbering) only | Amendment necessary to introduce this aspect that has been lacking in the licenses and to provide basis for enforcement action in case of breach                           | No feedback  | No feedback  | Proposed Modification was Adopted   |
| 8. | License Term             | Term 6.1<br><br>NFP –T1                           | The word “Platforms” added   | To ensure that CSPs interconnect on with NFP-T1s is given due recognition as well as place dispute resolution between CSPs and NFPs under the interconnection regulations. | Airtel Networks Limited<br><br>AND<br><br>Wananchi Network Limited | Licence conditionv6.1 on NFP-TZ proposes amendment to include the word ‘platforms. which allows for interconnection between NFP’s and CSP’s irrespective of the nature of the CSP. Currently there is no interconnection between NFP’s and CSP’s. For interconnection between NFP’s and CSP’s to take place, there is need to establish whether this is technically feasible. In addition there is need to ensure that the CSP’s have the requisite interconnect billing capability to enable the implementation of such interconnections. More clarity or guidelines is required from the Authority on the circumstances under which interconnection between NFP’s and CSP’s should take place. | Interconnection is not defined by capability to bill. Interconnection should be looked at from the Interconnection Regulation point of view. The interconnection regulations does not specify billing capability as the prerequisite to being an interconnect party. It is further noted that CSPs are Licensees under the Act and hence the need to guarantee interconnection of the systems to the various networks.<br><br>Proposed Modification was Adopted |

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|     |              | Term 5.2 ASP and CSP  | Period of 30 days added  | To provide for a period within which a proposed new service is to be filed with the Authority                    | No feedback                   | No feedback   | Proposed Modification was Adopted  |
| 9.  | License Term | Term 7  | General penalty requirement added  | To provide a clause that makes every license term, condition or directive subject to penalization if contravened | No feedback                   | No feedback   | Proposed Modification was Adopted  |
| 10. | Licence Term | Licence Term 8<br><br>ASP, CSP, NFP, and IGSS Term 8.1 to 8.7 | Framework for proportionate application of penalty<br><br>Specific general guideline for | The clause provides for factors to be considered when applying penalty for                                       | 8<br><br>Telkom Kenya Limited | Delete in 8 the phrase 'directives issued by the Authority' | The Authority may consider issuing directives depending on the issue of non-compliance.<br><br>The word directive therefore remains relevant.<br><br>Proposed Modification was Adopted |

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|  |  |  | determination of the amount of penalty to be levied by the Authority, in case of license contravention, has been added. | breach of a licence | Wananchi Group Kenya Limited | <p>Clause 8 on NFPj-TZ, ASP and CSP: Proposes that " The Authority may impose penalties, for the contravention of the licence terms..."</p> <p>We propose that the Authority amends clause 8 by inserting the word proportionate between the words "impose" and "penalties" to ensure that the penalties so imposed by the Authority is proportionate to the nature of the contravention and to ensure that this concept and spirit is reflected in the license conditions. We therefore propose the clause to read as follows:</p> <p>The Authority may impose proportionate penalties for the contravention of any license terms, conditions or directive issued by the Authority, based on a consideration of several factors, which</p> <p>include, but are not limited to the following"</p> | <p>The aspect of proportionality is inherent in the sub clauses under this licence term. In considering the amount of penalty to issue, the applicable clauses that relates to the licensees non compliance will be considered and therefore no need to repeat proportionality.</p> <p>Proposed Modification was Adopted</p> |
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|  |  |  |  |   | <p>Airtel Networks Kenya Limited</p> <p>We would like to point out that penalties imposed for contravention, should be proportionate to the nature, type or impact of the contravention. In this regard therefore we propose a change to reflect proportionality in the penalties that will be imposed.</p> <p>We therefore propose that term 8 for NFP Tier 1,2, ASP, CSP and IGSS and Term 9 for NFP tier 3 be amended as follows: -</p> <p>“ _“ This Licence and the Licensee are subject to the provisions of the Act including, but not limited to, licence modifications, enforcements and Sanctions. The Authority may impose penalties, which shall be of a proportionate nature to the contravention, for the contravention of any license terms, conditions or directive issued by the Authority, based on a consideration of several factors, which include, but are not limited to ....”</p> |  |
|  |  |  |  |   | <p>Wananchi Group Kenya Limited</p> <p>The Authority may impose proportionate penalties for the contravention of any license terms, conditions or directive issued by the Authority, based on a consideration of several factors, which include, but are not limited to the following"</p>   |  |
|  |  |  |  | <p>8.1<br/>Frontier Optical Networks</p> <p>Delete 8.1 – Deliberate or recklessness difficult to determine</p> <p>Who determines and proves recklessness and what procedure</p> | <p>The authority, as an institution, is well placed to consider a matter and determine as to whether an action by a licensee is as a result of recklessness or not.</p>  |  |

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|  |  |  |  |  | 8.1<br>Frontier<br>Optical<br>Networks         | Clause 8.1 who determines and prove the recklessness? what is the procedure? this clause should be deleted as it gives CAK a blank cheque to impose and justify whatever condition(s) it deems fit  | The authority is also the institution that will carry out investigation and this is within the Authority's mandate. The Inspection procedure on the other hand is an internal issue to the Authority and also need not be specified in the licence.<br><br>Proposed Modification was Adopted |
|  |  |  |  |  | 8.2.<br>8.3<br>Frontier<br>Optical<br>Networks | Clause 8.2, 8.3 who determines and prove the investigation? what are the procedures? this clause should be deleted as it gives CAK a blank cheque to impose and justify whatever condition(s) it deems fit.<br><br>Clause 8.1 and 8.3 are ambiguous in nature and should be deleted |  |
|  |  |  |  |  | 8.4<br>Telkom<br>Kenya<br>Limited              | Clauses 8.2 and 8.4 are identical; one of these clauses ought to be deleted   | Repetitive clause has been deleted   |

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|  |  |  |  |                                     | <p>Sema Mobile Services Limited (formerly Zioncell Kenya Limited)</p> <p>We propose that the following provision should be added at clause 8: -</p> <p>a) “Due regard will also be given to whether or not: -<br/>Compliance is delayed by failure on the part of another Licensee to adhere to the licence terms, conditions or directive issued by the Authority;</p> <p>b) Breach of the license terms, conditions or directive issued by the Authority or any non-compliance therewith is occasioned by a force majeure event or situation, being a situation that is beyond a party’s reasonable control including but not limited to war, rebellion, sabotage, riots, floods, fire, national strikes, explosion or acts of terrorism</p> | <p>The proposed condition by Sema Mobile Services Limited (formerly Zioncell Kenya Limited) subjects compliance by licensee to another license, which is not practical regulatory practice.</p> <p>Bullet two is already covered by license condition on force majeure in various licenses</p> <p>Proposed Modification was Adopted</p> |
|  |  |  |  | <p>8.8<br/>Telkom Kenya Limited</p> | <p>Delete 8.7 – Failure to obtain compliance certificate can arise for many reasons</p>  | <p>Yes and for whichever the reason that leads to non compliance, if the compliance certificate was not issued then this has to be considered when determining penalty</p> <p>Proposed Modification was Adopted</p>   |

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|     |                     |  |  |   | Kenya Commercial Bank | <p>1. 8.1 and 8.4 are repetitive provisions</p> <p>Clause 8.6 refers to unjustifiable charges but the means for determining whether a cost is justified is not provided for. Costs will be agreed between the licensee and customer in the terms and conditions and ought not to be questioned thereafter unless the criteria for such questioning are pre-determined.</p> <p>1. Delete either 8.1 or 8.4<br/>Define what an unjustifiable charge would be in the circumstances.</p> | <p>Repetitive clause has been deleted</p> <p>Unjustifiable charges would imply charges that may not have been disclosed to the users or which upon scrutiny by the Authority may be deemed not to have been procedurally of correctly levied to the user</p> |
| 11. | Definition of Terms | Definition 9.2 and 9.5 in ASP, NFP and CSP | The word Broadcasting is deleted from the definition of “application Services” and “Content Services” in ASP, NFP and CSP licenses | Amendment necessary to remove “Broadcasting” from the definition of services offered under ASP and CSP licenses given the elaborate market segmentation in Broadcasting market structure. | Telkom Kenya Limited  | <p>Retain definition of ASP as in current license .Broadcast signals can be carried over the communications networks'</p>  | <p>Retain definitions as is in the modified NFP and ASP Licenses . As a service, broadcasting has a clear market structure, however the relay of signals can occur over any NFP infrastructure.</p> <p>Proposed Modification was Adopted</p>                 |

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| 12. |  | General on definitions by KCB |  |  | Kenya Commercial Bank | This section appears to be misplaced in the document. As currently positioned, these definitions don't make for easy reading. The definitions should appear either at the end or beginning of the document. | Comment was noted but it was agreed that the current format be retained for now<br><br>Proposed Modification was Adopted |
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| 13. | Definition of Terms | Definition 9.5 ASP, NFP and CSP | Definition of Compliance Certificate enhanced to include requirement to fulfill all compliance requirements before being issued with one. | Amendment necessary to enhance requirement to be issued with a Compliance Certificate | Kenya Commercial Bank | <p>This provision should be read together with clause 18.3. Neither of these provisions clarify the following important points relating to implementation of the requirement for a compliance report:</p> <ol style="list-style-type: none"> <li>1. What will be the content of the compliance report?</li> <li>2. Is the licensee to address how it complied with each and every license condition in the report?</li> <li>3. What is the difference between the compliance report and compliance returns referred to under clause 10.5?</li> <li>4. Will a compliance certificate be a pre-requisite for license renewal?</li> </ol> <p>There is no right to make representations in respect of a refusal to issue the compliance certificate.</p> <ol style="list-style-type: none"> <li>1. Our view is that the compliance reports and returns should be one and the same, so the wording should be harmonized to reflect this position.</li> <li>2. The license should also clarify which aspects of license compliance would be addressed in the report and provide a reporting template to guide the licensees in reporting.</li> <li>3. The conditions should clarify the office within CAK in which the report will be submitted.</li> <li>4. Provide for representations to be made by the licensee for appeals against refusal to grant a compliance certificate.</li> </ol> <p>Clarify whether failure to obtain a compliance certificate will result in or be relevant to license renewal/non-renewal.</p> | <p>Compliance report is a report submitted by licensees after every quarter and the format of the report is provided via a compliance return form issued by the Authority.</p> <p>Compliance Report and Compliance Return mean the same thing. The two terms have been harmonized for consistency</p> <p>Compliance certificate is only issued to a licensee that has complied with its license conditions</p> <p>There is a provision for appeals tribunal where licensees can seek recourse in any matter that has been determined by the Authority.</p> |
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| 14. |  | Definition 10.5 |  |  | <p>Airtel Networks Kenya Limited</p> <p>We propose to amend the definition of "Compliance Report" in order to ensure that only the licence terms and conditions that are critical or material and have a high impact on the operator's performance are captured by the Compliance Report. We therefore propose that Compliance Report be defined as follows:</p> <p>"Compliance Report" means a report to be prepared periodically by the licensee in a format as shall be specified from time to time and provided by the Authority detailing its performance in respect of every license conditions." _ "</p> | <p>Retain definition as is because all conditions in the license are important for purposes of compliance</p> <p>The terms "...Compliance Returns Form and Compliance Report..." have been harmonized</p>                      |
|     |  |                 |  |  | <p>Wananchi Group Kenya Limited</p> <p>Definition of Terms: We propose to amend the definition of "Compliance Report" in order to ensure that only the licence terms and conditions that are critical or material and have a high impact on the operator's performance are</p> <p>Compliance Report" means a report to be prepared periodically by the Licensee detailing its performance in respect of critical licence terms and conditions; the template and format of the compliance report shall be specified and provided by the Authority.</p>   | <p>Retain definition as is because all conditions in the license are important for purposes of compliance. This reporting is also meant to take care of the customers' interests.</p> <p>Proposed Modification was Adopted</p> |

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|  |  |  |  |  | <p>Sea Submarine Communications Limited</p> <p>“Compliance Certificate” means a certificate to be issued by the Authority to a licensee following the licensee’s compliance with the terms and conditions of this license including periodic submission to the Authority of duly completed compliance returns and the subsequent receipt and satisfactory review of the same by the Authority.”</p> <p>The definition provided attaches the issue of the Compliance Certificate to compliance by the licensee “...with all regulatory requirements...” Use of the phrase “all regulatory requirements” leaves the impression that the issue of the Compliance Certificate is also subject to compliance by the licensee with other regulatory requirements outside the supervision of the CA. For clarity we propose that the definition borrow from Condition 21.4.1 of the license which ties the issue of the Compliance Certificate to compliance with the terms and conditions of the license.</p> <p>· On the above basis we propose that definition 10.5 be revised to read as follows:</p> <p>“Compliance Certificate” means a certificate to be issued by the Authority to a licensee following the licensee’s compliance with the terms and conditions of this license including periodic submission to the Authority of duly completed compliance returns and the subsequent receipt and satisfactory review of the same by the Authority.”</p> | <p>Definition to remain as is. There are other regulatory requirements e.g determinations that the Authority may issue from time to time that may have to be considered other than just the terms and conditions of the license. It is also to be noted that the Licences issued by the Authority are issued pursuant to the provisions of the Kenya Information and Communications Act. The expression “regulatory requirements” should therefore be understood in this context.</p> <p>Proposed Modification was Adopted</p> |
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| 15. | Definition of Terms | Definition 10.13, 10.14 for ASP, 10.12, 10.13 for CSP, , 10.14 and 10.15for NFP and IGSS | An Additional definition .                  | New definitions for “Issuance Date” and “Licence Term”                                  | Kenya Commercial Bank | <ol style="list-style-type: none"> <li>1. The definition of the above terms in the definition section confirms that they both refer to the same date and event, i.e. the date when the license is issued to the licensee.</li> <li>2. Clause 1 of the conditions also confirms that the effective date is the date when the license was issued. Harmonize these provisions and delete reference to the issuance date as it is confusing.</li> </ol> | <p>“Effective Date” is when the licence was first issued to the licensee whether under the old or ULF.</p> <p>“Issuance Date” when the licence was migrated to the Unified Licensing Framework</p> <p>“Licence Term” is the duration of the licence from the effective date</p> |
| 16. |                     | Definition 10:18<br><br>CSP  |   |   | Kenya Commercial Bank | <p>Kenya Communications Regulations, 2001 are not the only regulations affecting these license conditions yet it is the only listed regulation in the definition</p> <p>Amend the definition to provide for all the relevant regulations affecting the license.</p>   | This has been amended and cited “ Regulations mean the Regulations made pursuant to Kenya Information and Communications Act, 1998 as may be amended”   |
| 17. |                     | Definition 10:21<br><br>CSP  |   |   | Kenya Commercial Bank | <p>These two provisions refer to SLAs that are not referred to in the text of the license. Either delete these provisions or address the SLAs in the license. In our view, SLAs are unnecessary as service levels and standards will be provided in our product terms and conditions.</p>   | “The term Service Level Agreement” in the definition has been deleted since it has not been used in the CSP licence   |
| 18. | Definition of Terms | Definition 9.16, 9.21 and 9.22 ASP, NFP  | An additional definition for “renewal date” | Amendment necessary to Include new definition “Renewal Date” in the definition of terms | Telkom Kenya Limited  | The term of the current TKL licenses is 25 Years  | <p>Proposed Modification was Adopted</p> <p>TKL being the first national operator to be licensed, when the concept of a national operator was in force, was given a license term of 25 years.</p>   |

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| 19. | Definition<br>11.2<br><br>17.1<br><br>25.1      |                        |  |  | Airtel<br>Networks<br>Kenya<br>Limited   | The use of the term “renewal date” in several clauses in the licenses (For example CSP License Condition 11.2, 17.1, 25.1, NFP Tier 1: condition 14, 29) does not take into account new licensees. These references should be changed to effective date or renewal date” to cater for existing licensees and new licensees | The word “renewal date” has been removed and will only be inserted for renewed licences only.<br><br>In 10.4 NFP T1 License, In the definition of “Renewal Date”, the word subsequent remains in the definition of “renewal date” since it refers any licence that may be issued after the expiry of an earlier one. |
| 20. | Definition<br>10.23                             |                        |  |  | Kenya<br>Commercial<br>Bank  | The word ‘Tier’ or ‘Tiers’ is not used anywhere else in the document. Delete this word/definition.   | This has been removal in CSP and ASP licences since they are not used in the licences  |
| 21. | PROVISION<br>OF<br>CUSTOMER<br>CARE<br>SERVICES | CSP Condition<br>3.3.1 |  |  | Kenya<br>Commercial<br>Bank  | This provision is unclear as to whether the prohibited fees apply only to the service or the cost of calling the help line as well. Provide for calling costs eg mobile service provider charges to be borne by the customer and clarify that the prohibited fees will only be fees for the customer support service.      | The free services include both telephone (toll free) and customer care services.   |
|     |   | ASP Condition<br>5     |  |  | Sema Mobile<br>Services<br>Limited<br>(formerly<br>Zioncell<br>Kenya<br>Limited) | We propose that a Licensee should be required to furnish its customer complaints handling procedures at least thirty (30) days prior to launch of its services.  | The proposal has been accepted and the licences modified so that complaints handling procedures to be submitted to the Authority at least thirty (30) days prior to launch of a service.   |

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| 22. | <b>PROVISION OF LICENSE SERVICES</b> | Condition 1<br>NFP<br>ASP | Five years roll out removed<br><br>Reference to penalty removed (now covered under term 7).<br><br>New Coverage and subscriber rollout obligation defined | To make roll out period general<br><br>Penalty now defined in license term<br><br>New license to be given new coverage obligations for areas not yet covered and subscriber rollout. | No feedback | No feedback | Proposed Modification was Adopted |
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|  |  | SCLR license |  |  | <p>Condition 2.2</p> <p>Sea Submarine Communications Limited</p> | <p>This is a new license condition that requires the Licensee to establish a Network Control Centre with the capability to unobtrusively store call data records. This clause appears to have been borrowed from other infrastructure licenses but without relation to the nature of services offered under the Submarine Cable Landing License.</p> <ul style="list-style-type: none"> <li>· As a licensee Sea Submarine Communications Ltd (“SSCL”) is unable to comply with this proposed condition on the basis that it only provides a pipe to its customers for ingress and egress of traffic. SSCL: <ul style="list-style-type: none"> <li>(i) Is blind, on an active level, to activity on the customer side of the service divide and is therefore unable to provide and retain the records required by this condition.</li> <li>(ii) Is currently unable to distinguish, identify, isolate or monitor IP voice traffic delivered through its system and is therefore unable to store the call data required by this condition.</li> </ul> </li> <li>· By requiring SSCL to providing billing information on the required call data, Condition 2.2 presupposes that SSCL’s customers host their billing systems on SSCL’s network and that SSCL has access to the required data, which is not the case</li> <li>· On the basis of the above we propose that Condition 2.2 be deleted in its entirety.</li> </ul> | <p>The SCLR has been revised to remove the requirement for unobtrusive recording and storing of data records that appeared irrelevant for the SCLR.</p> |
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|  |  | CSP Condition 1.1 |  |  | <p>Kenya Commercial Bank</p> <ol style="list-style-type: none"> <li>1. The term 'desirable to the public' appears to be subjective as what is desirable to one person may be undesirable to another. The wording is therefore vague and very broad, rendering compliance requirements unclear.</li> <li>2. The term 'content' is not defined in the document yet it goes to the root of the license and this clause, which obliges the licensee to ensure that the content is desirable.</li> </ol> <p>This requirement should oblige the licensee to ensure that the services are 'lawful'. Replace the word 'desirable' with 'lawful'.</p> <p>Define 'content' and ensure that the definition applies only to content provided by the licensee and or under the licensee's control. Otherwise, if the matters referred to in the clause can be included in the system by the user, the licensee would not be in a position to comply with this requirement.</p> <p>The clause also needs to be clear on what is meant by facilitating/promoting unlawful activities</p> | <p>Standards on undesirable and indecent content already exist in the law, as used for example by the Kenya Film Classification Board, which would form the basis for the determination of what is considered desirable/undesirable to the public. It is further noted that examples of content that would fail the test of desirability are enumerated under the sub-clauses (1.1.1 to 1.1.12) of condition 1.1 of CSP licence. The Authority is of the view that a content service that is designed to target those that engage in unlawful or immoral activity with a view to enabling them to undertake the activity would be said to be facilitating or promoting that act or activity.</p> <p>A definition of the term "Content" has been provided in the CSP licence.</p> |
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|  |  | CSP Condition 1.1.7  |  |  | Kenya Commercial Bank | The term 'unacceptable sense of fear or anxiety' is not clearly defined in the document and would be interpreted subjectively. Define what would be acceptable or unacceptable levels of anxiety/fear. | There is indeed a measure of subjectivity in determining what constitutes unacceptable sense of fear/anxiety and it may not be possible to provide a definition that is all encompassing. In making such determinations, the Authority as a quasi-judicial body will exercise due care. It is also noted that the law and regulations have adequate provisions for appeal to the Authority as well as the appeals tribunal where a Licensee is of a contrary view. |
|  |  | CSP Condition 1.16   |  |  | Kenya Commercial Bank | The limits of what would be a reasonable or unreasonable level of invasion of privacy are not defined. Clarify the limits of reasonableness with respect to invasion of privacy.                       | As above   |
|  |  | CSP Condition 1.1.10 |  |  | Kenya Commercial Bank | The term 'grave or widespread offence' is not clearly defined. How will the extent of offence be measured and/or proved? Either clearly define this term or delete the requirement.                    | As above   |

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|  |  | CSP Condition 1.2 |   |  | Kenya Commercial Bank | <p>The requirement to prevent access to people who do not need the service appears too onerous for the licensee and will be impossible to implement as it is a requirement in the negative. A customer may access the service whether they need it or not and the bank cannot control the level of interest or take up of the service by a customer.</p> <p>Replace with a requirement to ensure that customers are not misled as to the capabilities of the service and the correct advise is provided upon enquiry.</p> <p>Provide a requirement for customers to be provided with guidance on how to use the service and the purpose (s) for which it was intended.</p> | <p>Content services are only to be provided to customers on an opt-in basis as provided under the Consumer Protection Regulations. It is not expected that a licensee can send information to some one who has not subscribed to the service.</p> <p>Proposed Modification was Adopted</p> |
|  |  | ASP Condition 1   | <p>Record's retention period increased to 3 years</p> <p>Types of records defined</p> | <p>To align the period with penal code period</p> <p>To clarify what may be required</p> | No feedback           | No feedback  | Proposed Modification was Adopted  |

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| 23. | <b>EXPANSION OF THE LICENSED SERVICES</b> | NFP Condition 1<br>IGSS Condition 2                    | BTS Roll out targets specified in NFP license<br><br>Format of records to be submitted to the Authority specified in IGSS license                        | The new NFP-T1 license to be issued requires new roll out obligations<br><br>This makes it clear in terms of expected records from the IGSS licensee | No feedback  | No feedback  | Proposed Modification was Adopted   |
| 24. | <b>UNIVERSAL SERVICE OBLIGATION</b>       | NFP Condition 2<br>ASP Condition 2<br>IGSS Condition 2 | Obligation to make services accessible to persons with disability (PWD) added.   | To ensure PWD are catered for in the provision of communication services   | Kenya Commercial Bank<br><br>CSP 2.1                           | Clarity is needed on what will be entailed to be a Universal Service. Indicate and clearly provide that universal service will be determined in accordance with the Kenya Information and Communications (Universal Access And Service) Regulations, 2010.   | This licence condition is a standard one that also encompasses the contribution to the USF. It is also general to extent that it can be applied whenever technology becomes capable of allowing the provision of such envisaged services<br><br>Proposed Modification was Adopted |
| 25. | <b>Universal service</b>                  | ASP Condition 2  | Obligation to make services accessible to persons with disability (PWD) added.<br><br>Requirement to contribute to universal service fund (USF) included | To ensure PWD are catered for in the provision of communication services<br><br>To Make USF part of license condition                                | Sema Mobile Services Limited (formerly Zioncell Kenya Limited) | While we appreciate the need to ensure that telecommunication services are made accessible to persons with disability, due regard should be given to the nature of services and senses required, where certain services may not be convertible from speech-to-text, or vice versa.<br><br>There is also need to distinguish between device feature and network features, so that Licensees' obligations only extend to facilitating access to services within the capability of the network and associated infrastructure. | The Authority will not require licensees to meet what is not practically possible on USO.<br><br>Proposed Modification was Adopted  |

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| 26. | <b>ESTABLISHMENT OF THE LICENSED SYSTEMS</b>  | NFP Condition 3                         | Format of records defined   | To make the information being sought clear and to provide the same to the other relevant government institutions. | Telkom Kenya Limited  | -Establishment of the licensed system is a continuous process. The requirement may only apply to new licensees<br><br>-Filing of all these documents will be cumbersome since authorization are sought for each site separately  | The license conditions must remain standard and cannot be tailor made for new comers and existing players separately.<br><br>Proposed Modification was Adopted   |
|     |   | NFP Condition 3<br><br>IGSS Condition 1 | Some content removed and now covered under condition on Public Safety | To introduce a condition of public safety and avoid duplication of the content                                    | No feedback           | No feedback  | Proposed Modification was Adopted  |
| 27. | <b>REQUIREMENT TO PUBLISH THE CHARGES, TERMS AND CONDITIONS OF LICENSED SERVICE</b> | CSP condition 4                         |   |   | Kenya Commercial Bank | The criteria to be taken into consideration by the Authority in considering the approval of the increase in charges for the service is not provided for. The criteria to be taken into consideration by the Authority for approval of charges for the service should be clearly outlined in Regulations and Guidelines | The approval envisaged takes cognizance of the different factors that different licensees may consider and therefore no specific standard may be prescribed. However, the approval focuses on issues that may grossly violate customers rights in one way or the other.<br><br>Proposed Modification was Adopted |

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|  |  | CSP condition<br>4.1 |  |  | Kenya<br>Commercial<br>Bank | The full amount charged to the customer should not be refunded. Only the excess of what is approved should be refunded. Amend the provision to ensure that only the excess payment is refunded to the customer. | The licensee to refund full amount because not in all cases will the services be charged in excess. In some instances it may be a charge below (predatory pricing) the normal amount which equally has a negative impact |
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|  |  |  |  |  | <p>Frontier Optical Networks</p> <p>KCB</p> <p>The condition mandates the licensee to publish, submit and after approval file the charges, terms and conditions of licensed services with the authority. The licensee is also required to furnish CAK with any changes thereafter. The licensee is also mandated to furnish its clients with legible contract and accurate and true information without any misrepresentation.</p> <p>Comment/recommendation;</p> <p>Does the licensee need to fill all the contracts with its clients with CAK?</p> <p>CAK is a regulatory body and any penalties imposed must be guided by law and the exact figures laid down in law.</p> <p>This clause also hinders a liberal competitive market.</p> <p>CAK should let the market determine the price to encourage free and fair competition.</p> | <p>Retained as is. All penalties to be issued by the Authority will be as per the law.</p> <p>Further on the contrary, the Authority's view is that publishing tariff information and terms and conditions enhances competition, and also seeks to protect consumers.</p> <p>Proposed Modification was Adopted</p> |
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|  |  |  |  |  | <p>Sema Mobile Services Limited (formerly Zioncell Kenya Limited)</p> <p>In principle, customers should be required to pay for services consumed so as to avoid mischief in consumption of services and subsequent dispute on charges levied</p> <p>Further, the term “unapproved charges” as used in this Condition is not defined. We propose that condition 7.3 be revised as follows: -</p> <p>Notwithstanding the penalty that may be imposed, a licensee that has imposed unapproved charges, terms and conditions of any new service shall refund to the customer who may be aggrieved by the service any charges or cost incurred in obtaining and using the service. Charges shall be deemed to have been approved if: -</p> <ul style="list-style-type: none"> <li>(i) A customer obtains a service on subscription by following the subscription process notified by the licensee; or</li> <li>(ii) A customer obtains a service on demand, having been notified of the charges; or</li> <li>(iii) A customer otherwise requests for or authorizes provision of the service or takes any steps to initiate supply of the service.</li> </ul> | <p>The proposed text is customer centric approval, which is at variance with the Authority’s intension of approving the proposed services.</p> <p>Approval by the Authority is clear as per the license term 5.2. This provides an avenue through which the licensees are assisted in ensuring that they do not provide services not covered under their Licences.</p> <p>Proposed Modification was Adopted</p> |
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|     |                    | 4 in CSP          |  |  | Airtel Networks Kenya Limited | <p>We propose the following amendments:</p> <ol style="list-style-type: none"> <li>1. -Condition 4.2- charges: the inclusion of an additional penalty to refund an aggrieved customer unapproved charges should be deleted from this condition as it is not clear how this refund mechanism shall be enforced.</li> <li>2. -Clause 4.4- the reference to clause 3.4.1 needs to be changed to refer to clause 4.4.1.</li> <li>3. -Clause 4.4.2- introduces a specific requirement on the font size of the charges. This is over prescriptive and we propose that this be excluded.</li> </ol> | <p>No change considered by CA</p> <ol style="list-style-type: none"> <li>1. The charges will be determined in the service level agreement between the licensee and the customer. If there is a way of charging then there has to be a way too for refunding.</li> <li>2. This is OK</li> <li>3. The condition is not overly prescriptive and is based on challenges faced by consumers, which have been reported to the Authority, and is indeed a best practice.</li> </ol> |
| 28. | PUBLIC EMERGENCIES | CSP Condition 6.4 |  |  | Kenya Commercial Bank         | <p>Reimbursement of costs incurred by the licensee for services rendered during a public emergency has not been made mandatory, thus the same will be at the discretion of the government. The reimbursement should be mandatory to avoid the licensees incurring losses.</p>  | <p>Not all situations may warrant reimbursement to the licensees for services rendered. Therefore making a must may not be appropriate</p> <p>Proposed Modification was Adopted</p>  |

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| 29. | <b>INTERCONNECTION, PROVISION OF CONNECTIVITY TO THIRD PARTIES &amp; PROTECTION OF THIRD PARTY'S PROPERTY</b> | NFP Condition 5                  | Two titles of different license conditions have been merged to the condition on "INTERCONNECTION" | To bring all licensees (CSPs, ASP and NFPs) under an interconnection arrangement. | Telkom Kenya Limited          | Interconnection shall between licensees offering/exchanging similar services .CSP cannot be treated as interconnection parties'  | Interconnection is not defined by capability to bill. Interconnection should be looked at from the Interconnection Regulation point of view. The interconnection regulations does not specify billing capability as the prerequisite to being an interconnect party. It is further noted that CSPs are Licensees under the Act and hence the need to guarantee interconnection of the systems to the various networks. |
|     |   | ASP Condition 10                 |   |   | Airtel Networks Kenya Limited | Interconnection Agreements to be filed with the Authority shall be for the regulated services only.  |  |
|     |   | CSP Condition 6 IGSS Condition 3 |   |   | Wananchi Group Kenya Limited  | The inclusion of platforms means that NFP's will be obligated to Interconnect with CSP's and ASP irrespective of the nature of the ASP's or CSP. There is need then to ensure that the ASP's and CSPs have the interconnect billing capability to enable the implementation of these interconnections.   |  |
|     |   |                                  |   |   |                               | Licence condition 6.1 on NFP-T2 proposes amendment to include the word 'platforms. which allows for interconnection between NFP's and CSP's irrespective of the nature of the CSP. Currently there is no interconnection between NFP's and CSP's. For interconnection between NFP's and CSP's to take place, there is need to establish whether this is technically feasible. In addition there is need to ensure that the CSP's have the requisite interconnect billing capability to enable the implementation of such interconnections. More clarity or guidelines is required from the Authority on the circumstances under which interconnection between NFP's and CSP's should take place. |  |

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|  |  |                   |  |  | <p>Sema Mobile Services Limited (formerly Zioncell Kenya Limited)</p> <p>We appreciate that interconnection is vital for customer inclusion in provision of telecommunication services. However, should a licensee be under an obligation to interconnect with a content service provider who may be offering a service that competes with a similar service provided in-house by the Licensee?</p> <p>In any event, Licensees should be at liberty to require application and content service providers to ensure compliance with the Licensee's reasonable information security requirements. It might be useful for the Authority to propose Guidelines on "reasonable information security requirements" and fairness in application thereof, so that application and content service providers have a level playing field, so to speak</p> |   |
|  |  | CSP Condition 7.4 |  |  | <p>Kenya Commercial Bank</p> <p>This clause presumes liability on the part of the bank and that the licensee will proceed to switch off the offending equipment, facilities or operations. The issue of liability should also be referred to CAK or the courts for determination</p>  | <p>This condition is in all licences and not only CSPs. Any licensee has the potential to interfere with another's system and therefore the existence of this condition in all licences.</p> <p>Proposed Modification was Adopted</p> |

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| 30. | <b>COLOCATION AND INFRASTRUCTURE SHARING</b> | NFP Condition 4  | Added;  | To enable the Authority issue enforceable guidelines  | Telkom Kenya Limited | <ol style="list-style-type: none"> <li>Guidelines to be left as such 'guidelines' - replace 'shall' with 'will' in 4.1</li> <li>No need to file collocation agreements with CA whereas a separate Agreement is signed for each site</li> <li>Licensee will install large capacity that might never be utilized. The collocation capacity will only be on need per need service since for first arrivals, you cannot know the other parties who will be interested since infrastructure development is very expensive</li> <li>The CA should lobby for setting of policy on condition that building owners to provide telecommunication rooms and entry at no cost the same way water and electricity is done.</li> </ol> | <ol style="list-style-type: none"> <li>The word “shall” to be retained because this is a compliance issue for which there is no compromise.</li> <li>What is being sought for approval is a template and not every single agreement.</li> <li>This is true, however, the capacity issue is “where possible” as quoted in condition 4.6</li> <li>Agreed. This is an important issue and CA will consider exploring this.</li> </ol> |
|     |  | IGSS Condition 4 | Requirement to comply with guidelines and regulations<br><br>Publication of collocation agreement template<br><br>Disallowed exclusive agreements between licensees and landlords<br><br>Required establishment of extra capacity by first entrant to a building. | To make the collocation offer template readily and publicly available<br><br>To avoid anticompetitive behavior on access to buildings<br><br>To ensure new entrants do not interfere with already existing infrastructure and allow collocation |                      |  |  |

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|  |  |  |  |  | <p>Frontier Optical Networks</p> <p>Sub clause 4.5 and 4.6 forbids the licensee to enter into exclusive agreements with a building owner for access and where the licensee is the first entrant to a building, the licensee shall ensure that there is adequate provision in the building's communication infrastructure to facilitate sharing with other licensees.</p> <p>Comment/recommendation; CAK should emulate to adopt the EU lawful interception model. CAK should find a way of making sure that the building owners do not deny service providers access to go in their building and provide their services especially where the tenant has requested for that particular service.</p> | Noted and can be considered for regulations    |
|  |  |  |  |  | <p>Sea Submarine Communications Limited</p> <p>-On the basis of the above we propose that Condition 4.3 be revised by removing the requirement to publish colocation/infrastructure share offers on a licensee's corporate website</p>   | CA will make proposals to the relevant bodies. |

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|     |   |   |   |  | Sea Submarine Communications Limited | <p>This condition requires a licensee to publish its template colocation agreement on its website. Whilst we do appreciate the importance of transparency, it is our opinion that the requirement to publish such information on a widely accessible platform such as the corporate website is only relevant where it is necessary to publish generic information to a wide audience. This is not the case with colocation/infrastructure share offers, which are negotiated between operators on a one on one basis having regard to the request from the other operator. Operator to operator contracts represent a small audience that would not require mass communication on a corporate website.</p> <p>· On the basis of the above we propose that Condition 5.8 be revised by removing the requirement to publish colocation/infrastructure share offers on a licensee’s corporate website.</p> | <p>What is being sought for approval is a template and not every single colocation agreement.</p> <p>The licensee must be able to provide a generic agreement in a publicly accessible media</p>  |
| 31. | <b>QUALITY OF SERVICE (QOS) REQUIRE</b> | NFP Condition 6<br>ASP Condition 8 IGSS | Clause specifying penalty has been deleted. | Penalty is now addressed in the license term | 8<br>Telkom Kenya Limited            | <p>SLA between Licensees need not be published. Requirement to file with the authority is adequate</p>  | <p>The requirement is for the licensee to publish a reference SLA and not all specific SLA’s entered into by the licensee. The requirement to publish a reference SLA is important to avoid discrimination by increasing transparency</p> |

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|  | <b>MENTS</b> | Condition 5 | SLA requirement added to this condition | SLA is merged to QoS and interconnection conditions as it relates to the two conditions. | Sea Submarine Communications Limited | <p>This condition requires a licensee to publish its reference SLA on its website. Whilst we do appreciate the importance of transparency, it is our opinion that the requirement to publish such information on a widely accessible platform such as the corporate website is only relevant where it is necessary to publish generic information to a wide audience. This is not the case with colocation/infrastructure share offers which are negotiated between operators on a one on one basis having regard to the request from the other operator. Operator to operator contracts represent a small audience that would not require mass communication on a corporate website.</p> <p>· On the basis of the above we propose that Condition 6.3 be revised by removing the requirement to publish reference SLA's on a licensee's corporate website. SCLR</p> | in licensees' engagements. |
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|  |  |  |  |  | <p>Airtel Networks Kenya Limited</p> <p>In comparison with global best practice, normally, the conditions to publish what is known as the Reference Interconnection Offer together with the Service Level Agreement (SLA) is imposed to a dominant operator and does not apply to all licensees. This practice would apply also for capacities and links leased from NFP. We would like the Authority to exercise caution in imposing this condition to all licensees and propose that this condition be put under the Regulations and should apply to dominant operators only.</p> <p>However incase the Authority decides to have this condition to apply to all licensees, we note that the proposed condition 6.3, 5.3, does not reflect the fact that interconnection and Lease Capacity are some of the different services provided by NFP's and they should be clearly captured separately in the requirement to have SLA for the two services.</p> <p>We therefore propose that Condition 6.3, 5.3, 8.3 be therefore re-worded as follows to capture the spirit and objective more clearly</p> <p>6.3 "The Licensee shall enter into a Service Level Agreement (SLA) with a Requesting Licensee to ensure that all interconnection services provided are of an agreed quality. The Licensee shall file a Reference SLA with the Authority and publish on its website."</p> <p>We propose a new 6.4 (NFP 1,2,3), 5.4 IGSS, to cover for provision of Leased Capacity or Links from NFP's.</p> <p>NFP T1,2,3 Condition 6.4. "The Licensee shall enter into a Service Level Agreement (SLA) with a Requesting Licensee to ensure that all capacities or links provided are of an agreed quality. The Licensee shall file a Reference SLA with the Authority and publish on its website."</p> <p>IGSS Condition 8.4. "The Licensee shall enter into a Service Level Agreement (SLA) with a Requesting Licensee to ensure that all capacities or links provided are of an agreed quality. The Licensee shall file a Reference SLA with the Authority and publish on its website."</p> |  |
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| 1. | ACCESS TO SITES AND RECORDS |  |  |  | Kenya Commercial Bank     | There is no assurance that information obtained by CAK during inspection will remain confidential. Permit to the Authority should be issued upon written request being issued by the authority and on condition that confidential information shall not be disclosed to any third party.  | Written requests are not practical in every circumstances of an inspection. Sometimes it could be something that is interfering or endangering others or systems and the lengthy procedures of writing may not be practical. Where confidentiality is required this can be disclosed to the Authority for consideration.<br><br>Proposed Modification was Adopted |
|    |                             |  |  |  | Frontier Optical Networks | This condition mandates the CAK to unlimitedly inspect the licensee records, data and facilities whether they are confidential or otherwise for investigation purposes.<br>Comment/recommendation; it does not indicate whether the licensee requires a written notice on the purpose of inspection/investigation before this inspection is conducted, it also does not state the length of the investigation and how the CAK representatives identify themselves and which department ought to do this work. |   |
|    |                             |  |  |  | Telkom Kenya Limited      | 1. Provide for a reasonable notification period (Written)<br><br>2. Authority would not seek confidential customer data in condition 14.1 and 14.4<br><br>3. Delete 14.5 (Same as 14.1 above)   |   |

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|     |   |   |   |  | <p>Wananchi Group Limited</p> <p>Condition 12/11: Access to Sites and Records (NFP-T2 /IGSS) proposes that records to be kept for a minimum period of three (3) years. For purposes of clarity the type of data to be kept needs to be clearly defined in advance especially in light of the amount of data that is to be generated. We propose that the Authority should define the prescribed format in advance to enable the Operators understand the implications and cost of storing this information for a period of three years.</p> |  |
|     |   |   |   |  | <p>Airtel Networks Kenya Limited</p> <p>For purposes of clarity the type of data to be retained by operators needs to be set out especially in light of the amount of data that is generated. The Authority should also define the format in which the data should be retained in advance to enable the Operator understand the implications and cost of storing this information.</p>  | <p>The data that will be required is of minimal sizes given the nature of information that would ordinarily be requested</p>   |
| 32. | <b>NUMBERING AND NUMBER PORTABILITY</b> | <p>NFP Condition 7</p> <p>ASP Condition 9</p> <p>CSP Condition 4 IGSS</p> | <p>Clause prohibiting delivery of calls to numbers outside the numbering plan added</p> <p>Requirement of</p> | <p>To avoid calls to numbers that do not exist in Kenya and which may be linked to unlicensed, Terrorism and other</p> | <p>Elige Communications Limited</p> <p>Proposes that; The numbering prohibitions only applies to originations/terminations of traffic from/to the fixed mobile network. The licensee is allowed to define custom plans for delivery of VOIP/ENUM traffic</p>  | <p>The comment by the stakeholder refers to the need to exclude private numbers, that are not regulated, from the requirement and to this extent the licence condition is acceptable as is without further need for clarification.</p> <p>Clarification will be made on the National Numbering Plan.</p> |

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|  |  | Condition 6 | licensees to deliver emergency calls free of charge added | organized criminal networks.<br><br>To ensure that operators provide emergency services free of charge and not charge designated public emergency organizations that provide emergency services. | Frontier Optical Networks | <p>This clause mandates the licensee to only use the numbers assign to it and also not to facilitate delivery of traffic to numbers that do not exist in the national numbering plan.</p> <p>Comment/recommendation; This clause is ambiguous in the sense that how does a provider deliver international traffic?</p>  | <p>Proposed Modification was Adopted</p> <p>A provider intending to deliver international traffic to a public network is as per standardized national numbering plan which includes E.164.</p>   |
|  |  |             |   |  |                           | <p>We propose that the Authority should define the criteria for allocation of toll free numbers / short codes and maximum number of toll free numbers / codes that can be allocated to each entity, so as to avoid a situation where numerous toll free numbers / codes are allocated under unclear circumstances, yet the Licensee is not entitled to levy any charges.</p> <p>We also propose that the beneficiaries of toll free numbers / codes should furnish to the Authority an annual account on usage of the numbers / codes. Where the use of any number / code is contrary to the pre-determined criteria, the allocation should be revoked.</p> <p>Where a number / code does not meet the pre-determined criteria, the Licensee should be entitled to levy charges at prevailing commercial rates.</p> | <ol style="list-style-type: none"> <li>1. There exist guidelines for management of premium rate numbers. These are available on CA's website</li> <li>2. This is already covered by condition on "Requirement to Provide information" and the relevant "compliance return forms"</li> <li>3. Enforcement of none compliance with license condition including utilization of number is already covered under the Act, relevant regulations and license conditions on suspension and revocation.</li> </ol> <p>The license provides for licensee's rights obtainable from the Authority and obligations to customers. The license doesn't prescribe obligations of customers to the licensee</p> |

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| 33. | <b>PUBLIC SAFETY</b>                          | NFP Condition 8<br><br>IGSS Condition 10<br><br>ASP Condition 3                        | Condition on public safety added to the NFP-T1 and anchors code of practice (CoP)   | To enhance public safety requirement to ensure that systems installed by licensee do not become a health hazard and also anchor code of practice to the license. | Sema Mobile Services Limited (formerly Zioncell Kenya Limited) ASP Condition 3 | To facilitate compliance by licensees with all applicable statutory obligations, the Code of Practice and Guidelines relating to environmental health and safety should be made consistent with the following statutes: - <ul style="list-style-type: none"> <li>• Environmental Management &amp; Co-ordination Act (Chapter 387 of the Laws of Kenya)</li> </ul> Occupational Health & Safety Act (Act No. 15 of 2007)   | This is Noted.   |
| 34. | <b>INTERRUPTIONS TO THE LICENSE D SYSTEMS</b> | NFP Condition 9<br><br>ASP Condition 11<br><br>CSP Condition 7<br><br>IGSS Condition 7 | Amendment requires licensee to only interrupt a service where the interconnection or SLA agreement on the services provides for it and had been filed and subsequently acknowledged by the Authority. | To provide for safeguard against unwarranted disconnection of other licensees while also recognizing the value and purpose of interconnect or SLA agreements.    | Kenya Commercial Bank  | It is not reasonable for the licensee to advise the customers of the expiry date of its license. To do this would suggest to the customer that the services would not be available after the expiry date. Customers will be able to access the list of CAK licensees on the CAK website. There are also penalties against persons operating without a license. There is therefore no rationale for this requirement and it is proposed that the same be deleted | This requirement is for purposes of safeguarding customers from an abrupt discontinuation of services without prior information. It is to enable customers to prepare themselves for a planned outage either for maintenance or otherwise<br><br>Proposed Modification was Adopted |

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| 35. | <b>PROVISION OF EMERGENCY SERVICES</b> | NFP Condition 10<br>ASP Condition 12<br>IGSS Condition 8                     | No material change  | No material change   | No feedback                  | No feedback   | Proposed Modification was Adopted  |
| 36. | <b>PUBLIC EMERGENCIES</b>              | NFP Condition 11<br>ASP Condition 13<br>CSP Condition 5<br>IGSS Condition 9  | Reference to section 88A removed after it was repealed  | To align the license to the Act. .   | 13.1<br>Telkom Kenya Limited | Delete the phrase 'As the Authority may direct' in condition 13.1                 | The phrase 'as the Authority may direct' sits in appropriately and does not need to be deleted |
| 37. | <b>ACCESS TO SITES AND RECORDS</b>     | NFP Condition 12<br>ASP Condition 14<br>CSP Condition 8<br>IGSS Condition 11 | Additional clause to require licensees to provide information when requested during inspection. | To ensure that the Authority is facilitated during its investigations/inspections. | 14.1                         | 1. Provide for a reasonable notification period (Written)                         | Proposed Modification was Adopted  |
|     |  |  |   |  | 14.4                         | 2. Authority would not seek confidential customer data in condition 14.1 and 14.4 | Proposed Modification was Adopted  |
|     |  |  |   |  | 14.5<br>Telkom Kenya Limited |   |  |

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|     |                         |                   |  |   |                      | It does not indicate whether the licensee requires a written notice on the purpose of inspection/investigation before this inspection is conducted, it also does not state the length of the investigation and how the CAK representatives identify themselves and which department ought to do this work. | Upon identification , licensee should grant access to CA staff to access records relevant to its mandate. The other aspects of inspections are covered under the relevant regulations.<br><br>Proposed Modification was Adopted  |
| 38. | <b>BILLING ACCURACY</b> | NFP Condition 13  | Requirement for the billing system to be accurate                            | Ensure that billing system is accurate  | Telkom Kenya Limited | 1. Authority should not ask for CDRs.  | Proposed Modification was Adopted  |
|     |                         | ASP Condition 15  | The Authority may appoint independent auditor to examine/test billing system | Ensure that inspectors are able to get required information at the time of inspection     |                      | 2. Balance before and after the call on apply for prepaid customers.   | Proposed Modification was Adopted<br><br>This is applicable to both pre-paid and post-paid customers   |
|     |                         | CSP Condition 9   | Billing info format that may be required is specified                        | Specifying billing record format for regulatory requirement to address billing complaints |                      | Frontier Optical Networks  | The condition is amended to give the Authority powers to appoint an independent auditor to examine and test the billing system before and after its operation for accuracy.<br><br>What is the criteria for testing the accuracy of the billing system? we recommend this should only be done when there is a justified complained against the service providers |
|     |                         | IGSS Condition 12 |  |   |                      |  |  |

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| 39. | <b>PRIVACY AND CONFIDENTIALITY</b> | NFP Condition 14  | The Authority to be given confidentiality procedures | Amendment seeks:<br><br>For the Authority to be satisfied with the confidentiality procedures put in place by Licensees | 16.6                 | Delete 16.6 entirely - Would be difficult to handle where we enter into interconnection arrangement with other operators. CDR's for outgoing off-net call shall also be available to the terminating operator.  | Proposed Modification was Adopted<br><br>Interconnection arrangements does not affect confidential information.<br><br>Operators with subscribers information should not share information without the consent of the subscribers |
|     |                                    | ASP Condition 16  |  |   | Telkom Kenya Limited |   |   |
|     |                                    | CSP Condition 10  |  |   | 16.5                 | The condition mandate the licensees to use reasonable effort to ensure private and confidential information obtained from their client at the cause of its business and licensee has been given 180 days from license renewal date to ensure it has submitted to the authority the systems it has put in place to maintain confidentiality of its client information. Clause 11.5 also states as follows:<br><br>Mandating the providers to provide confidential information of their clients to CAK is not acceptable. this can only be done by a Court of law and CAK should concentrate in its mandate and not usurp court's powers. | Proposed Modification was Adopted<br><br>The information being sought is with regards to how the licensee has notified customers about their data being intruded or silently recorded.  |
|     |                                    | IGSS Condition 13 |  | Frontier Optical Networks   |                      |   |   |

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|     |              |                                      |  |  | <p>16.2</p> <p>Sea Submarine Communications Limited</p> | <p>Condition 14.2 requires a licensee to submit to the Authority “...sufficient information on its confidentiality procedures to satisfy the Authority”.</p> <ul style="list-style-type: none"> <li>- No guidance is provided in the Act, license or applicable regulations on what is “sufficient information”. We propose that the condition be revised to only require a licensee to provide information on its confidentiality procedures without a qualifying threshold of sufficiency. Whether that information is sufficient to meet the confidentiality obligations under Condition 14.1 will then be up to the CA having regard to the requirements of the Kenya Communications Act, applicable regulations and the license itself.</li> <li>- On the basis of the above we propose that Condition 14.2 be revised to read as follows:</li> </ul> <p>“The Licensee shall maintain and submit to the Authority, not more than 180 days from the renewal date, information on its confidentiality procedures to demonstrate to the Authority that the requirements of Condition 14.1 are being met.</p> | <p>As above</p> <p>Sufficiency or otherwise will be determined by the Authority. The Authority will exercise good judgment on this in the same way, most conditions also make reference to “ where in the Authority’s view”</p> <p>Proposed Modification was Adopted</p> |
| 40. | FAIR TRADING | NFP Condition 15<br>ASP Condition 17 | Restricting unreasonable charges against category of | Amendment seeks to create a level playing field for charging | <p>17.1.4</p> <p>Telkom Kenya Limited</p>               | <p>Delete 17.1.4 (Interconnection rates are already set by CA for regulated services where for other service are mutually agreed by the parties)</p>   | <p>Proposed Modification was Adopted</p>   |

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|     |                                     | CSP Condition 11<br><br>IGSS condition 14   | licensees          | among licensees    | 17.2<br><br>Airtel Networks Kenya Limited | <p>We propose the wording of Condition 15.2 for NFP 14.2 for IGSS, 17.2 for ASP be amended to replace the word “appears to” with “comes to the attention of” as follows:-</p> <p>In the event it comes to the attention of the Authority that the Licensee is in breach of 15.1, the Authority shall give written notice to the Licensee:</p> <p>This amendment will align the license condition with the Act and regulations that provide for the raising of complaints on anti-competitive behavior by licensees</p> | <p>This is designed to enable the Authority to commence investigations even where hard evidence is not available. This is done with much caution.</p> <p>Proposed Modification was Adopted</p> |
| 41. | PROHIBITION ON UNDUE DISCRIMINATION | NFP Condition 16<br><br>ASP Condition 18<br><br>CSP Condition 12<br><br>IGSS condition 15 | No change          | No change          | No feedback                               | No feedback  | Proposed Modification was Adopted  |
| 42. | PROHIBITION OF CROSS-SUBSIDIZATION  | NFP Condition 17<br><br>ASP Condition 19<br><br>CSP Condition 13<br><br>IGSS condition 16 | No material change | No material change | No feedback                               | No feedback  | Proposed Modification was Adopted  |

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| 43. | NOTIFICATION OF CHANGE IN SHAREHOLDING | NFP Condition 18  | The Authority to approve/disapprove change of shareholding, as opposed to only disapproving, the failure of which automatic change takes effect. | The change aligns the condition to section 9 of Regulation 2010 on licensing and quality of service and; | 20                                 | We propose that the status quo be maintained, such that 30 days' notice is issued, rather than 60 days' notice as proposed in the amended Licence Conditions.   | Proposed Modification was Adopted<br><br>no adequate justification has been given for counter proposal   |
|     |  | ASP Condition 20  |  |  | 21<br>22.4<br>Telkom Kenya Limited |   |  |
|     |  | CSP Condition 14  |  |  |                                    |   |  |
|     |  | IGSS condition 17 |  |  |                                    | We propose that the status quo be maintained, such that 30 days' notice is issued, rather than 60 days' notice as proposed in the amended Licence Conditions.   | Proposed Modification was Adopted<br><br>no proper justification given for counter proposal  |
| 44. | PRE-NOTIFICATION OF JOINT VENTURES     | NFP Condition 19  | No material change   | No material change   | No feedback                        | No feedback   | Proposed Modification was Adopted  |
|     |  | ASP Condition 21  |  |  |                                    |   |  |
|     |  | CSP Condition 15  |  |  |                                    |   |  |
|     |  | IGSS condition 18 |  |  |                                    |   |  |
| 45. | ACCOUNTING REQUIREMENTS                | NFP Condition 20  | Change requires the licensee to separate accounts  | To avoid situations of cross subsidization   |                                    | Delete 22.4 - Separate accounts for each of the licenses will not available   | Proposed Modification was Adopted<br><br>The clause is not about account separation but clear attribution of revenue streams related to the specific license(s) held when providing notes in the Audited accounts. |
|     |  | ASP Condition 22  |  |  |                                    | We will appreciate the Authority's clarity on account separation. in addition, we are of the view that there should be a clearly understood and agreed upon definition of what constitutes gross revenue for purposes of computing Annual operating fees. |  |
|     |  | CSP Condition 16  |  |  |                                    |   |  |
|     |  | IGSS condition    |  |  |                                    |   |  |

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|  |  | 19 |  |  | <p>Airtel Networks Kenya Limited</p> | <p>Condition 20.4 requires that “The licensee shall clearly show the accounts related to this license in its financial reporting”.</p> <p>We are of the view that this condition in effect imposes an obligation for the operators to do Account Separation of which we are well aware that global best practice is that Account Separation is imposed only on dominant operators and not all licensees.</p> <p>We propose that this requirement be removed from the standard license terms and conditions and be captured in the competition regulations.</p> |  |
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|  |  |  |  |  | <p>Wananchi Group Kenya Limited</p> | <p>Condition 20 (NFPQ-TZ/IGSS): Accounting Requirements</p> <p>The Authority has introduced clause 20.4 which states that "The licensee shall clearly show the accounts related to this license in its financial reporting". This condition in effect imposes an obligation for the operators to have; separation of accounts .We believe this will help in removal of non-related accounts/ revenues from the expected annual audited accounts. In a scenario where account separation mechanism has been imposed, the account separation framework among the licenses needs to be developed and agreed in advance. In the absence of such framework from the onset, it is difficult to comply with the account separation condition. Further clarity is required whether the Account separation is for each licence category or per entity. We will appreciate the Authority's clarity on account separation. in addition, we are of the view that there should be a clearly understood and agreed upon definition of what constitutes gross revenue for purposes of computing Annual operating fees. Revenues which are not directly attributable to the core mandate of the services as per the licence issued should be excluded from the computation of Gross Annual Turnover.</p> |  |
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|  |  |  |  |  | <p>Sema Mobile Services Limited (formerly Zioncell Kenya Limited)</p> <p>Condition 20.4 requires that <i>“The licensee shall clearly show the accounts related to this license in its financial reporting”</i>.</p> <p>We are of the view that this condition in effect imposes an obligation for the operators to do account separation of which we are well aware that global best practice is that account separation is imposed only on dominant operators and not all licensees. We propose that this requirement be removed from the standard license terms and conditions and be captured in the competition regulations.</p> <p>Secondly, even in a scenario where this account separation mechanism has been imposed, the account separation framework for the various licenses needs to be developed and agreed upon by Licensees, with reference also to international accounting standards.</p> |  |
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| 46. | REQUIREMENTS TO PROVIDE INFORMATION | NFP Condition 21<br>ASP Condition 23<br>CSP Condition 17<br>IGSS condition 20 | Amendment seeks accuracy of information.      | This amendment and the attendant penalty seeks to address licensees who submit inaccurate information to the Authority.<br><br>Gives the Authority flexibility to obtain information from licensees | No feedback | No feedback | Proposed Modification was Adopted |
| 47. | DISPUTE SETTLEMENT                  | NFP Condition 25<br>ASP Condition 25<br>CSP Condition 18<br>IGSS condition 22 | Addition of "regulations" to the existing Act | Necessary to make reference to dispute resolution provided for or as may be provided under a regulation   | No feedback | No feedback | Proposed Modification was Adopted |

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|     |                          |  |   |   | Frontier Optical Networks | <p>This clause has introduced the acts of force majeure which is missing in the current contract. The clause further states that a Licensed seeking to rely on Force majeure must demonstrate to the authority that it took all reasonable steps to minimize the effects of force majeure and also to repair or build the system when such acts ended.</p> <p>Comment/recommendation: Acts of force majeure must be clearly stated and defined.</p> | <p>Proposed Modification was Adopted</p> <p>Force majeure is clearly defined and catered for in 25.1</p>  |
| 48. | SUSPENSION OF OPERATIONS | <p>NFP Condition 24</p> <p>ASP Condition 26</p> <p>CSP Condition 19</p> <p>IGSS condition 23</p> | Proposed addition to allow the Authority to suspend a license or a service provided by a licensee | This is to address grievous non compliance which may border on possible license revocation but where revocation may not be the best option. | Kenya Commercial Bank     | <p>There is no definition of what constitutes a material breach of the conditions. This leaves uncertainty as to precisely under which circumstances the license may be suspended. Clearly define what constitutes a material breach as opposed to other breaches of the conditions and allocate the consequences of breach accordingly.</p>  | <p>The suspension clause is an intermediate action between compliance enforcement and license revocation.</p> <p>Before a suspension, a licensee will have been first given a chance to remedy the contravention, and where this fails, the licensee may be penalized. If even after a penalty has been issued and the licensee still fails to comply, this may be considered a material breach that then can lead to suspension of part of operations.</p> |

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|  |  |  |  |  | <p>Kenya Commercial Bank</p> <p>This clause does not provide for an appeal procedure in respect of the findings made by CAK</p> <p>The Act does not provide for suspension of services thus CAK may be exceeding its mandate by suspending the service. The licensee should be informed of its right of appeal to the Tribunal under Section 102 of the Act, as well as the time within which an appeal may be lodged to the Tribunal.</p> <p>Consider amending the Act to provide for suspension of services so as to provide a legal basis for this.</p> | <p>The licenses may not need to repeat everything in the Act. The Act provides for license revocation, which is more severe than suspension. The suspension is an intermediate action between penalty and licence revocation and therefore merely provides an avenue further engagement before a final decision can be taken to revoke a licence.</p> <p>Appeals procedure is provided in the Act</p> <p>Proposed Modification was Adopted</p> |
|  |  |  |  |  | <p>Telkom Kenya Limited</p> <p>Delete entirely Condition 26 – If license or a service is suspended what would happen to the customers during the period of suspension.</p>   | <p>This refers to suspension of a service or part of a licensee’s operation.</p> <p>The suspension of the service/operation will in most cases be in the interest of the customer and may in certain circumstances also help the Licensee comply with its obligations.</p> <p>Proposed Modification was Adopted</p>  |

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|  |  |  |  |  | <p>Wananchi Group Networks Limited</p> <p>Condition 26- ASP, Condition 26- CSP, Condition 24, NFP Tier 2, Condition 23, IGSS proposes that " The Authority may suspend some /part of the operations of the licensee where the licensee has breached a condition and in the Authority's opinion the breach is of a material nature.....". we are concerned that the Authority has not defined or clarified what it meant by suspension of some or part of the operations of a licensee. In Particular the clause should also be clear on what happens during the period of suspension, e.g shall the operator cease operations and trading? What services can be provided by an entity that has been suspended? We would appreciate further clarity from the Authority on what is entailed under suspension of services and the breach of license conditions leading to suspension of licensee should be clearly stated for clarity.</p> <p>We further note that the notice period of 45 days of the Authority's intention to suspend the services of a licensee is too short. We wish to highlight that most of the licensees enter into long term contractual relationship with their customers and suppliers and therefore a longer notice period is recommended. We propose a notice period of 6-12 months of intention to suspend the services of a licensee.</p> | <p>The suspension clause is an intermediate action between compliance enforcement and license revocation.</p> <p>Before a suspension, a licensee will have been first given a chance to remedy the contravention, and where this fails, the licensee may be penalized. If even after a penalty has been issued and the licensee still fails to comply, this may be considered a material breach that then can lead to suspension of part of operations.</p> <p>Given the lengthy engagement process involved before notice of suspension, the 45 days is therefore adequate for a suspension under such circumstances</p> <p>Proposed Modification was Adopted</p> |
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|  |  |  |  |  | <p>Airtel Networks Kenya Limited</p> <p>Given the nature of the telecommunications services especially for an NFP and given that development and deployment of infrastructure is a long and expensive process and secondly the costs involved in maintaining a telecommunications networks with or without customers is a costly affair, we wish to note that it is important for the Authority to specify clearly what breaches would lead to a suspension of a license so that this act of suspension of a license is proportionate to the breach. It is also imperative that the Authority clearly states what happens during the suspension period by answering the following questions.</p> <p>Does it mean no services should be provided and billed to customers during this period?</p> <p>Does it mean license/operating fees for this period are waived?</p> <p>Does it mean the network should be shut down during this period?.</p> <p>In this regard therefore, we propose the following amendments:</p> <ol style="list-style-type: none"> <li>1. The notice period of the intention to suspend a license is revised to 75 days and a further 15 days for the suspension bringing total period to 90 days.</li> <li>2. Particular breach of license conditions leading to suspension of license should be clearly stated.</li> <li>3. There should be clarity on what happens during the period of suspension of the license so that there is clarity as to whether the operator shall cease operations and trading.</li> </ol> | <p>The suspension clause is an intermediate action between compliance enforcement and license revocation.</p> <p>Before a suspension, a licensee will have been first given a chance to remedy the contravention, and where this fails, the licensee may be penalized. If even after a penalty has been issued and the licensee still fails to comply, this may be considered a material breach that then can lead to suspension of part of operations.</p> <p>Given the lengthy engagement process involved before notice of suspension, the 45 days is therefore adequate for a suspension under such circumstances</p> <p>Where suspension is applied, the relevant services/applicable systems would cease to be provided and/or billed during this period of suspension.</p> <p>Licence/operating fees will however remain applicable because the licence will still be operational, although some of the rights are waived during the period of suspension.</p> |
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|  |  |  |  |  | <p>Frontier Optical Networks</p> <p>This condition introduced a suspension clause giving the Authority power to suspend a licensee where it has breached a license condition that the authority opine it's a material breach and has failed to rectify the breach after being served with a forty five (45) days notice</p> <p>Comment/recommendation; it does not state what is material breach but states its whatever CAK opine its material this clause is ambiguous as it gives room for CAK to manipulate the contract to their favour.</p> <p>45 days are too short a period for some of the breaches to be amended especially the Network facilities providers. We recommend for the NFPs to be given 6 months..</p> |  |
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|  |  |  |  |  | <p>Sema Mobile Services Limited (formerly Zioncell Kenya Limited)</p> <p>There is need to clarify the nature of activities that may or may not be undertaken by a Licensee following suspension of a Licence, bearing in mind the following matters: -</p> <p>(a) Suspension of a licence does not in itself mean that the Licensee company has ceased to be a going concern. This is a matter to be determined subject to and in accordance with the Companies Act (Chapter 486 of the Laws of Kenya). Accordingly, the Licensee may continue trading in relation to other services not governed by the then suspended Licence.</p> <p>(b) Following the practice in management of companies that have ceased to trade actively and for practical reasons, a Licensee whose licence has been suspended should nonetheless be allowed to continue collecting debts owed to the Licensee, whether from customers or third parties;</p> <p>We propose that where breach of licence term, condition or directive issued by the Authority can be remedied, such circumstances should lead to licence suspension, rather than revocation.</p> | <p>Already addressed in the above responses</p> |
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|  |  |  |  |  | <p>Sea Submarine Communications Limited</p> <p>(c) Appreciating the impact of a suspension on a licensee's operations we propose that any remedy period specified by the Authority under Condition 24.1 be reasonable having regard to the nature of the breach.</p> <p>(d) · On the basis of the above we propose that Condition 24.1 be revised by deleting the fourth line of that condition that starts with the words "of the license..." in its entirety and replacing it with the following words "...of the license and has been given notice to comply within a specified reasonable period having regard to the nature of the breach and failed..."</p> | <p>Already addressed in the above responses</p> |
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| 49. | LICENCE<br>REVOCATI<br>ON |  |  |  | Wananchi<br>Group<br>Networks<br>Limited | <p>Condition 27.5, AS.P, Condition 22, CSP, Condition 25, NFP Tier 2, condition 24, I655 proposes that....”the</p> <p>Authority may at any time revoke this licence by giving six(6) months’ notice in writing.....”</p> <p>We propose that it should be included in the licence revocation condition, a provision for a 2 year transition period from the date of revocation. This is to take into account the massive investment by the licensee to be able to dispose of and mitigate the losses to be suffered by the revocation. The notice period for two (2) years is to further take care of the long contractual relationships with suppliers.</p> <p>We further recommend that the particular breach of license conditions leading to revocation of license should be clearly stated for clarity in the licence condition.</p> | <p>It is to be appreciated that before revocation clause is invoked, the licensee will have been given enough opportunities with inbuilt time frames to remedy the contravention, other enforcement actions may have taken place and suspension may have also been invoked. By the time revocation clause is invoked, the licensee will have had enough time and won’t need another two years. The 6 months is therefore deemed enough for the licensee to wind up its operations after revocation notice has been served</p> <p>Breaches warranting revocation are as many as there are license conditions and therefore do not need to be listed. The revocation is an ultimate action where the licensee has been given a chance to remedy the contravention has not complied.</p> <p>Proposed Modification was Adopted</p> |
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|  |  |  |  |  | <p>Airtel Networks Kenya Limited</p> <p>Given the nature of the telecommunications services especially for an NFP and given that development and deployment of infrastructure is a long and expensive process and secondly the costs involved in maintaining a telecommunications networks with or without customers is a costly affair, we wish to note that it is important for the Authority to specify clearly what breaches would lead to a revocation of a license so that this action of revocation of a license is proportionate to the breach. Given the capital investment nature of the NFP licenses, it is prudent that the notice given to revoke a licence especially for NFP be increase to allow the resolution of many issues with the various many stakeholder which include customers, supplies of equipment etc.</p> <p>We propose the following amendments:</p> <ol style="list-style-type: none"> <li>1. There should be included in the license revocation condition, a provision for a 2 year transition period from the date of revocation. This is to take into account the massive investment put in which a licensee should be able to dispose of and mitigate the losses suffered from the license revocation.</li> <li>2. Particular breach of license conditions leading to revocation of license should be clearly stated.</li> </ol> | <p>It is to be appreciated that before revocation clause is invoked, the licensee will have been given enough opportunities with inbuilt time frames to remedy the contravention, other enforcement actions may have taken place and suspension may have also been invoked. By the time revocation clause is invoked, the licensee will have had enough time and won't need another two years. The 6 months is therefore deemed enough for the licensee to wind up its operations after revocation notice has been served</p> <p>Proposed Modification was Adopted</p> |
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| 50. | TRANSITIONAL PROVISIONS | NFP Condition 25 | <p>The amendments seek to:</p> <p>Condition license renewal after 10 years subject to acquisition of spectrum through a market based allocation (e.g. Auction)</p>                                     | <p>NFP-T1 license is about spectrum and therefore can only be renewed if licensee successfully acquires spectrum in a competitive process</p>   | Kenya Commercial Bank        | <p>Review of a license for renewal 2 years prior to the renewal date does not appear to be practical. It would negate the relevance of the process relating to annual compliance reporting and compliance certification. Review should be a gradual and continuous process. Besides, breach of the license terms may occur after a favourable review, leading to a wrong renewal decision by CAK. Amend to provide for continuous compliance review and compliance certification to be the criteria for license renewal.</p>   | <p>Review is indeed continuous and licensees are issued with annual compliance certificate. However, review for license for renewal after 10, 15 or 25 year licence term is to be done 2 years prior to expiry. Where gross non compliance is noted after the review, this can always be re-looked at or appropriate enforcement action or revocation can be considered.</p> <p>Proposed Modification was Adopted</p> |
|     |                         |                  | <p>Participation in spectrum allocation to conditional to satisfactory performance in the preceding performance period</p> <p>Degrading NFP-T1 to NFP-T2 if the licensee fails to acquire spectrum</p> | <p>To ensure that only performing licensees are considered for license renewal</p> <p>The loss of NFP-T1 is only relevant to GSM spectrum, and should they lose it, but other infrastructure can remain and be operated under NFP-T2, which</p> | Wananchi Group Kenya Limited | <p>Condition 26.2 (NFP/IGSS) Transitional Provisions proposes that " the licensee shall not be eligible to participate in the market based spectrum allocation process if a formal review carried out by the Authority, at least one (1) year before the commencement of the market - based spectrum allocation mechanism, determines that the licensee's performance during the licence term has been unsatisfactory..."</p> <p>We propose that the Authority should define a performance matrix well in advance, which should clearly define satisfactory and unsatisfactory performance. This should be an annex in the licence issued to the licensees. We propose the following definitions in the performance matrix: Over 50% compliance should be defined as satisfactory performance, 0 Less than 50% should be defined as unsatisfactory performance</p> | <p>Each licence condition is important and compliance with all the licence conditions is encouraged.</p> <p>Performance may be pegged on 50% and the licensee can comply with 90%, but the remaining 10% non-compliance may be too grievous to be ignored. In this regard, it will be hard to peg compliance threshold to a percentage as this may not be realistic for purposes of this condition.</p>               |

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|  |  |  |  | the licensee can apply for. | <p>Airtel Networks Kenya Limited</p> <p>Condition 26.2 provides “The licensee shall not be eligible to participate in the market based spectrum allocation process if a formal review carried out by the Authority, at least one (1)year before the commencement of the market-based spectrum allocation mechanism, determines that the licensee’s performance during the license term has been unsatisfactory”</p> <p>We propose that the Authority develops a performance-rating matrix that defines unsatisfactory performance and satisfactory performance. A rating of over 50% should be defined as satisfactory less than 50% should be defined as unsatisfactory</p> | <p>Each licence condition is important and compliance with all the licence conditions is encouraged.</p> <p>Performance may be pegged on 50% and the licensee can comply with 90%, but the remaining 10% non-compliance may be too grievous to be ignored. In this regard, it will be hard to peg compliance threshold to a percentage as this may not be realistic for purposes of this condition.</p> <p>Proposed Modification was Adopted</p> |
|  |  |  |  |                             | <p>28.2</p> <p>Telkom Kenya Limited</p> <p>Requirement to renew license 1 year before expiry date including payment of renewal fees effectively reduces the term of the current license by one year</p>  | <p>The license is renewed one year earlier but the licence remains in force to the full term so that the one year renewal is paper work rather than an end to the previous term</p> <p>Proposed Modification was Adopted</p>   |

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|  |  |  |  |  | <p>Frontier Optical Networks</p> <p>This condition states that the Authority at the request of the licensee shall only renew a license after it has carried out a two-year formal review of the licensee prior to the expiry date and determine whether the license should be renewed.</p> <p>This clause does not state the procedure of carrying out the review does it depend on the licensee's request or CAK's own volition? Does it mean the licensee has to serve a two year notice to the CAK of their intention to renew the license? How long does an audit and the outcome of the audit take? How are you informed of the decision and the repercussions thereafter? What is the procedure to appeal against CAK unfavorable decision? What is the term for a renewed license? This clause appears to be ambiguous and needs proper formation to cater for the above questions..</p> | <p>The licensee shall request for renewal</p> <p>CA shall carry out the review using internal procedures and processes.</p> <p>The procedure for redress is specified in the KICA, 1998.</p> <p>Proposed Modification was Adopted</p> |
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|     |                  |  |  |  | Sema Mobile Services Limited (formerly Zioncell Kenya Limited) | We propose the following definitions in the performance matrix: Over 50% compliance should be defined as satisfactory performance, Less than 50% should be defined as unsatisfactory performance. | Each licence condition is important and compliance with all the licence conditions is encouraged.<br><br>Performance may be pegged on 50% and the licensee can comply with 90%, but the remaining 10% non-compliance may be too grievous to be ignored. In this regard, it will be hard to peg compliance threshold to a percentage as this may not be realistic for purposes of this condition.<br><br>Proposed Modification was Adopted |
| 51. | LICENCE TRANSFER | NFP Condition 25<br>ASP Condition 28<br>CSP Condition 20 | License transfer to exclude resources assigned prior to the transfer | To avoid consolidation of licenses and resources by few licensees that may lead to | 29.2<br>Telkom Kenya Limited                                   | How would the new licensee operate the license without the requisite resources?   | The transferee shall seek/apply for the use/transfer of the requisite resources.<br><br>Proposed Modification was Adopted   |

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|     |              | IGSS condition 25  |  | monopolistic tendencies.                    | Frontier Optical Networks  | <p>This condition states that the licensee can only transfer their interest and obligation upon getting consent from CAK and forbids the licensee from transferring resources assigned to it by the Authority under whatever circumstances.</p> <p>Comment/recommendation; What are the CAK resources that are being mentioned here? They should be indicated in the license conditions</p>    | <p>The resources are Numbering and spectrum Resources</p> <p>Proposed Modification was Adopted</p>   |
|     |              |  |  |   | Sema Mobile Services Limited (formerly Zioncell Kenya Limited)           | <p>The licence conditions on anti-competitive practices should be made subject to the provisions of the Competition Act (Act No. 12 of 2010).</p>  | <p>There is already inherent mutual recognition of other laws. License condition 3.2 on establishment of licensed systems provides recognition of other governmental and institutional establishments</p> <p>Proposed Modification was Adopted</p> |
| 52. | LICENCE FEES | <p>NFP Condition 26</p> <p>ASP Condition 30</p> <p>CSP Condition 24</p> <p>IGSS condition 26</p> | Amendment seeks to introduce interest for delayed payment of license fees due. | To increase compliance with payment of fees | <p>31.4</p> <p>Telkom Kenya Limited</p> <p>Frontier Optical Networks</p> | <p>Delete 31.4. Licensee to declare to the Authority how they will pay the outstanding amounts</p> <p>Introduction of a penalty i.e an interest of 2% for the delay payment of license fee the clause states as follows;</p> <p>We applause CAK for lowering the percentage of the operating fee, however also feel that the 2% penalty is too punitive we proposed it be lowered to 0.5%.</p> |  |

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|  |  |  |  |  | <p>Wananchi Group Kenya Limited</p> <p>Condition 28.4 (NEP-TZ/IGSS) seeks to introduce interest for delayed payment of licence fees due. Any fees due to the Authority that remain unpaid ninety (90) days after they become due shall attract an interest at a rate of 2% per month.....”</p> <p>We propose that the interest on late payment should be abolished and if indeed the Authority insists on charging an interest on late payment then we propose that the interest on late payment under condition 31.4 be at 0.1% per month instead of 2% per month to ensure that the license fees do not escalate to unsustainable levels due to penalties arising out of delay and force some licensees to exit the market.</p> | <p>It is the licensees’ responsibility to ensure that the license fees is paid in good time and not allowed to remain unpaid for such a period that will attract enormous interest. Also note that this is not a penalty but the cost of holding on to money that belongs to the Authority.</p> <p>Proposed Modification was Adopted</p> |
|  |  |  |  | <p>Airtel Networks Kenya Limited</p> <p>We propose that the interest on late payment under condition 28.4 be amended to 0.5% per month instead of 2% per month to ensure that the license fees do not escalate to unsustainable levels due to penalties arising out of delay.</p> <p>We also propose that a standard time of 60 days within which fees shall be paid be included in the license to ensure consistency and set a base for the imposition of interest.</p> |   |  |
|  |  |  |  | <p>Sema Mobile Services Limited (formerly Zioncell Kenya Limited)</p> <p>We propose that the interest on late payment under condition 28.4 be amended to 1% per month instead of 2% per month. Hefty interest can be counter-productive if interest accrues to an amount that defeats commercial viability of a Licensee’s business.</p>   |   |  |

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|     |   |                   |   |  | Kenya Commercial Bank     | Billing address should be made certain. The invoices should be forwarded to the licensee's email which is disclosed by the licensee.  | This is noted although cannot be addressed in the licence.            |
| 53. | SUBSCRIBER MANAGEMENT IN THE EVENT OF DISCONTINUATION OF PRODUCTS OR SERVICES BY LICENSEE | NFP Condition 28  | New condition requiring the licensee to have a plan for subscriber management in the event of non-license renewal or license revocation | To guarantee continuity of services to subscribers in the event of non-renewal or license revocation | Telkom Kenya Limited      | Transfer of subscribers would involve two parties. Such a transfer management plan would have to be negotiated and agreed by the parties involved   | Subscriber management plan has to be approved by the Authority (30.1) |
|     |   | ASP Condition 29  |   |  | Frontier Optical Networks | This clause requires the licensee to put in place a plan for subscriber management in the event of non –license renewal or license revocation<br><br>If CAK revokes a license how much time does it give the service provider to put in place the subscriber management plan? What are the requirements/guidelines for this?. | Period indicated in 27.1<br><br>Proposed Modification was Adopted     |
|     |   | CSP Condition 22  |   |  |                           |   |   |
|     |   | IGSS condition 26 |   |  |                           |   |   |

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|  |  |  |  |  | <p>Sema Mobile Services Limited (formerly Zioncell Kenya Limited)</p> <p>We are agreeable to the principle of the proposed Condition. However, a licensee may not be able to contemplate suitable provisions of the Transfer Management Plan <i>“within three (3) months from the Effective Date”</i> as proposed. Commercial and operational arrangements relating to transitioning of subscribers are dependent on numerous variables to be agreed between the transferor and transferee at the material time. We propose that Licensees should be required to furnish to the Authority the Transfer Management Plan <i>“At least 6days prior to implementation of the Transfer Management Plan...”</i></p> <p>We are also of the view that the Transfer Management Plan should not apply in the event of suspension of a Licence if the Licensee’s company unless the Licensee company commits an act of insolvency, applies for a winding up order or is placed under receivership. Our concern is to ensure that the Licensee has an opportunity to re-vamp its business following licence suspension if circumstances permit, and with the kind permission of the Authority.</p> | <p>The management plan envisaged here is a broad framework that does not necessarily delve into the specifics and therefore this condition and its requirement remains relevant.</p> <p>Agreed! Transfer Management Plan will not apply to suspension.</p> |
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