

THE UNITED REPUBLIC OF TANZANIA

TANZANIA COMMUNICATIONS REGULATORY AUTHORITY



ENFORCEMENT GUIDELINES

NOVEMBER, 2012

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1.0 INTRODUCTION

- 1.1. The Tanzania Communications Regulatory Authority (herein referred to as the Authority), is an independent regulatory body established under the Tanzania Communications Regulatory Authority Act, 2003 to regulate postal, broadcasting and electronic-communications sectors. The Authority's functions are provided under the Electronic and Postal Communications Act, No. 3 of 2010 (EPOCA) and the Tanzania Communications Regulatory Authority Act, 2003 (TCRA Act). The said functions include among others: issuance and renewal of licences, enforcement of licence conditions, establishing standards for regulated goods and services, regulating rates and charges, type approving electronic communication equipment and managing frequency spectrum.
- 1.2. These guidelines focus on the mandate, powers, areas, procedures and institutional arrangements of the Authority in carrying out its enforcement functions.

2.0 MANDATE, POWERS AND PRINCIPLES

2.1 Mandate

One of principal duties of the Authority is to ensure there is compliance with the provisions of the Electronic and Postal Communications Act, No. 3 of 2010 (EPOCA), the Tanzania Communications Regulatory Authority Act, 2003 (TCRA Act), Regulations and Rules made under the said legislations and licence obligations issued to licensees.

2.2 Powers

Section 114 of EPOCA gives powers to the Authority to take enforcement measures against any person who contravenes licence conditions, regulations and provisions of the said Act. Section 6 (1) (e) of the TCRA Act requires the Authority to take over and continue carrying out the functions of the former Tanzania Communications Commission and Tanzania Broadcasting Commission which relates to ensuring enforcement of licence conditions including among others the following:

- compliance to the law requires operators to meet obligations provided in the EPOCA and TCRA Act;
- Compliance to regulatory requirements requires operators to meet obligations provided under the Electronic and Postal Communication

Regulations, 2011 and the Tanzania Broadcasting (Content) Regulations, 2005 for content service providers (television and radio service providers).

- Follow up of licence compliance and other obligations such as roll out and meeting quality of service requirements will be done during inspection by the Authority's staff or monitoring compliance through submission of certain documents such as complaint handling procedure, contract for service and interconnection agreements.
- Require any person to produce specified documents and/or information;
- Issuance of compliance orders to operators who breach licence conditions by requiring them to show cause why action should not be taken against them for the said breach;
- Issuance of notice to require a person or licensee to remedy a breach;
- Enter any premise and seize equipment or goods not authorized to use or provide;
- Issuance of sanctions to licensees who violate licence conditions or the law, including fines, suspension or cancellation of a licence;

2.3 Principles of Enforcement

In executing its mandates on enforcement, the Authority is encouraged to adhere to the following internationally recognized principles:

- a) act promptly and concisely in enforcement actions.
- b) abide by their enforcement decisions and see that they are implemented.
- c) ensure fair hearing
- d) act basing on sufficient evidence.
- e) ensure transparent, objective and impartial due process.
- f) ensure that sanctions for specific violations are applied indiscriminately and proportionately.
- g) ensure consistency in making decisions.
- h) take into account the magnitude and gravity of the violations and antecedents of the offender.

3.0 AREAS OF ENFORCEMENT

There are a number of areas which the Authority needs to ensure there is enforcement. The list below is indicative and not exhaustive.

3.1 National Areas of Enforcement

The Authority should ensure that there is compliance in the sector in respect to following areas:

3.1.1 Licensing Requirements

Any person who fails to observe licence requirements and establishes, installs, operates, constructs, maintains, owns or makes available network facilities without obtaining an individual licence commits an offence under Section 116 (1) of EPOCA. In addition, it is an offence if a person provides the following services without obtaining a licence from the Authority: network services (Section. 116 (2), application services (Section 116 (3) (a), content services (Section 116 (3) (b), imports, distribute or sells any electronic communication equipment or apparatus or establishes, installs, maintains and operates an electronic communication system or imports non-type approved equipment.

The penalty for the above mentioned offence is a fine of not less than five million Tanzanian shillings or imprisonment for a term not less than twelve months or to both. By the Authority taking action against illegal operators, order is created within the sector and existing service providers are given comfort that they are all operating at a level playing field.

3.1.2 Quality of Service

Section 6 (1) (e) of the TCRA Act requires the Authority to monitor the performance of the regulated sector in relation to availability, quality and standards of services. In enforcing quality of service, the Authority under Section 6 of the Second Schedule of the EPOCA is required to lay down standards and codes of conducts to be observed by all electronic communication and postal operators and consider such aspects as service availability, network availability, call success or completion rate, voice or speech quality, call drop rate, call set up time and received signal strength, efficient mail delivery, mail security, acceptable quality of electronic content delivery to the public. Operators are also required to comply with the Electronic Communication and Postal (Quality of Service) Regulations, 2011.

Furthermore, in accordance with Section 34 (e) of the Second Schedule of the EPOCA, the Authority is required to carry out periodic measuring of quality of services.

3.1.3 Interconnection

Section 7 of the Second Schedule of the EPOCA, requires the Authority to regulate the interconnection of and access to systems of electronic communication operators. In addition, interconnection is regulated by the Electronic Communications and Postal (Interconnection) Regulations, 2011 which provide for among other issues interconnection negotiation procedure, conditions of interconnection agreements and a three months period to enter into interconnection agreements. In carrying out its function on interconnection, the Authority is required to put in place interconnection frameworks which guarantee seamless service provision to consumers, speedy rollouts by licensees, return on investment by licensees and protection of consumers from spillover effects of high interconnection rates.

3.1.4 Fair Competition

On the issue of ensuring fair competition in the communications sector, as provided under Section 5(a) of the TCRA Act, the Authority has the duty to promote effective competition and economic efficiency. This can be performed by the Authority ensuring fair competition among service providers by removing entry barriers to new entrants into the market and discouraging anticompetitive behaviors in the markets.

Section 19 of the TCRA Act gives power to the Authority to deal with competition issues which may arise in the course of the discharge of its functions, by investigating and reporting on those issues as well as making appropriate recommendations to the Fair Competition Commission or any other relevant authority on the matter.

Part IV of EPOCA provides for Competition practices and conduct. This Part prohibits anti-competitive practices and conduct of dominant licensee. The Authority also has powers under Section 62 of EPOCA to determine a dominant licensee for each electronic communication market and required to publish guidelines for the determination of dominant licensees and publishing list of all electronic communication licensees holding dominant position and to

regulate their prices (Section 63 of EPOCA). Part IV also provides for prohibition of collusive agreements (Section 64 of EPOCA) and on tying or linking arrangements (Section 65 of EPOCA). The Authority is also required to maintain a register of current authorizations of conducts and remedies against any prohibited conduct on competition (Section 67 of EPOCA).

3.1.5 Rollout Obligations

Licencees with licences for network facilities, network services and application services have roll out obligations under the roll out plans provided as Annex I to their licences. Regulation 29 (1) of the Electronic Communication and Postal (Licensing) Regulations, 2011 provides for licensee to roll out services within a maximum period of twelve months from the date of grant of the licence. The Authority is required to follow up that licensees meet their rollout commitments as required under their respective licences.

3.1.6 Consumer Protection

Section 5 (b) of the TCRA Act, provides for the Authority's duty to protect the interest of consumers. The Electronic and Postal Communication (Consumer Protection) Regulations, 2011 provide for licensee to give correct and adequate information to enable consumers to make informed decision, to establish customer care system, complaint handling procedure, outage credit system, installation of billing system and ensure confidentiality of consumer information and data protection. For effective consumer protection, the Authority has the duty to ensure that all these are complied with by a licensee and take action against any licensee who acts in contravention of the said Regulations and relevant licence conditions.

3.1.7. SIM Card Registration

In accordance with Regulation 33 of the Electronic and Postal Communication (Licensing) Regulations, 2011, a person distributing or selling SIM cards is required to register the same. Licensees are required to activate only registered SIM cards.

3.1.8 Scarce Resource Utilization

The Authority has powers to manage and control all radio communication frequencies spectrum or frequency channels (Section 77 of EPOCA) and regulate all electronic communication numbering and electronic address (Section 79 of EPOCA). Operators are required to comply to licence requirements and provisions under the Electronic and Postal Communication (Radio Communication and Frequency Spectrum) Regulations, 2011 and the

Electronic and Postal Communication (Telecommunication Numbering and Electronic Address) Regulations, 2011 that among other issues provide for efficient and effective utilization of scarce resources such as frequency spectrum and numbers.

3.1.9. Installation, Maintenance, Importation and Selling of Electronic Communication Equipment

The Authority should ensure that contractors of installation and importation of electronic communication equipment meet both local and international standards as provided under the law, in particular the Electronic and Postal Communication (Licensing) Regulations, 2011, and the Electronic and Postal Communication (Type Approval of Electronic Communication Equipment) Regulations, 2011. This will guarantee network integrity, interoperability and safety of users.

In accordance with Regulation 39 of the Electronic and Postal Communication (Licensing) Regulations, 2011 an importer, distributor or seller of electronic communication equipment is required to provide to a consumer with a warranty of not less than 12 months.

3.1.10. Digital Broadcasting

The Electronic and Postal Communication (Digital Broadcasting and Other Broadcasting Networks) Regulations, 2011 places a number of obligations on network facilities licensee who are authorized to provide digital terrestrial broadcasting multiplexing and signal distribution services. The said obligations include among others the followings:

- to provide access to Free to Air content services licensees as a primary obligation (Regulation 7 (a));
- to provide access to subscription (pay television) on secondary basis (Regulation 7 (b));
- to provide services to current and new content services licensees on a fair, transparent, impartial and non-discriminatory manner.

3.1.11 Content Matters

Content services licensees are required under their licences to comply to regulations, including the Broadcasting Services (Content) Regulations, 2005.

Under the above mentioned regulations content services licensees have a number of obligations such as to provide as to broadcast events of national interest, use of Kiswahili or English in broadcasting and any other language if approved by the Authority, provide news and current affairs, methods of advertising and sponsorship, prohibition of programmes that incite and perpetuate hatred, unsuitable for children and negligently misrepresents facts.

3.1.12. Postal Issues

The Electronic and Postal Communication (Postal) Regulations, 2011 places a number of obligations on postal communications licensees including among others the followings: posting of postal articles, delivery of postal articles, disposal of undelivered postal articles, transmission of newspapers, quality of service, insured post, prohibited articles, postal security and safety.

3.2 Regional Enforcement Areas

At the East African regional level, the Authority should ensure that there is compliance in the sector in respect to *Inter-state* transmission connectivity to ensure availability and reliability of communication services in the region, in particular:

3.2.1 Regional roaming

Encourage service providers to offer efficient and affordable roaming services in the region.

3.2.2 Regional broadcasting (radio and television)

Encourage regional integration in terms of cultural diversity and content delivery in the region.

3.2.3 Inter-state money order and courier services

Ensure efficient provision of postal money order and courier services in the region.

3.2.4 Cross border frequency coordination

Ensure cross border frequency coordination to eliminate interference.

4.0 ENFORCEMENT PROCEDURES

Every part of the enforcement process needs a clear timeline and well-defined procedures for the sake of clarity and promptness. There are three ways of initiating an enforcement process namely;

- The Authority-initiated investigations,
- consumer complaints, and
- service providers/service provider complaints

The enforcement shall involve the following processes:

1. Monitoring
2. Inspection
3. Sanction

4.1 Monitoring

Monitoring is a purposeful and systematic observation that involve giving feedback on the on going activities to determine the level of performance in relation to the Authority requirements. Monitoring shall be conducted in the relevant enforcement areas mentioned in part three of these Guidelines.

4.2 Inspection and Other Processes

(a) Inspection

In order to ensure licensed operators comply with the law and licence conditions and on any allegation of illegal operators, the Authority using its powers under Section 115 (1) of EPOCA and 34 of the Second Schedule of the EPOCA to carry out field investigations/inspection.

The Authority may also appoint any person to carry out inspection on its behalf.

Inspection may be carried concerning the following:

- any reports/complaints against a licensed or non-licensed operator,
- measuring of quality of service,
- proper utilization of resources such as frequency spectrum,
- operation with excessive transmission power,
- illegal operations,
- the fulfillment of roll out obligations.

Inspection carried out by the Authority's staff may be either scheduled or ad hoc and carried out on quarterly basis by inspection teams. The team shall be required to prepare an inspection report pointing out any identified violation and propose actions to be taken, including any of the following:

- a) take no further action but advise the owners of the inspected facilities,
- b) issue a Letter of Inquiry requesting for additional information,
- c) issue a Notice of Violation notifying the party that it is in violation of the law and requiring an explanation or
- d) take more severe enforcement action such as assessment of monetary fines.

(b) Letters of Inquiry

In carrying out investigations in respect of non-compliance under the EPOCA, TCRA Act and Regulations, the Authority may issue letters of inquiry. The purpose of the letters of Inquiry is to gather from a licensee or other relevant entity more information during the course of an ongoing investigation when the record is inadequate.

The recipient of the letter of inquiry shall be required to respond to the Letter of Inquiry within ten working days after receipt of the said letter. Based on the response received, the Authority may decide to end the investigation without further action, send follow-up Letter of Inquiry requesting additional or clarifying information, or take enforcement action.

(c) Powers of Search and Seizure of equipment or system

In performing its enforcement functions, the Authority by virtue of section 115(2) of EPOCA may utilize the services of a police officer not below the rank of an Inspector of police or authorized employee, to enter and search any place or stop and board any board, vessel or aircraft and seize material, equipment not typed approved or authorized to be used to offer communication services.

(d) Compliance Orders

After inspection or investigation is carried out and the Authority is satisfied that there is non-compliance or breach of licence condition(s) or that a person has committed or likely to commit an offence provided under EPOCA or TCRA Act, it may issue a compliance order upon the said person/licensee (**Annex I**).

The following procedure is followed in issuance of compliance orders:

- After inspection or investigation is carried out by officers of the Authority and there is reason to believe that there is non-compliance or breach of licence condition(s) or that a licensee has committed or, is likely to commit an offence against EPOCA or the TCRA Act the Director of Legal Services will propose for issuance of a compliance order against the licensee.
- The Director General, by virtue of powers under section 45 of the TCRA Act will issue a compliance order to the licensee/person in breach of licence condition.

The compliance order which must be signed by the Director General, is required to be served upon the person who has committed or likely to commit an offence giving them time to appear before the Compliance and Enforcement Committee to show cause why action should not be taken against them for breach of licence condition(s).

- The Director of Legal services will arrange for meeting between the Compliance and Enforcement Committee and the licensee or person who has been served the compliance order to hear their defence.
- If the licensee acknowledges the offence, their representative will be required to sign an Offence Acknowledgment Form (**refer to Annex II**)
- Thereafter, the Authority may proceed to issue an order/decision in which the licensee or person may among other issues be required:
 - take action as directed by the Authority so as to remedy the breach
 - to refrain from the conduct

- Issue a Letter of Inquiry requesting for additional information,
- Issue a Notice of Violation notifying the party that it is in violation of the rules and Regulations requiring an explanation
- Issue an order to offending party to refrain
- Take more severe enforcement actions such as imposition of monetary fines, cancellation or revocation of the licence.
- Where the licensee/person refutes to be in breach of any offence, the Authority action may be taken against them including to file a case against them.

A copy of the compliance order will be placed on the Public Register and is enforceable as an order of the High Court.

4.3. Sanctions

Section 17 of the Second Schedule to the EPOCA gives powers to the Authority to impose sanctions upon any licensee for violation of the law or licence conditions.

Regulation 44 of the Electronic and Postal Communications (Licensing) Regulations provides for the following sanctions which may be imposed by the Authority:

- a) public apology by the licensee, at its own costs in a newspaper of general circulation in an area
- b) payment of a fine
- c) compensation to an injured party
- d) suspension or cancellation of licence
- e) any other sanction as may be appropriate.

Section 22 (a) of EPOCA and **Regulation 38** of the Electronic and Postal Communications (Licensing) Regulations, 2011 allows the Authority to suspend or cancel a licence if the licensee is in material breach of the licence conditions including the following events:

- i) failure of a licensee to commence construction of the network within twelve months of the date of execution of the licence;
- ii) failure of a licensee to provide services to customers within twelve months from the date of issuance of the licence;
- iii) continuous interruption of services for a consecutive or combined period of thirty days over any six months period provided that the - interruption is not a result of force majeure;

- iv) bankruptcy or filing of any insolvency proceedings against the licensee;
- v) repeated failure of a licensee to pay licence fees;
- vi) repetition or continuation of an event of fraction following written notice by the Authority to cease operation;
- vii) failure to comply with any condition set out in the licence;
- viii) breach of joint venture contract by the majority shareholder which results into the dissolution of the joint venture or otherwise jeopardizes the performance of the licensee; and
- ix) alienation of shares by the majority shareholder without notification to and approval by the Authority and to the extent that the majority shareholder is reduced to a minority shareholder.

The process for cancellation of a licence should be reserved for the most serious cases such as those where the licensee has misrepresented material facts to the Authority or where, despite warnings or other types of enforcement action, the party continues to violate the rules. Prior to cancellation of a licensee's licence, the Authority must issue an Order directing the party to show cause why its licence should not be cancelled. The Order to show cause must also offer the party an opportunity for hearing prior to issuance of the Cancellation/Revocation Order.

The Authority may impose a warning on a licensee. In such a case the Authority may shall inform the licensee in writing that its actions violate rules/law and warn the them to take steps to ensure compliance with the rule in the future. Issuance of the warning letter may officially conclude the matter. Failure to comply with a rule after issuance of a warning can lead to more severe enforcement action.

(d) Consent Decrees

In lieu of a fine, the Authority may sometime find it in the public interest to enter into a consent decree where by the offending party agrees to take steps to ensure compliance.

(e) Criminal Prosecution

Criminal prosecution may be taken against any person who commits an offence under EPOCA, TCRA Act, Regulations or Rules. Section 155 of EPOCA gives powers to the DG to compound certain offences other than offences related to theft, fraud, forgery or similar offences and order the person to pay a sum of money not exceeding the amount of the fine prescribed for the offence. The Department of Legal services being responsible for all litigation involving the Authority is responsible for prosecution of all offenders who act contrary to the law or licence conditions.

In cases concerning unpaid fees or royalty, the Authority may cause a charge to be created in favor over the assets of a licensee who has defaulted payment of fees or royalty on or before the date the fee or royalty is due. The procedure for creating the charge is provided under Section 158 of EPOCA and includes serving notice to licensee and specifying among other issues the assets charged, interest accruing with respect to the fee or royalty and any other costs of charge and sale. The Authority's powers to sell assets of a debtor licensee, method and timing of sale are provided under section 159 of EPOCA.

(f) Alternative Dispute Resolution

In respect of formal complaints between service providers or between service providers and consumers, the Authority will reconcile or mediate, and arbitrate disputes as well as enforce its decision such as award of damages to the aggrieved party.

5.0. INSTITUTIONAL ARRANGEMENT

For the purpose of having effective enforcement mechanism in place, the Authority need to have the proper institutional arrangement with a dedicated section/department to handle enforcement issues.

5.1. Enforcement Functions

The Director of Legal Services of the Authority is responsible for follow up of enforcement issues. In the said department there are two sections, namely: one is the Licensing and enforcement and the other is Legal services. While Licensing and Enforcement is required to advise and take action on

enforcement issues, Legal services section assists in advising, investigating and taking enforcement measures. The staff of the Licensing and enforcement section comprise of a team of persons with multi-disciplinary qualifications, including among others, the following:

- Lawyers for advising on legal issues, investigations and preparing legal documents for enforcement measures.
- Engineers for advising on technical issues such as quality of service and frequency interferences.
- Postal officers for advising on postal issues.

5.2 Compliance and Enforcement Committee

For the purpose of carrying out effective enforcement measures, as the case may be the Authority establishes a Compliance and Enforcement Committee. The composition of the Compliance and Enforcement Committee to comprise of the following:

Chairperson: Director of Legal Services

Member: Director-----

Invited Members:

- Director(s) from any department where specific issue of enforcement falls under,
- Any other staff conversant with the issue or has expertise on the matter and appointed by the Director General to be a member of the Committee.

Secretariat:

- Deputy Director Licensing & Enforcement
- Deputy Director of Legal Services
- Principal Legal Officer
- Senior Legal Officer

- Senior Frequency Management Engineer
- any other staff as may be co-opted

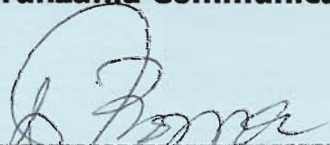
6.0 REVIEW OF GUIDELINES

These Guidelines may be revised by the Authority when the need arises.

7.0. CONCLUSION

These Guidelines have been developed to be used by the Authority's staff in ensuring enforcement is carried out of licence conditions.

Issued by the Tanzania Communications Regulatory



DIRECTOR GENERAL
TCRA

November 2012

DATE

THE UNITED REPUBLIC OF TANZANIA
TANZANIA COMMUNICATIONS REGULATORY AUTHORITY



To: -----

P. O. Box -----

DAR ES SALAAM

COMPLIANCE ORDER

(Made pursuant to Section 45 of the Tanzania Communications Regulatory Authority Act, Cap. 172 of the Laws of Tanzania as amended by Section 179 of the Electronic and Postal Communications Act, Cap. 306 of the Laws of Tanzania)

WHEREAS:

A. On -----the Tanzania Communications Regulatory Authority (herein after referred to as "the **AUTHORITY**") issued to ----- (herein after referred to as "the **LICENSEE**") a Licence for provision of -----
-----("herein after referred to as "the **LICENCE**");

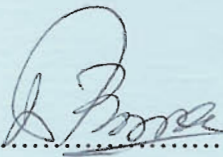
On ----- the **AUTHORITY** carried out inspection in ----- and noted non-compliance of the **LICENSEE** to the licence conditions including requirements of the law by-----

NOW THEREFORE, the LICENSEE is ordered to appear before the **AUTHORITY** at Mawasiliano Towers, Sam Nujoma Road, Dar es Salaam on -----**2012 at 10.00 a.m.** to show cause why legal action should not be taken against it for:

- (1) Acting contrary to -----of the Electronic and Postal Communications (Licensing) Regulations, 2011 and
- (2) Breaching clause -----of its -----licence by -----

TAKE FURTHER NOTICE THAT, should you fail, neglect or refuse to comply with this Order, the **AUTHORITY** will proceed to take legal and regulatory actions against -----without any further notice and at its own risk as to costs and consequences of the actions.

This Order is issued thisday of -----, 2012.


.....
DIRECTOR GENERAL

Compliance Order served upon, and received by ----- on this.....day of.....2012

Name.....

Signature..... (Official Stamp)

Designation.....

This Order is issued in duplicate. Sign both copies and retain your copy while the other copy is to be returned to the Authority to authenticate due service of the Order.

**THE UNITED REPUBLIC OF TANZANIA
TANZANIA COMMUNICATIONS REGULATORY AUTHORITY**



OFFENCE ACKNOWLEDGEMENT

BY -----

(Made under sections 45 and 48 of the Tanzania Communications Regulatory Authority Act No. 12/2003 and any other enabling provisions of the law)

I

of

Doeth hereby acknowledge and declare that ----- is in breach of Regulation-----of the (**INSERT RELEVANT PROVISION**) by-----

I do hereby declare further that I have made this acknowledgement with sober mind and own volition.

Signed at Dar es Salaam thisday of2012.

.....
NAME

.....
SIGNATURE