



**TANZANIA COMMUNICATIONS REGULATORY  
AUTHORITY**

Ref. No: EB.32/160/01/69

13<sup>th</sup> June, 2023

Chief Executive Officer,  
Hyzaxy Company Limited,  
P. O. Box 98968,  
14112 DAR ES SALAAM.

**DECISION ON COMPLIANCE ORDER**

*(Pursuant to Compliance Order hearing conducted on 12<sup>th</sup> April, 2023 at TCRA Headquarters)*

**1. INTRODUCTION**

- 1.1 On 20<sup>th</sup> April, 2020, Tanzania Communications Regulatory Authority (hereinafter referred to as the "Authority") issued to Hyzaxy Company Limited (hereinafter referred to as the "Licensee"), a Regional Application Services licence for the provision of internet services;
- 1.2 WHEREAS among the licence conditions, the Licensee is obliged to comply with the relevant provisions of the Acts, Regulations, Authority's directives and any other Laws of Tanzania;
- 1.3 Section 6 (1) of the Electronic and Postal Communications Act, Cap. 306, R.E. 2022 requires any person or a company that wishes to operate any electronic communications system or offer postal communications, electronic communications or content services to apply to the Authority for a licence.
- 1.4 Table One of the First Schedule to the Electronic and Postal Communications (Licensing) Regulations, 2018 as amended 2022 by GN No. 65, building and operating a fiber network is within the scope of a Network Facilities licence. Therefore, the Application Services licence does not include fibre networks.
- 1.5 The Authority carried out an audit and assessment of Hyzaxy Company Limited's Sites rollout from December 2022 to January 2023 whereby it was revealed that the licensee is operating beyond the scope of its licence by building and operating the



fibre optic cable networks in Dar es salaam region without having the Network Facility Licence;

## 1.6 COMPLIANCE ORDER

1.7 That on 31<sup>st</sup> day of March 2023, the Authority issued a Compliance Order requiring the Licensee to submit a written explanation and appear before the Authority **at TCRA Headquarters 8<sup>th</sup> Floor on 11<sup>th</sup> day of April, 2023 at 2:00 pm** to show cause as to why the Authority should not take Legal and regulatory actions for the Licensee's breach of the Law, Regulations and Licence Conditions. The licensee appeared before the Authority but without written explanation. The licensee requested the Authority to submit the required explanation on the **12<sup>th</sup> day of April, 2023 at 3:00 pm**, the request which was granted.

## 2. COMPLIANCE ORDER HEARING

2.1 The Licensee in compliance with the order, appeared before the Authority on the date and time set for the hearing represented by Bill Zhang, Managing Director and Daniel Kisoka, an Accountant (CPA).

## 3. LICENSEE'S DEFENCE

The Licensee submitted their oral and written explanation vide a letter dated **12<sup>th</sup> April 2023** providing their defense as follows;

3.1 The Licensee submitted that they are licensed by the Authority to provide internet services. They added that in order to provide high speed, reliable and stable internet services to customers, they use both fibre optic cable and wireless technology.

3.2 They further submitted that, they do not use fibre optic cable network as a new line of business but for the purpose of facilitating the last mile connectivity to provide internet services for better results and customer satisfaction as an option and mostly fibre optic cable is used to link customers within the building.

3.3 Further to the written explanation, the Licensee stated that they are not selling or lease any network facility as a business instead, they only use it for the purpose of facilitating internet services to their customers.



- 3.4 When asked questions in relation to the scope and nature of the licence, they answered that in the business case submitted to TCRA when applying for the licence, they assumed that, in providing their services, they are allowed to use fibre optic cable to the home.
- 3.5 When interrogated further by the Authority if they are aware of their licence conditions and if they are aware of Network Service Facilities Licence, they replied that, they understand that, both fibre optic cable and wireless technology are of the same thing and having such a facility for providing stable internet services was not breaching of the law since they were not trading them.
- 3.6 In conclusion, the Licensee expressed their readiness and willingness to receive guidance from the Authority as to what other licences they need to obtain so that they can fully be in compliance with the law. Further to that, the licensee is ready to fully and immediately comply with all regulations and operate within the parameters of the Authority's licensing requirements.

#### **4. CONSIDERATION OF THE LICENSEE'S DEFENCE**

After receiving the licensee's oral and written explanations, the Authority has made the following observations;

- 4.1 Regarding the licensee admission and claims that, they intended to provide reliable and high quality services, Authority is of the view that, any regulated service one needs to provide, must ensure that, the required licenses have been sought and acquired. Section 11 of the Electronic and Postal Communications Act, Cap. 306, R.E. 2022 states that "*.....a person shall not install, operate, manage, construct, maintain, own or make available network facilities in the United Republic except under the terms and conditions of an individual licence granted by the Authority.*"
- 4.2 The licensee has, while providing internet service and without possessing Network Facilities License; installed, operated and manages fibre, an act which contrives the referred provisions of the law.



- 4.3 Regarding licensee claims that, in owning and managing fiber in their network and they do not lease to other service providers but solely use for provision of service to their customers. The Authority emphasizes that, the requirement for Network Facility License also applies to the service providers who are providing services to customers but do not include customer service. That is to say that, the licensee customer does not require this license to own equipment which are used to receive service from a licensed service provider.
- 4.4 It is clear that Hyzaxy Company Limited holds an application services licence without a network facility which does not allow the licensee to own, build or operate a network facility. If the licensee wishes to provide internet services by using his own fiber optic cable, he should first apply and be granted a network facilities licence from the Authority.
- 4.5 After considering the breach committed and submissions made by the licensee, the Authority hereby finds the licensee in breach of Sections 6(1) and 11 of the Electronic and Postal Communications and licensing condition respectively.
5. **NOWHEREFORE**, after the licensee's defence and having and considering the Licensee's admission at the hearing and in written submissions, the Authority has found the licensee in non-compliance as clearly explained above.

By virtue of Section 48 (2) and (3) of the Tanzania Communications Regulatory Authority Act, Cap 172 the Authority hereby gives orders to Hyzaxy Company Limited as follows: -

- 5.1 To make an application for a Network Facilities Licence if they so desire to continue building and operating fibre optic cable.
- 5.2 To pay a fine of Tanzanian Shillings Five Million Only (5,000,000/=) for building and operating fibre optic cable without obtaining Network Facilities licence from the Authority.
- 5.3 To comply with the above orders within Thirty days (30) from the date of this order.

**TAKE NOTICE** that, should Hyzaxy Company Limited fail, refuse or neglect to comply with this order, the Authority will proceed to take further legal and regulatory actions without any further notice.

Order issued on this..... day of ....., 2023.



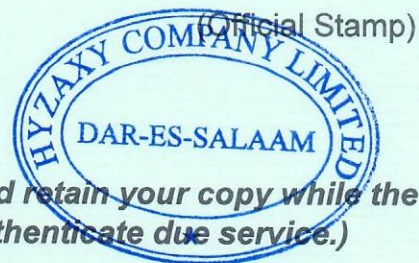
.....  
Dr. Jabiri K. Bakari  
**DIRECTOR GENERAL**

Order served upon and received by **Hyzaxy Company Limited** on this...<sup>th</sup>13...day of **June** **2023**.

Name: **HAN ZHI ZHANG** .....

Signature:  .....

Designation: **MD** .....



*(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.)*