



JOINT MEMORANDUM ON THE:

The Draft Kenya Information and Communication (Broadcasting) Regulations 2022;

Draft Kenya Information and Communication (Registration of telecommunications service subscribers) Regulations 2022;

The Draft Kenya Information and Communication (Access and Infrastructure Sharing) Regulations 2022; and,

Draft Kenya Information and Communications (Interconnection) 2022

Submitted to:

Taskforce on the Review of the KICA, 1998

The Ministry of ICT, Innovation and Youth Affairs

Communications Authority of Kenya

By:

Access Now

ARTICLE 19 Eastern Africa

Centre for Intellectual Property and Information Technology Law (CIPIT)

Kenya ICT Action Network (KICTANet)

31 May 2022

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31 May 2022,

The Chairperson,
Taskforce on the Review of the KICA, 1998
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Dear Sirs,

RE: Joint Memorandum on Regulations under the Kenya Information and Communication Act.

Greetings from the coalition.

We submit this memorandum jointly as Kenyan non-government and civil society organisations with expertise on human rights and Information and Communication (ICTs).

Our memorandum responds to the Kenya Information and Communications (Broadcasting) Regulations, 2022; the Kenya Information and Communications (Registration of Telecommunications Service Subscribers) Regulations, 2022; the Kenya Information and Communications (Access and Infrastructure Sharing) regulations; and, the Kenya Information and Communications (Interconnection) Regulations 2022.

We have included herein a matrix presentation that captures our concerns, and highlights our proposals on relevant provisions of each of the Regulations for your review and consideration. We would be glad to provide further input and perspectives on the Regulations, as and when required.

We look forward to your response.

Regards,

Access Now

ARTICLE 19 Eastern Africa

Centre for Intellectual Property and Information Technology Law (CIPIT)

Kenya ICT Action Network (KICTANet)

1. [Draft Kenya Information and Communication \(Broadcasting\) Regulations 2022](#)

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
General		The lack of principles and objectives.	<p>The regulation should provide clear objectives and principles that shall guide its implementation.</p> <p>The principles could be aligned to broadcasting standards such as: independence, fairness and objectivity, human rights, public interest, professionalism, ethical conduct, accuracy, balance, respect for intellectual property and laws, inclusivity and non-discrimination.</p>	<p>Clear objectives and principles are useful best practice to ensure clarity in the interpretation of the regulations and its enforcement.</p> <p>These should be aligned to the government’s objectives for broadcasting contained in the 2019 ICT policy (pp. 23).</p>
2	Interpretation: “Licensee”	<p>The draft definition of licensee is not consistent with the definition of “licence” in KICA, which includes any licence issued under the Act including broadcasting signal distribution services.</p> <p>Regulation 16 refers to licensees in the context of the licensing of digital broadcasting signal distribution services but does not make clear that regulations pertaining to content should not</p>	<p>After “Licensee” means holder of,” delete the words “broadcasting services.”</p> <p>AND</p> <p>In Regulation 16 add additional paragraph at the end: “(10) Regulations 18 to 44 shall not apply to digital broadcasting signal distribution services.”</p>	<p>The scope of the term “licensee” should include its use in Section 16 with respect to broadcasting signal distribution services; however, the content obligations imposed on the providers of broadcasting services should not apply to broadcasting signal distribution services.</p> <p>The Taskforce should develop specific regulation for digital broadcasting services.</p>

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		<p>apply to signal distributors as the responsibility for content compliance should rest with the broadcasting service licensee.</p>		
2	<p>Interpretation: “Local Content Requirement”</p>	<p>The conditions for an animated program to fulfil the local content requirement are too stringent and may prevent locally produced animated programs from being ascertained as local content. This can potentially disenfranchise local animators and reduce their likelihood of their program being viewed locally. Currently, the regulations require more than half (5 out of 9) of the following staff on an animated program be Kenyan Citizens to be considered local content:</p> <ul style="list-style-type: none"> ● script writer; ● programme director; ● art director; ● creative director; ● character designer; ● supervising layout artist; ● supervising storyboard artist; 	<p>Reduce the threshold of Kenyan citizens required as staff on an animated program for it to be considered local content. Reduce from the 5 staff to 3 staff members.</p>	<p>Kenya’s animated arts scene is still a young industry with many animators practising freelance. The current local content requirement has the potential to significantly limit the broadcast time of locally produced animations that barely miss the threshold of having 5 Kenyan Citizens occupying key production roles. The reduction in the threshold will enhance the growth of the animated programs industry. In addition, a lowered threshold will result in a larger number of diverse local animated programs, appealing to a wider audience and inadvertently increasing growth of the animated arts industry.</p> <p>Furthermore, lowering the threshold for local content allows for more collaboration with regional and international animated artists, producers, and directors. This will</p>

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		<ul style="list-style-type: none"> ● key background artist; or ● the lead animator. 		<p>increase the production quality of animated programs as well as enhance the likelihood of Kenyan animators garnering wider recognition on the continent and globally.</p> <p>Alternatively, the definition of local content should be moved to a substantive provision within the regulations. The regulations could provide for the regulator to develop specific guidelines on local content, more aspects, dynamics within the industry, and also promote growth and investment in local productions.</p>
3	General requirements	Paragraph 3(2) of the 2009 regulations has been omitted from the draft regulations	Add, after paragraph (1), new paragraph “(1A) The Authority shall provide information related to the availability of broadcasting frequencies, the application requirements and the selection criteria for issuance of a licence.”	This was included in the 2009 regulations and should be retained as it contributes to a fair and transparent process for selection and award of broadcasting licences.

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3 (4)	<p>General Requirements:</p> <p>The Authority shall publish in the Gazette, a list of applications received for broadcasting licences that are complete, and invite the public to comment before it makes a decision on issuance of a licence.</p>	<p>There is a lack of specific timelines on gazettment and invitations for the public to comment.</p> <p>The absence of specific timelines on the time it should take for the Authority to consider the application and provide a response to the applicant.</p>	<ul style="list-style-type: none"> a) Define the period within which the application will be considered and feedback provided to the applicant. b) Define the period between receiving complete applications by the authority and publication of the list in the Gazette. c) Define the period for public participation after publication of the list of applicants in the gazette. d) Define the mode through which the public may make their comments. e) We propose a turnaround period of 90 days from the date of submitting the application, publication in the gazette, and making a decision by the Authority for the licence. 	<ul style="list-style-type: none"> a) Lack of specificity means that there are no timelines within which the Authority is expected to consider and communicate the decision to the applicant without undue delays. b) Lack of specificity also means that the Communications Authority of Kenya (CA) may on its own motion refuse to gazette an applicant who has made a complete application and the applicant will not have any recourse since the Act does not have a defined period within which the Gazettment ought to take place. The end result is interference with the right to access information for the Kenyan citizens and exercise of the freedom of media. c) A citizen wishing to participate by giving comments on an application may be locked out of giving

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				<p>their comments because they are time barred yet the regulations do not define the time frame for submission of comments by the public.</p> <p>d) The mode of submission of public comments e.g. online or print media does not come out clearly which means submissions may be locked out on the basis that the correct mode of presentation of the comments has not been adopted yet the mode of submission is not defined in the regulations.</p>
4(3)	<p>Application for a commercial broadcasting services license:</p> <p>A person who applies for a licence to provide subscription television or radio service shall,</p>	The Regulations need to clarify what is the threshold for the minimum number of channels.	The Regulation should provide clarification and should touch on providing specified categories that would expound on what amounts to a 'minimum number'	The specification of minimum should not be limited to internal specification by the Authority. The use of a standard number that varies based on categories (created by the Authority) would be more appropriate. It would assist with providing transparency to the decision making of the Authority

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	<p>unless it is otherwise prescribed, comply with sub-regulation and satisfy that it has the capacity to offer such minimum number of channels as may be specified by the Authority.</p>			
5(2)(b)	<p>Application for a community broadcasting licence:</p>	<p>Lack of templates or forms for the documents required</p>	<p>The Regulations should prescribe the templates for the application form and template forms for each of the documents required under the provision.</p>	<p>Providing appropriate forms will ensure clarity and precision in the application process.</p>
6(1) (c)	<p>The Authority shall develop a frequency plan which sets out how the frequencies available for broadcasting services in Kenya will be shared equitably and in the public interest among</p>	<p>The Authority is not obligated to conduct consultations with various stakeholders in the development of the Frequency Plan.</p>	<p>Modify the framing of the clause to include 'develop a frequency plan in consultation with stakeholders'</p>	<p>In the interest of fair process stakeholders, including broadcasters and representatives of audiences should be consulted in the development of the frequency plan, to ensure their interests and general public interest is protected in the sharing of frequencies.</p>

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	various tier of broadcasting			
7(1)(2)	<p>a)The Authority may prescribe fees payable for the broadcasting services licence, application, renewal, transfer, annual licence fee and any other fees related to the services;</p> <p>b) specify the timeline within which the fees specified in sub regulation (a) shall be paid together with interest or penalties to be levied for late payments</p>	<p>As is, the provision suggests that the fees will be at the discretion of the Authority, since there is no set criteria or proposed schedule on how the fees will be assessed.</p> <p>There is also the danger of hiking fees arbitrarily that might hinder the entry of more community radios.</p>	<p>Include a schedule of fees in the regulations.</p> <p>Establish a criteria in the regulation on how the various fees payable will be assessed, to allow room for feedback on the same, ensure there is a set criteria applicable to all applicants that is well known and public.</p>	<p>The Regulations should be clear on the criteria fees to limit discretion of the Authority, ensure that the fees are not prohibitive, and ensure that information on fees payable is publicly available for all applicants.</p> <p>The 2019 ICT policy proposes the removal of barriers such as fees to promote local content.</p>
8 (1)	<p>Commencement of broadcasting service:</p> <p>A licensee shall, prior to the commencement of broadcasting services, notify the public of the</p>	<p>Lack of specific timelines for notifying the public on the intention to commence broadcasting services.</p> <p>Provision of alternative means of notification beyond the newspaper.</p>	<p>a) Define the time when the public ought to be notified before commencement of a broadcasting service.</p> <p>b) Define the period for which the public ought to be notified before</p>	<p>a) Can the notification to the public happen a day for the broadcast begins? That is a question that cannot be easily answered looking at the regulations. The time between the notification of the public</p>

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	intention to commence broadcasting service, through publication in at least two daily newspapers with national wide circulation.	Will the notification in National wided newspapers be free? There needs to be clarity especially for those intending to commence community broadcasting, and may not necessarily have the resources to notify the public in national wide newspapers.	<p>commencement of a broadcasting service.</p> <p>c) Provide for alternative means of notification beyond newspapers as long as the mode of notification has wide circulation.</p> <p>d) A 30-day notice period should be sufficient in our view.</p>	<p>and commencement of broadcasting is important because the public is given adequate opportunity to raise any challenge that they may have on the commencement of the broadcasting service.</p> <p>b) Is the publication supposed to run once in at least two daily newspapers with national wide circulation or more than once? That question cannot be easily answered looking at the draft regulations. The time period for which a notification is to run is important because it helps to identify whether or not the public is adequately notified of the commencement of broadcasting which impacts the right to public participation under Article 10 of the Constitution of Kenya 2010.</p> <p>c) For community broadcasters, there needs to be a provision</p>

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				of notifying the public that is local.
9	Renewal of licences	Requirement of certification by Classification Board and Media Council of Kenya. Grounds for rejection of renewal	Delete paragraph 9(2) Make the following addition to Sub-Regulation 9(4) after "...stipulated in the licence" the words "and shall provide the licensee with reasons for its decision within 14-days of making the decision."	Paragraph 9(2) was not a requirement under the 2009 regulations and means approval would be needed by 3 different regulators. It should be sufficient for the Authority to take into account the compliance record of the licensee in making a renewal decision. Where the Authority rejects a renewal request it should give reasons for its decision in writing within 14 days of the decision.
10	Ownership and control	Regulations on concentration of ownership should also apply to sound broadcasting services carried by digital broadcasting signal distributors.	In paragraph 10(1) replace "radio frequencies or free-to-air television channels" with "broadcasting services"	Extends the scope of this provision to enable the Authority to determine the maximum number of digital sound broadcasting services that may be allocated to a person in the same coverage area.
11(7)	Public Broadcasting Service:	Lack of clarity of which entity will determine the reasonable charge to applied for retransmission of public interest broadcasts.	The Sub-Regulation should state that the Authority shall determine the applicable charge.	Appreciating that use of most 'proprietary' rights within the Regulations are subject to the Authority's consent, the reasonable

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	Where a public broadcaster has exclusive rights for the broadcast of a national event identified to be of public interest, such signal shall be made available for re-transmission by other interested broadcasting licensees at a reasonable charge.			charge should fall within the Authority Scope.
16	Terrestrial digital broadcasting signal distribution services	<p>The Regulation can provide for the signal distribution of both digital television and digital sound broadcasting services however paragraphs 16(4) and 16(5) are only relevant to television and should not be required in relation to sound broadcasting services.</p> <p>The restriction in 16(7) is relevant to national signal distribution services but may be overly restrictive in relation to local signal distribution services.</p>	<p>In paragraph 16(4) after “A licensee” insert the words “that is a provider of signal distribution services for TV channels” and replace the words “broadcasting services” with “TV channels”.</p> <p>In paragraph 16(5) after “A licensee” insert the words “that is required to comply with paragraph 4”</p> <p>In paragraph 16(7) replace the words “broadcast signal distributor” with “national</p>	These amendments would facilitate the introduction of national and local digital sound broadcasting signal distribution services in a sustainable manner while restricting excessive concentration of ownership and promoting media plurality.

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			<p>broadcasting signal distributor” in each place where they occur.</p> <p>Add, after paragraph 16(7) the following new paragraphs: “(7A) An entity licensed under paragraph (7) shall be required to cover such a percentage of the population of Kenya as the Authority may prescribe and within such a timeline as the Authority may prescribe.</p> <p>(7B) An entity shall be eligible to be licensed as a local sound broadcasting signal distributor, provided such an entity – (a) does not have as a participant any entity that holds shares directly or indirectly in a national broadcasting signal distributor; (b) includes as a majority of its participants the providers of local commercial and community sound broadcasting services; (c) ensures any funds generated from the operations of the local signal distribution service</p>	

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			<p>are reinvested in activities benefiting the locality; and (d) provides reports on such to the Authority on an annual basis.</p> <p>(7C) A licensee under this regulation providing a local sound broadcasting digital distribution service shall give priority to the carriage of local commercial and community radio services and shall carry such minimum number of each as the Authority may prescribe.”</p> <p>In paragraph 16(8) insert after “signal distribution services” the words “for TV channels”.</p>	
16(6)	<p>Terrestrial digital broadcasting signal distribution services:</p> <p>Where a broadcasting signal distribution licensee is not able to comply with paragraph (4), due to failure by a</p>	<p>Lack of timeline for the broadcasting service provider to reply to a complaint and notification of intention to terminate the agreement</p>	<p>The Regulation should stipulate the timelines during which the broadcasting licensee can respond.</p> <p>We suggest a period of 30 days.</p>	<p>Clarity on the timelines would promote administrative fairness.</p>

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	<p>broadcasting service provider to provide programme schedule information in accordance with paragraph (5) and the signal distributor may lodge a complaint with the Authority and notify the broadcasting service provider of an intention to terminate the agreement and shall give the broadcasting service provider an opportunity to respond.</p>			
24	Reporting on Controversial Issues	Lack of clarity on what constitutes a controversial issue of public interest.	<p>We propose the deletion of the term “controversial” so that what is retained is “issue of public interest”.</p> <p>A definition of the same should be provided.</p>	<p>The provision does not define what constitutes a controversial issue of public interest or specify the exact considerations to be taken into account when determining ‘controversial issues of public interest’.</p> <p>The interpretation of what constitutes a ‘controversial issue’ is subjective and will differ between licensees and individuals, potentially culminating in</p>

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				<p>ambiguities.</p> <p>To avoid ambiguity and vagueness we should ensure that licensees can understand their obligations clearly and precisely. The term public interest is widely accepted, but not 'controversial'.</p>
24(b)	<p>Reporting on Controversial Issues:</p> <p>A person or organisation whose views on any controversial issues of public interest have been criticised during a broadcast, is given a right of reply within a reasonable time;</p>	<p>Lack of specific timelines for the right to reply for a person or an organisation that has been criticised on a broadcast because of their views on controversial issues.</p> <p>Offering discretion on the timelines for ensuring a broadcaster facilitates the right to reply can lead to abuse of the privilege. Less influential persons and organisations may be denied the opportunity to respond in a timely manner, possibly resulting in significant reputational damage to the person or organisation that supports a controversial view.</p>	<p>The Sub-Regulation should provide the right to reply to criticism on controversial issues within 7 days.</p>	<p>7 days provides a reasonable time for the Broadcaster to ensure the criticised person or organisation can address any criticism levied upon them for their controversial view.</p> <p>Taking into account Regulation 25(h) and Regulation 26(g) provides political parties candidates, and referendum committees a 24 hour timeline for the broadcaster to facilitate the right to reply to any criticism levied against them, 7 days is a very reasonable timeline for the right to reply for criticisms for controversial views.</p>

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24 and 25	Election period and referenda	Specificity	<p>We propose that the provision requires the regulator to develop specific guidelines for broadcasters and licensees to clearly elaborate obligations during political contests such as elections and referenda. The measures should all be reasonable.</p> <p>These aspects have been repeated in regulation 24 and 25. We suggest that the two aspects could be merged into a single provision.</p> <p>Also, instead of the provisions specifying things that licensees ought to do, we suggest that these be replaced with principles to be observed during election or referendum periods. These can include: fairness, balance,</p> <p>The principles could be aligned to broadcasting standards such as: independence, fairness and objectivity, human rights, public interest, professionalism, ethical conduct, accuracy, balance, respect</p>	<p>Specific guidelines would be useful to provide clarity to broadcasters. The principle of reasonableness is useful to ensure that the obligations do not impose strict liability, but require licensees to take reasonable measures.</p> <p>Principles are better respected and implemented.</p>

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			for intellectual property and laws, inclusivity and non-discrimination.	
25(d)	Election Period: Ensure that the employees of a licensee who wish to be candidates for any elective position(s) resign from their employment with the licensee during the election period	Lack of specified timeline within which the employees of broadcasters should resign.	The Regulations should specify the timeline within which a political aspirant should resign. The timeline could be pegged on the IEBC timelines that requires public servants to resign (at least six months before the general election) from office before vying for an elected position during the General election period.	It is important that the timelines are clear to ensure that there is proper balance between the individual's political rights and the need to safeguard the neutrality and/or perception of neutrality of the licensee.
25(g) and (h)	Election Period	During an Election period, a licensee shall— (...) (g) give political parties and candidates the right of reply where a report aired under the editorial responsibility of the licensee contains inaccurate information or unfair criticism based on distortion of facts;	The time period to afford an opportunity to reply should be amended to 'as soon as reasonably possible' and not 24 hours.	There may be instances where numerous individuals are criticised in a single broadcast and so expecting all of these individuals to be accorded an opportunity to reply within 24 hours in a programme of similar weight and audience may be unrealistic.

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		(h) ensure that the opportunity to reply is given within twenty-four hours in a programme of similar weight and audience;		
26	Referendum Period:	Lack of definition of what constitutes a 'referendum period'.	<p>The term 'referendum period' is not set out and should be defined. The referendum period should begin after the Commissioner of the IEBC publishes a notice of holding referendum as per Section 50 of the Elections Act. The period should end following gazettelement of the results.</p> <p>The time period to afford an opportunity to reply should be amended to 'as soon as reasonably possible' and not 24 hours.</p>	<p>There is a gap as to when the application of the obligations under this section commence. This is due to the varied processes that have to be completed under the Elections Act before a referendum is held. Providing a definition would therefore resolve this issue.</p> <p>There may be instances where numerous individuals are criticised in a single broadcast and so expecting all of these individuals to be accorded an opportunity to reply within 24 hours in a programme of similar weight may be unrealistic.</p>
29(a)	<p>Sexual Offences:</p> <p>A licensee shall not disclose, in a broadcast, the identity of a victim</p>	Unlawfully disclosing a sexual offence victim's identity is considered a major breach of privacy. Sexual offence victims often receive stigma from society and can	Addition: "The consent to broadcast the identity of a victim of sexual offence shall be obtained in accordance with the Data Protection Act 2019 and its	Due to the highly sensitive nature of the broadcast, obtaining consent to disclose the identity of a victim of a sexual offence should be guided by the provisions of the Data Protection

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	of a sexual offence unless such victim consents in writing to the disclosure of his or her identity.	be exposed to additional harassment and further marginalised.	subsequent regulations and guidelines”.	Act. Therefore, the broadcaster licensee should ensure that they obtain express, unequivocal, free, specific and informed consent from the sexual offence victim before broadcasting their identity.
30	<p>Consent to broadcast:</p> <p>A licensee shall not broadcast any information acquired from a person, including information captured without the person’s knowledge and without that person’s consent, unless the information so acquired is essential to establish the credibility and authority of a source, or where the information is clearly in the public interest.</p>	Broadcasting of a natural person’s information without their consent constitutes a violation of their right to privacy.	<p>There should be a general obligation of licensees to respect the privacy of all persons, who they capture or broadcast information about.</p> <p>Addition. “The consent to broadcast a person or their information shall be obtained in accordance with the Data Protection Act 2019 and its subsequent regulations and guidelines”.</p>	<p>The Regulation does not establish the standard for consent to be applicable to broadcast a natural person or their information, especially if the information can be attributed back to a specific individual.</p> <p>Furthermore the broadcasting of personal information about an individual based on public interest grounds should be qualified as per Section 51(2)(b) of the Data Protection Act, 2019.</p>

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36(1)	<p>Local Content:</p> <p>The Authority may require a licensee to commit the minimum amount of time, to broadcast of local content prescribed from time to time by the Authority in the Programming Code or by notice in the Gazette.</p>		<p>The Regulation should make it so that the Authority 'shall' publish local content guidelines and schedules on a defined periodic basis. This is opposed to the current provision which states that the Authority may do so from 'time to time'.</p>	<p>The suggestion does not require broadcast licensees to compulsorily broadcast local content but that the Authority should issue periodic schedules so that local content requirements are not imposed arbitrarily and suddenly on a licensee.</p> <p>This ensures administrative fairness, especially considering failure to adhere to local content requirements can attract fines under the regulations as read with Section 83A of the Act.</p>
44 (1)	<p>Public Emergencies:</p> <p>All broadcasting service providers shall provide a public notice of an emergency nature, public service announcement or a public disaster announcement upon the request of a person authorised by the Government.</p>	<p>Use of words that have a wide scope of application and whose meaning cannot be clearly ascertained e.g the words public service.</p>	<p>Delete the words ' public service announcement'</p>	<p>Use of the words 'public service announcement' leaves room for broadcasting service providers to be coerced into airing information that favours the government agenda as opposed to airing information that reflects the exercise of their autonomy and freedoms of media and expression.</p>

2. [Draft Kenya Information and Communication\(Registration of telecommunications service subscribers\) Regulations 2022](#)

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2	Interpretation:	Lack of interpretation provided for the term “biometric data”	The term biometric data should reflect the definition already provided under Section 2 of the Data Protection Act 2019.	The Data Protection Act 2019 already provides a comprehensive definition under section 2 as: "Biometric data" means personal data resulting from specific technical processing based on physical, physiological or behavioral characterization including blood typing, fingerprinting, deoxyribonucleic acid analysis, earlobe geometry, retinal scanning, and voice recognition.
3	Object and purpose of the regulation	Lack of clarity as to whether the Regulation applies to both existing and new SIM subscribers.	We recommend that this clarity be explicitly stipulated in the provision of the Regulation. If the object and purpose include existing subscribers, we recommend that an additional regulation for the process of registration for existing subscribers be provided for.	The term subscribers here is silent on crucial information regarding whether it includes both existing and new subscribers or whether it is only for new members. In that case, it would mean that once a new subscriber is registered they will not be required to register again.

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			Articulate clear principles for the regulations.	
5	Reporting	Absence of transparency and accountability measures on the data being handled by the Telecommunication Companies and how the data is shared as a result of lawful requests by third parties.	<p>Delete regulation 6(1)(a).</p> <p>Replace 6(1)(a) with the following:</p> <p>submit to the Authority a report of the records maintained pursuant to regulation (5), on a quarterly basis, showing statistics on aspects such as the state of: registered subscriptions, active or inactive subscribers, registration status, activated/deactivated SIM-cards, number ported, technology accessed (2G/3G, 4G, 5G); SMS, call and data traffic; data bundle bandwidth etc.</p> <p>Add a new sub-regulation 6(1)(c) as follows:</p> <p>Publish a transparency report annually detailing the types, nature and extent of personal data in its possession, the measures it has taken to safeguard the data, the</p>	<p>One of the principles of Data Protection is data transparency as provided for under Section 25 of the Data Protection Act which states that a data controller or data processor shall ensure that personal data is processed lawfully, fairly and in a transparent manner in relation to any data subject.</p> <p>Therefore, there is no reason or justification for the regulator to be issued a copy of the records containing the personal details of subscribers. Many people have found their SIM card registration data being used to further fraud, and other criminal offences.</p> <p>Abuse of SIM-card registration data is a growing problem in the country, and the continent. Licensees need to be accountable to users whom it holds their data on the measures it takes to safeguard the data, and to</p>

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			<p>nature and statistics of recorded requests to access the personal data, number of subscribers affected, nature of information requested, disclosures made, the entities making such requests, the 3rd parties having access to the data.</p>	<p>report publicly on its measures. Hence, transparency reporting is critical.</p>
7	Registration	<p>The operators need authority to capture the details.</p> <p>Collection of details of children</p>	<p>Amend 7 to read:</p> <p>A telecommunications operator or registration agent shall, prior to registration of a subscriber, seek production of, and register a subscriber using the details from the following original identification documents -</p> <p>Delete 7(b)</p> <p>Add proviso that</p> <p>Any information provided for registration shall be confidential.</p> <p>The regulation should specify the</p>	<p>The registration should observe principles of data protection under section 24 of the Data Protection Act. Thus, capturing the image and details in the original identification document should be sufficient for registration.</p> <p>The registration of children should comply with the provisions of section 33 of the Data Protection Act.</p> <p>The registration of the SIM-card by a parent or guardian is sufficient to protect the interests of the child, without need for additional details of the child. Further, the designation that the same card will</p>

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			<p>information required for the registration of legal persons such as companies, societies, NGOs, etc.</p>	<p>be used by a minor suffices to meet the registration requirement.</p> <p>Collection of data of children by telecom companies could present serious risks to the best interest of the child.</p>
8	SIM-card registration requirements for children.	Collection and processing of personal data relating to children.	<p>Delete the phrase “and the child’s relevant identification particulars”.</p> <p>Delete 8(3), (4), (5), and (6).</p>	<p>The registration should comply with the provisions of section 33 of the Data Protection Act.</p> <p>The registration of the SIM-card by a parent or guardian is sufficient to protect the interests of the child, without need for additional details of the child. Further, the designation that the same card will be used by a minor suffices to meet the registration requirement.</p> <p>Collection of data of children by telecom companies could present serious risks to the best interest of the child.</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
9	<p>Repository:</p> <p>A telecommunication operator shall be required to maintain a repository of registration details obtained under regulation (7) in addition to retaining copies of the identification documents used.</p>	<p>Location and access to the repository</p>	<p>We recommend that SIM-card registration databases or repositories should be hosted locally.</p> <p>Access to the repository or specific information about a subscriber should only be through officials working for the operator in furtherance of a specific purpose requiring the identification of a subscriber.</p> <p>The operators should be required to develop internal policies and adequate access control mechanisms to ensure the confidentiality, safety and security of the information in the repository.</p> <p>All the personal Information in the repository should not be accessed by, or revealed to any third party, and if required, should be disclosed pursuant to a court order. The only exception is where it is necessary</p>	<p>There is a need for clarification on who has access to this repository, who has the capacity to modify the data in this repository and where the servers holding this information will be located.</p> <p>There is a need for clear delimitations of who can access the records. According to Section 32 of the Data Protection Regulations 2021 the elements necessary to implement the principle of integrity, confidentiality and availability of data include ensuring only authorised personnel have access to the data necessary for their processing tasks and securing data from unauthorised access and alterations.</p> <p>Section 25 of the Data Protection Act imposes an obligation on Data Controllers and Processors to ensure that personal data is processed lawfully, fairly and in a transparent manner in relation to</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			<p>for the completion of a transaction, in which case, the operator should be required to redact the information shared with the third party. Further, operators should be required to disclose to users in a portal, the instances and the parties who have either accessed, or sought to access their personal information, or notify them of such access.</p> <p>The unlawful or unauthorised access of the information or repository should be illegal and prohibited by the regulations.</p>	<p>any data subject.</p> <p>Data breaches are increasingly a serious concern in the country, and globally. There have been incidences of subscriber data being harvested and sold to companies who target subscribers with spam information, advertisements, and others.</p>
10	Update of records	Access to data by Data Subject	Add a new provision that requires operators to provide subscribers with access to a portal where they can update the images of their identification documents, without bureaucracy. The portal should also keep the previous copies of the documents uploaded to it.	<p>The meaning of Data Transparency has been elaborated under section 30 of the Data Protection Regulations 2021 to include making the information on the processing easily accessible to the data subject.</p> <p>Additionally section 26 of the Data Protection Regulations 2021 puts a</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
				<p>requirement for data relating to the provision of services directly related to communications infrastructure to be stored in a data centre located in Kenya.</p> <p>We recently saw the debacle caused by the lack of operators providing portals for registration. This can be addressed through an online portal, to avoid numerous queues and enhance efficiency.</p>
11	Verification	Unclear verification process	<p>Specify the database through which the verification and authentication should be done e.g. integrated population register (IPRS).</p> <p>Develop rules on the process for accessing the government database for verification and authentication.</p> <p>The government should be required to provide access to a portal or access to the database for verification.</p>	<p>The process of verification or what constitutes verification or authentication is not provided for in the regulations. Currently, the government operates the IPRS.</p> <p>Operators have been accessing the IPRS but the procedures and rules of engagement are not clear.</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
12 (d)	<p>Registration process:</p> <p>A telecommunications operator or registration agent shall—</p> <p>(a) enter the ...</p> <p>(d) maintain the registration particulars obtained in a secure and confidential manner</p>	<p>Form A</p> <p>Lack of a proper mechanism for enforcement</p>	<p>The particulars captured in the form A should include and be limited to:</p> <ul style="list-style-type: none"> a) The particulars contained in identification documents e.g. name, document number, date of birth, location, gender, and a copy of the identification document. b) No information that is not in the identification document should be mandatory. <p>Provide for a mechanism for enforcement of the requirement that registered agents or the telecommunications providers ensure that the information obtained is maintained in a secure and confidential manner.</p>	<p>Observe section 24 of the Data Protection Act, on data minimisation.</p> <p>Without enforcement mechanisms Regulation 12 (d) which attempts to capture the right to privacy under Article 30 of the Constitution of Kenya 2010 cannot be translated to reality. Enforcement mechanisms would for instance include jail terms or fines imposed by either a court of law or the CAK.</p> <p>Comparison can be made to regulation 15 (2) which expressly creates an offence where a subscriber registers more than ten sim cards.</p>
14	Transfer of telecommunication service	Provide for the destruction of the data, and giving access and custody of the data to the users.	The regulation should specify a maximum period for the retention and destruction of personal data once a subscriber has transferred	Section 39 and 40 of the Data Protection Act could provide guidance on this aspect.

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			<p>their communication services.</p> <p>Such users should also be notified of the erasure and granted access to a copy of their data upon the transfer of their services.</p>	
15	Limit on number of SIM-cards	Limitation on ownership	<p>Delete provision.</p> <p>Alternatively, operators can be required to take action on, and notify authorities of SIM-card subscribers engaging or reported to be engaging in unlawful or illegal activities once the information is brought to their attention.</p> <p>Also, operators should be required to have designated numbers to report SIM-card subscriber numbers that are engaging or suspected to be engaging in illegal or unlawful activities.</p>	<p>So long as a person can acquire and register SIM-cards for their use, they should be permitted to own the SIM-cards.</p> <p>We are in the era of IOTs, where various devices can be used with a SIM-card. Putting a threshold on the number of SIM-cards will be problematic and do more harm than good.</p> <p>While there have been cases of people using multiple SIM-cards for illegal activities, in most of these cases, the SIM-cards were unregistered. Also, operators have not been taking action on SIM-card numbers that are reported by others to be engaging in fraud and other cybercrimes.</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
16	<p>Access to systems:</p> <p>A telecommunications operator shall grant the Authority's officers access to its systems, premises, facilities, files, records and other data to enable the Authority inspect such systems, premises, facilities, files, records and other data for purposes of ensuring compliance with the Act and these Regulations</p>	<p>There is no justification why the authority needs to have this kind of access.</p> <p>Data Protection safeguards provided on how the Authority uses this data.</p> <p>Absence of clarity on who has access to the records held by both the telecommunications companies and the Authority</p>	<p>Delete provision.</p> <p>Instead, operators should be required to conduct a data protection impact assessment, and annual independent data protection audits to assess whether they are complying with their data protection obligations, identifying data protection risks and implementing recommendations on best practice.</p> <p>These reports or the impact assessment and the independent annual audits are what should be submitted to the Authority. The Authority does not have the expertise to assess compliance by operators. It is for the operator to demonstrate compliance with the Data Protection Act and other laws.</p> <p>A request for such access to personal information hosted by the operator should always be</p>	<p>The Data Protection Act under section 31 is clear that where a processing operation is likely to result in high risk to the rights and freedoms of a data subject, by virtue of its nature, scope, context and purposes, a data controller or data processor shall, prior to the processing, carry out a data protection impact assessment.</p> <p>The processing operation poses significant risks to the subscribers' right to privacy and a data protection impact assessment needs to be conducted in order to introduce sufficient safeguards against the inherent risks. The risks come primarily from the fact that the telecommunications companies will be sharing the subscribers details to third parties including the Authority.</p> <p>Thus an impact assessment and regular independent audits will</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			accompanied by a court order or warrant with clear reasons on why access is required.	enhance compliance.
17	Notification of intent to suspend services	Include SMS, calls or emails	<p>Add SMS, calls, or email communication to the registered contact address of the subscriber.</p> <p>The notice sent should provide a reasonable period e.g. of 90 days to enable the user take remedial action.</p>	Due process requires that a party is notified, given an opportunity to respond and be heard, and to appeal a decision.
18	Deactivation	<p>No appeal mechanism</p> <p>Lack of a mechanism for handling of acquired digital resources e.g. bundles, airtime and mobile money; and the disposal of personal data.</p>	<p>Provide a mechanism for the users whose SIM-cards are deactivated to appeal the decision.</p> <p>Operators who have deactivated SIM-cards should be restricted from transferring the registered number to other users, for a period of 90-days after the expiry of the 90-day notice period to facilitate appeal of the decision to deactivate a number.</p>	<p>Many users are often frustrated after the transfer of their numbers to other users. This causes a lot of confusion. The procedure for recovery of a deactivated line should be clear, and the custody of resources should be elaborated on.</p> <p>A fundamental aspect of the right to data privacy is how the information will be disposed of after its relevance has ended. The</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			<p>The regulations should specify what happens to the resources such as airtime, mobile bundles, mobile money that belong to a subscriber upon the deactivation of their number. These resources should be transferred to the owner upon termination, or request by the user for resumption of services.</p> <p>Operators should be required to report to the regulator the status of deactivations, and the resources that they hold belonging to subscribers who have had their numbers deactivated.</p> <p>Provide for a method of disposal of a subscriber's information once they have been deactivated.</p>	<p>Regulation does not address the issue of disposal of records after deactivation of an account which still leaves questions of data privacy hanging.</p>
19	Reporting of false registration	Lack of timeline specifying the period for lodging and responding to complaints regarding subscribers with false registration information.	Add a provision to provide a timeline between notifying the subscriber of false information and complaint filed before deactivation.	Establishing a time frame for lodging and responding to complaints will eliminate the likelihood of a backlog of complaints. Furthermore, the

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			<p>The suggested provision may read as follows: “The subscriber shall have 30 days to respond to the complaint before deactivation by the telecommunications service.”</p> <p>Furthermore, the Regulation should include the following provision: “Where the subscriber fails to respond to the complaint within the stated time frame the telecommunications operator shall proceed to deactivate the telecommunication service.”</p>	<p>recommendation aligns with the provisions of Regulation 19 that provides a timeline before deactivation.</p>
20(2)	<p>Security and Confidentiality:</p> <p>A telecommunications operator shall notify the Authority of the steps taken and processes introduced to ensure the security and confidentiality of it</p>	<p>Data subjects should also be informed of the measures in place to safeguard their data.</p>	<p>A mandatory requirement on the telecommunications company to publish its policies on safeguarding the subscribers data and take reasonable steps to ensure that the subscribers are informed of the decisions.</p>	<p>In order to safeguard the right to privacy as guaranteed by the Constitution.</p> <p>Under Section 29 of the Data Protection Act data controllers and data processors are obligated to notify data subjects of the security measures taken to ensure the integrity and confidentiality of the</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
	subscribers' registration particulars within thirty days of the commencement of these regulations			data they collect. Consequently, in this case telecommunication companies should be obligated to disclose safety measures in place to subscribers. Subscribers can also make informed decisions on the service providers they choose to entrust their data with.
New Regulation	Additional regulation after regulation 20	Privacy policy	<p>Add a provision requiring telecommunication operators to develop, publish and notify their subscribers of their privacy policy that covers the:</p> <ul style="list-style-type: none"> ● Rights of the subscriber ● Processing of the subscriber's data ● Storage ● Third party sharing ● Description of security and confidentiality measures before registration confirmation. ● Breach notifications ● Notification of changes to the policy <p>The new provision may read as</p>	<p>Section 29 of the Data Protection Act provides for the duty to notify the data subject(in this case the subscriber) of,</p> <ul style="list-style-type: none"> ● Their rights ● The fact that personal data is being collected ● Third parties who are likely to access their data ● Contacts of the entity collecting the data ● Description of technical and organizational security measures taken to ensure confidentiality of the data. <p>Such information is often contained in a Privacy Policy. Therefore the requirement to provide subscribers</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			<p>follows:</p> <p>“A telecommunications operator shall develop, publish, and notify each of its subscribers of its privacy policy prior to and upon registration.</p> <p>It should also notify them of any changes or updates thereto and shall ensure that the subscriber confirms reading the privacy policy prior to registration.”</p>	<p>with access to the licensee’s privacy policy will be in compliance with Kenya’s data protection laws.</p>
New Regulation	Subscribers that have ceased to use their services.	<p>Currently, there is no procedure for how operators should handle personal information and resources e.g. airtime, data bundles, mobile money and records owned by subscribers who have ceased using their services, including deceased persons.</p> <p>Also, operators have no legitimate purpose to indefinitely retain the information and resources indefinitely.</p>	<p>We recommend that the Regulations:</p> <p>Provide the procedure for how operators should handle personal information and resources e.g. airtime, data bundles, mobile money and records owned by subscribers who have terminated, or otherwise ceased using their services, including deceased persons.</p> <p>There should be an obligation on</p>	<p>Telecommunication operators are expected to respect and act in compliance with Section 40(2) of the Data Protection Act, 2019 which requires data controllers to erase or destroy without undue delay personal data that the data controller is no longer authorised to retain.</p> <p>Due to the various classifications of personal and sensitive personal data collected for SIM- card registration, the Regulations should</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			<p>operators to delete subscriber registration details after the expiration of a specified period, after their SIM-cards were last reported to be active, or the owners reported to be deceased. Users should be able to access the information relating to deceased persons, or transfer their information and resources.</p>	<p>not allow the telecommunication operators to indefinitely retain the registration details. The telecommunication operators should only retain personal data of their subscribers that is relevant to their business operations, therefore ex customers and deceased persons do not qualify.</p>
<p>Schedule - Registration of Telecommunications service Subscriber Form</p>	<p>Part 3 vi - Type of Biometric Data Collected. Part 5 Verifications done for (b)Biometric data</p>	<p>Collection of biometric data for SIM-card registration purposes.</p>	<p>Delete the provision</p>	<p>No part of the Regulation provides for the use of biometric data during registration or for purposes of verification. The Data Protection Act defines biometric data and it is possible to highlight which biometrics would be required.</p> <p>Further, the Act classifies biometric data as sensitive personal data which suggests a higher degree of care is required to ensure its protection.</p> <p>See: Resolution adopted by the General Assembly on 16 December</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
				2020

3. [Draft Kenya Information and Communication \(Access and Infrastructure Sharing\) Regulations 2022](#)

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
Regulation 2 - Interpretation	New	Lack of definition of “access agreement”	Define access agreement as a legally binding contract between an infrastructure provider and infrastructure seeker that grants the infrastructure seeker access to the infrastructure provider's facilities.	<p>Regulation 20 on network access agreements stipulates that access agreements must be in writing and contain certain information. However, prior to providing the format and specifications, it is necessary to define what it actually means for clarity.</p> <p>For instance, the Telecommunications Infrastructure sharing and Collocation Directive No. 793/2021 by the Ethiopian Communications Authority defines an access agreement as "an agreement made between a Telecommunications Operator or Infrastructure Provider for the provision of infrastructure sharing and/or collocation space." This provides context when reading sections of the Directive that discuss the access agreement.</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
2	<p>Interpretation</p> <p>Definition of non-replicable infrastructure: “Non-replicable infrastructure” means a facility that is provided on a monopolistic basis or subject to some degree of monopoly, is required by competitors in order to compete and it cannot be practicably replicated by other competitors for economic, technical or other reasons.</p>	<p>Lack of precise definition of "non-replicable infrastructure."</p>	<p>Provide a precise definition of "non-replicable infrastructure."</p>	<p>A more precise definition is necessary to provide the appropriate context to Regulation 6 which provides for the conditions for sharing non-replicable infrastructure.</p>
3	<p>Object and Purpose</p>	<p>The object and purposes are quite limited, the scope can be expanded.</p>	<p>We recommend the clause to be expanded to include:</p> <p>Encouraging a strategic, forward-looking approach to the deployment and provision of communications facilities with the aim of realising the benefits</p>	<p>This will ensure proper coordination and harmonisation of the development, deployment and sharing of all broadband infrastructure (both private and public) among all stakeholders.</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			<p>of forward planning.</p> <p>Articulate clear principles for the regulations.</p>	
5(5)	<p>Conditions for sharing of general infrastructure:</p> <p>The Authority may impose specific infrastructure sharing obligations relating to an infrastructure provider who has significant market power or is declared dominant in the relevant market segment to ensure effective occupation.</p>	<p>The Regulations fail to specify the dominance threshold for an infrastructure provider.</p> <p>Furthermore, it is not clear whether the infrastructure sharing obligations apply to both Active and Passive infrastructure as defined under the Regulation.</p>	<p>We recommend that the Regulations define a threshold for dominance or provide an additional provision stating that the CA may review and revise the threshold of dominance by Notice in the Kenya Gazette.</p> <p>The regulation 5(5) should state if the imposing of infrastructure sharing obligations applies to Active infrastructure, Passive infrastructure, or both.</p>	<p>Without an identified threshold for dominance, the Communications Authority may erroneously compel technically non-dominant infrastructure providers to share their infrastructure.</p> <p>As per the definitions under the Regulation, Active infrastructure sharing pertains to electronic infrastructure elements while Passive infrastructure pertains to non-electronic infrastructure elements. Clearly stipulating the nature of infrastructure that the Authority can impose infrastructure obligations upon will prevent breach of the legitimate expectation of licensed infrastructure providers.</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
22	Unreasonable access requests	<p>(1) A facilities licensee may refuse unreasonable requests for access to facilities licensee’s network facilities.</p> <p>(2) A request for access to network facilities shall be unreasonable if it—</p> <p>(a) is not economically or technically feasible; or</p> <p>(b) may result in the facilities licensee being unduly prejudiced.</p> <p>(3) A facilities licensee shall not be required to provide access where, in the Authority’s view, it is not reasonable to require the facilities provider to provide access including, among others, to circumstances where it is beyond its control or it is not reasonably practicable.</p>	<p>Include a section that specifies the timeframe and method (email, letter) within which the infrastructure provider must notify the infrastructure seeker and the Authority of the receipt of the access request and the reason for denial of access.</p>	<p>This will clarify the communication procedure and timeframe for denied access requests.</p>
			<p>Include a provision stating that the Authority may direct the infrastructure provider to produce any records and documents pertaining to the denial of access request, and that the Authority or a representative of the Authority may enter the sites to inspect relevant sites to determine the reasonableness of denial of access.</p>	<p>The purpose of the site inspection, if deemed necessary, is to help the Authority make an informed decision.</p>
			<p>Include a section specifying what actions the Authority may take upon review. These may include the decision to uphold the infrastructure provider's denial</p>	<p>This will ensure transparency, accountability, and the legal responsibility of information providers.</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
			of access or to direct the infrastructure provider to reconsider the decision based on the grounds that the Authority will provide.	
24	Co-location	There is no specific ground upon which a licensee or operator may refuse access to its infrastructure	We recommend a clause for the grounds upon which a licensee/operator may refuse access to its infrastructure	<p>An operator should be allowed to refuse access to its infrastructure on the basis of any of the following:</p> <ul style="list-style-type: none"> a) Technical incompatibility of the infrastructure; b) Endangering public or national security or third party's network; and, c) Detriment to other services provided on the same infrastructure. <p>This will ensure economic and voluntary engagement between operators.</p>

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
25	Dispute Resolution: A dispute arising from the infrastructure sharing arrangement or agreement shall be referred to the Authority in accordance with the regulations relating to dispute resolution	Lack of specific timelines for parties to dispute resolution for parties to an infrastructure sharing agreement.	Include a section that specifies the time limit within which the parties may seek resolution of a dispute.	The provision will enable parties to act promptly to resolve disputes that may arise.
			Include a section on the role of the Authority in dispute resolution	The Authority's role may be to direct the parties to implement an interim arrangement for access depending on the nature of the dispute.
			Include a section on an interim arrangement that may be part until the dispute is resolved	The process of resolving a dispute may take time. As a result, the access interim arrangement may remain in effect until the Authority resolves the dispute, rather than halting the access and infrastructure sharing process entirely.

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal

4. [Draft Kenya Information and Communications \(Interconnection\) 2022](#)

Regulation	Provision	Issue/Concern	Proposal/Recommendation	Justification for Proposal
3	Purpose	No principles	Articulate clear principles for the regulations.	It is important for clarity and objectivity in implementation.
5(7)	Negotiation of interconnect agreements	Access to information	Access to information is an important feature which should be provided for in the interconnection agreement.	Interconnecting operators pass considerable information back and forth about each other's clients. Limits on the permitted uses of this information should be defined especially with regard to the temptation to engage in marketing activities by approaching another operator's clients based on information obtained through interconnection activities.
			Data to be exchanged is an important feature which should be provided for in the interconnection agreement.	This is because appropriate measures should be taken to protect personal data considering that interconnecting operators pass considerable information back and forth about each other's clients.
6	Prohibitions	The regulations under this provision are too general	We recommend that the Regulation in question is too general. Prohibitions need to be	These malpractices which may further include refusal to provide information required to reach

			<p>specific. For example, it can state that: a party negotiating an interconnection agreement shall not</p> <ul style="list-style-type: none"> ● Intentionally mislead the other party; ● Coerce the other party into making an agreement that it would not otherwise have made; or ● Intentionally obstruct negotiations. ● Refusal to allow clauses within an agreement, which permit future amendments; ● Attempts to tie conditions within the agreement to resolution of other unrelated disputes; ● Actions intended to delay negotiations including- consistent refusal to designate a representative with authority to make binding commitments, leading to delay. 	<p>agreement; requirement for a purchaser of interconnect services to commit to minimum periods of use before establishing a price for the service; intentionally misleading or coercing another party into reaching an agreement that it would not have otherwise made; and intentionally obstructing or delaying negotiations or resolutions of disputes must be stated in unambiguous terms. If not, then even judicial adjudication or arbitration in case of dispute becomes complex and unrelated.</p>
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7	Interconnection procedures	The Authority may not adequately have time or chance to engage in some of the details when it comes to interconnection arrangements.	We recommend the establishment of the industrial technical committee	Bilateral or multilateral Industrial Committees can form the best forum for establishing the details of interconnection arrangements. If negotiations are proceeding smoothly, incumbents and new entrants may take initiative to delegate details of interconnection arrangements to working groups or committees- this committee can often facilitate agreement on interconnection arrangements; suggest alternative approaches when there is an impasse
10(5)	<p>Approval of interconnection agreements:</p> <p>Where the parties are unable to agree on the requested modification, the Authority may, if it determines that a negotiated agreement is not feasible, the Authority shall provide an interconnection agreement to the parties that includes the terms and conditions and with the</p>	The wording of the provision does not clarify whether the CA is obligated or can exercise discretion to provide an alternative interconnection agreement upon failure of the parties to appropriately modify their agreement as per the CA's recommendations.	Reword the provision to state: "Where the parties are unable to agree on the requested modification, the Authority may, if it determines that a negotiated agreement is not feasible, provide an interconnection agreement to the parties that includes the terms and conditions and with the charges payable for the interconnection.	The CA should not be obligated to provide an alternative interconnection agreement to parties that have failed to negotiate a feasible agreement. Imposing such an obligation may compel the CA to facilitate the execution of interconnection agreement under less than ideal circumstances, under terms the parties to the agreement cannot fulfil. This can evolve into future contractual disputes between the parties to the agreement. By

	charges payable for the interconnection.			offering the discretion to the CA to determine the contracts it can intervene and provide alternative agreements, there is a higher probability that the alternative contracts will be successfully implemented.
10(6)	<p>Approval of interconnection agreements:</p> <p>Where the licensees are in the process of negotiating an interconnection agreement or have entered into an agreement but the agreement is pending before the Authority for approval, the parties may agree to exchange traffic based on interim conditions and notify the Authority</p>	The lack of specificity of the timeline for the interim exchange traffic period can be abused by the parties to an interconnection agreement. The Regulations need to specify the time period for interim exchange of	We recommend the addition to the provision specifying that the parties to an interconnection agreement may agree to exchange traffic based on interim conditions for a maximum of 90 days, and notify the Authority.	Specifying the timeline will reduce the possibility of parties to an interconnection agreement abusing an indefinite interim period for traffic exchange while awaiting approval of the agreement before the Authority.
11	Non-discrimination	The regulation does not specifically state what grounds may constitute non-discrimination	We recommend that the Regulation should state unequivocally what constitute grounds of discrimination	It should be noted that interconnection arrangements may vary from one competitor to another without being unduly or unjustly discriminatory.

				The real test therefore should not be discrimination in the sense of “differences” in interconnection arrangements. The test should be “unjust”, “unfair,” or “undue” discrimination, in the sense that an interconnecting competitor is placed at a significant disadvantage as a result of less favourable interconnection arrangements
12(1)	Interconnection charges structure	Lack of clarity pertaining to the interpretation of an interconnection charge.	The regulation should provide a clear definition or interpretation of what exactly an interconnection charge is and what it entails.	Definition of the term will remove any misconceptions.
15	Confidentiality	The regulation does not exempt interconnection with dominant incumbents from confidentiality rules- this may lead to thwarting of competition by the same dominant incumbents.	We recommend that interconnection with dominant incumbents be exempted from confidentiality rules	Confidential treatment of interconnection arrangements would provide incumbents with an opportunity to act strategically to thwart competition. For example, such operators could enter into interconnection agreements that provide unfavourable interconnection arrangements with competitors and more favourable with affiliates. Dominant operators could also

				<p>limit the functionality of the types offered, levy excessive charges, and otherwise act strategically to limit competition.</p> <p>Transparency of interconnection arrangements is an effective means of discouraging anti-competitive strategic behaviour by dominant operators. It is easier for regulators to detect and remedy such behaviour if interconnection arrangements are made public. Publication also makes it easier for regulators and industry participants to compare interconnection rates, terms and conditions.</p>
26	Unbundling	Lack of definition of 'unbundling' under Regulation 2	Definition of the term will clarify what it means to network operators and what is expected of them.	Unbundling requires facilities sharing or collocation and plays an important role in increasing competition in the provision of services supported by the existing network.