



# **REVIEW OF THE TELECOMMUNICATIONS MARKET STRUCTURE**

**December 2024**

Consultation Version

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## **ABBREVIATIONS**

ASP	Application Service Provider
CEV	Communications Equipment Vendor
e-CSP	Electronic Certification Service Provider
IGSS	International Gateway Systems and Services
IMEI	International Mobile Equipment Identity
IMWE	Installation, Maintenance, Internal & External Wiring
IoT	Internet of Things
IRU	Indefeasible Right of Use
ISM	Industrial, Scientific, and Medical applications
MVNO	Mobile Virtual Network Operator
NFP	Network Facilities Provider
PCAC	Public Communication Access Centre
SCLR	Submarine Cable Landing Rights
SLR	Satellite Landing Rights
TEC	Telecommunication Contractor
ULF	Unified Licensing Framework

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## **BACKGROUND**

1. The Communications Authority of Kenya (the Authority), established in 1999 by the Kenya Information and Communications Act, 1998, is the regulatory Authority for the Information and Communication Technology (ICT) sector in Kenya. The Authority therefore facilitates development of broadcasting, cybersecurity, multimedia, telecommunications, electronic commerce (e-commerce), as well as postal and courier services. The Authority facilitates the development of the subsectors through licensing, competition management, frequency and numbering resource management and ICT consumers protection.
2. The Authority licenses entities in compliance with Section 24(1) of the Kenya Information and Communications Act, 1998, which provides that “No person shall operate a telecommunication system or provide any telecommunication services except in accordance with a valid Licence granted under this Act”.
3. The Authority has established a telecommunications market structure and application requirements, which are instruments that provide market access to the regulated telecommunication industry in Kenya.
4. The current market structure, which was established in 2008, is based on a Unified Licensing Framework (ULF) that operates on technology and service neutrality principles. This framework was considered critical towards simplifying and facilitating market entry by minimizing regulatory requirements and processes for evolving and dynamic technologies.
5. Amendments to the ULF market structure were subsequently made in 2012 and 2014 respectively largely to improve the operating environment. The 2012 amendment reduced annual operating Licence fees from 0.5% to 0.4% of annual gross turn over.
6. The 2014 amendment, on the other hand, introduced new Licence categories; including Electronic Certification Service Provider (e-CSP), Dot Ke Domain Name Registrars, and incorporated new services such as Mobile Virtual Network Operator (MVNO), Vehicle Tracking, and Country Code Top Level domain registrar services under the Application Service Provider (ASP) Licence category.

7. The National ICT Policy Guidelines of 2020 aim to increase the number of competing companies by creating incentives for market players, lowering the barriers to entry, reducing the cost of failure, and encouraging the trial of new ideas.
8. The Kenya Government's Manifesto has also prioritized ICT development under the National Digital Superhighway Programme which includes the following five (5) components:
  - a) Deployment of 100,000 Km of fibre cable across the country;
  - b) Installation of 25,000 public Wi-Fi hotspots;
  - c) Establishment of 1,450 Digital Village Smart Hubs and Studios (one per ward);
  - d) Establishment of three (3) Data Centres; and
  - e) Cyber security management.
9. The current review is therefore aimed at removing certain market barriers identified over time, in line with the Authority's mission of enabling regulation.
10. The Authority's 2023-27 Strategic Plan's first Key Result Area focuses on promoting meaningful connectivity to ICT Services. This objective aims at ensuring efficient ICT markets and fostering competition in the ICT sector through a number of interventions. Reviewing the telecommunications market structure is therefore timely and appropriate towards the attainment of this objective.

## **A. NETWORK FACILITIES PROVIDERS**

### **A.1. Current Status**

11. The current NFP Licence sub-categories allow licensees to establish communication infrastructure nationwide using any technology to provide any type of services in line with the ULF principles.

### **A.2. Challenges/Barriers**

#### **A.2.1. Tower Business**

12. Despite ongoing interest in the tower market segment, the Authority has received feedback from investors regarding the restriction of the tower business to the NFP-T2 Licence category.
13. The ULF, under which the two Licence categories are anchored, is technology- neutral and does not envisage differentiation based on the infrastructure they establish. Therefore, we have since established that reserving Tower Infrastructure business to NFP-T2 is contradictory to ULF principles.

#### **A.2.2. Satellite Services**

14. Currently, the NFP-T3 licensees are restricted from establishing Satellite systems because NFP-T3 is a regional Licence, whereas satellite systems are borderless. However, this restriction contradicts the technology neutrality licensing principle that allows the use of any technology to provide communications services. In this regard, the differentiation's between NFP-T2 and NFP-T3 should be based solely on geographical scope, without extending it to the infrastructure/technologies employed..

#### **A.2.3. Rapid Growth of Illegal Internet Service Providers (ISPs) at the last mile**

15. The Authority has observed a growing increase in unauthorized ISPs across the country. Most of them have deployed their networks using wireless technologies on Licence-free frequency bands intended for industrial, scientific, and medical applications (ISM). An increasing number have also now deployed optic fibre to homes and enterprises.
16. These illegal ISPs generally operate in limited and localized areas, especially in densely populated estates, and do not have the extensive coverage that NFP-T3 licensees possess.

### A.3. Proposals

17. NFP-T3 licensees should be allowed to establish satellite systems, including hub facilities, and provide satellite services, provided they comply with the geographical scope principle of distinction between NFP-T3 and NFP-T2.
18. It is recommended that in order to make the NFP-T3 Licence more commercially viable and attractive to potential investors, its scope of coverage be increased from one county to three counties.
19. It is recommended to clarify in the market structure that NFP-T2 and NFP-T3 licensees operate under a technology-neutral principle as envisaged under the ULF, allowing them to deploy tower infrastructure and satellite systems, including satellite hubs, provided they adhere to the county scope limitations. An NFP-T3 licensee shall be subject to the following three additional provisions:
  - a) have a geographical coverage limitation of a maximum of *three (3) counties*;
  - b) be allowed to establish Satellite Hubs and use satellite systems for their infrastructure without technology limitations, provided they comply with commensurate fee payments, based on the number of counties in which they operate;
  - c) be penalized 0.2% of their annual gross turnover if they establish infrastructure in more than three (3) counties without first upgrading their Licence to NFP-T2. Each additional city or county will be penalized at 0.2% of annual gross turnover.
20. Currently, NFP-T3 licensees that have surpassed these proposed requirements will be permitted to operate until their respective Licence terms expire, after which they must apply for and convert to NFP-T2 Licence.
21. Introduction of a new Licence category – Network Facilities Provider – Tier 4 (NFP-T4) with operations limited to one county. Applicants for this Licence will also be required to simultaneously apply for a County ASP Licence.
22. An NFP-T4 licensee may upgrade to a fully-fledged NFP-T3, subject to the Licensee applying and subsequent approval by the Authority.



23. Enforcement will be based on licensee declaration through compliance returns or findings from inspection activities. The Authority's regional presence and inspection activities will be instrumental in ensuring compliance by NFP-T3 licensees.

24. The proposed regulatory fees and Licence terms for these categories are:

**NFP-T4**

- a. Application fees – KShs.1,000
- b. Initial fees - KShs.15,000
- c. Annual Operating Licence fees - KShs. 15,000 or 0.4 per cent of the Annual Gross turnover, whichever is higher.
- d. Licence Term – 15 years

**County ASP**

- a. Application fees – KShs.1,000
- b. Initial fees - KShs.10,000,
- c. AOL – KShs.10,000 or 0.4 per cent of the Annual Gross turnover, whichever is higher)
- d. Licence Term – 15 years

**B. INTERNATIONAL GATEWAY LICENCE, SUBMARINE CABLE LANDING RIGHTS AND SATELLITE LANDING RIGHTS**

**B.1. Current Status**

25. The current market structure provides for Submarine Cable Landing Rights (SCLR), Satellite Landing Rights (SLR), and International Gateway Systems and Services (IGSS) Licence categories. These three Licence categories facilitate international connectivity enabling the origination and termination of international traffic using specific technologies, which contravene the principles of ULF.

26. SCLR licensees acquire rights to land submarine cable systems that pass under the sea into the mainland; SLR licensees acquire rights to land their satellite signal in the country; whereas IGSS licensees, on the other hand, handle international traffic using satellite technology.

27. The three Licences are also subject to different regulatory fees. SCLR and IGSS are charged Kshs. 15 million as the initial Licence fee, whereas SLR is charged a one-time fee of \$12,500.

With regard to annual operating fees, SCLR is charged a minimum of Kshs 4 million; while the IGSS Licence holder is charged a minimum of Kshs 800,000 in annual fees, and the SLRA Licence holder is not charged any annual operating fees but a one-off fee of US\$12,500 for a 15-year term.

28. Notably, the significant differences in initial Licence fees, annual operating fees, and deployed technologies among these Licence categories are inconsistent with the technology-neutrality principle of the ULF Framework.

## **B.2. Proposals**

29. The existing SCLR Licence be modified to exclude international gateway provisions;
30. The existing IGSS Licence be modified to make it technologically neutral, and to permit a Licence holder to utilize any form of technology to handle the international traffic. Therefore, billing and switching of international traffic will be a preserve of this Licence category; there will be no change in the fees charged for the IGSS Licence.
31. The SLR and SCLR Licence categories be merged to create a new Licence category called the Landing Rights Licence. This change aims to ensure technology neutrality and allow investors to land signals using any technology. Furthermore, this new Licence category will expand its scope to accommodate investors looking to leverage on Kenya's unique location to establish and operate the following three (3) types of infrastructure:
  - a) Terrestrial cables that only transit Kenya destined to neighbouring countries;
  - b) Satellite hub(s) that exclusively serve clients outside Kenya; and
  - c) Satellite services beyond traditional communication services, such as telemetry, tracking and control subsystem (TTC), space research, and meteorological aids, among others.
32. Holders of Landing Rights Licences shall only commercialize the capacity within Kenya through licensed IGSS licensees or provide end-user/direct- to- device (D2D) services through duly licensed ASPs.

33. The proposed regulatory fees and Licence term for this category are:

- a. Application fee: Kshs. 5,000
- b. Initial Licence fees: Kshs. 15 million
- c. Annual operating fees: Kshs. 4 million or 0.4% of Annual Gross Turnover, whichever is higher
- d. Licence Term: 15 years

33.1. The proposed regulatory fees and Licence terms for the IGSS Licence will remain unchanged, except for the proposal to make them technology-neutral.

## **C. ORDINARY VENDORS and EQUIPMENT DISTRIBUTORS**

### **C.1. Current Status**

34. Currently, the Vendor Licence permits the licensee to sell low-power telecommunications terminal equipment such as mobile phones, vehicle tracking devices among other low power telecommunication terminal equipment. It is currently free of any regulatory fees.
35. Despite the ease of entry in this market segment, most vendors operate without a Licence, oftentimes importing and selling sub-standard communication devices, thereby raising several concerns due to non-compliance with local standards, such as the requirement for a unique International Mobile Equipment Identity (IMEI).
36. Further, the large number of vendors makes it nearly impossible to control the sale of substandard devices in the market.

### **C.2. Proposals**

37. Introduction of a new Licence category, **Telecommunication Equipment Distributor (TED)**, Licence, to be issued to the following entities:

- 37.1. Any wholesale supplier of communications equipment; and
- 37.2. Any entity who wishes to import communications equipment for sale.

- 37.3. Foreign manufacturers that wish to distribute their own equipment locally will be required to obtain this Licence. Manufacturers domiciled in Kenya will, however, not be required to obtain any licence, but will be required to sell to only licensed TEDs. Any local manufacturer that wishes to distribute communications equipment to local Vendors will be required to obtain a TED Licence;
38. The scope of the TED Licence will only include the supply and sale of telecommunication equipment and devices (both ordinary terminal equipment and complex network equipment) and provision of after-sales support through the supply of spares to vendors that purchase from them in order to reduce proliferation of e-waste. The TED Licence will not however include installation and maintenance activities in its scope of services.
39. Consequently, only licensed TEDs will be able to seek type approval/acceptance services. Every TED will ensure that all low power communications equipment they sell in the market has been type approved, has a minimum one-year warranty period and avail spares for all equipment it manufacturers/imports.
40. Arising from the introduction of the TED Licence, Vendors will be required to obtain their goods from ICT equipment importers who will now bear the responsibility of ensuring that all communication devices they import or manufacture comply with established industry standards in Kenya.
41. Convert the current vendor Licence into a **CLASS** Licence and rename it to **Communications Equipment Vendor (CEV)** Licence, applicable to entities selling low-power communications equipment to end-users, with conditions set by the Authority.
- A class Licence is a Licence that will not be issued to individual providers of a service. Instead, the terms and conditions governing the Licence shall be published in the Kenya Gazette and on the Authority's website. This publication shall enable any individual or entity seeking to provide the service to familiarize themselves with the Authority's requirements in relation to the provision of the service. By offering services within the scope of a Class Licence, an entity will automatically be subject to the terms and conditions set out in that Class Licence. Upon publication in the Kenya Gazette, the terms and conditions set out in the Licence shall take effect as prescribed in the Gazette notice.
42. CEVs will only obtain their equipment from licensed TEDs.
43. That TECs **currently engaged in the manufacturing or importation (based on TradeNet data as at the date of commencement of this consultation)** and distribution of telecommunications equipment will be offered the TED Licence, which shall be

synchronized with their current TEC Licence. This shall occur without the need for re-application, provided that the TEC Licence remains valid and is subject to any modifications resulting from this market structure review.

44. The proposed regulatory fees for TED:

- a. Application fee: Kshs. 5,000
- b. Initial Licence fees: Kshs. 250,000
- c. Annual operating fees: Kshs. 120,000 or 0.4% of gross annual turnover whichever is higher
- d. Licence Term: 15 years

45. The proposed regulatory fees for CEV: nil regulatory fees.

## **D. TELECOMMUNICATIONS CONTRACTORS (TEC)**

### **D.1. Current Status**

46. Currently, applicants for Telecommunication Contractor (TEC) Licences must obtain a letter from registered Technical Personnel in the full category of IMWE (Installation, Maintenance, Internal & External Wiring).

47. TEC licensees also currently pay a flat annual operating fee of Kshs 3,000, which does not reflect their varied revenue levels. Most of the licensees therefore pay annual operating fees that are not commensurate to the scope of their operations.

### **D.2. Proposals**

48. TEC applicants only apply for their Licences based on standard requirements that are not linked to any technical personnel. However, it is proposed that all equipment installations be certified by a registered Technical Personnel.

49. It is proposed that the scope of TEC Licence remains as installation and maintenance of communication devices, but shall exclude manufacturing, importation, sale of devices/spares, and repairs of equipment and devices.

50. Current TEC Licensees be limited to Installation and Maintenance of Telecommunication infrastructure and those wishing to engage in manufacturing, supply, and distribution, or

retail of equipment be issued with a separate TED Licence, with a transition procedure to be developed.

51. Renaming of the Telecommunication Equipment Contractor (TEC) Licence to Communications Equipment Contractor (CEC), with their equipment installation reports certified by a registered Technical Personnel to ensure integrity of equipment installation and maintenance.
52. This TEC Licence will include installation and maintenance of vehicle tracking devices, but exclude the provision of vehicle tracking services and importation of Telecommunication equipment, which they may provide under a separate and additional (TED) Licence, if they so desire.
53. The proposed regulatory fees and Licence term for this category are:
  - a. Application fee: Kshs. 1,000
  - b. Initial Licence fees: Kshs. 10,000
  - c. Annual operating fees: Kshs. 10,000 or 0.4% of gross annual turnover whichever is higher
  - d. Term: 15 years

## **E. TECHNICAL PERSONNEL LICENCE**

### **E.1. Current Status**

54. The Telecommunication Technical Personnel Licence has two Categories; Internal Wiring (W) and Maintenance (M) on the one part and External Wiring (E) and Maintenance(M) on the other. A Technical personnel Licensee permitted to do both is usually issued a Licence with the scope of works abbreviated as IMWE.
55. The original categorization, which was adopted when most of the communication infrastructure was either copper wired and wireless, is outdated, as most copper networks have nearly been replaced by Optical Fiber Technologies, while IP technologies now drive communication systems.
56. Majority of the work currently carried out by Technical Personnel revolves around Local Area Network (LAN) using specialized IP networking devices whose manufacturers provide specialized trainings.
57. Technical Personnel with IT background and related fields are not currently provided for in the existing market structure. A number of these IT professionals hold certifications from Original Telecommunications Equipment Manufacturers.
58. The lack of recognition in the licensing framework is a major hindrance and a barrier for Technical Personnel applicants considering that they have taken specialized and relevant

trainings but cannot obtain a Licence from the Authority and many of them end up practicing in the telecom field without any Licences.

59. It has also been noted that many of the benefits enjoyed by Kenyan citizens, except for engaging in political activity, have been extended to Kenyan Residents. There is, therefore, need to align with the Citizenship and Immigration Act as pertains to this licence category.

## **E.2. Proposal**

60. It is proposed that the Authority absorbs these categories of Technical Personnel and issue them with a Licence that allows them to carry out installation, support and maintenance of IP networks being built by our licensees.
61. The Authority to establish two different categories of Technical Personnel Licensees to broaden the scope of personnel to be licensed into the following three broad categories and the attendant classes:
- a) Telecommunication Engineering Personnel Licence: - Electrical and electronics Engineering, telecommunications or equivalent
    - i. Class A -Degree
    - ii. Class B - Diploma
    - iii. Class C - Certificate
  - b) Telecommunication Systems Professionals - IT and Computer Science or equivalent
    - i. Class A -Degree
    - ii. Class B - Diploma
    - iii. Class C - Certificate
62. The proposed regulatory fees and Licence term for this category are:
- i. Application fee: Kshs. 500
  - ii. Initial Licence fees: Kshs. 1000
  - iii. Annual operating fees: Kshs. 500
  - iv. Licence Term: 10 years
63. Only Kenyan Citizens and holders of a Permanent Residency Visas shall be eligible to apply for Telecommunications Technical Personnel Licence.
64. The Authority will also consider applications that can sufficiently demonstrate knowledge and experience as guided by the country's Recognition of Prior Learning framework.

## **F. INTERNET OF THINGS (IoT)**

### **F.1. Current Status**

65. Currently, IoT applications such as vehicle tracking are licensed under the Applications Service Provider Licence.

### **F.2. Proposals**

66. IoT providers should continue to be licensed as ASPs to accommodate future growth as more devices connect to the internet.

67. The proposed regulatory fees for IoT service providers will align with that of the ASP Licence category.

## **G. PUBLIC COMMUNICATION ACCESS CENTRE (INTERNET CYBERCAFÉS)**

### **G.1. Current Status**

68. The Authority currently has a provision to license cybercafe's under a category called Public Communication Access Centre (PCAC). The Authority is cognizant of the government's initiative to provide free public WIFI hotspots through the ICT Authority. It is notable that there is also a very large number of entities operating as cybercafes countrywide, that pose regulatory challenges that closely mirror those of the ordinary vendor Licence category.

### **G.2. Proposals**

69. That PCACs that provide internet browsing services be licensed under the category of Internet Cafes.

70. This Licence shall be re-introduced, but as a **CLASS** Licence with Licence terms and conditions set by the Authority including provisions for record keeping, logging-in software, CCTV surveillance, as well as identification of persons accessing the service point/facility.

## **H. DATA CENTRES**

### **H.1. Current Status**

71. Data Centers in Kenya are primarily established in two different ways, namely:



- 71.1. Fully-fledged data centres complete with space, power supply, connectivity, air conditioning, security and even physical computing where clients can store their data and/or run their applications.
- 71.2. Data centers offering only space, power supply, security, connectivity and air conditioning where clients collocate their own servers.

## **H.2. Need for Licensing**

- 72. The National ICT policy guidelines, 2020, promote infrastructure sharing as a principle of prudent management of capital-intensive projects, noting that Data Centres will be deployed nationally and regionally. The policy requires the Authority to Licence and oversee such operators, including Data Centres. It also specifically states: “*The government will promote, encourage and Licence private sector investment in neutral data centres by companies incorporated for that purpose*”.
- 73. Given that the facility owner in the second type of data centre arrangement significantly influences data accessibility, it is necessary to bring these arrangements within the licensing framework to protect users’ data access rights. This approach aligns with current practices where communications tower companies are licensed as Network Facilities Providers despite being providers of passive infrastructure.
- 74. For the avoidance of doubt, this proposal does not extend to tenancy arrangements where operators install BTS/communication systems/equipment in specific buildings, as these arrangements are typically fluid and usually involve a single facility with any given tenant and therefore may not have significant impact on provision of communication services.

## **H.3. Proposals**

- 75. From the current policy, commercial data centres should be subject to licensing depending on the scope of their services. As such, we propose that data centres be licensed as follows:

### **Requirement for NFP-T3 Licence:**

- 76. It is not envisaged that data centre operators will have physical facilities in multiple counties. As such, we propose that where a data centre operator establishes communication infrastructure – terrestrial and/or non-terrestrial connectivity - to the

facility to facilitate ease of connectivity by users of this data centre, then they will be required to obtain an NFP-T3 Licence.

**Requirement for ASP Licence:**

- 77. Data centre operators providing either or all of building, power, servers and internal communication infrastructure and any other related services but excluding communication infrastructure in public space, will be required to obtain an ASP Licence only. Additionally, clients offering public communication services and are hosted in a data centre must hold appropriate Licence (s).
- 78. The proposed regulatory fees for data centres will align with those for ASP and NFP-T3 as per the current market structure.

**I. ROADMAP**

- 79. The proposed roadmap for implementation of the revised telecommunications market structure is as detailed in Table 1 below:

<b>S. No.</b>	<b>Activity</b>	<b>Target</b>
1.	Public consultation process	FY2024/2025
2.	Revision of the proposed Licences	FY2024/2025
3.	Market Sensitization and Consumer Education	FY2025/2026
4.	Implementation of the revised telecommunications market structure	FY2025/2026

- 80. A summary of the proposed market structure and regulatory fees is provided in Annex I.

## ANNEX I: PROPOSED REGULATORY FEES

Licence Category		Initial Licence Fees		Annual Operating Licence Fees	
		Current Initial Licence fees	Proposed Minimum Initial Licence Fees	Current Annual Operating Fees	Proposed Annual Operating Fees
1.	Network Facilities Provider - Tier 1 (NFP-T1)	No Change	No Change	No Change	No Change
2.	Network Facilities Provider - Tier 2 (NFP-T2)	No Change	No Change	No Change	No Change
3.	Network Facilities Provider - Tier 3 (NFP-T3)	No Change	No Change	No Change	No Change
4.	Network Facilities Provider - Tier 4 (NFP-T4)	N/A	15,000	-	15,000 Or 0.4% of Annual Gross Turnover
5.	International Gateway Systems and Services (IGSS)	No Change	No Change	No Change	No Change
6.	Landing Rights Licence	N/A	15,000,000	-	4,000,000 Or 0.4% of Annual Gross Turnover
7.	6.1 Satellite Landing Rights	\$12,500		0	

Licence Category		Initial Licence Fees		Annual Operating Licence Fees	
		Current Initial Licence fees	Proposed Minimum Initial Licence Fees	Current Annual Operating Fees	Proposed Annual Operating Fees
8.	6.2 Submarine Cable Landing Rights	15,000,000/=		4,000,000 or 0.4% of Annual Gross Turnover	
9.	Applications Service Provider (ASP)	No Change	No Change	No Change	No Change
10.	County Applications Service Provider (C-ASP)	N/A	10,000	N/A	10,000 Or 0.4% Of Annual Gross Turnover
11.	Content Service Provider (CSP)	No Change	No Change	No Change	No Change
12.	Telecommunications Equipment Distributors (TED)	N/A	250,000	N/A	120,000 Or 0.4% of Annual Gross Turnover
13.	Communications Equipment Contractor (CEC).	7,500	7,500	3,000	3,000 Or 0.4% of Annual Gross Turnover
14.	Technical Personnel	No Change	No Change	No Change	No Change
15.	PCAC	No Change	No Change	No Change	No Change

Licence Category		Initial Licence Fees		Annual Operating Licence Fees	
		Current Initial Licence fees	Proposed Minimum Initial Licence Fees	Current Annual Operating Fees	Proposed Annual Operating Fees
16.	CEV	No Change	No Change	No Change	No Change

