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THE KENYA COMMUNICATIONS ACT

(No. 2 of 1998)

TELECOMMUNICATIONS AND POSTAL SECTOR POLICY GUIDELINES

IT IS notified for the information of the general public that the Minister for Transport and Communications has issued the policy guidelines set out in the schedule hereto, and has duly notified the contents thereof to the Communications Commission of Kenya, in accordance with the provisions of section 5 (4) (a) of the Kenya Communications Act, 1998.

SCHEDULE

FOREWORD

It is with great pleasure that I issue this Telecommunications and Postal Sector Policy Statement to the people of Kenya. This policy statement is the result of extensive consultation with stakeholders in the telecommunications and postal sector and the public. In formulating it, the Government has taken cognizance of the dynamic changes affecting telecommunications and postal sector in our country. Specifically, the Government has noted the great impact of globalization and rapid changes in technology in the sector which has affected our traditional approach to policy making, thus making policy formulation in this sector a dynamic process that is subject to constant review. It is therefore, the Government's intention to continuously review policies in the sector to ensure that they remain relevant to the development of the communications industry.

In the areas of mobile telephony, for instance, we have in a period of 10 (ten) years moved from the External Total Access Communications Systems (ETACS) to the second and third generation of Global Mobile Systems (GSM). This calls for new approaches to frequency management and other aspects of mobile telecommunications policy. Recent advances in this field have led to convergence of technologies resulting in a situation where electronic mail can, for instance, be received through television radio; television broadcast can be transmitted through the internet and telecommunications lines now carry multi-media signals. Consequently, it is now impossible to draw strict separate market segments for telecommunications and broadcasting. As we look at the possibility of introducing digital terrestrial radio and television broadcasting, we will, as a Government, look afresh at our policies concerning frequency management, signal transmission and licensing processes.

The Government's ultimate goal is to have a combined communications policy document that, among other things, places telecommunication and broadcasting together. This objective is however, being held back by lack of basic communication infrastructure in the rural and marginalized urban areas, which require the policy to address both the up-coming new technologies and basic communications requirements of these areas.

The Government's primary goal is thus to balance the provision of basic telecommunications and postal services in the rural areas with the provision of advanced information services necessary for sustaining the growing needs of the Kenyan economy.

I believe that the implementation of this policy will have a positive impact on the development of telecommunications and postal services in the country and take this opportunity to thank everybody who participated in its review. Finally, I would like to invite all investors to study this updated policy statement and identify appropriate opportunities to meet the changing investment needs of this sector.

Dated the 28th November, 2001.

MUSALIA MUDAVADI,
Minister for Transport and Communications.

CONTENTS

- | | |
|--|--|
| 1. Introduction. | 4.1.1 Customer Premises Equipment and Wiring. |
| 2. Policy objectives and targets. | 4.1.2 Resale Services (Value Added Services). |
| 3. Strategy: | 4.1.3 Internet Backbone |
| 3.1 Restructuring of the Sector. | 4.1.4 Very Small Aperture Terminal (VSAT) Services. |
| 3.2 Regulatory Framework. | 4.1.5 Public Trunked Radio Communications. |
| 3.3 Radio Frequency Spectrum Management. | 4.1.6 Mobile Cellular Services. |
| 3.4 Competition. | 4.1.7 Mobile Satellite Services. |
| 3.4.1 Universal Service. | 4.1.8 Local Telephone Access Network Operators. |
| 3.4.2 Equity Participation. | 4.1.9 National Long Distance Telephone Services. |
| 3.5 Privatization of the Telkom Kenya Limited. | 4.1.10 International Long Distance Telephone Service. |
| 4. Market structure and liberalization | 4.2 Telecommunications Infrastructure (Carrier Systems). |
| 4.1 Telecommunication Services. | 4.3 Postal Services. |
| | 5. Establishment of a policy advisory secretariat. |
| | Annex 1 Approved market structure. |

1. INTRODUCTION

The Government of Kenya has embarked on a series of initiatives to revitalize and transform the economy into a modern market-oriented one. The aim is to improve the economic well-being of Kenyans by establishing Kenya, in the medium term, as the center of industrial and financial activities in the region. The sector policy statement aims to define the framework within which telecommunication and postal services will be provided.

2. POLICY OBJECTIVES AND TARGETS

- 1.1 The overall Government objective for the sector is to optimize its contribution to the development of the Kenyan economy as a whole by ensuring the availability of efficient, reliable and affordable communication services throughout the country. In the area of telecommunications services for instance, it is intended:

- (a) To improve penetration in the rural areas from the present 0.16 lines to 5 lines per 100 people by the year 2015.
(b) To improve service penetration in the urban areas from the present 4 lines to 20 lines per 100 people by the year 2015.

- 1.2 These targets translate to installation of 1.5 million fixed lines in rural areas and 2.4 million fixed lines in urban areas respectively. At an estimated average cost of about US\$ 1,500 per line, the total investment over the 15 years period will amount to about US\$ 5.85 billion. This means that, on average, the annual requirements will be about US\$ 390 million. This is an enormous investment requirement which calls for new initiatives to attract capital into the sector. It is in this context that the restructuring of Telkom Kenya Limited and a step by step liberalization of the sector is being undertaken particularly with a view to attract capital from the private sector.

- 1.3 In the area of postal services, it is observed that the network is already fairly extensive. The main objective, therefore, will be to ensure high quality service, cost effective expansion and financial self-sustenance.

3. STRATEGY

3.1 *Restructuring of the Sector*

In July 1999, KPTC was split into three legal entities, namely Telkom Kenya Limited (TELKOM), Postal Corporation of Kenya (POSTA) and the Communications Commission of Kenya (CCK).

The Postal Corporation of Kenya (POSTA), which was established by the Postal Corporation of Kenya Act, 1998, is the public postal licensee with the specific role to ensure universal access of postal services. POSTA will have exclusivity only in stamp provision and private letter boxes but compete in all other market segments.

Telkom Kenya Limited was established as a public telecommunications operator under the Companies Act. Consequently, Telkom Kenya was issued with licences in all areas that it is currently operating. It has universal access service requirements in its licence and is obliged to provide interconnection facilities to other duly licensed operators.

The Communications Commission of Kenya, the regulatory body for the sector, was established by the Kenya Communications Act, 1998, to discharge the following major functions:

- (a) Issue licences.
- (b) Price regulation.
- (c) Establish interconnection principles.
- (d) Type approve equipment.
- (e) Manage the radio frequency spectrum.

3.2 *Regulatory Framework*

The Kenya Communications Act, 1998, which received Presidential Assent on 1st October, 1998, sets out a modern regulatory regime suitable for a multi-operator environment necessary to support the revitalization of the telecommunications and postal sectors. The Act also provides for the rights and obligations of licensees and service consumers. It also sets out principles on interconnection, public service obligations and fair competition which will ensure protection of consumers and investors interests.

3.3 *Radio Frequency Spectrum Management*

Government Security Agencies and other strategic public institutions shall be exempted from frequency licensing fees and licensing conditions.

3.4 *Competition*

Competition in the telecommunications sector, within a defined market structure, will be fostered with the licensing of new players. The aim will be to increase customer choice and accelerate investment. The specific elements of the telecommunications liberalization programme are set out below:

3.4.1. *Universal Service*

The Government will continue to emphasize the provision of basic postal and telecommunication services to all unserved or under-served areas at affordable rates. All players will be expected to contribute towards this goal. Appropriate regulations and licensing procedures will be put into place to ensure compliance. However, where the provision of such service is deemed to be uneconomical, the Government will undertake to avail appropriate subventions.

3.4.2. *Equity Participation*

The Government will continue to encourage Kenyans to actively participate in the sector through equity ownership. Consequently, it will be a requirement, initially that any firm licensed to provide services in the liberalized market segments should have at least 30 per cent of its equity owned by Kenyans. However, for all the listed companies, the equity participation shall conform to the existing rules and regulations of the Capital Markets Authority (CMA). This policy will be reviewed from time to time in line with the country's investment and socio-economic needs.

3.5 *Privatization of the Telkom Kenya Limited*

Telkom Kenya Limited is to be privatized through a sale of 49 per cent of its equity to a strategic investor.

4. MARKET STRUCTURE AND LIBERALIZATION

4.1 *Telecommunications Services*

The approved market structure, which is depicted in the Annex consists of the following major segments:

- (i) Customer Premises Equipment.
- (ii) Internal and External Wiring.
- (iii) Resale Services (Value Added Services).
- (iv) Internet Backbone.
- (v) VSAT Services.
- (vi) Mobile Cellular Services.
- (vii) Mobile Satellite Services.
- (viii) Local Telephone Access Services.
- (ix) National Long Distance Telephone Service.
- (x) International Long Distance Telephone Services.

4.1.1 *Customer Premises Equipment & Wiring*

The provision of telecommunications terminal equipment and customer premises wiring has been fully liberalized.

4.1.2 *Resale Services (Value Added Services)*

Resale Services or Value Added Services, which include internet services, electronic mail, store and forward messaging, voice mail, video conferencing and leased data services, will be subject to class licences. This market segment will be opened immediately to full competition.

Public telephone operators such as telebureaus and telecentres are also service re-sellers and play an important role in increasing accessibility of telecommunication services. Competition will be encouraged in the provision of these services. Licences issued to public telephone operators or service re-sellers will be designed to encourage creative service delivery system.

Public telephones will not be subject to price regulation. However, CCK will monitor rates and quality of service to ensure that the consumer is protected.

4.1.3 *Internet Backbone*

The establishment of an internet backbone infrastructure is necessary to ensure rapid expansion and accessibility of this important service in all parts of the country. Operators of national and international long distance services will also be licenced to establish internet nodes/points of presence within the backbone infrastructure. The introduction of competition in this market segment will, however, take into account the need to avoid infrastructure duplication.

4.1.4 *Very Small Aperture Terminal (VSAT) Services*

The Government has fully liberalized the supply and installation of VSAT terminals. Provisioning of private VSAT networks and services will be licensed on obtaining the necessary authorization from the regulator and will be restricted to intra-corporate data communications. However, the carrying of public voice service over VSAT networks may, upon obtaining the necessary authorization from the regulator, be granted to licensed operators. Consequently, only Telkom Kenya shall, during the exclusivity period, be licensed to operate international commercial VSAT networks and services. The Government will grant special consideration for VSAT networks used for social services including tele-education and libraries, tele-medicine, public services such as intra-government communications, civil aviation, meteorology and disaster management.

4.1.5 *Public Trunked Radio Communications*

The Government intends to licence public trunk network operators in selected frequency bands. Licences will be awarded through a competitive selection process but will be subject to availability of frequency spectrum.

4.1.6 *Mobile Cellular Services*

The Government has liberalized the mobile cellular market and currently two mobile cellular licences have been granted. The first has been granted to Safaricom Limited, a subsidiary of Telkom Kenya. A second cellular licence has been granted to Kencell Communications Limited, a joint venture between Sameer Investment group, a local company and Vivendi International of France. The award of a third or fourth cellular licence will be considered after the third year of operation of the existing network operators but will be subject to market requirements and fulfillment of Government policy targets.

4.1.7 *Mobile Satellite Services*

The Mobile Satellite Services (MSS) including the Global Mobile Personal Communication by Satellite (GMPCS) service is a new evolution in telecommunications service that is provided by means of a satellite system directly to the end users. The mobile satellite service includes voice telephony, data and paging services. The MSS service has three main elements in its operations. First is the satellite system operator whose main duty is to provide worldwide connectivity through its satellite network. Secondly is the Mobile Satellite Service gateway operator who provides connectivity between the satellite network and the terrestrial public switched network. Thirdly is the mobile satellite service provider who markets the service and connects the end user. The establishment of mobile satellite systems has already been agreed under the auspices of the International Telecommunication Union (ITU) which spearheaded the formulation of worldwide acceptance of the Global Mobile Personal Communication by Satellite Memorandum of Understanding (GMPCS-MOU). Separate licences will be required, however, for provision of mobile satellite service and establishment of a mobile satellite gateway in the country. Provision of mobile satellite user terminals will be done under a class licence. The circulation of the terminals shall be subject to type acceptance in collaboration with the International Telecommunications Union and the concerned satellite operators.

4.1.8 *Local Telephone Access Network Operators*

This consists of local access network and telephone exchange. Local Telephone Access Network Operators will be granted licences in specific geographic areas/regions for the purpose of providing telephone services as well as other services that may be defined in the licence. These operators will be expected to interconnect with the Telkom Kenya network. Terms for inter-connection agreement will be mutually agreed but will be based on principles developed by CCK. Local Access operators will, like Telkom Kenya, be subject to universal service obligations and some form of price regulation.

4.1.9 *National Long Distance Telephone Services*

National long distance telephone services will continue to be operated by Telkom Kenya until a second national operator or other long distance telephone network operators are licensed. The introduction of competition in this market segment will be done in phases, in accordance with law, and will take account of the need to avoid unnecessary infrastructure duplication. Licensed operators of local access networks and mobile cellular services will, therefore, be encouraged to maximize the utility of Telkom Kenya trunk network.

4.1.10 *International Long Distance Telephone Service*

International gateway and telephone services will continue to be operated by Telkom Kenya until a second national operator or other international telephone network operators are licensed. The introduction of competition in this market segment will also be done in phases and will take into account national and economic interests of the country.

4.2 *Telecommunications Infrastructure (Carrier Systems)*

(a) Public Telecommunications infrastructure or carrier systems will continue to be provided by Telkom Kenya until other operators are licensed to provide local telephone access service, long distance telephone service, international long distance services and mobile cellular services as outlined above.

(b) It is recognized that there are telecommunications facilities that have been built and are being operated by parastatals such as Kenya Railways and Kenya Pipeline Company to support their critical operations and meet their in-house requirements. These facilities will continue to be operated by the same organizations under licence from CCK. Where there is less capacity, and where technically feasible, the parastatals will be encouraged to lease such capacity from Telkom Kenya and/or other licensed operators under mutually agreed commercial and operation terms and conditions. This will ensure optimum utilization of the country's telecommunications infrastructure.

4.3 *Postal Services*

The Postal Services market has experienced competition in spite of the legal monopoly enjoyed by the Kenya Posts and Telecommunications Corporation (KPTC). The new legislation provides for competition in the sub sector but all players will have to be licensed by the regulatory authority Communications Commission of Kenya (CCK).

Postal Corporation of Kenya, as the public postal licensee, has exclusivity on the following services:

- (a) Delivery of letters with weights up to a maximum of 350 grammes.
- (b) Printing and issuance of stamps.
- (c) Provision of letters boxes.

The public postal licensee will be expected to operate commercially under a licence from Communications Commission of Kenya.

5. *ESTABLISHMENT OF A POLICY ADVISORY SECRETARIAT*

5.1 Telecommunications and information infrastructures are vital for any country's economic productivity, competitiveness and national security. These sectors are experiencing rapid technological advances which make it imperative for the Government to maintain an effective and dynamic policy environment that will facilitate sustainable development and advancement of strategic interests.

5.2 The Kenya Communications Act, 1998 provides for the establishment of a National Communications Secretariat to serve as the policy advisory arm of the Government on all matters pertaining to the info-communication sector. The functions include:

- (a) Formulation of info-communication policies and recommendations that aim to advance strategic interests.
- (b) Carrying out telecommunications and postal policy, research and analysis.
- (c) Advising Government on the most efficient and effective way of managing the radio frequency spectrum.
- (d) Conducting continuous review of all phases of development in info-communications
- (e) Assisting in the preparation of country positions papers for all international meetings and conferences relating to info-communications.
- (f) Updating sector policy statements, sessional papers and legislation pertaining to info-communications.

5.3 The regulation of the sector and granting of licences will remain the responsibility of the Communications Commission of Kenya.

ANNEX 1: APPROVED MARKET STRUCTURE

<i>Service</i>	<i>Licence Required</i>	<i>Competition Policy</i>	<i>Exclusivity Period</i>
Local	Yes	Telkom Kenya and Local Network Operators covering geographic service areas based on provincial administrative boundaries except Nairobi which will be exclusively Telkom Kenya	Up to 2004 for Nairobi only
National Long Distance	Yes	Restricted to Telkom Kenya initially and later other long distance operators after period of exclusivity	Up to 2004
International Gateway and Service	Yes	Restricted to Telkom Kenya initially and later other international gateway operators after exclusivity period	Up to 2004
Global Mobile Personal Communications by Satellite (GMPCS)	Yes	Telkom Kenya and other licensed network operators to provide GMPCS service. Full competition in the provision of GMPCS user terminals under class licence	Up to 2004 Nil
GSM/ETACS	Yes	Initially duopoly between Safaricom and Kencell	Nil
Other Mobile services (e.g. Personal Communications Systems, Trunked Radio System)	Yes	Limited competition based on spectrum availability and demand for mobile services	None
Paging	Yes	Full competition depending on radio spectrum availability	None
VSAT	Yes	Restricted to private networks and services for intra-corporate data communications. International Commercial VSAT networks and services to be restricted to Telkom Kenya. Other infrastructure providers to be licensed in line with market growth.	Nil Up to 2004
Internet Node and Backbone	Yes	Initially to be provided by Telkom Kenya. Other infrastructure providers to be licensed in line with market growth.	Up to 2004
Value Added Services e.g. Electronic Mail, Voice Mail, Store and Forward Fax, Internet Services Provision, Video Conferencing, Electronic Data Interchange.	Generic/Class Licences	Full competition	Nil
Public Telephone Service Resale	Yes	Full competition	Nil

ANNEX 1: APPROVED MARKET STRUCTURE—(Contd.)

<i>Service</i>	<i>Licence Required</i>	<i>Competition Policy</i>	<i>Exclusivity Period</i>
Customer Premises Equipment. Internal/External Wiring	Certificate and Type Approve of Equipment	Full competition	Nil

Dated the 28th November, 2001.

MUSALIA MUDAVADI,
Minister for Transport and Communications.