

MODEL GUIDELINES FOR CO-LOCATION AND INFRASTRUCTURE SHARING

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July 2017

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PART I: INTRODUCTION

1. Background

EACO Working Group 2 on Infrastructure Development, Connectivity and Digital Inclusion was tasked in its terms of reference, among other things to:

- Identify feasible infrastructure sharing models and strategies that can be adopted within EAC region;
- Develop guidelines and regulations for infrastructure sharing and interconnection in the region.

In order to address this task, Working Group 2 (WG2) started by analyzing current status in the 5 EAC Member States. It was found that Tanzania and Rwanda have infrastructure sharing model while Kenya has a developed code for infrastructure sharing. Nothing was found for Burundi and Uganda.

Report of EACO Taskforce meeting on Infrastructure sharing held in Kampala on 13th April 2012 was also analyzed. This report has established the structure that could be taken by EACO Infrastructure sharing guidelines and the WG2 decided to use this structure and enrich it where necessary after analyzing other models of infrastructure sharing in other regions.

Infrastructure sharing models found on internet and considered in this study, in addition to the one of Kenya, Tanzania and Rwanda are from Botswana, Nigeria, Bangladesh, GSMA Mobile Infrastructure Sharing and ITU best practice guidelines on innovative infrastructure sharing strategies to promote affordable access for all.

However, it is worth to note that, given that legislation may differ from country to country, these guidelines include minimum general principles and clauses which should be included in Regulatory Authority's Guidelines. National Regulatory Authorities (NRAs) in Partner States shall therefore customize them based on their national legislation.

In addition to that, we have noticed that some EAC Member States may not have clear provision in their respective Communications Act mandating the Regulator to issue infrastructure sharing regulations. However, in the course of this study, we realized that common responsibilities of any ICT Regulatory Authority like promoting and maintaining competition, promoting interests of consumers, universal service obligations can serve as a legal basis for issuing such regulation in a given country.

Finally, after analyzing the infrastructure sharing models aforementioned, we came to a conclusion that the guidelines model we propose shall make mandatory the sharing of Passive infrastructure (non-electronic equipment) while active infrastructure sharing shall be encouraged by the Regulator subject to not distorting competition.

2. Short Title, Extent And Commencement

- 2.1. These guidelines shall be referred to as: “Guidelines on infrastructure sharing and co-location”
- 2.2. The Guidelines shall be applicable to all Licensed Operators in the Telecommunications /ICT Sector
- 2.3. The guidelines shall come into force on.....

3. Definitions

In this part we have put important definitions keeping in mind that national legislation may have defined them otherwise. Respective National Regulatory Authorities is therefore required to use definitions provided in their respective national legislation when available.

- a) **Access** means the technically feasible means of reaching network facilities for purposes of leasing or sharing of network facilities
- b) **Act** means (name of the Communications act)
- c) **Authority (or Commission)** means (name of the Regulatory Authority established in the terms of the act)

- d) **Co-location** means the accommodation of two or more licensee's communications equipment in or on a single building, tower or other structure
- e) **Infrastructure provider** means any licensed telecommunication operator who owns or is in control of a facility or infrastructure access to which another licensed operator desires for the purposes of co-location or infrastructure sharing.
- f) **Infrastructure seeker:** Means any licensed telecommunications operator desirous of sharing a facility or infrastructure owned or in the control of another licensed telecommunications operator;
- g) **Passive Infrastructure sharing:** Passive infrastructure sharing is the sharing of non-electronic infrastructure and facility. It includes sharing of physical sites, buildings, shelters, towers/masts, electric power supply and battery backup, grounding/earthing, air conditioning, security arrangement, poles, ducts, trenches, right of way.
- h) **Active infrastructure Sharing:** Active infrastructure sharing is the sharing of electronic infrastructure and facility. It includes sharing of Base Transceiver Station (BTS), spectrum, antenna, feeder cable, Radio Access Network (RAN), microwave radio equipment, billing platform, switching centers, router, Base Station Controller (BSC) /Radio Network Controller (RNC), optical Fiber/ wired access and backbone transmission network, database etc.
- i) **Telecommunication facility:** Any cables, wires, lines, waveguides, antennas and any other equipment that is used or associated with the provision of one or more telecommunications services.

4. Objectives of the guidelines

4.1. The primary objectives of these guidelines are:

- a) Minimize the cost of network deployment (Optimize operator's capital expenditure on supporting infrastructure);
- b) Protect the environment by reducing the proliferation of towers and facilities installation thereby not changing the aesthetics of the country's landscape;

- c) Enhance competition amongst telecom operators in more cooperative environments;
- d) Maximize use of network facilities including but not limited to network capacity and capabilities, base station sites, backbone, towers and reduce duplication of investment for network facilities;
- e) Ensure that the economic advantages derivable from the sharing of infrastructure are harnessed for the overall benefit of all telecommunication stakeholders;
- f) Encourage operators to pursue a cost-oriented policy with the added effect of a reduction in the tariffs chargeable to consumers;
- g) Encourage the Authority to coordinate and cooperate with other Government Institutions involved in infrastructure deployment and /or installation

PART II. INFRASTRUCTURE SHARING

5. Types of infrastructure amenable to sharing

5.1. Infrastructures amenable to sharing are those that can be shared without an attendant risk of lessening of competition.

5.2. The Authority shall encourage and promote the sharing of the following infrastructures:

- a. Rights of way;
- b. Physical sites, space buildings, shelters and battery backup;
- c. Antenna masts and tower structures;
- d. Poles, ducts and trenches
- e. Air conditioning;
- f. Electric power supply;
- g. Grounding/earthing system;
- h. Security arrangements.

5.3. Where the sharing of an infrastructure such as Rights of Way and Electric Power is precedent upon securing the necessary approval of a granting authority, such approval should be obtained before the sharing arrangement can be finalized.

5.4. The Authority may from time to time add to the list other infrastructures that can be shared.

- 5.5. The Authority shall at all times reserve the right to examine incidence of infrastructure sharing to ensure consistency with the relevant license(s) and reduce the risk of a lessening of competition.
- 5.6. Where the authority, acting pursuant to paragraph (5.4) above, determines that an infrastructure sharing arrangement is inconsistent with the relevant license(s), and/or identifies a risk of lessening of competition as a consequence of infrastructure sharing, it may require such specific arrangement to be discontinued.

6. Procedure for negotiating infrastructure sharing

- 6.1. Any operator who owns or has control of a facility or infrastructure amenable to sharing shall enter into negotiations with another operator who submits a request to share that facility or infrastructure.
- 6.2. All negotiations for facility or infrastructure sharing must be conducted by all parties in good faith. In particular the owner of a facility of infrastructure shall not :
 - a. Obstruct or delay negotiations or resolution of disputes;
 - b. Refuse to provide information relevant to an agreement, including information necessary to identify facility needed and cost data.
 - c. Refuse to designate a representative to make binding commitments
- 6.3. A request for infrastructure sharing should be in writing. A party to whom such a request is made should within [time like 30 days, 14 days?] either accede to the request and grant access for sharing, or where access is denied, provide reasons in writing for the denial.
- 6.4. If on expiry of [the time referred to in 6.3], the Infrastructure provider has not provided access to infrastructure seeker without valid and justifiable reasons; then the latter shall be entitled to refer the matter to the Authority for intervention.
- 6.5. Except on emergency situations, the replacement or modification of a shared facility which affects existing infrastructure seekers, shall be undertaken upon due service of no less than [60 days, 90 days?] notice on the other parties.
- 6.6. A party on whom a notice is served may file a petition to the Authority against the removal or modification of a facility within [14 days?] of receiving such notice, and the notifying party shall reply thereto within [7 days?].

7. Terms and conditions for infrastructure sharing

- 7.1. An operator shall provide capacity to other operators on a “first come first served” basis.
- 7.2. Every infrastructure sharing agreement shall be in writing.
- 7.3. The terms on which infrastructure sharing is offered should be in compliance with the principles of neutrality, transparency, non-discrimination and fair competition.
- 7.4. Infrastructure sharing shall be commercially agreed between infrastructure provider and infrastructure seeker
- 7.5. Every infrastructure sharing agreement shall be registered with the Authority.
- 7.6. An Infrastructure provider shall reserve the right to decline an application for infrastructure sharing on grounds of:
 - a. Insufficient capacity;
 - b. Safety, reliability, incompatibility of facilities and;
 - c. General engineering consideration.
- 7.7. In all cases, the infrastructure provider should provide the Infrastructure seeker with reason(s) for refusal in writing.
- 7.8. Infrastructure seeker who is refused access may refer such refusal to the Authority
- 7.9. The Authority may upon due consideration:
 - (i) Request that a decision for refusing access should be reconsidered; and/or ;
 - (ii) Impose an infrastructure sharing arrangements on the parties.
- 7.10. Prices for infrastructure sharing should be non-discriminatory, reasonable and based the actual costs incurred by the owner of the facility.
- 7.11. Determination of the costs underlying prices should be transparent and neutral.

PART III: GENERAL RULES FOR INFRASTRUCTURE SHARING

8. Reference infrastructure sharing offer (RISO)

- 8.1. The Authority recognizes the right of operators to negotiate and agree on terms and conditions of infrastructure sharing and co-location. However, the Authority requires that such negotiations be within the limits of an existing Reference Infrastructure Offer developed by each Infrastructure providers.
- 8.2. Infrastructure provider shall ensure that its Reference Infrastructure Sharing Offer is readily available to other Operators with a view to promoting fairness in the negotiation process.
- 8.3. Parties involved in any negotiation for infrastructure sharing arrangement are at liberty to negotiate outside the Reference Offer provided that such negotiations are voluntarily and non – discriminatory.
- 8.4. The Reference Infrastructure Sharing Offer should contain sufficient information on issues relevant the infrastructure seeker for negotiation purposes.
- 8.5. Infrastructure seeker may request for a site inspection if it is deemed necessary for the purpose of taking an informed decision. Response on such request should be prompt to avoid delay. The cost of this inspection shall be borne by infrastructure seeker.
- 8.6. Infrastructure provider should develop a standard price list which shall provide guidance for determining the price for all infrastructure sharing arrangements for other operators.
- 8.7. Such standard price list developed should be reasonable, non-discriminatory and cost - oriented

9. Allocation of Capacity

- 9.1. There shall be no obligation on an operator to develop new infrastructure whenever its capacity has reached saturation level. Operators are however requested to take into consideration the demand for infrastructure sharing and co-location when expanding their facilities and when installing or deploying new infrastructure amenable to sharing and co-location.

9.2. Where there is no available capacity at the existing facilities to meet the needs of additional requests, the operator should consider re-development as a means of increasing capacity at existing facilities.

9.3. The licensed operator that installs or plans to install infrastructure amenable to sharing may require potential infrastructure seekers to express their requirements in writing and both, subject to mutual agreement, share the development costs of the new infrastructure amenable to sharing.

10. Reservation of Capacity

10.1. The right of an infrastructure provider to reserve capacity for which it has made long term investments will at all times be recognized but balanced against the need of not hampering the network roll-out or expansion plans of new market entrants.

10.2. Where however an infrastructure provider with significant investments exercises the option to reserve some rights in circumstances of limited capacity;

a. The reserve period shall not exceed (2) years after which the right cease from being operational

b. Not more than 50% of capacity shall be reserved

10.3. Information and documentary evidence of the reservation should be held by the Infrastructure provider and made available to other operators on demand.

PART IV: THE ROLE OF THE AUTHORITY

11. Institutional coordination

9.1 These guidelines shall be subject to other laws dealing with the installation and/or deployment of infrastructure such as public health, civil aviation, land ownership or leasehold and environmental laws.

9.2. The operators shall be subject to the jurisdiction of such entities as may be responsible for the enforcement of such other laws as may be applicable to them in the installation and / or deployment of infrastructure.

9.3. The Authority shall, in performing its regulatory duties, cooperate with such other competent entities as are relevant.

12. Disputes resolutions

- 12.1. The Authority has the power to intervene to resolve dispute at the request of either party and to impose infrastructure sharing arrangements between operators after giving each and/or all of the concerned parties a hearing.
- 12.2. The power of the Authority to intervene in disputes shall include the right to request for and receive all such necessary information as may be required to reach a decision.
- 12.3. The decision of the Authority, which shall be notified to the parties, may be published in such a manner as the Authority may deem appropriate. The decision of the Authority in that regards will be final and binding.
- 12.4. In resolving disputes, the Authority will rely on its dispute resolution procedures, processes and/or mechanisms as may be in existence from time to time

13. Supportive action

- 13.1. The Authority will from time to time arrange for the dissemination of pertinent information on the subject of infrastructure sharing
- 13.2. The Authority will use its mandate under the Act to further the opportunities for infrastructure sharing, provided there is no risk of the lessening of competition. In particular, the Authority will take action to:
 - (i) Encourage redevelopment of existing facilities amenable to sharing to increase their capacity;
 - (ii) Advise local and other authorities on the adoption of schemes which would encourage infrastructure sharing;
 - (iii) Support the development of the capability among operators to deal with the issues of infrastructure sharing in a competent way.

REFERENCES

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