

Supplement No. 24

28th June, 2013

SUBSIDIARY LEGISLATION

to the Gazette of the United Republic of Tanzania No. 26 Vol 94 dated 28th June, 2013

Printed by the Government Printer, Dar es Salaam by Order of Government

GOVERNMENT NOTICE No. 208 published on 28/06/2013

**THE ELECTRONIC AND POSTAL COMMUNICATIONS ACT,
(CAP.306)**

REGULATIONS

(Made under section 165)

**THE ELECTRONIC AND POSTAL COMMUNICATIONS
(TELECOMMUNICATIONS TRAFFIC MONITORING SYSTEM)
REGULATIONS, 2013**

ARRANGEMENT OF REGULATIONS

Regulation Title

**PART I
PRELIMINARY PROVISIONS**

1. Citation.
2. Application.
3. Interpretation.

*Electronic And Postal Communications (Telecommunications Traffic
Monitoring System*

PART II
TELECOMMUNICATIONS TRAFFIC MONITORING

4. Powers of the Authority.
5. Disclosure of information.
6. Powers to collect revenue generated.
7. Fraudulent Traffic.
8. Telecommunication Traffic Monitoring System Function.

PART III
OPERATOR'S OBLIGATIONS

9. Obligation to provide information.
10. Authority to conduct survey and inspection.
11. Signalling Data
12. Obligations on charging rates.
13. Monitoring process.
14. Installation of devices and their safety.
15. Control of International VoIP.
16. Interference to the network.
17. Physical access to the co-location space and the inspection.
18. Operation or maintenance of co-location equipment.
19. Operator to comply with directives.

PART IV
MISCELLANEOUS PROVISIONS

20. Minimum rate for the international incoming telecommunications traffic.
21. Establishment of Committees.
22. Transition provisions.
23. Appeals.
24. Reviews.
25. Offences and penalty.

SCHEDULES

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

THE ELECTRONIC AND POSTAL COMMUNICATIONS ACT,
(CAP.306)

REGULATIONS

(Made under section 165)

THE ELECTRONIC AND POSTAL COMMUNICATIONS (TELECOMMUNICATIONS
TRAFFIC MONITORING SYSTEM) REGULATIONS, 2013

PART I
PRELIMINARY PROVISIONS

- Citation 1. These Regulations may be cited as the Electronic and Postal Communications (Telecommunication Traffic Monitoring System) Regulations, 2013.
- Application 2. These Regulations shall apply to network facilities, network services and application services licensees.
- Interpretation 3. In these Regulations, unless the context requires otherwise-
- Cap. 306 "Act" means the Electronic and Postal Communications Act;
- Cap. 172 "Authority" means the Tanzania Communications Regulatory Authority established under the Tanzania Communications Regulatory Authority Act;
- "Call Detail Records (CDR)" means information generated by telephone exchanges which contain details of calls originating from, terminating at or passing through the exchange;
- Cap. 172 "Director General" has the meaning ascribed to it by the Tanzania Communications Regulatory Authority Act;
- "gateway" means switching system through which telecommunications traffic is sent and received with

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

provisions for allowing physical monitoring of traffic flow;
“market watch services” means a business intelligence that insights into emerging key market and technology trends affecting the ICT infrastructure and network computing technologies at the marketplace;

“monitoring” means observation and keeping records of telecommunications traffic signalling for the purpose of facilitating regulatory activities stipulated in these regulations;

“operator” means network facilities, network services a licensee of and application services licensee;

“telecommunication” means any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems;

“telecommunication network or network” means all the ways of providing telecommunication services between a number of locations where equipment provides access to these services; and

“telecommunications traffic” means a profile of signs, signals, writing, images and sounds or intelligence of any nature flowing within a telecommunication network.

PART II

TELECOMMUNICATIONS TRAFFIC MONITORING

Powers of the
Authority

4.-(1) The Authority shall carry out Monitoring of Telecommunications Traffic.

(2) Notwithstanding the generality of sub regulation (1), the Authority shall-

- (a) initiate site surveys in order to determine and ascertain the aspects of feasibility or requirements for the inter-network connectivity;

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

- (b) acquire, install, operate and maintain traffic monitoring and measurement devices at the operators' premises;
- (c) ensure transparent transit and roaming practices among operators through gateways monitoring, billing system and service for incoming calls;
- (d) verify the returns of operators;
- (e) establish procedures for billing and settlement;
- (f) ensure and enhance telecommunications traffic revenue assurance and market watch services;
- (g) conduct inspection at the operator's premises to ensure compliance with these regulations;
- (h) request any data from the operator pursuant to these regulations;
- (i) implement a monitoring system for mobile money transactions in compliance with these regulations and Bank of Tanzania Mobile Money and Mobile payment regulations; and
- (j) take actions against non-compliance to these regulations.

(3) The data requested under these Regulations, shall be provided by the operator within fourteen days.

(4) An operator who fails to submit the data or information within the time frame without a reasonable cause commits an offence and shall upon conviction, be liable to pay a fine of not less than five Million Shillings per day for every day after the seventh working day up to the day the information or data is submitted to the Authority.

*Electronic And Postal Communications (Telecommunications Traffic
Monitoring System*

(5) In carrying out Telecommunications Traffic Monitoring activities, the Authority shall ensure availability of adequate regulatory tools.

5.-(1) The Authority or any person employed by the Authority shall not disclose any information received or obtained during the exercise of its powers or performing its duties under the provisions of these Regulations.

(2) Subregulation (1) shall not apply where the information is required-

- (a) by any law enforcement agency, court of law or other lawfully constituted tribunal; or
- (b) for the purpose of national security.

(3) Notwithstanding the provision of this regulation, any authorized person who executes a directive or assists with execution thereof and obtains knowledge of any information may-

- (a) disclose such information to another law enforcement officer to the extent that such disclosure is necessary for the proper performance of the official duties of the authorized person making or the law enforcement officer receiving the disclosure; or
- (b) use such information to the extent that such use is necessary for the proper performance of official duties.

Powers to
collect
revenue
generated

6.-(1) The Authority shall collect from operator revenue generated from the minimum rate of international incoming telecommunications traffic for the purpose of payment to treasury and service fee as specified in items 3 and 4 of the Schedule to these Regulations.

(2) The Authority shall, in collecting revenue generated under sub regulation (1), issue an invoice with the following components:

- (a) the number of minutes;

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

(b) the amount owed based on the specified per minute fee; and

(c) the due date for payment.

(3) Every operator shall honour invoices in their entirety and payment shall be made not later than thirty days from the date of issuance.

(4) Any query relating to an invoice shall be raised and communicated to the Authority within two-working days from the date of receipt and all such queries shall be addressed within seven working days.

(5) Where there is late payment to the Authority by an operator, the Authority shall apply a penalty of 10% of the amount due and in the case of a delay of payment after seven days a further fine of 2% for everyday during which the payment is not being made.

Fraudulent
traffic

7.-(1) Telecommunication traffic is considered fraudulent when the telecommunications facilities or services are used with the intention of avoiding payment, without correct payment, with no payment at all, by making someone else pay, or by using a wrongful or criminal deception in order to obtain a financial or personal gain from the use of those facilities or services.

(2) Notwithstanding the generality of sub regulation (1), international incoming telecommunications traffic shall be considered as fraudulent when-

(a) it is managed by an entity without the license or authorization required for the management of international telecommunications traffic issued by the Authority;

(b) it is managed by a licensed operator but not declared to the Authority;

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

- (c) it is managed by a licensed operator but charged at a rate below the minimum rate as provided for in the Schedule to these Regulations;
 - (d) it is traffic by third parties or carriers that gets terminated to the United Republic of Tanzania where a network operator is unable to bill or collect payment;
 - (e) there is a reasonable expectation that an end user is not likely to pay the telephone bill because the calls are disputed as not originating from the telephone line for which the respective end user is responsible; and
 - (f) any other fraudulent act as may be determined by the Authority.
- (3) The Authority shall provide the necessary regulatory surveillance for detection and handling of fraudulent telecommunications traffic.
- (4) Subject to sub regulation (3), the Authority shall, where there is fraudulent trafficking, direct or order the operator to do any of the following-
- (a) effectively carry out or comply with any fraud surveillance obligations;
 - (b) disclose any fraud user SIM;
 - (c) deactivate any fraud user SIM;
 - (d) provide for a balance reporting on a fraud user SIM;
 - (e) sharing of any other fraud information; and
 - (f) report any fraud or related criminal activity to the Authority and any other law enforcement institutions for further action.
- (5) The delivery and termination of incoming telecommunications traffic by operator shall be limited to the

*Electronic And Postal Communications (Telecommunications Traffic
Monitoring System*

routing of calls to either customers of their own network or the customers of other operators' with whom they have an interconnection agreement for the provision of transit and roaming services for the incoming telecommunications traffic.

Telecommu-
nication
Traffic
Monitoring
System
Function

8.-(1) Without affecting quality of service of operators, the Telecommunication Traffic Monitoring System shall –

- (a) monitor quality of service;
- (b) generate reliable statistics for both, local and international telecommunications traffic;
- (c) provide terminal identification details;
- (d) provide mobile money transaction information;
- (e) provide fraudulent SIM card profile;
- (f) track and detect fraud through an anti-fraud system and services within International gateway traffic and cause the same bypass fraud to be blocked;
- (g) collect call detail record without any interception of contents of communications such as voice or SMS;
- (h) detect new mobile devices that sign onto any operator's network in the United Republic; and
- (i) monitor operators' mobile money gateways and transactions in order to capture transaction information from the network operators Unstructured Supplementary Service Data Centre.

PART III
OPERATOR'S OBLIGATIONS

Obligation to
provide
information

9.-(1) Every operator shall provide the Authority with the following information-

- (a) the Call Detail Records for all domestic and international inbound telecommunications traffic, including transit and roaming telecommunications traffic;
- (b) Statements by international carriers or operators for the telecommunications traffic terminated in the United Republic of Tanzania or invoices sent to international carriers or operators;
- (c) the number of minutes and revenue for telecommunications traffic terminated to each international carrier contracting the termination service with the licensed operator;
- (d) the Call Detail Records for voice traffic, both for international inbound traffic and for national voice traffic in a format defined by the Authority;
- (e) any other necessary information related to the management of their networks for the provision of voice services, including their networks signalling data links, recorded telecommunications traffic, contracts and invoices with other carriers.

(2) The report and Call Detail Records referred to under this regulation shall be submitted to the Authority before the sixth calendar day after the end of each calendar month.

(3) The Call Detail Records submitted under sub regulation (2), shall be subject to a verification process.

Electronic And Postal Communications (Telecommunications Traffic Monitoring System)

Authority to
conduct
survey and
inspection

10.-(1) An operator shall allow the Authority or any person acting on the Authority's behalf to-

- (a) conduct a survey in order to facilitate installation of the Traffic Monitoring System in accordance with these regulations;
- (b) conduct site inspection in order to assure the compliance to these regulations; and
- (c) conduct site inspection in order to assure the accurate reporting of all mobile money transactions for fiscal compliance purposes.

(2) Any site survey conducted under sub regulation (1) by the Authority or its authorized representatives shall, be done together with or in the presence of an operator or his authorized representative.

Signalling
Data

11.-(1) An operator shall keep signalling data necessary for the management of telecommunications

(2) The signalling data referred to under sub regulation (1), shall include origin, destination, service information, time and path of the communication.

(3) Operators shall notify the Authority in advance on any upgrades or changes of their signalling system with detailed timelines that may make the Telecommunication Traffic Monitoring System to function properly.

Obligations
on charging
rates

12.-(1) All operators shall –

- (a) impose a higher premium tariff or block on all international inbound traffic without proper Calling Line Identification Presentation in order to encourage international carriers to comply with ITU Calling Line Identification Presentation recommendations and standards;

*Electronic And Postal Communications (Telecommunications Traffic
Monitoring System*

- (b) apply the minimum rate per minute as specified in the Schedule to these Regulations for termination of international voice telecommunications traffic in the United Republic;
- (c) comply with the transit traffic fee, that applies as per rate specified in the agreements between the operator and international carriers;
- (d) not to charge a lesser rate than that specified in the Schedule to these Regulations, failure to which; the operator shall be liable to pay to the Authority a penalty of twice the difference between the specified rate and the rate actually charged;
- (e) not to charge its customers a higher fee for its service because of its adoption and application of the minimum rate for international incoming telecommunications traffic; and
- (f) not to increase the fees for its services resulted as a minimum rate for international incoming telecommunications traffic, whoever increased the tariff shall be liable to pay a penalty twice the sum of the value of the increase to the Authority.

(2) The transit fees or charges for international incoming telecommunications traffic referred to under sub-regulation (1)(c), shall be determined and agreed upon by, and entered into agreement between the operators and international carriers.

Monitoring
process

13.-(1) The Authority shall be responsible for monitoring operators'-

- (a) monthly trend of telecommunications traffic in the United Republic of Tanzania; and

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

- (b) parameters relating to quality of service and fraud detection.

(2) The Authority shall have the mandate to collect any information from the operators in order to ascertain, *inter alia*, quality of service and volume of traffic carried over the network of the operators.

(3) In monitoring telecommunications traffic, the operator shall-

- (a) allow the Authority or any entity acting on its behalf to install and maintain necessary equipment in, on, upon or under operator's network;
- (b) collaborate by providing all the required support and space for the installation of the monitoring system in their premises;
- (c) facilitate the installation of data transmission equipment between the Authority's monitoring system installed at their switch centres and the Authority's main operating centre.

(4) The Authority shall ensure that –

- (a) Call Detail Records data are collected for the exclusive purpose of monitoring compliance with these regulations;
- (b) Call Detail Records data are collected encrypted, and stored with the last three digits of the calling numbers hashed in order to protect the confidentiality of the caller; and
- (c) Call Detail Records collected are not transmitted or given to third parties, public or private, except as permitted by law.

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

Installation
of devices
and their
safety

14.-(1) Where a device is installed in, on or under the operator's network, the operator shall be required to exercise due care on the safety of such devices.

(2) Where a device installed is tampered, destroyed, or damaged by the operator, the operator shall be held liable to-

(a) pay for the cost of replacement of the tampered, destroyed or damaged device; and

(b) pay the amount payable to the Authority as specified in the Schedule based on the previous highest returns plus 10% of the returns during the period the device remains tampered, destroyed or damaged.

(3) In case where the device is destroyed or damaged by natural calamity, the Authority shall take responsibility.

(4) Where a device interferes with the operators network, all concerned parties shall, in good faith, take reasonable measures to resolve the problem.

Control of
International
VoIP

15. The Authority shall adopt measures for the control of International, Voice over Internet Protocol (VoIP) gateways in the United Republic.

Interference
to the
network

16.-(1) The International Border Control System and any co-location device, for the purposes of Telecommunication Traffic Monitoring System, shall not cause any interference to the network operators' equipment, plant, facilities, networks and the equipment of any other operator, in the co-location space, including when installing the International Border Control System equipment.

Electronic And Postal Communications (Telecommunications Traffic Monitoring System)

(2) There shall be a transmission link between operators and the Authority Network Operation Centre that shall be managed and operated by the Authority or entity operating on its behalf.

(3) Subject to sub regulation (2), where there may occur any interference, all concerned parties shall take, in good faith, reasonable measures to resolve the problem promptly.

Physical access to the co-location space and the inspection.

17.-(1) Procedures regarding the physical access to the co-location space and the inspection of the co-location space and equipment by the Authority, representatives or its staff shall be determined by the Authority at the time of the installation of the International Boarder Control System (IBCS) or any related telecommunications traffic measurement equipment, anti-fraud software such as complex Global System for Mobile Communication (GSM) and Code Division Multiple Access (CDMA) fraud detection systems and any other equipment.

(2) In the event of any direct damage to the co-location plant, network equipment or facilities, arising out of or during the course of installation, operation, maintenance, replacement or repair of the co-located facility or network in the premises of an operator, the damage shall be reported to the Authority, its representative or staff and the network equipment or facility shall be, subject to any agreement, rectified without delay.

Operation or maintenance of co-location equipment

18.-(1) The Authority or its representative shall be responsible for the operation or maintenance of its co-location equipment or as may be mutually agreed with an operator.

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

(2) The Authority and operators shall ensure that their staff observe and comply with all applicable or specified safety rules for the purposes of the link.

Operator to
comply with
directives

19. Every operator shall comply with the directives or orders of the Authority issued in connection with these Regulations or matters affecting any of its provisions or the implementation thereof.

PART IV
MISCELLANEOUS PROVISIONS

Minimum
rate for the
international
incoming
telecommuni-
cations
traffic

20.-(1) An operator shall charge the minimum rate for the international incoming telecommunications traffic in the manner prescribed in the Schedule.

(2) The revenue collected from the minimum rate for the international incoming telecommunications traffic shall be distributed to the operator, Authority and the Government in the manner prescribed in the Schedule.

Establishmen-
t of
Committee

21.-(1) There is established a Committee for the purposes of implementing these Regulations.

(2) Members of the Committee shall be nominated by the Authority after consultation with the Minister.

(3) In appointing members, consideration need to be taken to at least include to the committee:

- (a) one representative from every telecommunication company;
- (b) two representative from the Authority;
- (c) a representative from revenue authority; and
- (d) a representative from the Ministry responsible for communications;

(4) The Committee shall work under the directive of the Authority and shall be responsible for:

Electronic And Postal Communications (Telecommunications Traffic Monitoring System

- (a) providing advice to the Ministry and the Authority on the efficient operation of Telecommunication Traffic Monitoring System; and
- (b) carryout performance evaluation of the sector.

Transition provisions

22. Upon coming into force of these Regulations operators shall within sixty days-

- (a) amend their existing carrier agreements and file the same to the Authority; and
- (b) identify all the interconnection requirements for implementation of these Regulations.

Appeals

23. A person aggrieved by the decision of the Authority under these Regulations, may appeal to the Fair Competition Tribunal.

Reviews

24.-(1) The rate and distribution in the Schedule to these Regulations may be reviewed from time to time depending on the development of the sector.

(2) Any review of the rate under sub-regulation (1), shall maintain the proportionate percentage rates prescribed in the Schedule.

Offences and penalty

25. Any person, who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine not less than Ten Million Tanzanian Shillings or to imprisonment for a period not exceeding twelve months or to both.

*Electronic And Postal Communications (Telecommunications Traffic
Monitoring System*

SCHEDULE

(Made under regulation 6)

MINIMUM RATE FOR INBOUND

No.	Subject Matter	Rate Per Minute [US Cents]	Percentage Rate [%]
1.	Minimum Rate for termination in Tanzania of all international incoming telecommunications traffic.	25	100
2.	The Operators' share of per minute of incoming call.	13	52
3.	Revenue to be collected by TCRA and payable to the Treasury	7	28
4.	TCRA's service fees including payment for managing and operating the system.	5	20

Dar es Salaam,
11th June, 2013

MAKAME M. MBARAWA
*Minister for Communication, Science
and Technology*