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THE TANZANIA COMMUNICATIONS REGULATORY AUTHORITY ACT,  
2003  
(No. 12 of 2003)

REGULATIONS

(Made under section 47(1))

THE TANZANIA COMMUNICATIONS (ACCESS AND FACILITIES)  
REGULATIONS, 2005

ARRANGEMENT OF REGULATIONS

*Regulation*      *Title*

PART I  
PRELIMINARY PROVISIONS

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

PART II  
GENERAL DUTY ON FACILITIES AND ACCESS

4. Promotion of use access .
5. Access on commercial terms.
6. Mandated access.
7. Non-discrimination treatment
8. Refusal of access
9. Access charging structure
10. Content of access agreements
11. Limitation of access

THE TANZANIA COMMUNICATIONS REGULATORY  
AUTHORITY ACT, 2003

(No. 12 of 2003)

REGULATIONS

(Made under section 47(1))

THE COMMUNICATIONS (ACCESS AND FACILITIES) REGULATIONS, 2005

Citation.	<b>1.</b> These Regulations may be cited as the Tanzania Communications (Access Facilities) Regulations, 2005.
Application	<b>2.</b> These Regulations shall apply in relation to regulated goods and services.
Interpretation	<b>3.</b> In these Regulations, unless the context otherwise requires-
Acts No. 18 of 1993 and 12 of 2003	“Acts” means the Tanzania Communications Act, 1993 and Tanzania Communications Regulatory Authority Act, 2003;  “access” means the technically feasible means of reaching network facilities for purposes of interconnection, leasing or sharing of network facilities; “Authority” means the Tanzania Communications Regulatory Authority established under the Tanzania Communications Regulatory Authority Act, 2003; “co-location” means accommodation of two or more switches, transmission equipment and antennas or other electronic communications equipment in, or on a single building tower or other structure for the purpose of interconnecting communications networks;

“dominant operator” means a network facilities licensee who has at least thirty five percentum of the network facilities market in which it operates, unless it can show that it does not have market power in the relevant market and, who has the ability to materially affects the terms of participation (having regard to price and supply) in the network facilities market as a result of either the control over essential facilities, or the use of its position in the relevant network facilities market, and who has been declared by the Authority as a dominant operator;

“essential facility” means an electronic communication facility of a communication network facility licensee which cannot feasibly, whether economically or technically be substituted and is declared to be an essential facility by the Authority;

“facilities acquirer” means a network service licensee who has leased or shared facilities or has requested to lease or share facilities from a facilities provider;

“facilities provider” means a network facilities licensee who has been requested by a facilities acquirer to lease or share facilities;

network facility” means any element that forms part of a electronic communications network and includes any wire, cable, antenna, mast or other thing which is or may be used for or in connection with communications;

“network facility license” means a license which authorizes ownership, provisioning and control of network facilities;

“network services” means the wholesale and retail provisioning of an electronic communication service by means of a communications network, but does not include communication application services and/or communication content application services;

“network service licence” means a licence which authorizes the operation of a network service;

**PART II**  
**GENERAL DUTY ON ACCESS AND FACILITIES**

Promotion of use  
access facilities

**4.**-(1) The licensees shall facilitate access to network facilities.  
(2) Access to network facilities shall be commercially agreed upon between the facilities acquirer and the facilities provider.

Access on  
commercial  
terms

**5.** (1) Licensees may commercially negotiate access to network facilities.  
(2) Licensees shall negotiate access to network facilities, at all times, in good faith.  
(3) A request for access to network facilities shall be reasonable and

reduced into writing.

(4) A licensee shall submit a copy of a concluded access agreement to the Authority within thirty days after the conclusion.

Mandated access                    **6.**-(1) The Authority may mandate access to essential facilities of dominant operators.

(2) A facilities provider who has been mandated to provide access to network facilities shall be entitled to levy a charge for such access which will allow recovery of economic costs and ensure a reasonable rate of return.

Non-discrimination treatment

**7.**-(1) A facilities provider shall treat each:

- (a) Facilities Acquirer on a basis that is non-discriminatory in its provision of facilities and no less favourable than the treatment which the Facilities Provider affords to its subsidiaries, its affiliates, or other similarly situated telecommunication service providers;
- (b) communication network service of a Facilities Acquirer on a basis that is non-discriminatory and no less favourable than the treatment which the Facilities Provider affords to the electronic communication network services of itself, its affiliates, or other similarly situated communication licensees; and
- (c) customer of a Facilities Acquirer on a basis that is non-discriminatory and not less favourable than the treatment which the Facilities Provider affords to its own customers of the customers of its subsidiaries, its affiliates, or other similarly situated communication licensees.

Refusal of access

**8.**-(1) A Facilities Provider may refuse unreasonable requests for access to its network facilities.

(2) A request for access to network facilities shall be unreasonable if it:

- (a) is not economically or technically feasible; and
- (b) may result in the Facilities Provider being unduly prejudiced.

Facilities charging structure

**9.**-(1) Charges for the provision of network facilities shall be structured to distinguish and separately price the following aspects:

- (a) the establishment and implementation of the physical facilities including testing,
- (b) rental charges for use of facilities, equipment and resources; and
- (c) variable charges for ancillary and supplementary services.

Content of facilities and access agreements

**10.**-(1) A written access agreement shall address each of the following matters unless it is not relevant to the access that has been requested:

- (a) the scope and specification of facilities to be provided;
- (b) access to all ancillary or supplementary services or access to and use of premises or land that are required to support the provision of network facilities;
- (c) service levels and the maintenance of facilities;
- (d) charges for the facilities;
- (e) billing and settlement procedures;
- (f) ordering, forecasting, provisioning and testing procedures;
- (g) the provision of co-location for facilities and the terms and conditions in accordance with which co-location is to be provided;
- (h) technical specifications, standards and inter-operability tests;
- (i) information handling and confidentiality;
- (j) duration, re-negotiation and review procedures; and
- (k) dispute resolution procedures.

(2) An access agreement shall contain all the terms and conditions of the agreement between the parties related to access matters and no amendments, alterations, additions, variations or consensual cancellations will be of any force or effect unless they are reduced to writing and signed by both parties.

Limitation of access

**11.** The licensee shall not be required to provide access where, in the Authority view, it is not reasonable to require the licensee to provide access including, but not limited to circumstances where it-

- (a) is beyond the licensee's control; or
- (b) is not reasonably practicable.

Dar es Salaam  
3<sup>rd</sup> September ,2005

MARK J. MWANDOSYA  
*Minister for Communications and Transport*