

**CODE OF PRACTICE FOR THE
DEPLOYMENT OF COMMUNICATIONS
INFRASTRUCTURE IN KENYA**

[INSERT COMMENCEMENT DATE]

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1. Preamble

This Code of Practice for the Deployment of Communications Infrastructure in Kenya (hereinafter called “**this Code**”) aims to create a framework that will guide the rollout of communications network infrastructure throughout the Republic of Kenya in such a way that commercial, environmental as well as consumer concerns are addressed in a sustainable way for the benefit of all. This Code shall be mandatory and should be adhered to by all communication service providers and specifically those that have and will be rolling out communication facilities and infrastructure.

In developing this Code, it is recognised that:-

- 1.1 The existing laws take precedence and until they are modified or otherwise changed, the Operators will adhere to the provisions of such existing laws.
- 1.2 This Code has been drawn up in consultation with the statutorily mandated regulators, namely the CCK, NEMA, RPB, KCAA and KEBS and is intended for use by the current Operators and others that may come into the market.
- 1.3 Whereas the environmental impact of communication infrastructure is covered by existing legislation, the regulators and Operators are minded to make the process of getting consent from the relevant authorities more efficient and effective.
- 1.4 That efficient communication is vital to Kenya’s economic development and the Government’s policy is to facilitate the growth of new and existing systems whilst keeping adverse environmental impact to a minimum. The Government also has a responsibility where public health is concerned.
- 1.5 In planning the installation of communication networks both wire line and wireless, Operators are frequently under tight technical constraints as to the location of infrastructure if it is to provide an efficient and robust service to consumers. As a result, an Operator may find it has few options for siting infrastructure. This is particularly true in urban and town centre locations.
- 1.6 That the challenges faced by the communications sector in Kenya with regard to the rollout of communications infrastructure are not unique to Kenya and that there exist International best practices that the country’s communications sector stakeholders can learn from and adopt, with any appropriate adaptation, to address these challenges.

- 1.7 That all Operators have agreed to collocate and/or share facilities and sites, as appropriate, where this is practical and offers the best option to all Operators, including consumers and the public in accordance with the framework set out in this Code.
- 1.8 The Operators have agreed to undertake Strategic Environmental Assessment (“SEA”) for all areas that they propose to have installation of Communication infrastructure which includes but is not limited to radio masts and towers, antennas of all kinds, radio equipment housing, public call boxes, cabinets, poles and underground and overhead wires.
- 1.9 All the Operators shall adhere to the principles enunciated in this Code.

2. Purpose and Scope of this Code

The purpose of this Code is to deal with the siting of communication infrastructure and equipment with particular emphasis on:

- 2.1 ensuring that in considering requests for various authorizations required for the installation of communication equipment, the various regulators and Operators adopt a consistent approach;
- 2.2 setting up of a framework to address legislative gaps that may exist in the applicable laws until they are otherwise addressed through appropriate review(s);
- 2.3 Assuring the public that all precautions have been taken to ensure that Operators and their agents and the health and safety of the public, operators and their agents health and safety are is safeguarded with regard to communications installations;
- 2.4 Spelling out the principles that will guide Operators in the rollout of infrastructure;
- 2.5 Addressing areas of concern to all Regulators, Operators and the general public;
- 2.6 Assisting Operators and other stakeholders to comply with the legal requirements governing the deployment of communications infrastructure;
- 2.7 Setting out the minimum procedural requirements to be followed by Operators in the rollout of their communications infrastructure;
- 2.8 Spelling out the enforcement mechanism to be brought to bear where there is non-compliance by an Operator;
- 2.9 Promoting good industry practices in the communications sector;

- 2.10 Addressing reasonable consumer concerns and build/win consumer confidence that the Operators are sensitive and are committed to addressing concerns the consumers may have regarding the rollout of infrastructure.

This Code will apply to all forms of communications infrastructure including, but not limited to towers, masts, ducts and associated equipment for use in the provision of communication services, overhead, underground and submarine cables required by law to comply with environmental, civil aviation and local government planning laws and regulations.

3. Principles

Each Operator undertakes to:-

- 3.1 Comply, with other stakeholders, clear standards and procedures on the subject of visual impact (aesthetics).
- 3.2 Participate, as appropriate, with other stakeholders in developing and implementing the Strategic Environmental Assessment (SEA).
- 3.3 Ensure that all communication equipment within their control complies with the relevant national or international standard on EMF exposure levels.
- 3.4 Adhere to the environmental laws and licence conditions with respect to the management of inorganic waste and other pollutants resulting from Operators' activities.
- 3.5 Publish clear, transparent and accountable criteria and cross industry agreement for site sharing and co-location.
- 3.6 Develop, publish and adhere to a clear enforcement criteria and mechanism for resolution of disputes between Operators in relation to this Code.
- 3.7 Participate with other Operators in developing and implementing a criteria and programme for bringing existing telecommunication infrastructure into compliance with this Code.
- 3.8 Participate with other stakeholders in developing standard supporting documentation for all environmental and planning submissions to the relevant government authorities.
- 3.9 Establish resources to respond to complaints and enquiries from members of the public about radio base stations and other telecommunication equipment covered under this Code.
- 3.10 Establish clear, transparent and accountable criteria and cross-industry agreement for sharing of ducts and building entries.

4. Commitments

The Operators undertake to comply with the following:-

4.1 Visual Impact

4.1.1 The requirement that communications infrastructure be camouflaged will be subject to the provisions of EMCA and in any related guidelines/regulations as may be developed by the relevant regulatory agencies.

4.1.2 The commitments detailed under this section are subject to the provisions of existing law, including but not limited to the Civil Aviation Act Chapter 394 and the Environmental Management and Coordination Act (EMCA) of the Laws of Kenya.

4.2 Strategic Environmental Assessment (SEA)

4.2.1 It is noted that both NEMA and the CCK recommend that Operators explore the concept of the SEA. The Operators agree with this concept and agreed to do the SEA study as per guidelines to be provided by NEMA and in accordance to the discussions outlined in Annex I.

4.3 EMF Exposure Standards

4.3.1 Operators will adhere to the appropriate Kenya Standard on EMF exposure as may be published under the relevant law from time to time and, in the absence thereof, to the International Commission on Non-Ionising Radiation Protection (ICNIRP) guidelines, which are attached hereto as Annex II.

4.3.2 Operators will ensure that all communication equipment they use has been type approved by the CCK and operated in compliance with authorized technical parameters issued in accordance with the Kenya Communications Act 1998 read together with the Kenya Communications (Amendment) Act 20098 (together the “Act”) and the Kenya Communications Regulations 2001 as amended from time to time.

4.3.3 Operators will submit baseline information on EMF exposure levels

4.4 Waste and other pollutants resulting from Operators’ activities

4.4.1 The Operators commit to implement the mitigating measures identified by the EIA reports or the SEA arising from the environmental impact caused by generator noise and air pollution, fuel and

oil spillages, inorganic waste such as obsolete electrical and electronic equipment and debris or other pollutants.

- 4.4.2 Subject to the provisions of any lease agreement between the Operators and their respective landlords, Operators will, within six (6) months of decommissioning sites, remove from the leased premises all infrastructure and equipment and leave the leased premises in a good and tidy condition having regard to its state and condition prior to the installation of the infrastructure and equipment.

4.5 Site Sharing and Co-location

- 4.5.1 Site sharing or co-location will be pursued as the first option by Operators in a particular area on a first come first serve basis provided that environmental and health considerations have been taken into account, such site sharing or co-location is technically possible and the commercial terms thereof have been mutually agreed upon by the parties thereto in advance.

- 4.5.2 The commercial negotiations shall be left to the parties sharing the site and the parties undertake to make available their infrastructure for site sharing or co-location on such just and reasonable terms that permit the parties to benefit from the economies of scale of such site sharing or co-location. It is acknowledged that the charges and tariffs for site sharing or co-location may differ from site to site due to factors which may include but are not limited to:

4.5.2.1 The elements of the requested site sharing or co-location including: tower usage, ground space, indoor space, use of power (whether commercial or maintained) and /or outdoor space as the case may be;

4.5.2.2 Capital expenses of building the site;

4.5.2.3 Relevant operational expenses including land rates and rent, annual rent or licence fees, water, power security and insurance costs;

4.5.2.4 Maintenance costs including maintenance of the site and access roads.

- 4.5.3 Each Operator shall, upon receipt of a request to collocate, avail its terms for site sharing or co-location. The process of requesting for site sharing or co-location shall be as set out in Annex III.

- 4.5.4 An Operator who declines a request to site share or co-locate shall be obliged to give its reasons to justify such refusal to site share or co-locate in writing to the requesting Operator.

4.5.4.1 any request for collocation/site-sharing that is declined, whether justifiable or not, shall be reported to the Administrator of this Code by the requesting licensee, including the reasons advanced for the denial

- 4.5.4.2 an electronic log of declined collocation/site-sharing requests, including reasons for denial shall be maintained by the Administrator of this Code and shared with operators and regulators
- 4.5.4.3 a log of existing sites where collocation/sharing has been done shall be maintained, on a website, by the Administrator of this Code and shared with the operators and regulators
- 4.5.5 An Operator who is not satisfied with the reasons so provided for the denial to co-locate/site-share shall be free to file a complaint with the Administrator of this Code and avail a copy of such complaint to CCK

4.6 Enforcement Criteria and Dispute Resolution Mechanism

- 4.6.1 Each Operator agrees to comply with this Code.
- 4.6.2 Mechanisms for ensuring compliance will be as follows:
 - 4.6.2.1 A list of compliance versus a list of shame shall be published by the Administrator of this Code;
 - 4.6.2.2 The Administrator of this Code will issue a compliance certificate to operators that do not appear in the list of shame.
- 4.6.3 Each Operator shall make every effort to resolve any disputes exhaustively through a complaints handling procedure as may be agreed by the Operators from time to time.
- 4.6.4 In the event of failure to resolve a dispute within Thirty (30) days, either party shall then refer the dispute to the CCK to make a final determination in accordance with the laid down dispute resolution provisions of the Act.

4.7 Bringing Existing Communication Infrastructure into Compliance with This Code

- 4.7.1 The Operators undertake to bring the existing infrastructure into compliance with the provisions of this Code in accordance with a schedule to be approved by the CCK.
- 4.7.2 In order to measure compliance vis-à-vis this Code each Operator should conduct a self-audit within the first Twenty-four (24) months of the coming into force of this Code and provide a timetable of compliance, for approval, to the Administrator of this Code and all the regulators specified in 1.2 that are party to the development of this Code.

- 4.7.3 Save as is provided in 4.7.1 above, the Operators shall ensure that all existing infrastructure are brought into compliance with the provisions of this Code within Sixty (60) months of the coming into force of this Code.

4.8 Develop Standard Supporting Documentation For Planning Submissions (CCK to facilitate)

- 4.8.1 Subject to consultations, where necessary, with the Department of Defence, the KCAA will consider developing:-
- 4.8.1.1 a standard general approval system similar to the SEA proposal in 4.2 above, possibly through the mapping of no go areas and specifying height restrictions with regard to the aerodromes, air corridors, etc.
 - 4.8.1.2 a procedure for appeals in the event of refusals.
- 4.8.2 The CCK will consult with the relevant Ministries responsible for physical planning on the possibility of getting a standardized form of approval with regard to communications infrastructure and a standardized scale of fees to be charged for predictability.

4.9 Establish Suitable Resources To Respond To Complaints And Enquiries From Members Of The Public About Communication Infrastructure

The Administrator of this Code will provide means for channelling complaints (within the existing framework) and enquiries from members of the public, including but not limited to:-

- 4.9.1 Dedicated phone line and offices through which the public can lodge their complaints regarding the siting of communications infrastructure.
- 4.9.2 Website.
- 4.9.3 Procedure for dealing with complaints (health and aesthetics have emerged as the main issues).
- 4.9.4 Where so called upon, the CCK may act as arbiter in disputes between members of the public and the Operators arising from the provisions of this Code.

4.10 Ducts & Cable infrastructure

- 4.10.1 The basic principle is that Operators will share duct and cable infrastructure where such sharing is technically possible.

4.10.2 Sharing of cable infrastructure shall be based on the availability of duct space and on commercial agreement between co-locating parties. The procedure on sharing of cable infrastructure is defined in Annex IV hereto.

5. Administration of this Code

5.1 This Code shall be administered by the CCK until the parties to this Code have duly identified and established an alternative administrator with clear enforcement procedures, resources and sanctions that meet the approval of the CCK and the partnering regulators that are party to this code. Stakeholders.

5.2 The parties to this Code may establish or nominate an organization for the purpose of executing the administration of this Code in accordance with 5.1 above.

6. Review, Update or Amendment of this Code

The review, updating and amendment of this Code will initially be done by the Stakeholders Six (6) months after the Effective Date and subsequently every One (1) year.

7. Definitions

In this Code unless stated otherwise, the following terms have the meaning set out:-

- 7.1 **Act** means the Kenya Communications Act 1998 as read together with the Kenya Communications (Amendment) Act 2009.
- 7.2 **Camouflage** means a disguise applied to part, or whole, of transmission equipment in a manner that make it not readily identifiable as a telecommunications facility.
- 7.3 **Co-location** means the placement of equipment owned by the one Operator in the premises of another Operator for the purposes of either interconnection of the Operators' networks or sharing of existing infrastructure.
- 7.4 **Consumer** refers to a person who is an end user of any product or service.
- 7.5 **Environment** includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment.
- 7.6 **Infrastructure** means telecommunications equipment installed by an operator for the purpose of providing telecommunication services.

7.7 **Operator** refers to a legal person that is duly licensed to provide communication services in Kenya.

8. Abbreviation

8.1 **CCK** Communications Commission of Kenya established under the Act.

8.2 **CEO** Chief Executive Officer.

8.3 **EMF** Electro-Magnetic Field.

8.4 **KEBS** Kenya Bureau of Standards.

8.5 **KCAA** Kenya Civil Aviation Authority.

8.6 **NEMA** National Environment Management Authority.

8.7 **RPB** Radiation Protection Board.

8.8 **EMCA** Environmental Management & Co-ordination Act.

8.9 **SEA** Strategic Environmental Assessment.

ANNEX I STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)

- I. The guiding principle is that the environmental impact of one site is largely similar to the impact of another site in the same environment. There is therefore no need to conduct an environmental impact assessment for each site.
- II. It is recommended that Operators should conduct SEA in accordance with The Environmental (Impact Assessment and Audit) Regulations, 2003.
- III. NEMA will zone the country and duly notify the Operators of the same to enable them conduct the SEA as envisaged in (II) above.
- IV. The Operators will agree on Terms of Reference (in consultation with NEMA), the hiring of experts, the time frame within which to carry out the SEA per zone, the duration of the validity/enforceability the SEA, the cost of the exercise and how the cost is to be shared. The cost shall be apportioned in direct proportion to the number of sites that an Operator proposes to roll out in each zone.
- V. The SEA will have a process for public consultation which involves Operators representing the various zones for validity.
- VI. The benefit of the SEA would be cost reduction and a saving on time. This benefit shall be restricted to the participating Operators.
- VII. The principles contained in this Annex shall apply to future infrastructure. Existing infrastructure shall be dealt with under the provisions of clause 4.7.3 of this Code. Any future infrastructure that is not anticipated by the SEA shall be brought into compliance in the usual manner.
- VIII. After the SEA Operators will only be required to submit a project report to NEMA prior to construction of communication infrastructure.
- IX. Operators would require a commitment from NEMA that approvals shall be given within 30 days of submission of the project report.

ANNEX II **GUIDELINES FOR LIMITING EXPOSURE TO TIME-VARYING ELECTRIC,
MAGNETIC, AND ELECTROMAGNETIC FIELDS (UP TO 300 GHz)**



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ANNEX III PROCEDURE FOR SITE SHARING AND CO-LOCATION

The following procedure shall be followed for site sharing and co-location of telecommunication infrastructure.

1. If the party requesting to be co-located (Requesting Party) identifies a site belonging to another Operator (Co-locating Party) situated in an area where the Requesting Party would like to install its Equipment or share the premises, the Requesting Party shall notify the Occupant of its intention to share such site or install its Equipment therein.

2. The Co-locating Party will communicate its willingness to share such site within ten (10) days of receipt of the Request.

3. Once the Co-locating Party has communicated its willingness to share such Site, the Parties shall agree on a mutually convenient date and time when the Requesting Party can visit the site together with an authorised representative of the Co-locating Party to carry out any survey or inspection to determine its suitability for sharing. The cost of visiting such a site including costs for carrying out the survey and inspection shall be borne by the Co-locating Party.

4. Depending on the outcome of the visit, the Requesting Party shall if it wishes to share the Site submit to the Co-locating Party for approval its proposal for erecting, installing, commissioning and operating its Equipment, as the case may be, on the Site. The proposal shall include specifications on height required, the space on the tower, the equipment to be installed, facilities to be shared, ground space required, power sharing proposals, technical drawings and plans for any alterations, additions or modifications to be made to the structures existing at the site, a description of any works that may be required to be carried out on the site as well as the proposed duration of such works.

5. The Co-locating Party will thereafter but no later than twenty (20) working days after the receipt of the proposal notify the Requesting Party of its ability and acceptance to share the site subject to the Parties agreeing on the legal and commercial terms for co-location which shall include but will not be limited to obtaining the landlord's consent or approval of the proposed site sharing and proposed civil works (where applicable), the charges and tariffs for requested co-location or site share. Provided always that if the Co-locating Party requires more time to communicate its acceptance, it shall notify the Requesting Party of the same and give an indication on when the answer will be communicated.
6. If the Co-locating Party is unable to share the requested site, it will within twenty (20) working days after the receipt of the proposal notify the Requesting Party of its inability to share the site and give the Requesting Party its justifications for such inability.
7. The commercial negotiations on co-location shall be based on the general principles under Clause 5.4 of this Code of Practice.

ANNEX IV PROCEDURE ON SHARING OF DUCT AND CABLE INFRASTRUCTURE

1. GENERAL

- (a) This procedure is proposed for the sharing of cable installations, services operations and maintenance between Operators.
- (b) Sharing of cable infrastructure shall be based on commercial agreement between co-locating parties.
- (c) Sharing of cable infrastructure will depend on the availability of duct space.

2. INSTALLATION

- (i) All jointing and splicing of cables shall be by the co-locating party or infrastructure owner on the other party's request and at their cost.
- (ii) The co-locating party shall provide labelling of their cables for identification.

The Installation of cables falls into two (2) categories, installation in ducts and erection on poles.

2.1 INSTALLATION OF UNDERGROUND DUCTS

- (a) All installation of cables in underground ducts shall be carried out by the infrastructure owner at the co-locating party's cost.
- (b) The co-locating party should have their own separate manholes.

2.2 INSTALLATION ON POLES

- (a) Installation of cables on poles shall be carried out by the co-locating party or infrastructure owner on request, at the other party's cost.
- (b) Pole routes that are to be shared shall be grouped in such zones as shall be agreed between the parties. The total number of poles in each zone shall be reviewed annually.
- (c) Whenever the co-locating party plans to introduce co-location in a new zone or new services, the co-locating party shall give the owner ample (at least one month) notice on the intent giving full details of the requirements.

- (d) Joint survey shall then be arranged between the two parties and on successful conclusion will lead to the co-locating party utilizing the owner's facilities. The total number of poles in the new zone will be provided to the collocating party by the owner. The co-locating party shall meet the cost of the joint survey.
- (e) The co-locating party's cables shall be mounted at least 4 inches above the existing (owners) installation (cables, drop wires, arms etc.)
- (f) If the above separation is not attained the matter shall be referred to the requested infrastructure owner.
- (g) The co-locating party shall attach the cables using their own fittings that are acceptable to the requested infrastructure owner.

3. MAINTENANCE

- (a) The infrastructure owner shall be responsible for the maintenance of the Facilities Shared (poles and ducts).
- (b) Each party shall be responsible for the repair of all faulty cables in the network elements that it owns.
- (c) The infrastructure owner shall not be held responsible or liable for any damage to or vandalism of the shared facilities caused by third parties.

4. INTERRUPTION OF SERVICES

- (a) Any interruption of services, operated by one Party, caused by an unforeseen circumstance (cable damage, damages by third parties etc) must be reported to the other Party immediately the interruption and its cause are identified.
- (b) Any interruption of the owner co-location facility caused by an unforeseen circumstance (pole route damages, duct route damages, damages by third parties etc) must be reported to the infrastructure owner immediately the interruption is identified. The infrastructure owner will restore the affected co-location facility (pole/ducts).

5. ACCESS TO FACILITIES

- (a) To ensure co-ordination of any works at any shared facilities, the co-locating party shall give advance notification/request to the infrastructure owner for access to the facilities and authorization obtained prior to commencement of work. Written authorization to utilize facilities, giving particulars of staff or Contractors who will undertake the works shall be obtained from the owner of the infrastructure
- (b) The co-locating party shall notify the infrastructure owner on the completion of the works being undertaken and the infrastructure owner shall inspect the installations to ensure it meet the agreed standards. The co-locating party shall meet the cost of the inspection.

6. PAYMENTS FOR SHARED FACILITIES

Payment for the shared infrastructure must be agreed upon by the collocating parties before the provision of the service.

ANNEX V

NEW OPERATORS SUBSCRIPTION FORM
(To be submitted to the Communications Commission of Kenya)

Name:

Address:

[Insert Name of the New Operator], being an Operator duly licensed by the Communications Commission of Kenya to provide [insert details of the nature of the Operator's licence]:

Having read and understood the contents of the of **this Code of Practice For The Deployment Of Communications Infrastructure In Kenya** ("this Code") dated the day of 2009

- Hereby subscribes to the provisions of this Code and give its confirmation of its obligations to honour the Commitments on 1[Visual Impact], 3[EMF Exposure Standards], 4[Waste and Other Pollutants Resulting from Operators' Activities], 5[Site Sharing and Co-location], 6[Enforcement Criteria and Dispute Resolution Mechanism], 7[Bringing Existing Communication Infrastructure Into Compliance With This Code], 8[Develop Standard Supporting Documentation For Environmental And Planning Submissions], 9[Establish Suitable Resources To Respond To Complaints And Enquiries From Members Of The Public About Communication Equipment] and 10[Ducts and Cable Infrastructure] thereof.
- It further gives its confirmation of its obligation to honour Commitment 2[Strategic Environmental Assessment (SEA)] of this Code (optional).
-

Duly executed for and on behalf of [Insert Name of the New Operator] by its duly authorised representative.

Signature: _____

Name: _____

Designation: _____

Date: _____

Submitted to the Communications Commission of Kenya this day of Two
Thousand and