

**EAST AFRICAN REGULATORY, POSTAL AND
TELECOMMUNICATIONS ORGANISATIONS (EARPTO)**

**GUIDELINES ON INTERCONNECTION AND ACCESS FOR
TELECOMMUNICATIONS NETWORKS AND SERVICES WITHIN
THE EAST AFRICAN COMMUNITY**

April 2008

PREAMBLE

The East African Community (EAC) is an intergovernmental organization focusing on regional co-operation and Economic integration in the East African (EA) Community. The EAC has a broad based development and integration strategy covering trade, investment and industrial development, monetary and fiscal affairs, infrastructure and services, human resources, science and technology, agriculture and food security, social cultural activities and ICT among others.

In the Communications arena, the EAC has undertaken a number of initiatives not only to promote ICT infrastructure growth and development but also to harmonize ICT policies and regulatory regimes in the Community. The East African Submarine System (EASSy) project, the creation of the East African Regulatory Post and Telecommunications Organization (EARPTO) and the formation of the East African national working group to harmonise ICT policies are among such initiatives.

The recommendation for direct interconnection was adopted during the 14th EARPTO meeting (1st congress) and the Task Force was charged to develop an interconnection framework for public networks and services providers applicable in the Community. This document presents a set of principles, guidelines and procedures to be adopted within the region to assist all key-players, from the policy makers, the regulatory authorities, the operators and all end users. It is envisioned that this will be a key step in ensuring ICT development and regulatory harmonisation within the Community.

Key features of the guidelines include;

- 1. The removal of policy and regulatory barriers within partner state that would inhibit any operator licensed in the region to have direct interconnection with other licensed public infrastructure and service providers.*
- 2. That direct regional interconnection is mandatory by all licensed public telecommunication service and infrastructure providers.*
- 3. Licensed operators within the region without direct interconnection shall be obliged to route all their traffic terminating within the region through duly licensed East African operators of telecommunication networks or service providers.*
- 4. Traffic originating and termination within the East African region should be considered as regional traffic and therefore should not be subject to provisions meant for international services such as the need for an International Gateway.*
- 5. All technical and commercial agreements for interconnection should be a matter of agreement between the parties involved, subject to the provision of these guidelines and the competition provisions in each respective country or when such a competition law is adopted for the region.*
- 6. The creation of the East African Advisory Committee on Interconnection and Access charged with the overall responsibility of the effective implementation of the guidelines. The EA advisory Committee reports to the EARPTO congress*
- 7. The need to legally incorporate the EARPTO Congress into the overall framework of the EAC Commission, preferably reporting to the EAC Sectoral Committee dealing with issues related to ICTs*

8. *All licensed public telecommunication service and infrastructure providers in Partner States are mandated to subscribe to the EARPTO Congress and shall be bound by these guideline and any other Laws as shall be prescribed by the Congress.*

SECTION 1: GUIDELINES ON INTERCONNECTION AND ACCESS

These Guidelines are prepared taking cognizance of the spirit of Articles 5, 89 and 99 of the Treaty of the establishment of the East African Community

1.0 Introduction

The Guidelines on interconnection stem from the realization that the East African countries not only need similar interconnection principles and policies, but also that the interconnection rate applicable in the region should be both cost based and efficient to ensure affordability and universality. This is within the spirit of regional integration adopted since the start of East African Community and embraced under the EARPTO Congress, an organization charged with overseeing the development of postal and telecommunication services in the region.

The process of formulating these Guidelines started as far back as 2002 with a scoping study by CTO on the status of interconnection following the end of Sender Keeps All regime. Later that year during the 13th EARPTO Assembly, a Committee was established to review the findings of the study. The Committee recommended for a removal of all restrictions that would inhibit direct interconnection between any operators including mobile operators in the region. A recommendation to create a set of guidelines to be used as a basis for negotiating rates, with uniform costing, accounting and dispute resolution applicable to all operators within the region was thus reached.

For effective implementation of these guidelines a Committee on Interconnection and Access; (The Committee) shall be established with representation from all Partner States and shall report to the EARPTO Congress.

2.0 Scope

This document describes the common guidelines for fair, transparent, non-discriminatory and efficient interconnection of telecommunication networks, and access to telecommunication networks in order to ensure the interoperability of services in a more liberalized and competitive East African Community.

More specifically the guidelines contain a set of principles that EA partner countries should agree constitute critical elements for any interconnection regime. Each respective country in the region shall be required to adopt these guidelines to ensure a harmonious regulation and development of ICT in the Community.

3.0 Objectives

- i) To achieve regional integration of telecommunications infrastructure and services.
- ii) equitable investment recovery and attract further investment in the Community

- iii) Allow value added services providers to tap the potential of East African market

4.0 The EARPTO Committee on Interconnection and Access

There shall be established a Committee on Interconnection and Access that shall report to the EARPTO Congress. The EARPTO Congress shall report to the Sectoral Council of the EAC responsible for ICT matters (See reporting structure attached in Annex IV)

The primary function of the Committee shall be to oversee the implementation of these Guidelines and advise the EARPTO Congress on issues relating to Interconnection and Access matters in the Region.

i) Composition and tenure of office

The Committee shall be composed of experts with relevant experience in the areas of interconnection and access.

Two persons shall be nominated from each Partner State, one from the National Regulatory Authority (NRA) and the other from amongst the service providers.

Members drawn from amongst service providers shall remain in office for a period not exceeding two years and further appointments shall be on a rotation basis from amongst them.

The Committee shall have a Chairman elected by the Committee members and shall meet at least once a year or as need arise.

The Committee shall set its own working procedures

iii) Functions

The primary function of the Committee shall be to oversee the implementation of these Guidelines. Specifically the Committee shall:

- a. Provide Advice to the EARPTO Congress on matters related to regional Interconnection and Access, and to any other body as may be directed by the EARPTO Congress
- b. Perform any other function as may be directed by the EARPTO Congress

iv) Funding

It is recommended that each participating body, i.e. NRAs, relevant members of the EARPTO Congress, EA Secretariat among others shall contribute financially

to the establishment and operation of the Committee as need may arise and in line with EARPTO M.O.U.

Such contributions shall be based on the business plan and activities of the committee.

The Committee Chairman in consultation with the EARPTO Congress and EA Community sectoral Committee shall draw up an appropriate remuneration package for Committee members.

5.0 Interconnection and Access within the EAC

Partner states shall take all the necessary measures to remove any restrictions, which prevent organizations authorized within the Community to provide public telecommunications networks and publicly available telecommunications services from negotiating interconnection agreements between themselves in accordance to their national and regional legal provisions.

All technical and commercial agreements for interconnection shall be a matter of agreement between the parties involved, subject to the provisions of these guidelines.

Interconnecting parties shall ensure the confidentiality of information transmitted or stored in their facilities except where such information can be disclosed as required by the laws of the respective Partner States.

6.0 Rights and Obligations for Interconnection and Access

Operators of public telecommunications networks and telecommunications service providers shall have the right to directly interconnect and be obliged to interconnect for the conveyance of regional traffic at mutually agreed interconnection rates, which shall as far as possible be cost based.

In the event that interconnection is not technically or commercially viable or the requested interconnection is inappropriate in relation to the resources available to meet the request, the national regulatory authorities may agree to limit this obligation. Any such limitation imposed by the NRA shall be fully reasoned and made public.

Any operator of public telecommunications network or telecommunication service provider licensed within the East African Community shall be obliged to route all its traffic terminating within the region through a duly licensed East African operator of telecommunication networks or service provider.

An interconnection agreement shall be entered into as soon as practicable but in any event not later than three months after the interconnect provider has received a request for interconnection.

7.0 Significant Market Power (SMP)/ Dominance

Organizations authorized to provide public telecommunications networks and/or publicly available telecommunication services within a given national boundary found to be have SMP (Dominant) may have additional requirements with regards to regional interconnection.

Annex II provides the basic guidelines that Partner states should use in determining organizations with significant market power for organizations authorized to provide public telecommunications networks and/or publicly available telecommunication services within a given national boundary.

8.0 Principles for Interconnection and Access

8.1 Non-Discrimination and Transparency principles

Any licensed provider authorized to provide public telecommunications networks and/or publicly available telecommunication services should deliver upon request necessary information and data to all partner state organizations in order to allow the requesting party to choose the best available technical solution and to facilitate commercial negotiations.

Any planned change in networks affecting interconnection conditions should be notified to all interconnected operators and the national regulatory authority at least **three months** before its effective implementation.

Under these guidelines, Interconnection agreement shall be communicated to the relevant national regulatory authorities and with consent from interconnection partners involved made available upon request to interested parties except for information of commercial strategy.

All information received from an organization seeking interconnection shall be used only for the purpose for which it has been supplied. It should not be passed on to any subsidiaries or partners for whom such information could provide a competitive advantage.

8.2 Charges and Cost Accounting Principles

Operators authorized to provide public telecommunications networks and/or publicly available telecommunication services designated to have significant market power in the national market by the national regulatory authorities shall abide by the following principles of interconnection charges and cost accounting systems;

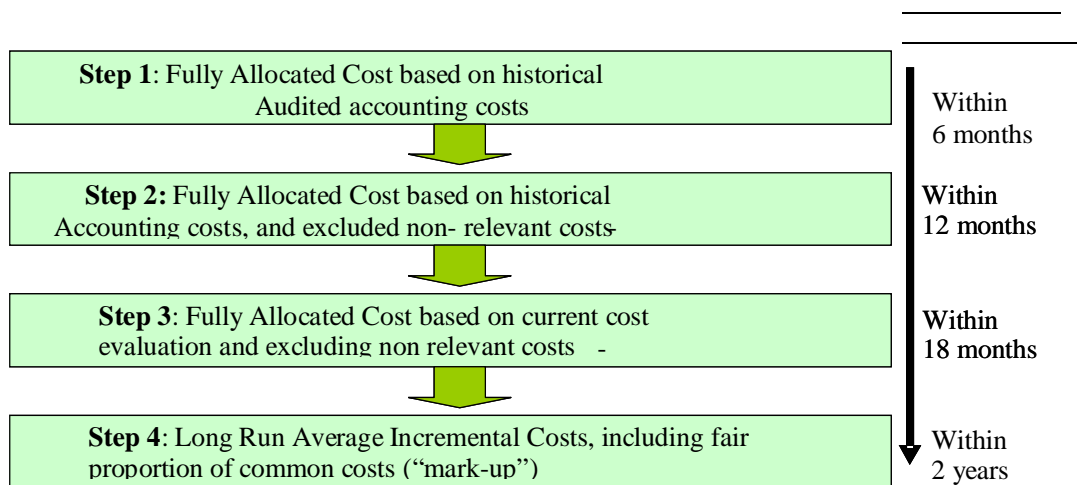
- a) Charges for interconnection shall follow the principle of transparency and cost orientation. The burden of proof that charges are derived from actual costs including a reasonable rate of return on investment shall lie with the

organization providing interconnection to its facilities. National regulatory authorities may request an organization to provide a full justification for its interconnection charges, and where appropriate may require charges to be adjusted.

- b) Organization authorized to provide public telecommunications networks and/or publicly available telecommunication services should progressively gravitate towards a cost-based pricing methodology. Long run incremental costing (LRIC) based on forward-looking costs shall be the preferred standard for calculating cost oriented prices for interconnection services.

Implementation of the LRIC shall require a transition period in the Partner States. The complexity, time and other resources required to implement the LRIC standard in practice should be taken into full account, necessitating a phased approach to the implementation of LRIC.

In the short to medium term as highlighted in the preliminary time plan below, the fully distributed costing (FDC) standard based on historical costs should form the basis for calculating cost oriented prices. This should be a temporary solution while preparing for prices based on a current cost valuation which should be used as a proxy for forward looking costs.



- c) Charges for interconnection shall be sufficiently unbundled, so that the operators/users are not required to pay more than for the services provided and network elements.
- d) Operators owning and operating various public network services (e.g. fixed, and mobile) should keep separate accounts for their proper interconnection networks and interconnection services provided to others.
- e) Where applicable, the charges related to universal service obligation should be unbundled and shown separately.

- f) With development of IP networks in the region, other interconnection charging frameworks such as capacity based shall be considered.

9.0 Accounting Separation and Financial Reporting

Operators providing public telecommunications networks and/or publicly available telecommunication services and notified by national regulatory authorities as organizations with significant market power shall, upon request be required to keep separate accounts, on one hand for their activities related to interconnection services provided internally and on the other hand interconnection services provided to other activities. This shall enable operators to identify all elements of cost and revenue related to interconnection and the basis of calculation and detailed attribution methods used including the breakdown of fixed assets and structural costs. To this effect;

- (a) A standard accounting format shall be adopted (in consultation with national regulatory authorities and the industry within the community) as a guide that shall be used by network operators and service providers to structure their accounts. In this format, costs shall be grouped under distinct categories to reflect the unbundling of networks and services, and structurally separating the independent telecommunications activities in order to establish the causal relationship between the costs and revenue.
- (b) Compliance with the cost accounting system shall be verified and approved by the national regulatory body or verified by a competent body, authorized by the national regulatory body.
- (c) The national regulatory authority shall ensure that information requested to determine the price of interconnection is submitted within a reasonable time frame such that no hardship is caused to any of the parties involved
- (d) Providers of networks and services shall upon request provide financial information to the national regulatory authority promptly and to the level of detail required. National regulatory authority shall exercise due care in processing the information to avoid creating a situation of unfair advantage, taking into account the commercial confidentiality requirements.

10.0 Interconnection Rate

Interconnection rates shall be derived through negotiations based on the principles of non-discrimination, transparency and cost based as defined in this guideline, except where;

- a. Negotiations have failed, in which case, the parties will resort to regulatory intervention and the price caps as defined in Annex III of the guideline shall be applicable.

- b. There is evidence of un- competitive behavior in the market, in which regulatory intervention shall apply..

11.0 Responsibilities of National Regulatory Authorities

The national regulatory authority has the mission to encourage the introduction of new technologies by facilitating market entry and the mechanisms that enables interconnection to the existing networks, so as to increase higher service penetration and meet universal service/access obligations within the EAC. In particular, national regulatory authorities shall take into account;

- a) The need to ensure satisfactory end- to- end communication to all users,
- b) The need to stimulate a competitive market and interconnection of national networks and interoperability of services and regional access to such services,
- c) The need to co-operate with their counterparts in Partner states,
- d) The need to ensure fair and proper development of an East African telecommunications market, to include the development of a trans-regional networks and services,
- e) The need to resolve disputes effectively and efficiently regarding regional interconnection and Access.
- f) Appointment of Members to the Committee in consultation with operators.
- g) Providing technical and financial support to the Committee activities including making provisions of funding in their annual budgets.

Further more, the national regulatory authority shall ensure that any conditions for interconnection related to security of networks as regards to risks of accidents are proportionate and non- discriminatory and based on objective criteria defined in advance.

Partner States may impose conditions in interconnection agreements in order to ensure interoperability of services and conditions to ensure end- to-end quality of service. Such conditions may include implementation of specific technical standards, or specification, or code of conduct agreed by the market players.

For purposes of these guidelines a reference model interconnection agreement has been provided in Annex V.

12.0 Responsibilities of Operators

- a) To ensure adequate and efficient interconnection of public telecommunication networks and interoperability of services for all users within the Community,
- b) Operators shall take necessary steps to ensure that the availability of public telecommunication networks and publicly available telecommunication services is maintained in the event of catastrophic network breakdown or in exceptional cases of force majeure, such as

extreme weather, floods, earthquake lightening or fire. In such an event, parties concerned shall make all the necessary steps to maintain the highest quality of service to meet the priorities laid down by the national regulatory authority.

- c) Providing technical and financial support to the Committee activities including making provisions of funding in their annual budgets.
- d) Operators shall take all the necessary steps to ensure that the integrity of public telecommunication networks is maintained. The terms and conditions related to the protection of network integrity should be defined in advance by the national regulatory authority and should be proportionate and non- discriminatory in nature

14.0 Responsibilities of the EAC Secretariat

For effective implementation of these guidelines, the EAC Secretariat may be required to provide technical and financial support to the Committee on Interconnection and Access activities.

The EAC Secretariat shall facilitate the effective integration of the EARPTO Congress into the EAC structures as described in Annex V

15.0 Co-location, Access and Facility Sharing

Interconnecting networks need to establish physical and/or logical points of interconnection, whether located at one operator's network or not (e.g. it could be located at third party outside of operators areas), involving collocation and/or sharing of facilities.

Agreements of co-location and/or sharing of facilities constitute one of the essential parts of commercial and technical interconnection negotiations, subject to non-discrimination and transparency requirements. The respective parts of the costs incurred by parties involved in sharing/collocation facilities should be defined following clear principles approved by the national regulatory authority.

The national regulatory authority shall intervene and provide a solution in the event the parties fail to reach an agreement on arrangements to share and/or co-locate their facilities. This intervention should involve extensive consultation in view of the sensitivity of the issue in a way that it could affect public and operators confidence.

16.0 Numbering

Numbering is an essential condition to fulfill equal access to telecommunication services. In this respect, NRAs shall ensure the provision of adequate numbers and numbering ranges for all publicly available telecommunication services.

NRA shall have the responsibility for developing, assigning, administering and controlling national numbering plans and addressing aspects of telecommunications services where coordination at national level is required so as to ensure effective competition.

Numbering schemes should be developed in full consultation with all the parties involved and in harmony with the regional and the international framework of numbering schemes.

National regulatory authorities shall encourage the easiest possible introduction of number portability in the Community within a medium time frame as far as it is economically and technically feasible.

17.0 Technical Standards

In order to ensure that the calls and messages are delivered end-to-end at a specified level of quality, the interfacing equipment between the different networks shall have;

Standard interfacing equipment specified in comprehensive and definitive terms. This should be ensured by national regulatory authorities for all organizations providing public telecommunications networks and/or publicly available telecommunication service.

National regulatory authorities should also ensure that the technical standards are in line with national or regional standards. In the absence of a reference that specifies both quality level and interfacing standard at national or regional level, the relevant standards of the International Telecommunications Union (ITU) and other internationally recognized telecommunications standard bodies shall prevail.

Signing of Service Level Agreements between operators shall be mandatory as part of the interconnection agreement.

In order to prevent practices such as refileing, Call Line Identification (CLI) shall also be mandatory.

18.0 Dispute Resolution;

Any party having a dispute against another party over interconnection should take the following steps to resolve the dispute in accordance with the procedures laid down;

- a) A Party wishing to invoke a dispute shall send a written notice of the Dispute to the other Party containing all relevant details concerning the nature and extent of the Dispute. The receiving Party shall acknowledge receipt of such notice of the Dispute within five (5) Working Days.
- b) Following the notice in (a) above, the two Parties shall consult in good faith to resolve the Dispute. If agreement is not reached within twenty (20)

working days, the Dispute may be escalated by either Party in writing to the respective national regulatory authorities.

- c) Once the Matter is reported to the NRAs, the NRAs shall;
 - i) Endeavour to mediate between the parties so that they arrive at an amicable settlement within twenty (20) working days.
 - ii) And where mediation fails, the NRAs shall intervene and arrive at a binding Determination which must be implemented within two (2) months of the date of its issuance.
 - iii) Provided that in the event that the relevant NRAs are in disagreement and fail to consensual determination, the NRA that is not interested in the matter shall be called upon to give a casting Determination which shall be binding on the parties.
- d) In the event that any party is aggrieved by the NRAs determination the party may refer the matter to the East African Court of Justice, within 14 (fourteen) working days from the date of the Determination. The decision by the Court shall be final.

19.0 Review, Alteration and Modification of these Guidelines

Subject to these Guidelines and the provision contained herein, these Guidelines may be reviewed, modified and/ or amended.

These Guidelines may be altered at any time where such alternation is deemed necessary for the effective performance of the operators in the sector.

In altering, reviewing and or modification of these Guidelines, prior consultation of all NRAs and the respective Operating parties concerned shall be sought. Advance notice of any intention to cause an amendment shall be sent to all respective parties at least thirty (30) working days prior to their effectiveness.

20.0 Effectiveness of the Guidelines

These Guidelines shall become effective at least three (3) month after adoption by the EARPTO Congress. They shall apply to all NRAs, operators and stakeholders concerned.

ANNEX I

DEFINITIONS

Basic telephone service -	the provision of domestic or international telecommunications service over the public switched telephone network.
Customer-	a person who receives and pays for a telecommunication service over a period of time under an agreement with or pursuant to terms and conditions established by the operator with approval of the National Regulatory a notional point identified as a point of interconnection Authority;
Data communications -	digital transmission of information usually between computers.
Dominant operator -	a regulatory classification of a telecommunications operator that has the largest market share in a given market segment or that is otherwise able to exercise market power in the same or other market segments.
Facilities leasing –	means the use by an operator of the facilities belonging to another operator, subject to commercial and legal conditions concluded between the parties for commercial purposes
Incumbent operator -	the existing operator in a market which is opened to competition.
Interconnection -	the physical and logical connection of two operators networks thereby allowing customers of one system to connect with customers of the other, or to access services provided from the other system at National level between operators and Cross – border between operators
Interface -	the technical characteristics that allow two networks that are interconnected to understand the technical operation of the other in order for services to interoperate across the interconnection boundary seamlessly
Interoperability -	the technical features of a group of interconnected networks which ensure end-to-end provision of a given service in a consistent and predictable way.
Non-discrimination -	a condition by which an operator, engaged in the provision of telecommunications services, shall not apply less favourable technical and commercial conditions on any competitor than what it would apply to itself, its subsidiaries or its affiliates in delivery of services.
National Regulatory	

Authority -	an agency empowered to regulate and monitor the activities of telecommunications operators or any other info-communications providers in the public interest.
Operator -	a person that operates telecommunications facilities.
paging –	a service that provides selective calling from any telephone through a base station to one or a predetermined group or radio receivers, which emit an audible, visual, or tactile alert and sometimes then record a numeric, alphanumeric, or even a short verbal message.
Point of Interconnection or POI-	a notional point identified as the centre at which different networks are connected with each other
Public switched telecommunications network (PSTN) -	a fully interconnected and integrated system of telecommunications consisting of various means of transmission and switching, utilised to provide basic telephone services to the general public.
Public telecommunications services -	telecommunications services provided to the general public or to a class of persons so as to be generally available.
Resale -	the offering to users or customers for profit of telecommunication services obtained from another telecommunication service provider;
Telecommunications -	any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choosing.
Telecommunications Infrastructure or Network -	an integrated system of facilities, which comprise the facilities, used to provide one or more info-communications services.
Transparency -	requires that network operators will make publicly available either the interconnection agreements or reference interconnection offers.
Universal access –	a policy of government to make telecommunications services available, at affordable prices, to as many people as possible through common points or end-user facilities such as libraries, schools, health-centres, community centres, public call offices and pay-phones. This policy also applies to advanced information services, for instance the provision of Internet services and applications such as tele-education, tele-medicine and electronic commerce.

Universal service –	a policy of government to make telecommunications services, including advanced telecommunications services, available throughout the country at affordable prices so that they are either available or easily accessible to anyone whenever they are needed, regardless of geographical or physical locations, with due regard to people with special needs.
Universal Service Agency (USA) -	an institution recommended to be established under either the Ministry or the Regulatory Authority to design universal service strategies and policies and monitor their implementation.
Universal Service Fund -	a fund into which contributions from operators and/or other sources are paid for the purpose of providing basic and advanced telecommunications services to underserved areas, communities or individuals who cannot afford such services on their own, in the pursuit of universal service/access.
Users-	means individuals, including consumers or organizations, using or requesting publicly available telecommunication services.
Value-added services -	means (i) the manipulation of the format, content, code, protocol, or other aspect of information transmitted via telecommunications by a customer (ii) the provision of information to a customer, including the restructuring of information transmitted by a customer or (iii) the offering of stored information for interaction by a customer.

ANNEX II

Basic Guidelines that National Regulatory Authority in EA Partner Country Should Use in the Determining Organizations with Significant Market Power (SMP).

1. Introduction

These guidelines have been prepared for the East African Community for the purpose of providing a uniform approach in the determination of dominant operators and operators with significant market power in the relevant telecommunications markets and should be read in conjunction with the regional interconnection guidelines herewith.

It is important to recognize that there are inherent difficulties in defining relevant markets for the context of the East African telecommunications market firstly because of the difference in both the market and regulatory structures adopted by the three administrations and secondly that the sector is characterized by technological changes; market definitions may run a risk of becoming inaccurate or irrelevant in the near future. It is therefore very important for NRAs to have extensive consultations in developing their specific guidelines. The context herewith just provides the basic principles that should be considered in the formulation of specific country's guidelines.

2. Analytical Framework for Determining Dominant/ Significant Market Position

In determining dominant or significant market position, partner state regulators shall be required to follow the analytical framework as proposed below, starting with defining the context within which Dominance or SMP is assessed, defining the relevant markets and the criteria for the assessment.

Proposed Analytical framework for Determining Dominant / Significant Position

	Define the Context	Define the Market	Assessment of Dominant
Objective	Ensure that the regulator has the appropriate powers to act	Define the boundaries of the relevant telecommunications market	Determine whether the licensee is in dominant position in the relevant market
Process	<p>Identify the circumstances which initiated the assessment (e.g. interconnect or access denial)</p> <p>Identify the licensee most likely to be in a dominant position</p> <p>Identify the key stakeholders in the process</p> <p>Make initial assessment of the likelihood that the is in a licensee is in a dominant position</p>	<p>Identify all demand substitutes for the product or service</p> <p>Identify all supply substitutes for the product or services</p> <p>Determine the relevant product market</p> <p>Determine the relevant geographical market</p> <p>Determine the relevant temporal market</p>	<p>Assess the behavioral out in the guidelines in evidence of dominance</p> <p>Assess the structural features of the market as set out in the guidelines for evidence of dominance</p> <p>Make final assessment of whether the licensee is in a dominant position.</p>

2.1 Define the context

- a. The objective in defining the context is to ensure that the regulator has the appropriate powers to act or intervene. This step shall require an initial assessment of the relevance of the dominant position criteria to the issue or situation at hand.
- b. The NRA shall consider matters such as the purported importance of the issuance or the situation, the circumstance in which it has risen (including whether a complaint has been made and by whom) and the likelihood that the regulator's intervention is required. In an interconnection dispute for instance, the regulator shall be required to identify the circumstances which initiated the assessment (e.g. access denial, quality of service), and in so doing shall need to identify the licensee most likely to be in a dominant position, the key stakeholders in the process and make initial assessment of the likelihood that the licensee is in a dominant position.
- c. The NRA may seek an undertaking from a licensee rather than proceed to a full determination of whether the licensee is in a dominant position in the relevant market. Any such undertaking should be proportionate to the nature and effects of the conduct under examination. The NRAs should normally only consider such a course if it is satisfied that an undertaking can address the issues raised by the market power of the licensee. The lodgement of such an undertaking would not prevent the NRAs from making a subsequent determination that the licensee was in a dominant position in the relevant market, but this would normally only occur where an undertaking had not been met or if new issues arose which the undertaking did not address.

2.2 Market Definition

- a. Assessing whether a licensee is dominant in a communications market crucially depends on the definition of the relevant market. As a basis for market definition, the NRAs shall carefully identify the relevant services which are exchanged in that market. This identification shall include consideration of factors such as service functionality, quality, price, inputs, costs, and principal customer groups, all in the light of the purpose to which the service is being put by customers.
- b. The relevant product/ service should therefore comprise of all those products or services that are sufficiently interchangeable or substitutable not only in terms of objective characteristics, by virtue of which they are particularly suitable for satisfying the constant needs of consumers, the prices of their intended use but also in terms of the conditions of structure of supply and demand on the market in question. Products or services which are to a small or relative degree interchangeable with each other do not form part of the same market. NRAs should therefore commence the exercise by grouping together products and services that are used by consumers for same purposes.
- c. The NRAs's criteria for identification of a communications market shall have to be extensively discussed with all stakeholders. It is important to note that the market and regulatory structures in the three EA countries differs and are generally evolving towards a converged environment.
- d. A market definition in a converged market shall for instance reflect the distinction between the provision of services and the provision of underlying network infrastructure. Determination of market boundaries involves the use of the economic concept of "substitutability" as the basis for market definition.
- e. Two main competitive constraints shall be considered on the behavior of undertakings on the market; i) demand side substitution and ii) supply side substitution
 - Demand side substantiality shall be used to measure the extent to which consumers are prepared to substitute other services or products in question whereas supply side substitutability should indicate whether suppliers other than those offering the

product or services in question would switch in the immediate to offer the relevant product or service without incurring significant additional costs.

- f. In assessing whether there is demand or supply substitutability, NRAs may apply the “hypothetical monopolist test”. Under this test, an NRA should ask what would happen if there were a small but significant (5-10%), lasting increase in the price of a given product or service assuming that the prices of all other products or services remain constant. The responses of consumers or undertakings concerns should guide NRAs in determining whether substitution products do exist, and if so where the boundaries of the product should be delineated.

2.3 Geographical market

- a. Once the relevant market is identified, the next step to be undertaken is the definition of the geographical dimension of the market. The relevant geographical market comprises of an area in which the undertakings concerned are involved in the supply and demand of relevant products or services, in which the area the conditions of competition are similar or sufficiently homogenous and which can be distinguished from neighboring areas in which prevailing conditions or competition are appreciably different
- b. In the electronic communications sector, the geographical scope should be defined by reference to two main criteria; i) the area covered by a network and ii) the existence of legal and other regulatory instruments. On the basis of these two main criteria, geographical market can be considered to be local, regional, national or covering territories of two or more countries for instance the East African market or a global market.

2.4 Assessing Significant Market Power (Dominance)

Once the relevant market has been defined, NRAs shall then determine whether a particular licensee is in a dominant position in that market.

2.4.1 The nature of a “Dominant Position”

- a. The primary characteristic of a firm in a dominant position in a market is its ability to undertake conduct to a significant extent independently of its competitive rivals and its customers (whether consumers or intermediate industry participants), and the pressures they would exert on the firm in a competitive market. This independence generally manifests itself as the ability to independently fix prices, although it extends to the ability to fix levels of output or the quality of output with similar disregard for the responses of rivals and customers in the market.
- b. Apart from the ability to act independently of rivals and customers, other characteristics of market behavior which have been associated with dominant position include:-
 - the ability to prevent effective competition (either now or in the future); and
 - the ability to force rivals to act in ways they would not have independently chosen.
- c. This independence of conduct generally springs from structural features of the market which prevent the emergence of significant rivals. These structural features may have a range of effects which may include:-
 - directly constrain the ability of rivals to enter the market, even in the absence of any conduct by the licensee;
 - providing the licensee with opportunities to drive rivals out of the market; or

- they may provide the licensee with opportunities to influence or even control the conduct of its rivals in the market.
- d. The concept of dominant position differs from the concept of market power. Market power is a condition similar to being in a dominant position, but with a lower threshold. Thus undertakings with market shares of no more than 25% are not most likely to enjoy a (single) dominant position of the market concerned. Single dominance would therefore occur in the case of undertakings with a market share of over 40%.
- e. Therefore NRAs should undertake a thorough and overall analysis of the economic characteristics of the relevant markets before coming to a conclusion as to the existence of significant market power. The following criteria can also be used to measure the power of an undertaking to behave to an appreciable extent independent of its competitors, customers and consumers.

2.4.2 Behavioral criteria associated with a Dominant Position

NRAs should regard the pricing and supply-related behaviors of licensees as relevant factors in assessing a dominant position in a communications market. These behaviors, which are indicative of a position of dominance include;

Pricing behavior

- a. An analysis of prices can determine whether pricing in a market is best described as genuine rivalry or as the price leadership of a particular market participant. Examples of pricing behaviour which could be relevant to the consideration of dominant position include: -
- *Excessive pricing.* It is possible that high prices relative to costs in either wholesale or retail markets could result from a dominant position in one of those markets. There are no general rules about the level at which prices should be regarded as “too high”, but industry cost structures and pricing patterns over time should be considerations. Sustained high levels of profitability could also reflect a lack of competitive rivalry.
 - *Price discrimination.* Price discrimination is not regarded as intrinsically a feature of dominant behaviour, or even anti-competitive behaviour, in most jurisdictions. It may simply be an efficient means of recovering common costs. NRAs should retain the flexibility to examine price discrimination when determining whether a licensee is in a dominant position in a market, but it should be primarily concerned with the impact of actual or potential competitive rivalry on the licensee’s ability to maintain such discrimination.
 - *Parallel pricing.* When competitors implement similar price variations simultaneously, it is possible that they are doing so in line with a dominant competitor. NRAs should adopt a presumption that parallel pricing does not demonstrate a dominant position as long as there is a rational and defensible alternative explanation of price movements.
 - *Excessive discounting.* Discounting can be a sign of normal competition, particularly when linked to volume discounts which are applied without discrimination. It can also be a means of raising barriers to entry in order to maintain a dominant position. The NRA shall have particular regard to discounting which raises barriers to entry by discouraging the use by customers of competitor’s services, or which discourages market entry by targeting those customers able to move to actual or potential alternative suppliers.

- b. In general NRAs should give a high weightage to evidence relating to pricing behavior and the ability to set prices independently when arriving at a conclusion on whether a licensee is in a dominant position in a communications market. The actual weightage shall depend on the circumstances of each determination.

Supply behavior

- c. The ability of a licensee to refuse to supply prospective customers (including other carriers), or reduce the quality of supply, *with little long term impact on market share* may constitute evidence that the licensee is in a dominant position in the relevant market. Examples of supply behaviour which could be relevant to a consideration of dominant position include:-
- *Refusal to supply network information.* This could indicate that a licensee is in a dominant position in markets for services which require such information if it prevents alternative service providers from entering the market for services based on the information. At the same time, the NRA should recognise that some information is legitimately commercially confidential, and that significant competition issues only arise where such refusal has the effect of substantially lessening competitive rivalry.
 - *Refusal to supply new services.* This could indicate that the licensee is in a dominant position for the new service, or services based upon it, if it is able to maintain a pre-eminent position in a market by virtue of its refusal to supply. In considering this form of behaviour, the NRA shall also have regard to the possibility that the behaviour could be a legitimate commercial attempt to provide a differentiated service or to reap the benefits of innovation.
 - *Refusal to supply a service essential to any-to-any connectivity.* This would constitute evidence of a dominant position where this behaviour had the effect of preventing new entry to a service market.
 - *Refusal to share scarce physical resources.* Such resources might include floor space in exchanges or space in ducts, but only where such resources are difficult or impossible to reproduce.
 - *Reduction in the quality of supply.* If a licensee is able to reduce the quality of supply without a corresponding reduction in price, this may constitute evidence of an ability to act independently in the market and hence of a dominant position in the relevant market.
- d. The NRA shall generally give a moderate weightage to evidence of supply decisions made independently of competitors and customers. The actual weighting shall depend on the nature and circumstances of the supply decision, and its potential to affect the emergence of or behavior of competitive rivals in the relevant communications market.

Importance of independence

- e. None of the above behaviors constitute direct evidence of a dominant position unless they are being pursued independently, that is without significant likelihood of long term impact on market share.

2.4.3 Structural criteria associated with a Dominant Position

The distribution of market share and the level of market concentration

- a. Market shares and market concentration are important structural indicators of a dominant position. However, alone they do not prove a dominant position, although it is unlikely that a licensee will be in a dominant position if it has a relatively small market share.
- b. Market share shall be regarded as particularly relevant where economies of scale are particularly strong, or where there are significant barriers to entry which restrict the level of potential competition. Market share can be measured in a number of ways, depending on the requirements of the particular situation under consideration:-
 - *Share of units sold in the market*, expressed as a percentage of the total units sold by all market participants, for example total volume of data transferred or total number of viewer minutes supplied. This measure does not account for relative pricing of services.
 - *Share of total market revenue*, expressed as a percentage of the total revenue generated by all market participants. This measure is useful where there are significant price differences between competitors, or between peak and off-peak rates.
 - *Share based on available capacity*, expressed as a percentage of the total units potentially sold by all market participants. This measure is useful when capacity constraints restrict the ability of competitive rivals to respond to conduct in the relevant market.
- c. In all cases, both static and dynamic market shares shall be used to provide insights into the evolution of market share in response to competitive rivalry.
- d. **The NRA should generally give a high weightage to market share measures when determining whether a licensee is in a dominant position in a communications market. The actual weightage shall depend on the NRA's assessment of the licensee's ability to translate market share into independence of action, and the quality of available market share data.**

The level of vertical integration in the market

- e. Vertical integration can place a licensee in a dominant position in a market, even in the absence of a large market share, if the licensee is in a dominant position in an important input or output market. Examples might include a licensee who held a monopoly in a content market, and was therefore dominant in a market for content applications, or a licensee who held a monopoly for a particular network service, and was therefore dominant in the supply of particular applications service.
- f. Such a position might be exploited by service cross-subsidisation or by refusal to supply competitors in upstream or downstream markets. The NRA shall therefore have regard to such vertical relationships in determining whether a licensee is in a dominant position. This factor shall depend on a range of circumstances, including:-
 - the parts of the production process which are part of the licensee's operations;
 - the extent of financial or structural separation of those operations;
 - the structure of intermediate markets; and
 - the extent to which the financial or corporate structure of the licensee's operations protect it from market pressures.

The extent of barriers to entry

g. The NRA shall define a barrier to entry as any structural feature of a market which places a new entrant at a significant disadvantage compared to a market incumbent. This can discourage rivals from entering a market, allowing a licensee to maintain a dominant position indefinitely and allowing it to act independently of actual or potential rivals. Forms of barriers to entry which the NRA shall have regard to include:-

- *Blocked access to bottleneck facilities.* Sole access to facilities which are both essential to the supply of services and difficult to reproduce economically can provide the structural preconditions for a dominant position.
- *Scale and scope economies.* Scale economies arise from the greater efficiency of large-scale production of products or services, while scope economies arise from the ability to offer a wider range of products or services or to link sales of one product or service to another. Scale and scope economies are not themselves a problem. All things being equal, they are to be encouraged. However, if they are of such extent as to discourage new entry, they might provide the preconditions for a dominant position.
- *Absolute cost barriers.* The absolute cost of entry to a market may constitute a barrier to entry if the potential returns to investment are not sufficient to justify the cost of capital, including the associated financial risks of competing with an entrenched incumbent.
- *Regulatory barriers.* The use of individual licensing can itself constitute a barrier to entry if new licences are not being issued in certain markets. The fact that the issue of licences is a policy decision does not relieve the NRA of the responsibility to address the issues related to a dominant position. The NRA shall therefore take into account the number of licensees in a market and the likelihood of new licences being issued when assessing the structural barriers to entry to a particular market.
- *Strategic barriers.* An incumbent licensee may utilise certain commercial arrangements such as long term supply agreements, exclusive supply agreements, or predatory conduct in order to create barriers to entry. Such arrangements or practices can be used to protect and perpetuate a dominant position.

Global technology and commercial trends

- h. In addition, NRA shall consider the prospects for new entry to the relevant market, having regard to global technology and commercial trends.
- i. The pace of technological and commercial change in the communications industry has significantly increased the prospects for alternative means of entering markets where cost and other barriers have traditionally been high. The importance of this factor shall depend on the state of technological and commercial development of the industry. Where there are likely prospects for such alternatives in the foreseeable future, the NRA shall be significantly less likely to conclude that a licensee is in a dominant position in the relevant market.

The degree of product or service differentiation and sales promotion

- j. Consumers often perceive differences between the services offered by one firm and another. These differences may be perceived, for example, in terms of quality or functionality. Sales promotion is often designed to reinforce and exploit these perceptions of difference, either by providing information about a product or service, or by providing non-informative advertising designed to generate customer loyalty.
- k. Where customers are captured by a particularly strong “brand identification”, a licensee may enjoy high recognition and loyalty to a service or product. In such cases, a new

entrant may be discouraged from competing by the high costs of achieving comparable recognition and loyalty, and this may allow a licensee to determine its prices independently of actual or potential rivals.

1. Relevant factors in determining the level of product or service differentiation may include the level of customer “churn”, the level and type of sales promotion engaged in by market participants, and the level of customer satisfaction with the licensee’s products or services.

2.5 Obligations of Organizations with SMP.

- a. If the NRAs find that the competition in the relevant market is not effective because of the existence of undertaking or undertakings in a dominant position, it should impose appropriate regulatory obligations on the undertakings concerned. This also applies in the condition where more than one undertaking have been identified to be dominant.
- b. **For the purposes of the East Africa region, Operators of public telecommunications networks and telecommunications networks service providers designated as dominant shall be required to have additional obligations as shown in table below:**

Additional Regulatory Requirements.
• “To supply interconnect services on an unbundled basis”
• “ <u>Not to discriminate</u> on supply conditions of price, quality of service and supply time between users of services. In particular, they should supply interconnect seekers on uniform terms, which are favorable as those on which they supply their own downstream business”.
• “ Must charge a cost –oriented price for interconnect services and network elements whether offered unbundled or bundled”.
• “Whenever possible , must provide access to physical facilities”
• To respect the principles of Transparency and <u>guidance for costs when establishing interconnect prices</u> , operators offering interconnection to should show that prices are calculated on the basis of service costs using the LRIC approach, including a reasonable rate for capital invested.
• To define and publish, in detail, the different components of interconnect prices charged.
• To prepare <u>reference interconnection offers</u>
• To have <u>separate accounting</u> for interconnection activity on one hand and for other activities on the other hand, with the former including all interconnection services, whether provided by the organization itself or to other organizations
• To make available all parties requesting for interconnection the description of analytical accounting system used by the operators including the principal categories for costing grouping and the rules of cost imputation upon request

ANNEX III

INTERCONNECTION RATES CAP FOR EAST AFRICA REGION

As part of the regional integration and in light of the changes in the regulatory framework across the region the following interconnection rates cap shall be applicable within the East African region when the commercial negotiations fail, or are not achieving the desired objectives.

The objectives referred to here are: -

1. To achieve regional integration of telecommunications infrastructure, services and operators
2. To achieve equitable investment recovery for the operators operating in the region with reasonable return on the investment which will attract investment in the region
3. To achieve the synergies of having an integrated telecommunication market with a population of over 90 million people.
4. To provide opportunities to operators in all respective East African countries in coming up with creative services that will enhance use of telecommunication services across the region.
5. To allow value added services providers to tap the potential of East African market to their benefit and the benefit of the telecommunications operators

In light of the above the proposed interconnection rate in East African Region shall trail above the cost based rates, which had been calculated in Tanzania. Subject to costing studies to be done in Kenya and Uganda these rates reflect the most realistic rates for interconnection in the region. For purposes of comparison the table below shows the domestic termination rates for operators in the region categorized by countries as of January 2007:-

Country	Tanzania	Kenya	Uganda
Fixed Termination (single and double tandem)	3.8US cents	5 US cents	5 US cents
	5.3 US cents	7 US cents	
Mobile Termination	7.9 US cents	8.9 US cents	9 US cents

Source: NRAs

The table above shows that the reasonable rate proposed for East Africa cannot be well above the average domestic rate. Therefore it is recommended that the East African termination rate **should have a cap of 12 US cents for both fixed and mobile termination**, (at least 3 US cents above the cost based mobile termination rate of 9 US cents). This should ensure that mobile and fixed operators are able to handle each other's traffic and the possibility to negotiate a lower rate when there is a business need.

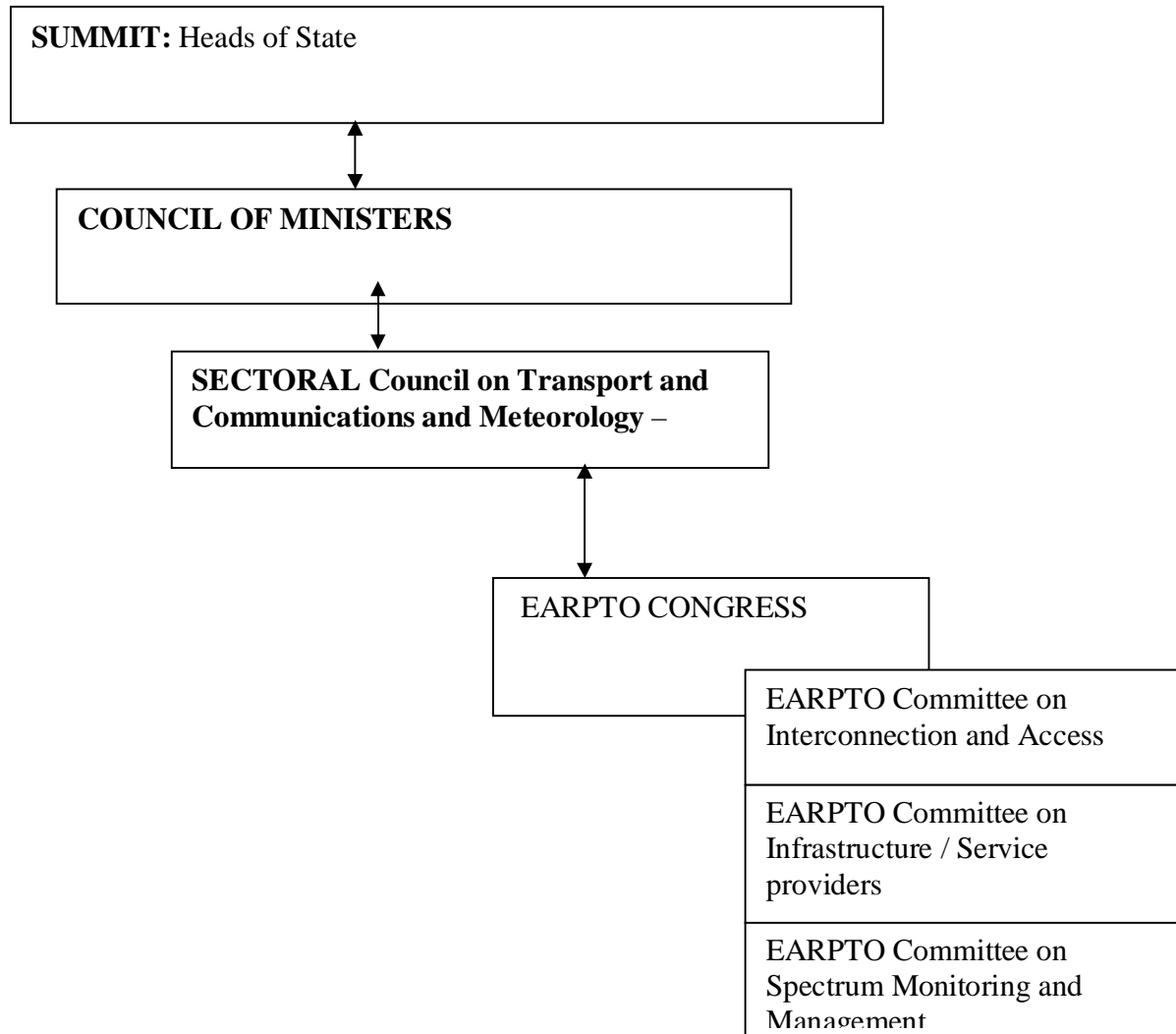
The said cap is proposed to stay for 1 years (12 months) from the adoption of the guideline, after which a new rate will be proposed based on the market development.

Status of regional termination (TBA)

Below are the average rates operators in the region are paying for terminating traffic.

<u>Fixed</u>	<u>Peak (USD)</u>	<u>Off Peak</u>
<u>Kenya to</u>		
• Tanzania	0.09	
• Uganda	0.11	
<u>Tanzania to</u>		
• Kenya	0.09	
• Uganda		
<u>Uganda to</u>		
• Kenya		
• Tanzania	0.10	
<u>Mobile</u>	<u>Peak</u>	<u>Off Peak</u>
<u>Kenya to</u>		
• Tanzania	0.18	
• Uganda		
<u>Tanzania to</u>		
• Kenya	0.18	
• Uganda		
<u>Uganda to</u>		
• Kenya		
• Tanzania	0.12	

ANNEX IV: Operational Linkages with the Organs of the EAC



ANNEX V; MODEL INTERCONNECT AGREEMENT

MODEL REGIONAL INTERCONNECT AGREEMENT

BETWEEN

OPERATOR X

AND

OPERATOR Y

TABLE OF CONTENTS

- 1. PARTIES**
- 2. PREAMBLE**
- 3. AGREEMENT**
- 4. DEFINITIONS**
- 5. EFFECTIVE DATE AND TERM**
- 6. INTERCONNECTION FACILITIES AND POINTS OF INTERCONNECTION**
- 7. CAPACITY PROFILES, FORECASTS AND QUALITY OF SERVICE**
- 8. PROVISION OF INFORMATION**
- 9. BILLING AND TARIFFS**
- 10. CHARGES AND PAYMENT**
- 11. EXERCISE OF REASONABLE SKILL**
- 12. CONFIDENTIALITY**
- 13. INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION**
- 14. FORCE MAJEURE**
- 15. SUCCESSORS AND ASSIGNS**
- 16. EFFECT OF SECTION HEADINGS**
- 17. INDEMNITY**
- 18. DISPUTE RESOLUTION**
- 19. BREACH, SUSPENSION, RENEWAL AND TERMINATION**
- 20. NOTICES**
- 21. SEVERABILITY**
- 22. WAIVER**
- 23. VARIATIONS**
- 24. ENTIRE AGREEMENT**
- 25. INDEPENDENT CONTRACTORS AND AGENCY**
- 26. GOVERNING LAW**
- 27. SIGNATURE CLAUSE**

IRIS SCHEDULE Part A and Part B

ANNEX A: TECHNICAL SPECIFICATIONS POI

**ANNEX B: TECHNICAL SPECIFICATIONS: LINKS
CAPACITY PROFILES AND FORECASTS**

1. PARTIES

THIS AGREEMENT is entered into this day of2006

between

[Operator X] having its registered office at [address, licensed as In the Country]

and

[Operator Y] having its registered office at [address, licensed as ... in the country]

2. PREAMBLE

HAVING REGARD TO the Agreement for the establishment of a Permanent Tripartite Commission for co-operation between the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda, done at Arusha on 30th November 1993;

CONSIDERING that the Objectives of EARPTO include, amongst other things, to:

(a) Harmonise and promote the development of postal and telecommunications services and regulatory matters and to devise ways and means to achieve fast, secure, reliable, affordable, and efficient services within the community, with particular focus on:

- (i) Network development and regional inter-connectivity,**
- (ii) Harmonization of tariff structures and settlement of accounts,**
- (iii) Policy advice on issues relating to the communications sector,**
- (iv) Promotion of regional projects and programmes,**
- (x) Realisation of improved and quality of services**

(b) serve as a consultative organization for settlement of postal and telecommunications matters which are of a regional nature;

3. AGREEMENT

Now therefore, in consideration of the premises, mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

4. DEFINITIONS AND INTERPRETATIONS

The following terms, when used in this Agreement shall have the meanings specified:

"EAR" means the East Africa Region Partner States being the Republic of Kenya, United Republic of Tanzania and the Republic of Uganda and "Partner State" shall be construed accordingly;

"EARPTO" means the East African Regulatory Postal and Telecommunications Organization established by Article 2 of the MOU dated [date];

"INTERCONNECTION" for the purpose of this Agreement shall mean the mutual provision by the Parties of Inter-Region Exchange Facilities and Links for use on the terms and conditions set forth in this Agreement to provide switching and transmission capacity for the Inter-Region Interconnect Service.

"LINKS" means the telecommunications facilities necessary to establish one or more transmission paths between the POI of each Party;

"PARTY" means either of the PTOs party to this agreement and shall be construed accordingly;

"POI" (Point of Interconnection) shall mean the physical location where the PSTN of one Party is connected to the PSTN of the other Party;

"PSTN" means Public Switched Telecommunications Network

"PTC" means the Permanent Tripartite Commission for co-operation between the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda, established by *East African Community Act*

"PTO"(Public Telecommunications Organisation) means any company, corporation, or other legal entity, duly constituted according to the laws of an EAR Partner State and licensed by the designated licensing authority in that partner state in due and proper form and according to the law to operate a PSTN and provide public telecommunications services;

"SERVICES" means voice telephony and more particularly (a) EAR mobile to mobile calls; (b) EAR fixed to fixed calls; (c) EAR mobile to fixed calls, and (d) EAR fixed to mobile calls terminated by a PTO on a PSTN in an EAR partner state.

"THIS AGREEMENT" means this present agreement and all its Annexes and the IRIS Schedule;

5. EFFECTIVE DATE AND TERM

5.1 This Agreement shall take effect as of the date first above mentioned

5.2 The term of this Agreement shall be two years, beginning on the Effective date

5.3 The Parties agree that by no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the

expiration date of this Agreement ("Subsequent Agreement"). If as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this agreement after expiration shall be as set forth in this agreement.

6. INTERCONNECTION FACILITIES AND POINTS OF INTERCONNECTION

- 6.1 The Parties will apply appropriate standards and operating guidelines, equipment, and engineering resources to provide links for the purpose of supporting Interconnection at the POI.
- 6.2 The Parties shall have due regard to any legal requirements imposed upon either of them including requirements arising from their respective enabling legislations, [Operator] Licence, national rules and regulations or guidelines on Interconnection and any other rules related to the above for the effective realisation of interconnection.

7. CAPACITY PROFILES & FORECASTS & QUALITY OF SERVICE

The Parties shall supply Capacity Profiles and Forecasts and hereby agree to the quality of service standards as may be set out from time to time.

8. PROVISION OF INFORMATION

- 8.1 Each Party shall provide free of charge, such information as is reasonably required from time to time by the other Party for the provision of IRIS or facilities supporting IRIS including but not limited to Links pursuant to this Agreement. Such information may be provided in electronic form if it is reasonably available in such form.
- 8.2 Nothing in this Agreement shall require a Party to provide information in breach of any statutory or regulatory obligations relating to confidentiality requirements.

9. BILLING AND TARIFFS

- 9.1 The Billing Periods shall correspond to each calendar month. All charges payable under this Agreement shall be calculated in accordance with this Agreement and at the tariff rates specified from time to time.
- 9.2. Within [10] working days at the end of each calendar month, each Party shall submit to the other an account for IRIS for which the Party is entitled to charge the other Party during the Billing Period. Each account shall be dated as of the date of despatch of that account. The account shall be supported by appropriate traffic volume data and other relevant information to enable the receiving Party to accurately review the account.

- 9.3 Within [5] working days from the end of the period specified in 6.2 above the Parties shall agree any set off in respect of the accounts exchanged there under and any balance due (the "Balance Due") shall be paid not later than the end of the calendar month then in progress (the "Due Date") (for the avoidance of doubt the Due Date is the last day of the month immediately following the month of account).

10. CHARGES AND PAYMENT

- 10.1 The invoice amount shall include the Balance Due in [US\$] [and any applicable turnover, value added or other taxes] the total invoice amount so calculated shall be paid by the Due Date..

- 10.2 Billing disputes shall be handled in accordance with the procedure provided in the paragraph headed Disputes (paragraph 13) below.

11. EXERCISE OF REASONABLE SKILL

Each Party is responsible for the safe operation of its own equipment and systems including, but not limited to, the Capacity and Links and shall exercise all reasonable skill and care of a competent telecommunications operator in performing its obligations under this Agreement including but not limited to taking reasonable and necessary steps to ensure that its operation and implementation of this Agreement does not:

- 11.1. endanger the safety or health of employees, contractors, agents or customers; or
- 11.2 damage, interfere with or cause any deterioration in the operation of the other Party's PSTN.

12. CONFIDENTIALITY

The Parties acknowledge that during the course of operation of this Agreement they may receive Confidential Information relating to the business of the other Party. A Party receiving such confidential information shall restrict disclosure of such information in only cases where it is so required by law or regulations. Confidential Information shall be used solely for the purposes for which it was disclosed.

13. INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

13.1 No License - No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Parties are strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any other's service mark or trademark.

Notwithstanding the foregoing, the parties may use each other's name

13.1.1 in response to inquiries of customers or potential customers regarding the source of the underlying service or the identity of repair or service technicians under this Agreement, and

13.1.2 the Parties may use the other's name in comparative advertising so long as the reference is truthful and factual, does not relate to the source of the underlying service and does not imply any agency relationship, partnership, endorsement, sponsorship or affiliation by or with the other.

13.2 Ownership of Intellectual Property - Any intellectual property which originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

14. FORCE MAJEURE

No Party shall be considered to be in default in the performance of any of its obligations under this Agreement (other than obligations of said Party to pay sums to be paid by it hereunder, and other costs and expenses) when a failure of performance shall be due to a Force Majeure event. A Force Majeure event shall be any cause beyond which, by exercise of due diligence such Party could not reasonably have been expected to avoid or control, and which by exercise of due diligence it shall be unable to overcome or control, including, but not restricted to, failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, strikes, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or inability to obtain the necessary authorizations or approvals from any governmental agency or authority. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in

which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

15. SUCCESSORS AND ASSIGNS

Each party may not assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties without the prior written consent of the other. Any such assignment or delegation made without such written consent shall be null and void. Consent for assignment shall not be withheld unreasonably. This Agreement shall be binding on and inure to the benefit of the respective successors and assigns of the Parties.

16. EFFECT OF SECTION HEADINGS

Section headings appearing in this Agreement are inserted for convenience only, and shall not be construed as interpretations of text.

17. INDEMNITY

Each Party hereby agrees to indemnify the other Party, its officers, agents, and employees for, from and against any and all loss, damages, expenses and liability for injury to or death of any person or injury to or loss of property, to the extent caused by the indemnifying Party's construction, ownership, operation, or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement. The indemnifying Party shall, at the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall also pay all costs and expenses that may be incurred by the other Party in enforcing this indemnity, including reasonable attorney's fees. This indemnification shall survive the termination or expiration of this Agreement.

18. DISPUTE RESOLUTION

- 18.1 A Party (the "Disputing Party") wishing to invoke the dispute procedure specified in this paragraph, shall send written notice of the Dispute to the other Party's specified dispute resolution contact (the "DRC"). The notice shall contain all relevant details concerning the nature and extent of the Dispute. The receiving Party shall acknowledge the receipt of such notice of the Dispute within two Working Days.
- 18.2 Following notice under paragraph 18.1, the Parties respective DRCs shall consult in good faith to resolve the Dispute. If agreement is not reached within ten working days, the Dispute may be escalated by either Party under paragraph 18.3 below.
- 18.3 If the Dispute is not resolved under paragraph 18.2, either Party's DRC may send written notice to the other requiring the Dispute to be escalated to appropriate senior managers and stating to whom that Party has escalated the Dispute. The DRC receiving such a notice will

acknowledge the receipt within two Working Days and state to whom the Dispute has been escalated.

18.4 Following notice under paragraph 18.3, the Parties' designated senior managers shall work in good faith to try to resolve the Dispute within seven working days.

18.5 If a dispute is not resolved after the procedures set out in paragraph 18.4 have been followed, the dispute may with the agreement of both Parties be referred to a mediator:

18.5.1 the mediator will be appointed by agreement of the Parties. In the event of a failure to agree within 3 days of a proposal by one party, the mediator will be jointly appointed by the Regulators responsible;

18.5.2 all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings;

18.5.3 if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and once signed by the parties will be binding. Any such agreement will constitute Confidential Information for the purposes of paragraph 12 above except that the Parties may inform the Regulators concerning the resolution of the dispute

18.6 If the Parties fail to reach agreement within 2 months of the mediator being appointed, then either Party may refer the matter to the East African Court of Justice [referred to in paragraph 12.02 of the MOU establishing the EARPTO, whose decision shall be final.

18.7 The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Agreement including seeking, obtaining or implementing interlocutory or other immediate relief by way of injunction or otherwise.

18.8 The DRC for Party X shall be [name, address, contacts];
The DRC for Party Y shall be [name, address, contacts];
or such other persons as the Parties may notify from time to time pursuant to this paragraph.

19. BREACH, SUSPENSION AND RENEWAL & TERMINATION

19.1 Without prejudice to a Party's rights, liabilities or obligations that have accrued prior to such termination or expiry, this Agreement may be terminated by either Party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other Party:

- 19.1.1 is unable to pay its debtors within the meaning of the applicable insolvency laws or
 - 19.1.2 has a receiver or administrative receiver appointed in relation to all or any of its assets; or
 - 19.1.3 has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
 - 19.1.4 has an administration order made in respect of its business; or
 - 19.1.5 enters into a voluntary arrangement [under relevant Insolvency Laws] ; or
 - 19.1.6 ceases to carry on business.
- 19.2 Termination or expiry of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement.
- 19.3 Either Party may terminate this Agreement by giving three calendar months written notice to the other which three calendar months shall begin to run from the first day of the month next following the day on which notice is given.
- 19.4 The Parties shall begin negotiations regarding renewal of this Agreement not later than six calendar months before the date on which it is due to expire.

20. NOTICES

- 20.1 A notice shall be duly served if:
- 20.1.1 sent by post by recorded delivery, 7 calendar days after the day of posting.
 - 20.1.2 sent by facsimile, upon its receipt being confirmed;
- 20.2 Except if otherwise specifically provided all notices and other communications relating to this Agreement shall be in writing and shall be sent as follows:
- If to Party X:
[Name and Address: Details]
- If to Party Y:
[Name and Address: Details]
- or to such other addressees as the Parties may notify from time to time pursuant to this paragraph.

21. SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held by a court of competent jurisdiction to be

invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

22. WAIVER

The failure by either Party hereto to require strict performance by the other Party of any of the provisions, terms and conditions contained in this Agreement shall not waive, affect or diminish any right of such Party at any time or times hereafter to demand strict performance thereof, and no waiver shall operate as a waiver of any other right or any right with respect to the same condition on a future occasion.

23. VARIATIONS

Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless agreed in writing by both Parties and signed by a director or the company secretary.

24. ENTIRE AGREEMENT

This Agreement and the documents attached hereto constitute the entire Agreement between the Parties relating to the subject matter hereof, there being no other agreements or understandings, written or oral, other than those contained in this Agreement and the attachments hereto. In the event of a conflict among the provisions of this Agreement and an attached document, this Agreement shall govern. This Agreement does not modify, change or impact any other agreement between the Parties relating to the provision of telecommunications services.

25. INDEPENDENT CONTRACTORS AND AGENTS

Nothing in this Agreement shall be deemed to constitute a partnership or relationship of agency between the Parties. Each of the Parties is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees or agents).

26. GOVERNING LAW

The interpretation, validity and performance of this Agreement shall be governed in accordance with the laws of the EAC. The Parties agree that in accordance paragraph 18.6 hereof, the East African Court of Justice [referred to in paragraph 12.02 of the MOU establishing the EARPTO] shall have final jurisdiction to settle any dispute in relation hereto.]

27. SIGNATURE CLAUSE

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed by their duly authorized representatives as of the date hereinabove set forth:

OPERATOR X

Signature: _____

Name: _____

Title: _____

Date Signed: _____

OPERATOR Y

Signature: _____

Name: _____

Title: _____

Date Signed: _____

Proposed Implementation plan for EA interconnection guideline

	Activities / Action dates	2007												2008												2009					
		Feb	Mar	rAP	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun					
1	3rd Taskforce Meeting Arusha																														
2	Presentation and Discussion to the Assembly of Regulators																														
3	Adoption by the EARPTO Congress																														
4	Formal application of EARPTO to the EAC																														
5	Considerations and communications from EAC																														
6	Constitution of the Interconnect and Access Committee																														
7	Start date of implementation																														
8	Progress report on the implementation of the interconnect guideline																														
		2007												2008												2009					

	Activities / Action dates	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
	Other related activities																									
1	Constitution of a task force in charge of Competition and regulatory accounting			■																						
2	Drafting of guidelines for regulatory accounting			■	■	■	■	■	■																	
3	1st meeting to review guideline									■																
4	Adoption of regulatory Accounting guidelines										■															
5	Report on the implementation of interconnection and regulatory accounting guidelines																					■				

