



Republika e Kosovës
Republika Kosova-Republic of Kosovo

Autoriteti Rregullator i Telekomunikacionit
Telecommunications Regulatory Authority
Regulativni Autoritet Telekomunikacije



Nr. Prot. 030/B/12

REGULATION
ON THE RIGHTS OF WAY AND COMMON USE OF THE INFRASTRUCTURE

CHAPTER ONE
General Provisions

Article 1
Legal Basis

- (1) This Regulation is issued based on the Article 1, point (1) and (2), Article 27 and Article 67 of the Telecommunications Law No. 2002/7, as amended by Law Nr.03/L-085 (hereinafter referred to as the Law) points (3.6.2) and (3.6.3) of the document Telecommunications Sector Policy dated 13/06/2007; European Partnership Action Plan (EPAP), Articles 11 and 12 of Directive 2002/21/EC of the European Parliament and Council dated 07/03/2002 for establishing a common framework for networks and electronic communications services (Framework Directive), as amended by Directive No. 2009/140/EC, dated 25/11/2009.

Article 2
Scope and Aim

- (1) The purpose of this regulation (hereinafter Regulation) is to encourage efficient use of electronic communications infrastructure and other infrastructure suitable to deployment and (or) accommodation of public electronic communications networks (hereinafter – Infrastructure) so that to decrease the costs of the deployment of the public electronic communications networks (hereinafter – electronic communications network);
- (2) The right of use of Infrastructure in the national and municipality/communal level will offer operators the possibility of deploying the electronic communication networks more quickly than in case if Infrastructure would not be used where it is possible;
- (3) With the aim to provide operators in the Republic of Kosovo with the benefits provided in the paragraphs (1) and (2) of this article, Regulation establishes the rights of way requirements, the procedure and conditions, according to which the operators can use the Infrastructure;

- (4) Regulation applies to all natural and legal, including public, persons owning/controlling the Infrastructure.

Article 3 **Definitions**

(1) For the purpose of this regulation:

(1.1) The meaning or the definition of each word, phrase or term according to the law on Telecommunications will be also applicable for that word, phrase or term in this regulation,

(1.2) Terms and phrases which follow will have this meaning;

- a) **The Right of Way:** pre-given right providing the operator with the right to use Infrastructure with the purpose of deployment, reconstruction, protection, maintenance, sharing, removal (hereinafter all together – deployment) of electronic communications network;
- b) **Electronic communications infrastructure:** physical infrastructure, consisting of hardware devices, including antennas, lines, pipes, cables, ducts, conduits, masts, manholes, and cabinets, towers and other supporting constructions, buildings or entries to buildings, building wiring and other facilities, dedicated to carry out electronic communications activities.
- c) **Operator** – means an undertaking/legal entity that offers or that is authorized to offer an electronic communications network or associated facilities.

CHAPTER TWO **Requirements for the Rights of Way**

Article 4 **Basis for the deployment of electronic communications infrastructure**

- (1) Operator shall have the right to deploy electronic communications network in the land owned by them by ownership right or for which servitude has been established or where the operator have the right to use it on some other basis without changing the purpose of land;
- (2) Electronic communications infrastructure relocation works performed when building or reconstructing buildings, bridges and other structures shall be carried out by the person ordering such building/reconstructing works on his/her own account according to the technical specifications provided by the owner of electronic communications infrastructure and after having coordinated such relocation work with the abovementioned owner, unless the person ordering such building/reconstructing works and the owner of electronic communications infrastructure do not agree otherwise;
- (3) Person ordering the deployment of Infrastructure shall prior to such deployment works, subject to the procedure, conditions and cases set out in the legal acts for installing, maintaining and protecting electronic communications infrastructure, make public the

information about the beginning of deployments works and about the possibility for other persons to jointly deploy electronic communications network

Article 5

Deployment of electronic communications infrastructure in road systems

- (1) After having coordinated their actions with state or municipal institutions, persons may use the lanes of state and municipal roads, squares, pipelines, water bodies and their shores, bridges, viaducts, tunnels and other structures for the construction of electronic communications networks.
- (2) Upon the completion of deployment of electronic communications networks, the person ordering such works must put roads and/or related structures in order in accordance with the procedure established by legal acts.
- (3) It is prohibited to the operator enter with owner of infrastructure referred to in the paragraph (1) of this Article into agreements leading to the exclusive right to use the infrastructure in question when it comes to electronic communications purposes.

Article 6

Servitude to deploy Electronic Communications Infrastructure

- (1) Where operator cannot realize the right to deploy electronic communications network neither through:
 - (a) Joint deployment nor through;
 - (b) Infrastructure sharing;
 - (c) nor by any other means;
 - (d) also in case of failure of negotiations with the owners of property which could be used for the deployment of electronic communications networks;

such an operator may apply to court for the granting of the right, where such an opportunity exists and where this does not impose an undue burden to the owner, to use state, municipal or private property for the deployment of electronic communications infrastructure by establishing a servitude on such property.

CHAPTER THREE

The common use of the Infrastructure

Article 7

General requirements

- (1) An owner of an Infrastructure must perform its obligations to allow use of the Infrastructure, which may be established with regard to the interests of national defense and security and ensuring of public order as well in cases of emergency situations;
- (2) If operator cannot realize the right to deploy the necessary electronic communications infrastructure or the costs of realisation of such a right are disproportionately high, the Telecommunications Regulatory Authority (hereinafter referred to as the TRA) may request

that any operator or another person controlling the relevant Infrastructure should permit, on non-discriminatory terms, the sharing of the relevant existing Infrastructure or installation of electronic communications infrastructure where this is cost efficient and does not require significant additional work. In this case, the TRA shall consult interested persons in accordance with the procedure, terms and conditions set out in the rules referred to in paragraph 8 of this Article.

- (3) The procedure and conditions for common use of the Infrastructure are established by the Agreement or by the procedure and conditions prescribed by legal acts;
- (4) The owner of the Infrastructure may not refuse to conclude the Agreement with the operator, require to amend or terminate the Agreement, in case the obligations, provided for in the Agreement, are being executed and:
 - 4.1) the request is substantiated, i.e. the operator is not able to implement its right to deploy the necessary electronic communications infrastructure or in case the expenses for implementation of the said right are disproportionately high; the condition shall be considered not able to be satisfied, in case of availability of technically and commercially substantiated alternatives to laying of new additional electronic communication lines or installation of equipment and apparatus;
 - 4.2) that is economically viable and does not require any additional essential works; the condition shall be considered not able to be satisfied in any of the said cases:
 - a) in case the laying of the cable results in infringement of the legal acts for deployment, maintaining and protecting electronic communications infrastructure;
 - b) there are no possibilities to replace the old and no longer used cables in the manner ensuring an emergence of sufficient space for laying the cables of the operator or in case the operator refuses the replacement of the cables;
 - c) the projects of deployment of electronic communications networks, approved by the owner of the Infrastructure foresee laying of an electronic communication line or installation of equipment and apparatus within the following (24) twenty-four months and the equipment and apparatus, installed and electronic communication lines, laid by the operator would hinder to implement such projects;
 - d) this would result in unacceptable disruptions in functioning of the previously deployed apparatus and equipment;
 - e) this would violate the technical conditions for operation of antenna towers or masts, provided for in the project of the structure.
- (5) In case of existence of the conditions, specified in paragraphs 4.1 and 4.2 of this Article, the owner of the Infrastructure shall not refuse to conclude the Agreement with the operator due to any reasons, as well as due to the obligations to ensure the functioning of the electronic communications network in case of emergency situations, the integrity of the network and security of the data;
- (6) The refusal of the owner of the Infrastructure to conclude the Agreement with the operator must be motivated and the arguments must be provided to the operator, who has presented the request, in writing not later than within the time period of (1) one month as of the date of submission of the request. When the request of operator is refused, the owner of

Infrastructure shall together with the negative replay provide the operator with the alternative sharing arrangement of his/her Infrastructure where such possibility exists;

- (7) In case of any dispute between the owner of the electronic communications infrastructure and the operator with regard to the right of common use of the Infrastructure (conclusion of the Agreement), the party, interested in implementation of the right or the conditions of the Agreement (including any requirements, pertaining to the Agreement) may apply to the TRA with regard to resolution of the dispute (including the request to require to allow the common use of the Infrastructure) according to Article 13 of this Regulation.
- (8) The TRA, according to the procedure, prescribed by legal acts, shall publish the request, provided by the interested party, to allow a common use of the Infrastructure (hereinafter referred to as the Request) on its Internet website not later than within the time period of (1) one month as of the date of receipt of the Request, in order for all the interested parties to be able to express their opinion on the time period, established by the TRA, which may not be shorter than (28) twenty-eight days as of the date of publishing of the Request.
- (9) Dispute resolution commission resolving disputes according to the Regulation on Dispute Resolution, should start resolving dispute, not earlier than after expiry of the time period, established in paragraph (6) of this article and should make a decision regarding the dispute pursuant to paragraph (7) of this article;
- (10) The owner of the Infrastructure should not restrict the rights of the operator to engage in electronic communications activities when using his/her Infrastructure.
- (11) The owner of the Infrastructure should provide to operator by electronic means access to the information about the controlled Infrastructure. In case such information cannot be provided by the electronic means, owner of the Infrastructure should provide operator with the hard copy of the information required within the (5) five working days from the submission of such request. The owner of the Infrastructure should ensure that the information about the controlled Infrastructure is up to date.

Article 8

The procedure of concluding of the Agreement

- (1) Operator, wishing to conclude the Agreement, shall provide a written request and supplementary documents, necessary in order to conclude the Agreement to the owner of the Infrastructure. The owner of the Infrastructure shall have the right to require the provision of only the necessary supplementary documents, uniform to all the operators, the provision of which is appropriately substantiated.
- (2) The owner of the Infrastructure shall have the right to set a charge for the investigation with regard to the request, corresponding to the costs of examination of the request and preparation of the reply. The TRA shall have the right to require a substantiation of the charge or changing of the charge, in case it fails to correspond to the expenses of investigation of the request and preparation of the reply.
- (3) The owner of the Infrastructure, not later than within the time period of (1) one month, shall provide a written reply to the operator, who has presented the request. The Agreement must be concluded not later than within the time period of (1) one month as of the date of provision of the positive consent of the owner of the Infrastructure or the decision of the TRA to oblige to use the Infrastructure. The Agreement must contain the technical,

commercial and financial conditions, as well as the obligations and responsibilities of the parties.

Article 9

The mandatory requirements, pertaining to the use of Infrastructure

- (1) The operator, when using the Infrastructure, must:
 - a) use the Infrastructure according to the provisions of the Agreement;
 - b) ensure that the apparatus and equipment, deployed by the operator do not cause any disturbances to the functioning of the previously deployed apparatus and equipment;
 - c) provide to the owner of the Infrastructure the rules for safety operation and specifications of the deployed apparatus and equipment and inform the owner of the Infrastructure on any changes to the said rules and specifications according to the procedure, established in the Agreement;
 - d) perform the works on deployed of the electronic communications infrastructure according to the projects, prepared, coordinated and approved according to the procedure, prescribed by the legal acts;
 - e) assign only qualified personnel or contractor for the performance of works on deployment of the electronic communications infrastructure and inform the owner of the Infrastructure about the contractor according to the procedure, established in the Agreement;
 - f) be responsible for labor safety when deploying electronic communications infrastructure.
- (2) Upon conclusion of the Agreement, the operator, according to the technical conditions, specified in the Agreement and the procedure, established in Article 10 of this Regulation, shall prepare the project. The time period for preparation and provision of the project to the owner of the Infrastructure shall be specified in the Agreement, however the said time period may not take longer than (6) six months.
- (3) The owner of the Infrastructure, whose Infrastructure is used by the operator according to the concluded Agreement, shall:
 - a) issue the technical conditions and not hinder the operator to deploy additional cable ducts in the places, where the ducts are missing or lay cables in case there is no sufficient space in the existing ducts;
 - b) establish a procedure for registration of faults;
 - c) perform the technical supervision and maintenance of the Infrastructure;
 - d) inform the operator in writing on any planned repairs of the Infrastructure not later than (1) one month prior to commencement of the repairs works, in case the works are likely to hinder the activities of the operator no longer than for (12) twelve hours and in case the activities are likely to be hindered for a longer period of time - (6) six months prior to the commencement of the works;

- e) according to the procedure, established in the Agreement, provide the operator with the conditions to maintain his/her electronic communications infrastructure: during the business days – not later than within the time period of (1) one hour, during the rest-days and holidays and during night-time – not later than within (3) three hours, in case no other provisions have been foreseen in the Agreement in this regard. The time shall be calculated as of the moment of registration of the request of the operator to permit to maintain his/her electronic communications infrastructure;
- f) in case of emergencies, inform the operator on the issue immediately, in case no other provisions have been foreseen in the Agreement in this regard.

Article 10

Preparation of Projects

- (1) In case no other provisions have been foreseen in the Agreement in this regard, the project on deployment of the electronic communications infrastructure shall be prepared by the operator.
- (2) Upon provision of the request by the operator, the owner of the Infrastructure, within the time period of (1) one month shall provide the information, necessary to perform the designing works to the operator and/or the designer, selected by the operator and specify the requirements, with which the project must be compliant. The requirements must be well-substantiated and uniform to all the operators and be no different from the corresponding requirements, applicable for the structural units and subsidiaries of the owner of the Infrastructure or to the undertakings, related to the owner of the Infrastructure.
- (3) The prepared project must be coordinated with the owner of the Infrastructure.
- (4) The owner of the Infrastructure must coordinate the project within the time period of (1) one month (in case no other provisions have been foreseen in the Agreement in this regard) as of the date of receipt of the project, or, in case the project fails to comply with the conditions of the Agreement or the requirements, specified by the owner of the Infrastructure in advance; the owner of the Infrastructure must, within the time period of (1) one month in case no other provisions have been foreseen in the Agreement in this regard), provide to the operator motivated requirements to supplement or amend the project. The project, agreed upon with the owner of the Infrastructure becomes an integral part of the Agreement.
- (5) In case it appears that the apparatus and equipment, deployed according to the project and agreed upon with the owner of the Infrastructure cause disturbances to the functioning of the previously deployed apparatus and equipment, the operator must, in cooperation with the owner of the Infrastructure prepare project amendments and eliminate the reasons of the disturbances. The Agreement must foresee the conditions for covering of the expenses for preparation of the project amendments and elimination of the disturbances.

Article 11

The procedure of setting and payment of the charge for use of Infrastructure

- (1) The operator shall pay the charge for use of the Infrastructure, specified in the Agreement.

- (2) The owner of the Infrastructure shall set the charge for use of the Infrastructure taking into account the relevant provisions established by the legal acts. In case the parties fail to reach an agreement with regard to the charge for use of the Infrastructure, the TRA, when resolving the dispute, shall have the right to set a reasonable amount of the charge for use of the Infrastructure, taking into consideration:
- a) the directly acquired data of the accounting system of the owner of the Infrastructure or other information of the owner of the Infrastructure, which may come into existence when performing the requirements, prescribed by legal acts;
 - b) indirectly acquired data on the corresponding costs of the services/products, comparing the prices of the corresponding services according to the best practice of the other countries, the practice of the similarly developed countries, the practice of the Republic of Kosovo and evaluating the relation between the wholesale and retail prices of the corresponding services/products.
- (3) The burden of evidencing of the compliance of the charge for use of the Infrastructure with the requirements, provided in the present document shall be borne by the owner of the Infrastructure.
- (4) If required by the TRA, the owner of the Infrastructure shall, within the time period, specified by the TRA, provide a comprehensive substantiation of the charge for the use of the Infrastructure by costs, including the reasonable return on investments.
- (5) The specific amount of the charge for the accounting period shall be specified in the bill, forwarded to the operator, which must be paid for within the time period of (1) one month as of the date of receipt, in case no other provisions have been foreseen in the Agreement in this regard.
- (6) The Agreement may foresee the right of the owner of the Infrastructure to review the amount of the charge, in case of existence of the corresponding economic grounds, however such revisions may be performed as rarely as possible. Tariffs should not be changed drastically and affect (influence) the operators decision to abandon the use of infrastructure.
- (7) In case, the mentioned right has been foreseen, the owner of the Infrastructure shall present the planned changes of the amount of the charge and the economic substantiation of such changes to the operator not later than (3) three months prior to the date of entering into effect of the changes, in case no other provisions have been foreseen in the Agreement in this regard.
- (8) The operator cannot refuse the charge, changed in the case and according to the procedure and conditions, provided in the paragraph (6) of this Article, in case the new charge, notified by the owner of the Infrastructure in writing is economically substantiated, however in this case the operator acquires the right to unilateral termination of the Agreement prior to entering into effect of the changed amount of the charge, by notifying the owner of the Infrastructure on the issue in writing.

Article 12

The conditions of entering into effect, amendment and termination of the Agreement

- (1) The Agreement shall enter into effect as of the date of undersigning, in case no other provisions have been foreseen in the Agreement in this regard.
- (2) Each party shall have the right to initiate amendment of the conditions of the Agreement, in case of changes in the legal acts, regulating the conditions of the corresponding electronic communications activities.
- (3) Owner of the Infrastructure shall provide its notification on its intent to terminate the Agreement not later than (2) two years prior to the planned date of termination, in case no other provisions have been foreseen in the Agreement or in the present Regulation in this regard and in case the Agreement is planned to be terminated not due to an essential breach thereof.

Article 13

Resolution of disputes

- (1) The TRA shall resolve disputes between the owner of the electronic communications infrastructure and operator with regard to the use of Infrastructure *mutatis mutandis* by applying the provisions of the Regulation on resolution of disputes and other legal acts.

Article 14

Final provisions

- (1) In case the owner of the Infrastructure concludes the Agreement with the operator, although, according to Article 7.4 of the present Regulation the owner of the Infrastructure may refuse to conclude such an Agreement, the relations between the parties to such an agreement shall not be regulated by the provisions of Article 13 of this Regulation with the exception of the cases, when the grounds, specified in paragraphs 7.4.1 and 7.4.2 of the present Regulation emerge during the course of the Agreement, when there emerges a need to conclude the Agreement with regard to the use of the Infrastructure, specified in the Agreement.
- (2) For issues that have to do with the right of servitude the Law on Property and Other Real Rights No. 03/L-154 will be applied.
- (3) The persons shall be amenable for the failure to observe the requirements, provided in the present Regulation according to the procedures and conditions, prescribed by the laws.

Article 15
Entry into force and validity

- (1) This regulation enters into force after its approval with a decision from the TRA Board and remains in force until another regulation is issued.

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Prishtinë, 19/03/2012

Ekrem Hoxha
Chairman of the TRA Board
