



Republika e Kosovës
Republika Kosova-Republic of Kosovo

Autoriteti Rregullator i Telekomunikacionit
Telecommunications Regulatory Authority
Regulativni Autoritet Telekomunikacije



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CONCLUSIONS
from
Public Consultation Document
Regulation on The Rights of Way and Common Use Of The Infrastructure

TRA's Board in the XXVIII meeting held on 15 and 17 November 2011, according to procedures established by the TRA's Internal Regulation has issued Decision No. 147 (Ref. ART. No. Prot. 063/B/11), to initiate public consultation for '**Draft Regulation on the Right of Way and the Common use of Infrastructure** ', which was prepared by Department of Telecommunications (DT) with the assistance and professional supervision of European Commission / TAIEX experts.

'Draft Regulation on the Rights of Way and Common Use of the Infrastructure' has been published on the TRA's website ([http://www.art-ks.org/?cid=1, 179](http://www.art-ks.org/?cid=1,179)) and passed on public consultation from **21 November 2011 until 20 December 2011**.

However, given the importance of this regulation and with the intention of creating a substantial document, TRA during March 2012 organized public hearings with all stakeholders.

Meetings with stakeholders were conducted on the following dates:

- On 07 March 2012, beginning at 10:00 am meeting with operators, who provide telecommunications services in the country;
- On 08 March 2012, beginning at 10.00 am meeting with representatives of municipal assemblies, respectively urban planning departments
- On 09 March 2012, beginning at 14:00 meeting with representatives of non-telecommunications public undertakings: Kosovo Railways, Kost, and the Kosovo Forestry Agency.

In the following table are given the comments received from the operator IPKO Telecommunications LLC (Ref. letter sent with the date, December 20, 2011) as well as answers and conclusions of the TRA Board in these comments as a result from the assessment administered on XXXIII meeting of the TRA's Board.

	IPKO's Comments	TRA's Answers
1.	<p>1.1 The right to shared use of existing infrastructure of the operators</p> <p>Draft Regulation in question refers to the shared use of existing infrastructure of operators that provide telecommunications services, and the same makes it ambiguous, because the use of operator's telecommunications infrastructure is regulated by other TRA's regulations, such as Market Analysis Regulation, the Regulation on Access, and other regulations of the TRA. Therefore, IPKO requires that Article 2 of the draft Regulation in question to clarify that the use of existing infrastructure of the telecommunications operators is not subject of regulation of this draft regulation, and that these issues are regulated in the Regulations mentioned in the previous paragraph.</p>	<p>The Regulation implements the Article 12 of the Framework directive 2002/21/EC as amended by the 2009/140/EC.</p> <p>The Article 12 establishes the general framework for the Rights of Way for Co-location and sharing of network elements and associated facilities for providers of electronic communications(EC) networks.</p> <p>According to the regulatory framework established by the Article 12, Rights of Way measures, including the servitude, are applicable to all persons owning/controlling Infrastructure suitable for EC network deployment.</p> <p>The Rights of Way measures are of the symmetrical application and do not interfere with the SMP framework where obligations are (could be) established as a temporary measure to address defined market failure and usually apply to one operator.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>
2.	<p>1.2 Ownership on investments by operators in the alternative infrastructure</p> <p>The regulation should specify that investments in the relevant public infrastructure made by telecommunications operators, based on agreements with the owners of infrastructure, will be regulated by the same agreement, and shall not be subject to the regulation of this Regulation.</p>	<p>Rejected</p> <p>Article 8(2) establishes that:</p> <p>"The Agreement must contain the technical, commercial and financial conditions, as well as the obligations and responsibilities of the parties"</p> <p><u>CONCLUSION: Comment is not accepted</u></p>

<p>3.</p>	<p>1.3 Sharing of national and municipal infrastructure</p> <p>Law on Roads in Kosovo stipulates the definition of routes and their separation including the authority/competencies of the institutions for all kinds of roads. Therefore, this regulation should clearly state the definition and determine which institutions are responsible for national and municipal infrastructure, starting from the separation that makes the Law on Roads.</p>	<p>The provisions are neutral to the legal status of the owner of the Infrastructure. Provisions of the Regulation are equally applicable to all the owners of the Infrastructure.</p> <p>For more clarification paragraph 4 is added to the Art.2:</p> <p><i>“Regulation applies to all natural and legal, including public, persons owning/controlling the Infrastructure.”</i></p> <p>It is not the aim of the Regulation to define all possible owners of the Infrastructures deployed in the country.</p> <p>During the meeting on 7th of March, 2012 operators claimed that it is complicated to find out the owners of the infrastructure which they would like to share. Regulator and operators agreed to keep this problem in mind so that to look for opportunities to address it during the dialogues with other institutions, including municipalities.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>
<p>4.</p>	<p>Article 1 - General provisions</p> <p>Article 1 refers to point b) of Article 1 of the Law on Telecommunications No.2002/7. In this Law that paragraph is non-existent therefore this should be corrected.</p>	<p>Accepted</p> <p>Article 1 will be corrected as follows:</p> <p><i>“According to Article 1 point (1) and point (2)”</i></p> <p><u>CONCLUSION: Comment is accepted</u></p>
<p>5.</p>	<p>Article 3 - Definitions</p> <p>IPKO suggests that the following terms are also defined because the regulation in its content refers to such definitions or will refer to them in the future:</p>	<p>-----</p>
<p>5.1</p>	<p>Owners of public infrastructure/alternative - is public entity / state which has in management operation and investment in public infrastructure.</p>	<p>It is suggested not to elaborate this term in definition. In each case it is clear who owns of the Infrastructure, just to clarify, that Regulation applies also to public persons.</p> <p>Also it is suggested to include paragraph (4) to the Article 2 elaborating that <i>“Regulation applies to all natural and legal, including public, persons owning/controlling the Infrastructure”</i>.</p> <p><u>CONCLUSION: Comment partially accepted</u></p>

5.2	<p>Users of electronic communications infrastructure</p> <p>- are operators of electronic communications, licensed by the TRA to offer such services.</p> <p>Comment: The regulation refers to the utilization of the infrastructure and to the infrastructure users, therefore it is necessary to unify the regulation on the use of word use and utilization, and if there is a legal distinction between than to give appropriate definiotins for each of them.</p>	<p>Users of electronic communications infrastructure are operators, therefore definition of the Operator is added</p> <p>The definition is as follows:</p> <p><i>“Operator - means an undertaking/legal entity that offers or that is authorized to offer an electronic communications network or associated facilities.”</i></p> <p><u>CONCLUSION: Comment is accepted</u></p>
5.3	<p>Agreement - (should be defined)</p>	<p>The essence of the Agreement has been defined in the Article 8(3) establishing that:</p> <p><i>“... The Agreement must contain the technical, commercial and financial conditions, as well as the obligations and responsibilities of the parties”</i></p> <p><u>CONCLUSION: Comment is partially accepted</u></p>
5.4	<p>Permission/ Consent</p> <p>- is special permission given to operators to use alternative infrastructure (public). Based on the Law on Roads, specifically Articles 27 and 28 of this Law, the relevant institutions for certain roads issue consent to use the infrastructure ; consent contains special conditions and method of compensation based on certain rules of that institution (municipal or national).</p> <p>Coment: Regulation should make it clear where operators can enter into agreements with an owner of infrastructure and when the permit / approval is issued from the relevant institutions.</p>	<p>The Article 7(3) of the Regulation is amended respectively adding reference to other legal acts:</p> <p><i>“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”</i></p> <p><u>CONCLUSION: Comment is partially accepted</u></p>
5.5	<p>Persons engaged in construction of networks -</p> <p>IPKO proposes the removal of this category, as infrastructure owners and operators should be responsible for the publication of information about starting the construction of infrastructure</p>	<p>Provision of Article 4(3) is clarified as follows:</p> <p>“Person ordering the deployment of electronic communications networks shall prior to such construction works, subject to the procedure, conditions and cases set out in</p>

	<p>works under the obligation stipulated in Article 4 (3) the draft Regulation.</p>	<p>the legal acts for installing, maintaining and protecting electronic communications infrastructure, make public the information about the beginning of deployment works and about the possibility for other persons to jointly deploy electronic communications network.</p> <p><u>CONCLUSION: Comment is accepted</u></p>
<p>5.6</p>	<p>Comments on definitions set out in Regulation: Providers of electronic communications networks</p> <p>– should be specified that providers of electronic communications networks are entities which are authorized by the TRA to provide electronic communications networks, or if it is not only for these operators, then this should be specified in the Regulation.</p>	<p>See the clarification provided to the comment 5.2.</p> <p><u>CONCLUSION: Comment is accepted</u></p>
<p>6.</p>	<p>Article 4</p> <p>Installation Principles for Electronic Communications Infrastructure</p> <p><i>Article 4 (2) : "Relocation of infrastructure, made during the construction or reconstruction of buildings, bridges and other structures, will be performed by users of electronic communications infrastructure in their account/expense according to technical specifications offered by the owners of infrastructure and after such coordination work with the owners of the above, unless the users and owners agree otherwise "</i></p> <p>This paragraph is inconsistent with Article 29 of Law on Roads (No. 2003/11), which provides that if removal / relocation of infrastructure is required, which is placed with regular procedures prescribed by law, the natural or legal person, which in this case is the operator of electronic communications has the right to seek compensation.</p> <p>Moreover, relocation of infrastructure will incur high costs for electronic telecommunications operators, so their compensation from the owners of infrastructure.</p>	<p>Paragraph (2) of Article 4 is re-formulated as follows:</p> <p><i>"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"</i></p> <p><u>CONCLUSION: Comment is accepted</u></p>
<p>7.</p>	<p>Article 4(3): <i>"Persons engaged in the construction of electronic communications networks shall, subject to the procedure, conditions and cases set out in the legal</i></p>	<p>Wording of the Article adjusted as follows:</p>

	<p><i>acts for installing, maintaining and protecting Infrastructure, make public information about the start of construction works and about the possibility for other persons to participate in construction sharing."</i></p> <p>The obligation to make public information about starting works on the construction of infrastructure should be the duty of the owner of the infrastructure and not of persons engaged in building networks, because the owner can choose to build the network by any contractor, but the responsibilities arising from this Regulation shall belong only to him / owner.</p>	<p><i>"Person ordering the deployment of electronic communications networks ..."</i></p> <p><u>CONCLUSION: Comment is accepted</u></p>
<p>8.</p>	<p>CHAPTER THREE</p> <p>The common use of the electronic communications infrastructure</p> <p>Article 7 - General requirements</p> <p>RregullorenThe general comments:</p> <ul style="list-style-type: none"> - Article 7 should be renamed in order to understand that is about common use of the public / alternative infrastructure, and not the operators existing telecommunications network, since the common usage of this infrastructure is regulated by specific regulation of TRA (see comments in paragraph 1.1 above). - In some cases refers to infrastructure providers, and several other proprietary (owner) of the infrastructure. This should be unified in this Article and all regulation. 	<p>New title is following: <i>"The common use of the Infrastructure"</i></p> <p>See the clarification provided to the comment 1.</p> <p><u>CONCLUSION: Comment is partially accepted</u></p>
<p>9.</p>	<p>Neni 7(2): <i>"If a provider of public communications networks cannot realise the right to install 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 provider of electronic communications networks or another person controlling the relevant infrastructure should permit, on non-discriminatory terms, the sharing of the existing electronic communications infrastructure as well as of other relevant pipelines, cable ducts, collectors, towers, masts, buildings and other facilities 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</i></p>	<p>The Article has been clarified during the public hearing on 7 March 2012.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>

	<i>rules referred to in Article 8 of this Regulation."</i>	
10.	<p>Neni 7 (3): <i>"The procedure and conditions for use of the Infrastructure are established by the Agreement;"</i></p> <p>Based on the Law on Roads, namely Articles 27 and 28 of this Law, the relevant institutions certain roads issue consents to use the infrastructure, consent which contains special conditions and method of compensation based on certain rules of that institution (municipal or state).</p>	<p>Accepted</p> <p>Wording of the Article 7(3) adjusted as follows:</p> <p><i>"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."</i></p> <p><u>CONCLUSION: Comment is accepted</u></p>
11.	<p>Neni 7 (4) should be restructured because it is ambiguous in itself. It is not clear which are the grounds for denial of the request to share infrastructure.</p> <p><i>"The owner of the Infrastructure may not refuse to conclude the Agreement with the user of the Infrastructure, require to amend or terminate the Agreement, in case the obligations, provided for in the Agreement, are being executed and:</i></p>	<p>The Article has been clarified during the public hearing on 7 March 2012.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>
12.	<p>4.1) <i>the request is substantiated, i. e. the user of the electronic communications infrastructure is not able to implement its right to install 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;</i></p>	<p>The Article has been clarified during the public hearing on 7 March 2012.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>
13.	<p>4.2)<i>that is economically viable and does not require any additional essential works</i></p>	<p>The Article has been clarified during the public hearing on 7 March 2012.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>
14.	<p>4.3) <i>the condition shall be considered not able to be satisfied in any of the said cases:</i></p> <p>We suggest to add: 4.3 (f) where would be foreseen that when the operator request for use of alternative infrastructure is refused, the infrastructure owner must give the operator an alternative, in order to make possible the</p>	<p>Relevant provision was added into the Article 7(6):</p> <p><i>"...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</i></p>

	<p>extension of the operator's infrastructure within territory where the owner has laid its own infrastructure.</p>	<p><i>Infrastructure where such possibility exists."</i> <u>CONCLUSION: Comment is accepted</u></p>
<p>15.</p>	<p>Article 7 (6). Please add the sentence: If the infrastructure owner does not replies to the operator request for the use of alternative infrastructure within one (1) month of the receipt of the request, then the silence of the owner of the infrastructure will be considered as administrative silence, respectively as acceptance / approval of the request of the operator</p>	<p>Could not be added because the Acceptance/Rejection of the request depends on the technical possibilities of common use. <u>CONCLUSION: Comment is not accepted</u></p>
<p>16.</p>	<p>Neni 7 (12) the following obligation, of liability for the owners of alternative infrastructure, to be added:</p> <p>If the infrastructure users or interested parties for any reason the access to the official website, where the infrastructure owner has published information about the available infrastructure for use, is prohibited then the user has the right to appeal to the TRA for this.</p> <p>The same, at least, within 5 working days of request, will be granted access to physical copies of the information in question.</p>	<p>Articte 7(12) (in the final version results as paragraph 11) has been re-formulated as follows:</p> <p><i>"The owner of the Infrastructure should be obliged to 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 requited 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."</i></p> <p><u>CONCLUSION: Comment is partially accepted.</u></p>
<p>17.</p>	<p>Article 8-The procedure of concluding of the agreement</p> <p><i>Article 8 point (2)"The owner of the Infrastructure, not later than within the time period of (1) one month, shall provide a written reply to the user of the Infrastructure, who has presented the request. The Agreement must be concluded not later than within the time period of one month as of the date of provision of the consent of the owner of the Infrastructure or the decision of the TRA to permit to use the Infrastructure. The Agreement must contain the technical, commercial and financial conditions, as well as the obligations and responsibilities of the parties "</i></p> <p>Please add the sentence: If the infrastructure owner does not replies to the operator request for the use of alternative infrastructure within one (1) month of the receipt of the request, then the silence of the owner of the infrastructure will be</p>	<p>Article 8(3) provides that</p> <p><i>"The Agreement must contain the technical, commercial and financial conditions, as well as the obligations and responsibilities of the parties".</i></p> <p>It is impossible to agree on the technical, commercial and financial conditions applying administrative silence procedure.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>

	considered as administrative silence, respectively as acceptance / approval of the request of the operator.	
18.	<p>Article 9</p> <p>The mandatory requirements, pertaining to the use of electronic communications infrastructure</p> <p>Article 9 (3) <i>“The owner of the Infrastructure, whose Infrastructure is used by the user of the Infrastructure according to the concluded Agreement, shall:</i></p> <p><i>b) establish a procedure for registration of faults that can be registered after technical supervision of the Infrastructure according to technical parameters/ specifications determined on the Agreement/Consent;</i></p> <p><i>c) perform the technical supervision of the Infrastructure according to technical parameters/ specifications determined on the Agreement/Consent ;”</i></p>	<p>The Article has been clarified during the public hearing on 7 March 2012.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>
19.	<p>Article 10</p> <p><i>Project Preparation</i></p> <p><i>10 (1) technical fault. Should be: if not otherwise provided by this regulation, instead of: "Unless otherwise provided by this Agreement"</i></p>	<p>The text is not in conflict with the text suggested by the IPKO.</p> <p><u>CONCLUSION: Comment is not accepted</u></p>
20.	<p>Article 11</p> <p>The procedure of setting and payment of the charge for use of electronic communications infrastructure</p> <p><i>Neni 11 (2)“The owner of the Infrastructure shall set the charge for use of the Infrastructure. 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:...”</i></p> <p>Draft Law on Electronic Communications in Kosovo provides that the right use of the way/path and infrastructure will be free of charge. On the other hand, the relevant regulations of Kosovo municipalities each have their respective fees for use of infrastructure, and these fees are fixed and can not be subject to negotiation between the owner of the infrastructure and its users. Therefore, these should be clarified in this Regulation accurately.</p>	<p>The provision of the Article 11(2) was adjusted accordingly:</p> <p><i>“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.”</i></p> <p>Draft Law Article 23 (1) applies to the Installation, Protection, Sharing and Maintenance of Electronic Communications Infrastructure in Road Systems only.</p> <p><u>CONCLUSION: Comment is accepted</u></p>
21.	<p><i>Neni 11 (6):“The Agreement may foresee the right of the owner of the Infrastructure to review the amount of</i></p>	<p>This Article is divided onto two paragraphs:</p>

	<p><i>the charge, in case of existence of the corresponding economic grounds, however such revisions may be performed no more frequently than one time per year. In case the said 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 user of the Infrastructure 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.</i></p> <p><i>Infrastructure owner is not allowed to make changes in the price of using no more than + / - 10% of the market price.</i></p> <p>Comment: Eventual change of price usage of infrastructure should be done as infrequently as possible, taking in consideration operators budgetary planning. Prices should not be changed drastically to affect operators' decision to abandon the use of infrastructure.</p>	<p>(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.</p> <p>(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.</p> <p><u>CONCLUSION: Comment is accepted</u></p>
<p>22.</p>	<p>Article 11 (7). Technical error. Conditions should be provided for in Article 11 of the Regulation</p>	<p>The reference was amended to paragraph 6 of the Article 11.</p> <p><u>CONCLUSION: Comment is accepted</u></p>
<p>23.</p>	<p>Article 12</p> <p>The conditions of entering into effect, amendment and termination of the agreement</p> <p>Article 12 (3)A party shall provide its notification on its intent to terminate the Agreement not later than one year 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”</p> <p>Comment: The time limit should be longer because the operators must be able to plan alternative routes in finding a lack of opportunity for use of infrastructure. In addition, this Regulation should specify all conditions for its termination, so that the infrastructure owner does</p>	<p>Wording was amended as follows:</p> <p>“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.</p> <p>This chapter covers cases when parties agree upon the usage of the Infrastructure on the commercial basis.</p> <p>In case of the lack of opportunity for use of In In the absence of use of the infrastructure provisions of the Article 6 (Servitude) may</p>

	<p>not have the space to its intersection with no legal basis.</p>	<p>apply.</p> <p><u>CONCLUSION: Comment is partially accepted</u></p>
<p>24.</p>	<p>Article 13</p> <p>Resolution of disputes</p> <p>To specify that the TRA decisions that are subject to appeal under the applicable law in Kosovo. The same article should provide the right of operators to take to the court to win their rights.</p>	<p>The procedure of the review of the decisions of the TRA is subject to the draft Law.</p> <p>Art 87(18) of the Draft Law: "A decision issued by the Authority whereby a dispute is resolved in substance or its consideration is discontinued may be appealed against to the Regional Court within thirty (30) days from the date of its adoption."</p> <p><u>CONCLUSION: Comment is not accepted</u></p>
<p>25.</p>	<p>Article 14</p> <p>Release form responsibility</p> <p>This article is completely unclear. The same purpose it is not understood. It should be clarified and well specified.</p>	<p>Article is deleted. Arguments are following: This is a question of general legal norm.</p> <p>This article is not establishing any new obligations or provisions.</p> <p><u>CONCLUSION: Comment is accepted</u></p>