

NATIONAL COMMUNICATIONS AUTHORITY

FEDERAL REPUBLIC OF SOMALIA

IN EXERCISE of the Authority granted in Articles 2, 3, and 6 of the National Communication Law of 2017, the National Communications Authority of the Federal Republic of Somalia issues the following:

Submarine Cable Regulations 2024

Article 1. Preliminary considerations

1.1 Citation

This document may be cited as the National Communications Authority Submarine Cable Regulations of 2024.

1.2 Source of authority

- (a) Article 2(g) of the Communications Law states that the Authority is responsible for issuing regulations for communications.
- (b) Article 3(1) of the communications Law gives powers to the Authority to manage all of the components of communications within the boundaries of Somalia.
- (c) Article 6 (3) of the Communications Law gives powers to the Authority to prepare regulations that are related to the components or sections of communications and participate in their implementation, in consultation with stakeholders.

Article 2. Purpose of the Submarine Cable Regulations

2.1 This regulation is aimed at:

- (a) Increasing the international bandwidth capacity of Federal Republic of Somalia
- (b) Laying down conditions for fair access to international bandwidth to facilitate the development of a competitive connectivity market.

Article 3. Scope of Application

These regulations shall apply to Licensees operating submarine cable landing stations and submarine cables in Federal Republic of Somalia. In order to operate a submarine cable landing station or a submarine cable an entity must hold either a Communications Infrastructure and Services Provider License or an International Communications Infrastructure Provider License, or such other license as the Authority may in the future prescribe. To the extent any provision of these regulations is inconsistent with any provision of the relevant license, the provision of these regulations shall control. All parties subject to the terms of these regulations shall also remain subject to all other requirements of the Communications Law and other applicable laws and all other regulations that the Authority has issued or may in the future issue.

Article 4. Definitions

4.1 Words, phrases or expressions used in these Regulations shall have the same meaning as in the Communications Law (where so defined) and the following, unless the context otherwise requires.

4.2 “Authority” means the National Communications Authority, Federal Republic of Somalia.

4.3 “Communications Law” means the National Communications Law, Law No. 005 of 10 February 2017.

4.4 “Physical Co-location” means the offering by the operator of a Submarine Cable Landing Station that enables a licensed communications service provider to place its own equipment to be used to access submarine cable capacity within or upon the Submarine Cable Landing Station operator’s premises; to enter those premises, subject to reasonable terms and conditions, to install, maintain, and repair equipment necessary to access submarine cable capacity; and to obtain reasonable amounts of space in the Submarine Cable Landing Station operator’s premises for the equipment necessary to access submarine cable capacity, such space to be allocated on a first-come, first-served basis.

4.5 “Virtual Co-location” means the offering by a Submarine Cable Landing Station operator that enables a licensed communications service provider to access submarine cable capacity at the cable landing station by a link between a remote point and the Submarine Cable Landing Station.

4.6 “Backhaul” means the provision of transport between the Submarine Cable Landing Station and the facilities of a licensed communications service provider.

Article 5. Permit Application

5.1 Notwithstanding the terms of the Communications Infrastructure and Services Provider License or the International Communications Infrastructure Provider License, as relevant, prior to landing a submarine cable within the territory of the Federal Republic of Somalia or constructing a submarine cable landing station within the territory of the Federal Republic of Somalia, a licensee shall submit an application to the Authority seeking permission to land said submarine cable or construct said submarine cable landing station. Any licensee that has landed a submarine cable within the territory of the Federal Republic of Somalia shall, within thirty (30) days of the effective date of these Regulations, submit to the Authority an application seeking permission to land said submarine cable. Any licensee that has constructed a submarine cable landing station within the territory of the Federal Republic of Somalia shall, within thirty (30) days of the effective date of these Regulations, submit to the Authority an application seeking permission to operate said submarine cable landing station.

5.2 The licensee shall submit its request for permission to land a submarine cable using the standard application form found on the Authority’s website. The licensee shall submit a separate application for each submarine cable that it proposes to land within the territory of the Federal Republic of Somalia. In addition to the information required by the application form, the licensee shall submit the following information concerning a proposed submarine cable:

(a) The name of the proposed submarine cable and full information concerning the ownership of the proposed submarine cable;

(b) The route and precise landing point, including geographic coordinates, of the proposed submarine cable;

(c) The total capacity of the proposed submarine cable and the capacity to be made available to the applicant and to other licensed operators within the territory of the Federal Republic of Somalia; and

(d) Such other information as the Authority may require.

5.3 The licensee shall submit its request for permission to construct and operate a submarine cable landing station using the standard application form found on the Authority's website. In addition to the information required by the application form, the licensee shall submit the following information concerning a proposed submarine cable landing station:

(a) The precise location of the cable landing station, including geographic coordinates;

(b) The ownership structure of the cable landing station, including any minority partners;

(c) All submarine cable systems that the applicant proposes to land at the cable landing station, including information concerning the ownership and capacity of such submarine cable systems; and

(d) Such other information as the Authority may require.

5.4 An applicant for permission to land a submarine cable within the territory of the Federal Republic of Somalia shall also demonstrate that it has obtained the following required approvals:

(a) A security clearance permit from the Ministry of Internal Security;

(b) A permit to install a submarine cable in Somali territorial waters from the Ministry of Ports and Marine Transport;

(c) A survey permit from the Ministry of Ministry of Communications and Technology and the Authority; and

(d) An environmental clearance from the Ministry of Environment and Climate Change, pursuant to the applicant's submission to the Ministry of a detailed environmental and social impact assessment and audit report.

5.5 An applicant for permission to land a submarine cable or to construct and operate a cable landing station must submit all agreements that the applicant has entered into with a foreign carrier to the Authority for its approval before any such agreement can become effective.

5.6 The Authority shall act upon an application to land a submarine cable or to construct and operate a submarine cable landing station within forty-five (45) working days of its receipt of the application and all required documents and approvals. If the Authority denies the application, the Authority shall issue a Decision, in writing, explaining the reasons for the Authority's denial of the application.

Article 6. Agreements with Foreign Carriers

6.1 A licensee must submit to the Authority for its approval any proposed changes or modifications to any agreement that is already in effect before such changes or modifications can become effective.

6.2 All commercial agreements must adhere to and comply with all NCA regulations including competition regulations.

6.3 Any licensee that has landed a submarine cable within the territory of the Federal Republic of Somalia shall, within thirty (30) days of the effective date of these Regulations, submit to the Authority all commercial agreements that it has previously negotiated with a foreign carrier in order to ensure that said agreements comply with all applicable legal and regulatory requirements.

Article 7. Access and Co-Location

7.1 The operator of a Submarine Cable Landing Station shall ensure that a licensed communications service provider shall have fair and not unreasonably discriminatory access to submarine cable capacity that the communications service provider owns or leases on a submarine cable that lands at said Submarine Cable Landing Station. In addition, whenever an owner of submarine cable capacity makes such capacity available to another licensed operator or to a member of the public, the owner of submarine cable capacity shall make such capacity available on fair and not unreasonably discriminatory terms and conditions. The operator of a Submarine Cable Landing Station shall publish and make readily available and accessible on its website a template for co-location and shall file any agreement it enters into for the provision of co-location services within thirty (30) days of execution of the agreement. The minimum period of an agreement for co-location services shall be six years, unless the parties to the agreement jointly petition the Authority to allow a shorter term.

7.2 The operator of a Submarine Cable Landing Station shall make physical co-location service available to a licensed communications service provider to enable the licensed communications service provider to connect its network equipment to a submarine cable that lands at the Submarine Cable Landing Station.

7.3 The operator of a Submarine Cable Landing Station shall negotiate co-location with a licensed communications service provider in good faith, in a manner consistent with the terms of Articles 49-51 of the Communications Law. The co-location agreement shall include both the technical and commercial terms of the co-location arrangement between the parties.

7.4 If the operator of the Submarine Cable Landing Station is unable to provide physical co-location space within the Submarine Cable Landing Station, the operator shall make arrangements with a licensed communications service provider that has requested physical co-location for virtual co-location at a point in reasonable proximity to the Submarine Cable Landing Station. The operator of the Submarine Cable Landing Station shall ensure that a licensed communications service provider shall be able to provision or obtain from a third party of the licensed communications service provider's choosing backhaul facilities and services to connect the licensed communications service provider's submarine cable capacity to the agreed virtual co-location point.

7.5 If the operator of a Submarine Cable Landing Station and a licensed communications service provider are unable to agree to the commercial or technical terms for co-location within thirty (30) days of a request for co-location service, either party may request

that the Authority mediate the dispute and impose reasonable terms for co-location service. In the event of such a request, the Authority shall direct the parties to submit their proposed commercial and technical terms to the Authority within ten (10) days of the filing of the request for mediation. The Authority shall issue its written Decision establishing terms for co-location service within sixty (60) days of the submission of the parties' proposed terms.

7.6 Any licensee that operates a Submarine Cable Landing Station shall, within thirty (30) days of the effective date of these Regulations, submit to the Authority all co-location agreements that it has entered into prior to the adoption of these Regulations.

Article 8. Quality of Services and Service Level Guarantees

8.1 The operator of a Submarine Cable Landing Station shall comply with any quality of service regulations and guidelines that the Authority may adopt from time to time.

8.2 The operator of a Submarine Cable Landing Station shall offer service level guarantees that are at least equal to the guarantees they provide for their own services or those offered by their subsidiaries or partners.

8.3 In the absence of quality of service regulations adopted by the Authority the operator of a Submarine Cable Landing Station shall adhere to quality of service standards consistent with international best practices.

Article 9. Dispute Resolution

9.1 In the event of a dispute between the operator of a Submarine Cable Landing Station and one or more licensed communications service providers using the facility, any party to the dispute may petition the Authority for a resolution of the dispute.

9.2 The Authority shall allow all parties to the dispute to submit their proposed resolution of the dispute within thirty (30) days of the filing of a petition seeking dispute resolution. The Authority shall issue a written Decision resolving the dispute within ninety (90) days of the parties' submission of their proposed resolutions. The Authority's Decision shall be binding upon all parties.

Article 10. Enforcement

10.1 The Authority reserves the right to monitor the compliance of licensed operators with these regulations and terms and conditions of any relevant license. The Authority shall enforce the terms of the Communications Law, these regulations, and the terms of any relevant license, consistent with the provisions of the Communications Law, through the imposition of fines or other appropriate sanctions on any party that violates the terms of these regulations.

10.2 Any licensee that operates a submarine cable landing station shall submit a report to the Authority every ninety (90) days identifying all submarine cables that land at the cable landing station and all agreements for physical or virtual co-location that the licensee has executed. All persons subject to these regulations shall comply with any request for information that the Authority shall make, whether in the form of regular reporting requirements or individual requests for information concerning the operation of a Submarine Cable Landing Station or a submarine cable.

Article 11. Entry into Force

These regulations shall enter into force upon publication on the Authority's website.

QABYO-QORAL