THE INFORMATION AND COMMUNICATIONS TECHNOLOGY SECTOR (Amendment) POLICY GUIDELINES

Ministry of Information, Communications and Technology

JULY 2013
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1. **INTRODUCTION**

The achievement of an information society and a knowledge economy is one of the main priorities of the Government towards the attainment of the development goals and objectives for wealth and employment creation as espoused in our development blueprint, Vision 2030.

Information and Communication Technology (ICT) is one of the fastest growing sectors in the country. For instance, the statistics as at April 2013 indicate as follows:

<table>
<thead>
<tr>
<th>S/no</th>
<th>Services</th>
<th>Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobile Subscriptions</td>
<td>30.7 million</td>
</tr>
<tr>
<td>2</td>
<td>Fixed Network Subscriptions</td>
<td>251,576 lines</td>
</tr>
<tr>
<td>3</td>
<td>Internet Subscriptions and Internet</td>
<td>9.4 million/16.2 million</td>
</tr>
<tr>
<td>4</td>
<td>Broadband subscriptions (speeds greater or equal to 256kbps in or out)</td>
<td>1,002,701 million</td>
</tr>
<tr>
<td>5</td>
<td>Internet penetration</td>
<td>41.1%</td>
</tr>
<tr>
<td>6</td>
<td>international internet used bandwidth</td>
<td>328,641 Mbps</td>
</tr>
<tr>
<td>7</td>
<td>International Internet Available Bandwidth</td>
<td>906, 186 Mbps</td>
</tr>
<tr>
<td>8</td>
<td>Broadcasting Radio</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>Broadcasting Television</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Number of Postal Outlets</td>
<td>634</td>
</tr>
</tbody>
</table>

- Harnessing of ICTs will therefore help the Government realize a number of its key policy objectives and in particular, ICT will contribute significantly to the process of improving government operations and service delivery as outlined in the E-Government Strategy of 2004.

- Some of the key challenges facing the ICT sector include inadequate implementation of policy and regulatory intentions to support rapid development and deployment of ICT infrastructure and services; limited support for research and development; and inadequate access to ICT services.

- The review of our ICT Policy is inspired by first and primarily at this stage, by the need to bring it into tandem with the new constitutional dispensation and Vision 2030 objective of transforming Kenya into a leading information and knowledge economic hub in the region.

- The State is bound to review all laws that are inconsistent with the Constitution. Communications as including freedom of expression and of the media are fundamental human rights under the Constitution. The review of the regulatory institutional framework as currently exits, is the core driver of this policy.
Parliament is required to enact legislation that provides for the establishment of a body, which shall be independent of control by government, political interests or commercial interests; reflect the interests of all sections of the society; and set media standards and regulate and monitor compliance with those standards.

Further, the driving force behind this review is to take on board the lessons of the Vision 2030 Medium Term Framework (2007-2012) and the principles of the three underlying pillars of Vision 2030, that is, the Economic, Social and Political Pillars.

The review is necessitated by the above considerations in mind and is meant to provide the pro-active policy and regulatory framework that is not only in tandem with contemporary technological realities and dynamics but that will also guide the orderly development of the ICT sector in such a way as to ensure maximum developmental impact for the benefit of all Kenyans.

The Information and Communications Technology Sector Policy Guidelines, 2006 (hereinafter, the Sector Policy 2006) continue to provide policy stands and to provide for the converged ICT sector regulator.

On the Policy Implementation Framework, the Policy recognises that the existence of a cohesive and well-functioning institutional framework is essential for the attainment of all the objectives of this Policy.

The aim is to ensure that the various institutions within the ICT sector effectively play their respective but interdependent roles with a view to enable the people of Kenya to freely and fully exchange and discuss information, knowledge and ideas through an efficient and sustainable converged regulatory environment.

Due to the very dynamic nature of the sector, the Government will seek to review the Sector Policy 2006 within the period 2013-2015 to cope with changing public needs, markets and technological advances. In order to realize the benefits and impact of ICT, emphasis will be placed on policy implementation initiatives, programmes and projects. The overarching policy philosophy is providing access to ICTs to all Kenyans as well as a borderless East African Community region with proactive collaboration and caucusing at regional and international levels.

THE OPPORTUNITY

Kenya should become the ICT hub for East Africa and beyond, building on the progress of recent years to connect every Kenyan to the new infrastructure and promote e-commerce and protect consumers. A lot of progress in the ICT Industry has taken place since the introduction of the ICT Policy Paper in 2006. Key accomplishments include:
• building of the relevant ICT Infrastructure and legislation of comprehensive policy;
• legal and regulatory frameworks which are already bearing fruit to the industry.

The listed challenges, however, are:

i). local content development, universal access and e-Government;
ii). how to Harness ICT for Efficient and Effective Government, Economic Growth and Job Creation for our youth;
iii). how to translate ICT into programs that add value to the education system, the agricultural sector, the health sector, business and Finance, governance, leadership and ultimately achieve the overall goal of driving economic growth.

Kenya is at a take-off stage where access to ICT and a groundswell of talent and economic opportunities from ICT products and services have come together. The Government through the Ministry of Information, Communication and Technology has been at the fore-front of facilitating this. Kenya’s biggest opportunity comes from developing human resource capacity through proper education/courses to not only match but surpass the needs of business and Government and even export our local solutions.

THE CHALLENGE

In the last 10 years, developments in the telecommunications sector have become a real success story in Kenya’s economy. There are now 27 million mobile phones in the country and virtually every adult has access to one. Over a third of the population enjoy internet access. It is noteworthy that Kenya has led the world in M-Pesa, electronic cash transfer through mobile telephony platform. This technological preamble is adequate impetus for propelling Kenya into Africa’s high-tech capital and creating a ‘Silicon Savannah’ of interconnected telecommunications hubs to power our growing economy. Over the last 5 years Kenya has put in place much of its ICT infrastructure, including 5 new fibre optic cables, as well as a new regulatory regime.

SOLUTIONS

The following are solutions to mitigate the ICT challenges experienced in Kenya:

i). Increase human resource capacity in ICT through improved ICT education in schools and training for teachers;

ii). Establish a universal single registration system activated at birth which will streamline registration, National ID registration, voter registration, NHIF, NSSF, and any other tax or commercial related registration;
iii). Expand the fibre optic network to cover hospitals, schools, and police stations. Progressively roll out free WI-FI in major towns within the next 5 years;

iv). Create incubation hubs for ICT start-ups in each county;

v). Instigate a ‘buy local’ policy for Government and parastatals enabling local Kenyan ICT companies to become suppliers;

vi). Streamline Government by creating a single electronic records system across all Departments and deploying the Integrated Finance Management Information System (IFMIS), which tracks public spending to local & county Governments hence tackling corruption. Using the technology, we will allow the public to walk with the Government through every step of the tendering process and to track every tax shilling spent by the county Governments and national Government;

vii). Develop ICT Incubation hubs at county level with the plan of extending these to constituency levels to empower our youth with the necessary training and work experience to develop market ready ICT services and products.

viii). Develop our Human Resource Capacity through education to improve the ability to perform tasks effectively in a digital environment. Literacy includes the ability to read and interpret media, to reproduce data through digital manipulation, and to evaluate and apply new knowledge gained from digital environments. This will lead to a more efficient Government and Businesses;

ix). Embark on Digital Government programme by cleaning up and managing databases that will be stored in a secure and centralized location and which can be accessed and used by all ministries and branches of Government. This will make Government more efficient;

x). Investing and facilitating a digital economy by empowering our youth to develop software that is market ready and which the Government and County Governments will be primary consumers of these software/products; and

xi). Create employment for our youth through ICT related jobs in Government and the corporate world supported by education and professional development programmes as well as granting them the necessary work experience.

Policy, Legal and Regulatory Framework

The Sector Policy 2006 under implementation since 2007 recognised that ICT issues which include the media sector are considered under various legislations including: Science, Technology and Innovation Act number 28 of 2012, Kenya Broadcasting Corporation Act of 1988 and the (now) The Kenya Information and Communications Act Chapter 411A, which were inadequate in dealing with issues of convergence, electronic commerce and e-Government.
There was and a need continues for a comprehensive policy, legal and regulatory framework to:

(a) Support ICT development, investment and application;
(b) Promote competition in the industry where appropriate;
(c) Ensure affordability and access to ICT nationally;
(d) Address issues of privacy, e-security, ICT legislation, cyber crime and intellectual property rights.
(e) Support research and development in ICT; and
(f) Develop an institutional framework for policy development and review.


2. **POLICY OBJECTIVES-CONSTITUTION OF KENYA 2010.**

The Constitution of Kenya 2010 has made it a requirement under Article 34, section 7 of the Sixth Schedule and the Fifth Schedule that within three years of 27th August 2010, Parliament shall enact legislation for the establishment of a body to meet the Constitutional imperatives.

3. **STRATEGY-THE INFORMATION AND COMMUNICATIONS TECHNOLOGY SECTOR (Amendment) POLICY GUIDELINES OBJECTIVES**

The Communications Commission of Kenya Board membership as reconstituted, shall be the body mandated under the Constitution of Kenya to meet with the Constitutional imperatives.

The Communications Commission of Kenya may be renamed as appropriate and the membership and terms of the Board shall be as provided for in law.

The Kenya Information and Communications Act, 1998 as (amended) shall continue to provide for the legal and regulatory framework of the converged ICT sector.
4. THE INFORMATION AND COMMUNICATIONS TECHNOLOGY SECTOR (Amendment) POLICY GUIDELINES IMPERATIVES

The following are the policy imperatives:

(i) The State is bound to review all laws that are inconsistent with the Constitution.

(ii) Communications as including freedom of expression and of the media are fundamental human rights under the Constitution.

(iii) Parliament shall enact legislation that provides for the establishment of a body, which shall—

   (a) be independent of control by government, political interests or commercial interests;

   (b) reflect the interests of all sections of the society; and

   (c) set media standards and regulate and monitor compliance with those standards.

(iv) The body that enables the realisation of these rights within the limitations envisaged in the Constitution.

(v) The body is to comply with the provisions of the Constitutions with regard to its discharge of its duties.

5. CONSTITUTIONAL COMPLIANCE

The following provisions of the Constitution concern the Authority as a state organ, and are taken into consideration in its formation and the discharge of its duties under The Information And Communications Technology Sector (Amendment) Policy Guidelines;

1. Chapter One; SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THIS CONSTITUTION
   Article 2 – Supremacy of this Constitution
   Article 7-National, official and other languages

2. Chapter Two; THE REPUBLIC
   Article 10 – National values and principles of governance
   Article 11-Culture
3. Chapter Four; THE BILL OF RIGHTS
   Part 1 – General provisions relating to the Bill of Rights and fundamental freedoms
      Article 19 – Rights and fundamental freedoms
      Article 20 – Application of Bill of Rights
      Article 21 – Implementation of rights and fundamental freedoms
      Article 24 – Limitation of rights or fundamental freedoms
      Article 25 – Fundamental Rights and freedoms that may not be limited

   Part 2 – Rights and fundamental freedoms
      Article 33 – Freedom of expression
      Article 34 – Freedom of media
      Article 44 – Language and culture

4. Chapter Thirteen-THE PUBLIC SERVICE
   Article 232

6. THE CONVERGED SECTOR REGULATOR MEMBERSHIP AND TERMS

   The body shall have a membership of a maximum of 10 (ten). The Terms of the members shall be 3(three) years. The members shall be recruited through a competitive process and appointed, as the case may be, by the President and the Cabinet Secretary in charge of information, communications and technology.

7. THE CONVERGED SECTOR REGULATORS FUNCTIONS AND POWERS

   The body shall have the same functions and powers as the Communications Commission of Kenya.

1. The Broadcasting Standards Committee

   There will be established a Broadcasting Standards Committee, which shall be responsible for developing standards for broadcasting content and regulating and monitoring compliance of those standards.

2. The Universal Service Fund Committee

   There will be established a Universal Service Fund Committee, which shall be responsible for mechanisms for operations of the fund and for accessing the funds.
8. OTHER INSTITUTIONAL FRAMEWORKS FOR POLICY (FORMULATION AND) IMPLEMENTATION

8.1 Role of Government

The Government's role will be through the Ministry responsible for Information, Communications and Technology, including *inter alia*:

(a) Formulation of information, communications and technology policy; and

(b) Implementation, coordination (and oversight) of the entire information and communications technology sector policy guidelines.

8.2 Role of the National Communications Secretariat

The National Communications Secretariat will continue to provide policy advisory support to the Government on all matters affecting the ICT sector through the Ministry of Information, Communications and Technology as provided for in the enabling Act.

8.3 ICT Appellate Tribunal

Disputes arising between parties in the ICT sector will be heard on appeal from the sector regulator and settled by the reconstituted and re-established Communications Appeals Tribunal, which is established under Section 102 of the Kenya Information and Communications Act, 1998.

DATED at Nairobi this........................day of.................................2013

DR. FRED O. MATIAN’GI  
CABINET SECRETARY