

STATUTORY INSTRUMENTS

2005 No. 28.

THE COMMUNICATIONS (POSTAL SERVICE) REGULATIONS, 2005.

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2005 No. 28.

The Communications (Postal Service) Regulations, 2005.

(Under section 94 of the Uganda Communications Act, Cap 106)

IN EXERCISE of the powers conferred upon the Uganda Communications Commission by section 94 of the Uganda Communications Act, these Regulations are made this 7th day of January, 2005.

1. Title

These Regulations may be cited as the Communications (Postal Service) Regulations, 2005.

2. Application of Regulations

These Regulations apply to postal services.

3. Objectives of Regulations

The objectives of these Regulations are—

- (a) to facilitate the postal sector reform and establish a regulatory framework for the transformation and operation of a commercialised postal network that is efficient, effective, reliable and affordable;
- (b) to facilitate and regulate the development of a nation-wide viable postal network for the provision of universal postal services and the satisfaction of the public interest, fulfillment of the social and economic objectives of government and for consumer satisfaction;
- (c) to develop and transform the postal sector into a competitive market that meets consumer demands of changing market characteristics and technological development;
- (d) to facilitate the improvement of the quality of postal services and the provision of social obligations through the application of commercial principles that create a financially self-supporting postal network;
- (e) to facilitate greater product choice, more competitive pricing, higher standards of services and greater innovation in the range of postal services and products made available to the public through competition;
- (f) to integrate technological reform into the postal sector in order to provide or continue providing low-cost universal mail services;
- (g) to adopt a consumer-oriented approach that focuses on delivery of quality services at a reasonable cost;
- (h) to safeguard the interests of consumers through regulating tariffs while ensuring improved and efficient services;
- (i) to ensure the provision of good and sufficient domestic and international postal services;

- (j) to promote the development of postal services and to achieve a postal network which delivers services in accordance with recognised international standard practice and public demand; and
- (k) to facilitate the introduction of new modern services and products, and the expansion of existing services into modern and innovative quality services delivered at reasonable and affordable costs.

4. Interpretation

(1) In these Regulations, unless the context otherwise requires—

“Act” means the Uganda Communications Act Cap 106;

“Commission” means the Uganda Communications Commission established under the Act;

“courier service” means any specialised service for the collection, dispatch, conveyance, handling and delivery of a postal article;

“eligible person” means a person with sound financial standing, who is not subject to any criminal proceedings and who is capable of carrying out the functions of an operator;

“foreign postal administration” means a postal administration outside Uganda;

“interconnection regulations” means the Communication (Interconnection) Regulations, 2005, made under the Act;

“international” when used in relation to an article, means that article which is intended to be transmitted, or which is in the course of transmission by an international service;

“international service” means a postal service performed by an operator in respect of a postal article posted within Uganda to an addressee outside Uganda for delivery or a postal article posted outside Uganda to an addressee in Uganda for delivery or retransmission to a place within Uganda;

“mail-bag” includes any form of container or covering in which postal articles in the course of transmission by post are enclosed by a postal operator in Uganda or a foreign postal administration for the purpose of conveyance by post, whether or not it contains any such postal articles;

“parcel” means an article which is offered for transmission by post as a parcel, or a postal article which is in the course of transmission by parcel post;

“post” when used in reference to transmission of postal articles, means any system for the collection, dispatch, conveyance, handling and delivery of postal articles;

“postal article” includes any letter, postcard, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel, package, or other

article tendered for dispatch or specified as such by the International Postal Union or in the licence to an operator;

“postal services” means—

(a) the service of conveying postal articles from one place to another by post, the incidental services of receiving, collecting, sorting and delivering such articles and any other service which relates to any of those services or is provided in conjunction with any of them;
or

(b) the services performed and facilities provided in connection with—

(i) the collection, transmission and delivery by land, water or air of postal articles;

(ii) the issue of postage stamps and the use of franking machines;
or

(iii) the issue and payment of money from one place to another place or to another address commonly referred to as money ordering;

“practice and procedure regulations” means The Communication (Practice and Procedure) Regulations, 2005 made under the Act;

“sender” in relation to any letter or other postal article, means a person from whom a posted article originates;

“user” means a sender, addressee, and a potential user and consumer of a service or product.

(2) For the purposes of these Regulations—

(a) a postal article shall be taken to be in the course of transmission by post from the time it is posted at any post office or post office letter box to the time it is delivered to the addressee;

(b) the delivery of a postal article of any description to a letter carrier or other person authorised to receive an article of that description for the post; or to a person engaged in the business of a postal operator, to be dealt with in the course of that business, shall be a delivery to a post office; and

(c) the delivery of a postal article—

(i) at the premises to which it is addressed or redirected;

(ii) to a box or receptacle to which an occupier of premises agrees that postal articles addressed to persons at those premises may be delivered; or

(iii) to the addressee’s agent or to any other person considered to be authorised to receive the article,

shall be a delivery to the addressee.

5. International postal rules and regulations

Any operator issued with a postal service licence shall conform in the conduct of its operations, to the international postal rules, regulations and practice applicable to such postal service.

6. Licensing of postal services

(1) A postal service licence shall be a major or minor licence.

(2) A licence for the provision of the following exclusive postal services shall be a major licence and shall be issued exclusively to Uganda Post Limited—

(a) reserved postal services as shall be specified by the licence;

(b) mandatory postal services as shall be specified by the licence;

(c) production and issuance of postage stamps, pre-stamped envelopes, aerogramme and international reply coupons bearing the official National Coat of Arms or the words, “Republic of Uganda”, “Uganda” or “Uganda Post “; and

(d) franking machines.

(3) The Uganda Post Limited shall provide the services under subregulation (2) at uniform prices and conditions.

(4) The Commission shall, in accordance with the Act, issue licences for the provision of other postal services in addition to the exclusive postal services, to any person who upon application to the Commission, satisfies the terms and conditions for the issue of that licence.

(5) An operator with a postal service licence shall provide or operate postal services in accordance with the Act, these Regulations and the terms and conditions of the licence.

7. Application for postal service licence

(1) An application for a postal service licence or an application for modification or renewal of a postal service licence shall be made in writing to the Commission using the prescribed form.

(2) An application for a postal service licence or an application for modification or renewal of a postal service licence shall specify—

(a) the character, financial, technical and other qualification of an applicant, showing its eligibility and capacity to operate or provide the services for which the licence is sought;

(b) specifications of the postal service to be provided or operated;

(c) the geographical places where the service is to be provided and the spreading of the service;

(d) the business plan and commercial viability of the postal service;

(e) information indicating the public interest that shall be served by the postal service for which the licence is sought; and

(f) in case of a company or corporation, particulars of ownership and share holding composition in the company or corporation.

(3) An application made under this regulation shall be accompanied by the prescribed fee.

(4) The Commission may at any time after the filing of any application for a licence or an application for modification or renewal of a licence, or during the term of a licence, require from the applicant or licensee, further written statements of fact to enable the Commission determine whether the application, modification or renewal should be granted, denied or revoked.

8. Licensing procedures

(1) In considering an application for a licence or an application for modification or renewal of a licence, the Commission shall consider providing a fair, efficient and equitable distribution of postal services throughout Uganda and may require any licensee to provide services in the rural or sparsely populated areas.

(2) The Commission shall in considering an application for a licence or an application for modification or renewal of a licence, take into account—

- (a) the eligibility of the applicant;
- (b) the capability of the applicant;
- (c) the policy objectives under the Act; and
- (d) the public interest to be served.

(3) Before granting a licence the Commission shall—

- (a) publish a notice in a manner the Commission may consider appropriate, to bring to the attention of persons likely to be affected by the grant, that an application for a licence has been made; and
- (b) consider any representations made in accordance with the notice.

(4) The notice under subregulation (3) shall state—

- (a) that the Commission proposes to grant the licence and the reasons for so proposing; and
- (b) the period, of not less than fourteen days from the date of publication of the notice, within which representations regarding the proposed licence may be made.

(5) An interested party may file with the Commission, an objection against any application for a postal service licence at any time before the Commission makes a grant of the licence in question.

(6) A grant of a postal service licence by the Commission shall be made on a first-come first-serve basis and after satisfaction that the applicant qualifies under subregulation (2).

(7) The practice and procedure regulations shall, with the necessary modifications, apply to the licensing procedures under these Regulations.

9. Terms and conditions of licence

(1) A postal service licence shall authorise a person specified as the licensee—

(a) to provide the specified postal services required in the licence; and

(b) to provide the services in paragraph (a) to such places as shall be prescribed.

(2) A postal service licence shall require the licensee to comply with such technical standards as service performance and criteria for setting tariffs.

(3) A postal service licence shall include a condition for the imposition by the Commission of a financial penalty, a fine or sanction, where the licensee does not comply with specified technical or quality standards or the general delivery of services.

(4) A postal service licence shall remain in force for the period specified in the licence, subject to renewal by the Commission.

(5) A postal service licence may be modified, suspended or revoked by the Commission.

(6) A licensee for the provision of exclusive services shall not engage in anti-competitive acts or acts in breach of fair competition and for that purpose the Commission may, as a condition in the licence, require the licensee to—

(a) provide exclusive services to areas that may not be adequately served;

(b) comply with roll-out obligations for the delivery of universal postal services;

(c) interconnect its postal network with and to other postal service operators;

(d) enter into contracts of agency or franchise with other postal service operators;

(e) state the criteria for determining and reviewing tariffs; and

(f) provide equal opportunity for access to the same type and quality of services to all customers without discrimination or undue preference or denial of such services.

10. Licence modification and renewal

(1) A postal service licence may be modified or renewed in accordance with the Act and the practice and procedure regulations.

(2) The Commission shall before seeking to modify a postal service licence, take into consideration the following—

(a) the necessity to achieve the objectives of the Act and these Regulations;

(b) the public interest;

(c) the justified interests of operators; and

(d) the principles of fair competition and equality of treatment.

(3) Before making a modification of a postal service licence, the Commission shall—

(a) give notice of the modification; and

(b) consider any representations made in accordance with the notice.

- (4) The notice under this regulation shall state—
- (a) that the Commission proposes to make the indicated modification;
 - (b) the effect of the proposed modification, if any;
 - (c) the reasons for the proposed modification; and
 - (d) the period, of not less than twenty eight days from the date of publication of the notice, within which representations in relation to the proposed modifications, may be made.
- (5) A notice under this regulation shall be given by—
- (a) serving a copy of the notice on the licence holder; or
 - (b) publishing the notice in such manner as the Commission may consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by it.
- (6) The Commission may, before giving any notice of modification, investigate whether—
- (a) any matter which relates to the provision of postal services, whose provision is authorised or required by a licence, operates against the public interest or may be expected to do so; and
 - (b) the effects which the matter under paragraph (a) has or may be expected to have, may be remedied or prevented by modifying the conditions of the licence.
- (7) As soon as practicable after commencing an investigation under this regulation, the Commission shall give notice of the investigation by—
- (a) serving a copy of the notice initiating the investigation on the licence holder; and
 - (b) publishing the particulars of the investigation in such manner as may be appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (8) In making a report in connection with an investigation under this regulation, the Commission shall—
- (a) include conclusions on the matter investigated and an account of the reasons for the conclusions which the Commission considers necessary to facilitate a proper understanding of the questions and conclusions;
 - (b) where it concludes that any of the matters investigated operates against the public interest or is likely to do so, specify the effects adverse to the public interest which the matter has or is likely to have; and
 - (c) where it concludes that any adverse effects so specified may be remedied or prevented by a modification of the conditions of the licence, specify the modification by which the effects may be remedied or prevented.
- (9) Where a report of the Commission upon an investigation—
- (a) includes any conclusion that any of the matters specified in the reference operates against the public interest or is likely to do so;
 - (b) specifies effects adverse to the public interest which the matter has or is likely to have;

(c) includes any conclusion that the effects may be remedied or prevented by a modification of the conditions of the licence; or

(d) specifies a modification by which the effects may be remedied or prevented, the Commission shall make such modifications of the conditions of the licence as it considers necessary to remedy or prevent the adverse effects specified in the report.

(10) Before making any modification under this regulation, the Commission shall—

(a) have regard to the modification specified in the report;

(b) give notice of its proposed modification; and

(c) consider any representations made.

(11) Where after considering any representation, the Commission decides to make any modification for the purpose of remedying or preventing the adverse effects specified in the report, the Commission shall give notice of the modification to the licensee.

(12) A notice under subregulation (11) shall state—

(a) that the Commission proposes to make the modification;

(b) the effect of the modification, if any;

(c) the reasons for the modifications; and

(d) the period, of not less than twenty eight days from the date of publication of the notice, within which representations in relation to the proposed modification, may be made.

(13) A notice under subregulation (11) shall be given by—

(a) serving a copy of the notice on the licence holder; and

(b) publishing the notice in such manner as the Commission may consider appropriate, for the purpose of bringing the matters to which the notice relates to the attention of any person likely to be affected by the modification.

(14) The Commission shall include in the notice under this regulation—

(a) a copy of any representations made in accordance with the notice; and

(b) any information the Commission may consider necessary.

(15) As soon as practicable after making a modification, the Commission shall send a copy of the modification to the licence holder.

11. Suspension and revocation of licence

(1) The Commission may in accordance with the Act, and in the manner set out in the practice and procedure regulations and the terms of a licence, suspend or revoke the licence.

(2) The Commission shall, before revoking a postal licence, take into account the following—

- (a) serious and repeated breach of the licence conditions;
- (b) any fraud or intentional misrepresentation by the operator in the application for the licence;
- (c) whether the operator is engaged in or is supporting activities amounting to a treasonable offence under the Penal Code Act; or
- (d) whether the operator has ceased to be an eligible person.

12. Transfer of licence

(1) An application for the transfer of a licence by the operator shall be in the manner provided in the Act and in the practice and procedure regulations made under the Act.

(2) The Commission shall, in considering an application for a transfer of a licence, have regard to the terms and conditions considered in granting a new licence, and may, in its absolute discretion, refuse to grant the transfer of a licence.

13. Interconnection

(1) A major postal service licensee shall allow interconnection of all or part of its postal network with other postal licensees, in compliance with the Act and the competition regulations made under the Act.

(2) A postal service licensee shall, in allowing interconnection onto and through its network, grant access on a non-discriminatory and equal basis.

(3) A postal service licensee granting interconnection shall enter into an interconnection agreement with the postal service operator allowed to interconnect and the interconnection agreement shall be filed with the Commission.

(4) Negotiations for interconnection, the inter-connection agreements and all other related matters shall be regulated by the interconnection regulations.

14. Regulation of rates

(1) All rates charged by a licensee in the market, for reserved services, shall be subject to approval by the Commission.

(2) The Commission shall approve rates that are based on the costs of efficient service provision and which do not—

- (a) contain any surcharges prevailing solely as a result of a licensee's dominant position in the market;
- (b) contain any discounts which prejudice in an anti-competitive manner, the competitive opportunities of other companies in a postal services market; and
- (c) create any advantages for individual users in relation to other users of postal services of the same type.

(3) In determining rates, due regard shall be given in particular to the costs of observing the basic working conditions common in the licensed sector as well as the costs of postal service provision throughout Uganda.

(4) The Commission shall approve rates on the basis of the cost of efficient service provision apportioned to the particular service, covering all reasonable costs and a reasonable rate of return.

(5) The methodology and procedure of tariff calculation and the tariff structure together with the terms of supply as approved by the Commission, shall be included in the licence.

15. Liability of postal service operator

(1) A licensee shall be liable for the loss of or damage to a postal article in respect of which the operator accepts liability or which is due to any wrongful act, neglect or default of the licensee while performing or purporting to perform in that capacity the functions relating to the receipt, conveyance, delivery or any other dealing with the postal article.

(2) A licensee who contravenes the Act or any regulations made under it or any obligation arising from a licence shall, to the extent that the law or obligation protects another party, be obliged to compensate that party for any damage arising from the contravention.

(3) A sender or an appointed agent, including an addressee shall be entitled to compensation by a licensee, for any loss or damage suffered in respect of any article.

(4) The amount recoverable in relation to a postal article of any description shall not exceed—

- (a) the market value of the article at the time of dispatch; or
- (b) the maximum amount payable under a scheme made for compensating any person aggrieved in respect of an article of that description.

(5) The mark of a licensee or of a foreign postal administration of any sum on any postal article shall, unless the contrary is shown, be the amount of the liability for the article to the service operator.

(6) For the purposes of claiming damage or loss it shall be presumed unless the contrary is shown, that the loss of or damage to the article was due to conduct in subregulation (1).

(7) A postal operator shall not intentionally delay the dispatch of or open a postal article in the course of its transmission by post.

(8) Subregulation (7) does not apply to the delay or the opening of a postal article—

- (a) in accordance with the Act or any other enactment or order under a warrant issued by Court; or
- (b) where the delay or opening of a postal packet is in accordance with terms and conditions applicable to its transmission by post.

(9) A postal service operator shall, at all times ensure during the provision of postal services that—

- (a) a postal article is not opened during transmission;
- (b) a postal article is delivered to the proper addressee; and

(c) the contents of the postal article are only disclosed to the addressee.

(10) An operator who fails to comply with sub-regulation (9) shall make good any damage or loss that may arise.

16. Postal secrecy

(1) Postal traffic, in particular the contents of postal items, shall be subject to postal secrecy.

(2) A licensee who provides postal services on a commercial basis or assists in the provision of these services is obliged to maintain postal secrecy.

(3) A licensee shall not procure for himself or herself or for any other party any information regarding the contents of postal items or the detailed circumstances of postal traffic beyond that which is required for the provision of the postal services except where it is necessary—

(a) to verify that reduced rate postal items meet the relevant pricing conditions;

(b) to secure the contents of damaged postal items;

(c) to establish the addressee or sender of an undeliverable postal item where this cannot be done by any other means; or

(d) to avert physical danger to persons or property from a postal item or mail.

(4) A licensee for postal services on a commercial basis or who assists in the provision of postal services on a commercial basis may collect, process and use the data of natural and legal persons where this is necessary to operate the commercial postal services—

(a) to establish and frame the contents of and modify a contractual relationship;

(b) to establish traffic data for contractual purposes;

(c) to duly deliver postal items; and

(d) to duly establish, perform accounting, evaluate and verify rates chargeable for commercial postal services.

(5) Commercial provision of postal services and their pricing, shall not be contingent upon the indication of personal data which is not required for the provision or pricing of those services.

17. Register

(1) The Commission shall compile and maintain a register of the postal service licences issued.

(2) The register shall be kept at such premises and in such form as the Commission may determine.

(3) The Commission shall cause the following matters to be entered in the register—

(a) the provisions of every licence;

(b) every modification, revocation or surrender of a licence;

- (c) the provisions of every direction or determination made or consent or approval given under a licence;
- (d) the terms of every order made and every revocation of such an order; and
- (e) every penalty imposed on the licensee under the Act or the licence.

(4) The Commission shall as far as practicable secure the exclusion from the register of any matter relating to the affairs of a person where the Commission considers that the inclusion may seriously affect the person's interests, except where—

- (a) the person concerned consents to the inclusion of the matter in the register; or
- (b) the Commission considers that entering the matter in the register is in the public interest.

(5) The Commission shall ensure that the contents of the register are available for inspection by the public—

- (a) during such hours as may be specified in an order made by the Commission; and
- (b) subject to the payment of such fees as the Commission may determine.

(6) If requested by any person to do so and subject to the payment of such fees as the Commission may determine, the Commission shall supply that person with a certified copy of the register or of an extract from it.

18. Complaints against postal service operators

(1) A licensee shall file with the Commission its complaint handling procedure, providing a mechanism by which consumers may make complaints concerning the services given by the licensee.

(2) The complaint handling procedure shall make provision for—

- (a) notification to customers of the right to complain;
- (b) availability of a complaint format or written method of raising complaints; and
- (c) maintenance of a log of consumer complaints.

(3) Where a matter which relates to the provision of postal services is referred to the Commission by or on behalf of a user of such services and the matter—

- (a) was previously the subject of a complaint to the person providing the service concerned;
- (b) was not satisfactorily resolved; and
- (c) does not appear to the Commission to be of a frivolous or vexatious nature,

the Commission shall investigate the matter as it considers appropriate.

19. Postal articles subject to taxes

(1) Customs or excise duties shall apply to goods contained in postal articles which are brought into or sent out of Uganda by post, as they apply to other goods, imported, exported or brought into or taken out of Uganda.

(2) A licensee engaged in the business of a postal operator may perform for purposes of customs and excise duty, any of the duties of an importer, exporter or person removing the goods.

(3) Duties chargeable on imported goods or other charges payable in respect of postal articles may be recovered by a postal operator concerned, as a civil debt due and owing.

(4) In any proceedings for the recovery of any charges payable under subregulation (3), a certificate of the postal operator concerned, of the amount of the charges shall be evidence of that fact.

20. Detention of postal packets

(1) A postal operator may—

(a) detain any postal article where the operator suspects that the article may contain relevant goods; and

(b) forward any detained article to the Commission.

(2) In this regulation “relevant goods” means any goods—

(a) chargeable with any duty charged on imported goods which is not paid for or secured; or

(b) in the course of importation, exportation or removal into or out of Uganda contrary to any prohibition or restriction under any law.

(3) Where a postal operator knows or reasonably suspects that a postal article is being sent by post in contravention of the Act or any other enactment, the operator may—

(a) refuse the transmission of the article;

(b) detain the article and open it;

(c) subject to any requirements as to additional postage or charges, return the article to its sender or forward it to its destination; or

(d) destroy or otherwise dispose of the article.

21. Postal service schemes

(1) A licensee shall make a scheme in relation to the services provided by him or her for determining any or all of the following—

(a) the charges to be imposed in respect of the services provided;

(b) other terms and conditions to be applied to the services provided; and

(c) procedures for dealing with the complaints of persons who use the services provided.

(2) A scheme under this regulation shall in particular—

- (a) adopt such system for the determination of the charges and other terms and conditions as the postal service operator concerned considers appropriate; and
 - (b) specify the manner in which, time and place at which and the person by whom the charges are to be paid.
- (3) A scheme shall not have any provision—
- (a) limiting the liability of a licensee for loss or damage; or
 - (b) amending the rules of law relating to evidence.

22. Imposition of fines

(1) The Commission shall impose on a licence holder, a fine of an amount it may consider reasonable, where it is satisfied that the licence holder contravened or is contravening any provision of the Act or these Regulations or any condition of the licence.

- (2) Before imposing any fine, the Commission shall—
- (a) give the licence holder notice of the proposed fine; and
 - (b) consider any representation made by the licence holder upon receipt of the notice.
- (3) The notice under this regulation shall state—
- (a) that the Commission proposes to impose a fine;
 - (b) the amount of the proposed fine;
 - (c) the condition which the Commission is satisfied has been contravened or is being contravened;
 - (d) the acts or omissions which the Commission considers to constitute the contravention;
 - (e) any other facts which the Commission considers to justify the imposition of a fine and the amount of the proposed fine;
 - (f) the manner in which, and place at which, the Commission proposes the fine to be paid; and
 - (g) the period, of not less than twenty-one days from the date of publication of the notice, within which representations in relation to the proposed fine, may be made.

(4) As soon as practicable after imposing a fine, the Commission shall give the licence holder notice of the fine.

(5) Where the whole or any portion of a fine is not paid by the date on which it is required to be paid, the unpaid balance shall carry interest at the rate specified in the licence.

(6) Where a portion of a fine is not paid by the specified date, the Commission may, where it considers it appropriate to do so, require a specific amount of the fine which is not paid, to be paid immediately.

(7) Where a fine imposed or any portion of a fine is not paid by the specified date, the Commission may recover from the licence holder any portion of the fine and any interest which is not paid, as a civil debt due to the Commission.

Cross reference

Penal Code Act, Cap 120.

ABEL KATAHOIRE,
Chairperson, Uganda Communications Commission.