



د مخابراتو او معلوماتي تکنالوجي وزارت

وزارت مخابرات و تکنالوژي معلوماتي

Ministry of Communications and IT - MCIT

د افغانستان اسلامي جمهوريت

جمهوری اسلامی افغانستان

Islamic Republic of Afghanistan



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د افغانستان اسلامي جمهوريت دمخابراتو او معلوماتي تکنالوجي وزارت

جمهوری اسلامی افغانستان وزارت مخابرات و تکنالوجی معلوماتی

Islamic Republic of Afghanistan Ministry of Communications and IT

Open Access Policy

October 1st, 2016

Open Access and Competitive Provisioning for Afghanistan's Fibre Optic and Broadband Sectors

PREAMBLE

Modern telecommunications have connected Afghans to a degree never before seen in the country's history, creating unity and economic prosperity. Since their respective formations, the Ministry of Communication and Information Technology (MCIT) and Afghanistan Telecom Regulatory Authority (ATRA) have faithfully administered the telecommunications sector through well-crafted free market policies, laws, regulations and procedures to the great benefit of the Afghan population. Support from the Government of Afghanistan for robust private sector competition in the telecommunications industry serves as a key driver for nearly universal access to mobile communications. A new threshold, however, has been reached.





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To ensure future growth in the information and communications technology (ICT) sector a new policy is needed to facilitate sustainable development through a private-sector-led fiber optic and broadband market. In accordance with Articles 10, 11, and 37 of the Constitution of Afghanistan and with the direction of the High Economic Council, MCIT formulated this policy of Open Access and Competitive Provisioning for Afghanistan's Fiber Optic and Broadband Sectors, to attract private investment and, in turn, promote a robust communications marketplace, free of monopolies, which provides affordability, ubiquity, and growth in other economic sectors. Through this policy, MCIT and ATRA seek to formulate further policies, statutes, regulations and procedures promoting these goals and build upon the impressive achievements in this sector of the last decade.

This policy of Open Access and Competitive Provisioning is the guiding principal for the legal framework governing ICT Providers' access to basic passive and basic active infrastructure and governs all government policies and actions relating to authorizing existing and future ICT Providers to build, locate, own, and operate physical infrastructure, including international gateways and internet exchange points (IXPs). This policy ensures transparent, non-discriminatory access to network infrastructure to allow effective competition at the wholesale and retail level, ensuring the provision of competitive and affordable service to end users. This policy is to be animated by government actions that treat all parties under consistent and equal terms, that are executed according to established time frames and that afford due process.

The policy of Open Access and Competitive Provisioning is the legal framework for operators/service providers to access fiber optic and broadband infrastructure for a fair price, as well as providing the right for private businesses to build, own, and operate active and passive infrastructure. This policy further authorizes the Afghan government, in particular MCIT, or its successor as the ministry responsible for telecommunications, and ATRA, or its successor as the telecommunications regulator, to establish and implement necessary regulations for attainment of goals of this policy.

THE NEED FOR OPEN ACCESS AND COMPETITIVE PROVISIONING

Despite robust growth for more than a decade, the information and communication technology sector has plateaued, in terms of revenues, connectivity, and technological advancement. Current infrastructure is not able to handle the increased data traffic requirements of wireless 3G, 4G, and fixed broadband technology users, which has grown to nearly 10% penetration and make up approximately 15% of industry revenue. As a result, the international trend of transition from voice to data has been slow in Afghanistan and broadband access is still not widespread. To meet the growing needs of the population, facilitate the Government of Afghanistan's commitment to connect 15 million Afghans to the



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internet by 2020, and to facilitate Afghanistan's long-term goal of serving as a major data transit route from South to Central Asia and beyond, significant private investment is needed to develop a world class fiber optic backbone.

In addition to investment, the sector needs capable and accountable services providers. International experience has shown that, when properly regulated, private sector owned and operated networks provide better secure service, to larger segments of the population, at a better price than state enterprises. Further, with appropriate oversight, private operators provide industry leading cybersecurity and protection of national network security.

The Open Access and Competitive Provisioning policy provides clear guidance and government approval for private sector investment and participation in the fiber optic and broadband internet sectors.

OBJECTIVES OF THE OPEN ACCESS AND COMPETITIVE PROVISIONING POLICY

It is an obligation of the ministry responsible for telecommunications and the telecommunications regulator to create and maintain a level playing field for all investors, providers of ICT services, and other operators and a market free of cartels and monopolies.

The objectives of this policy are:

- Facilitate investment and growth in the ICT sector;
- Encourage provision of broadband services to underserved areas;
- Provide for free and fair competition in the fiber optic and broadband markets;
- Provide Open Access to basic active and basic passive infrastructures in a transparent manner and without discrimination;
- Enable private companies, public entities, or partnerships between the two to build, own, and operate fiber optic and broadband infrastructure;
- Enable new entrants into the market;
- Open international gateways and internet exchange points (IXPs) to private competition, price negotiation, and operation by private and public sector actors;
- Create an ICT sector free of monopolies and cartels; and
- Provide affordable and reliable broadband access to the entire Afghan population.



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PRINCIPLES OF OPEN ACCESS AND COMPETITIVE PROVISIONING

This policy establishes the guiding principles for the legal framework relating to authorizing existing and future ICT Providers to build, locate and operate physical infrastructure. For purposes of this policy, ICT Providers are defined as private, public, or partnered entities that are primarily engaged in producing information and communications goods or services, or supplying technologies used to process, transmit or receive information and communications services and that require access to passive and active infrastructure. For further purposes of this policy, retail markets are defined as markets where sales are being made to end users, and wholesale markets are defined as markets where customers are businesses who source inputs that will be used to sell to other businesses or, ultimately, to end users.

This policy shall govern all government actions related to passive and active communications infrastructure. This policy is animated by government actions that (i) treat all parties under consistent and equal terms, (ii) are executed according to established time frames, and (iii) afford due process to all ICT Providers, users, and stakeholders.

In view of established best practices internationally, the following constitute the fundamental principles of this policy document:

- Treat all ICT Providers and would be ICT Providers of retail communications (telephone and Internet) services on an equal and fair basis through access to basic passive and active infrastructure;
- Encourage sharing of basic infrastructure, but not obligate telecommunication companies to share their own basic infrastructures unless their existing capacities exceed their requirements as reported by Providers;
- Expedite decisions pertaining to licensing, authorizing, reviews and redress by establishing open, clearly defined processes and decision making mechanisms and affording due process at every stage, including redress;
- Afford non-discriminatory access to basic infrastructure to all ICT Providers regardless of ownership status;
- Ensure all carriers must be offered the same effective rate and same effective date (nondiscrimination);
- Encourage market-based, commercial arrangements between Afghan and foreign carriers for the exchange of traffic;
- Create regulations and processes only through procedures that provide preliminary and adequate notice of adoption timeframe, actual draft language and an opportunity for public comment prior to adoption in an open hearing forum;
- Implement cost-oriented pricing for access to passive infrastructure and facilitate market-based pricing for access to active infrastructure;



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- Permit current and future licensed ICT Providers, including the Mobile Network Operators (MNOs) – whether individually or as part of a consortium – to build their own fiber optic infrastructure which, for the avoidance of doubt, shall be subject to the same Open Access and Competitive Provisioning terms set forth herein;
- Facilitate the construction or installation of ICT infrastructure, such as fiber optic networks, by ICT Providers; such ICT Providers shall be eligible to enter into contracts and obtain any and all authorizations from any other private sector entities such as, but not limited to, landowners, builders, engineers and consultants and to obtain such government permits relating to land use or environmental impact without obtaining additional authorization from the ministry responsible for telecommunications, the telecommunications regulator, or any other government authorities; provided however, such ICT Providers shall be obligated to report to the telecom regulator their initial plans (and thereafter upon material alternation) regarding location, capacity and basic operation information;
- Consideration will be given to appropriate separation of wholesale and retail offerings and offering of dark fiber capacity whether through accounting, operational or management arrangements in order to facilitate policing of potential cross-subsidization and other anti-competitive practices.
- The Afghan government, including the ministry responsible for telecommunications and the telecommunications regulator, shall assist ICT Providers seeking to construct communications infrastructure with obtaining Rights of Way to facilitate deployment of such infrastructure (including fiber optic) build-out in the same manner that it facilitates such Rights of Way for Afghan Telecom. The telecommunications regulator will issue details of Service License Agreements and cost information to departments engaged in Right of Way approval with due consideration of information obtained during the course of public consultations;
- To improve network redundancies by facilitating aforementioned Open Access rights to dark fiber provided in the communications networks that support electricity transmission and distribution infrastructure, including but not limited to, that owned by Da Afghanistan Breshna Shurkot;
- The Telecom Development Fund (TDF), or a similar universal services fund, shall be utilized in order to encourage infrastructure development across the country, including, but not limited to, rural and underserved areas.
- Given the increasing need for radio frequency spectrum for advanced services to support broadband access, the telecommunications regulator will ensure proper spectrum availability for operators to meet capacity requirements, with due consideration of information obtained during the course of public negotiations.



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IMPLEMENTATION RULES AND METHOD

This Policy on Open Access and Competitive Provisioning took effect on August 28th 2016 when it was approved by the High Economic Council and the President of Afghanistan. This approved Policy encourages the owners of communications infrastructures to share their resources in order to ensure large and small communications operators/service providers have an equal access to these infrastructures, operate in a free and fair competitive market, and provide better and affordable services to the users with minimum capital.

This Policy enables private companies, public companies, and public private partnerships to be certified or licensed by the telecommunications regulator to build, own, and operate fiber optic and broadband internet infrastructure, as well as international gateways and IXPs. As well, this Policy encourages due consideration for liberalization of "next generation technologies" as they become available to the market. Finally, this policy necessitates that the fiber optic and broadband sectors be free of any monopolies, either private or public. To ensure that the aforementioned objectives and principles of this policy are followed, the following rules and methods further govern Open Access and Competitive Provisioning:

1. Non-discrimination:

Owners of communications infrastructures, whether government or privately owned and whether occupying a dominant market position or otherwise, shall not prefer one operator to another in distributing or providing access to these resources in the market.

Specifically, provision of access to infrastructure and services shall not be denied on the basis of factors such as ownership of the applicant of the infrastructure or services, volume or quantity of the services in question, technology used by the services applicant and/or actual or potential market power of the applicant. Variation that would result in increased cost for the service provider shall be addressed consistent with pricing policy determined by the telecommunications regulator. Such variations shall not be the cause for the rejection of a fair request for access services.

MNOs, as fiber-optic operators, shall be required to provide access to any requesting communications operator and shall be subject to relevant interconnection obligations (e.g. on a fair, cost-oriented and non-discriminatory basis, making access charges and terms and conditions publicly available). Finally, no capable and properly vetted service provider will be prevented from investing in, owning, or operating fiber optic infrastructure in Afghanistan, provided that each company can demonstrate their ability to provide the services proposed and has obtained appropriate authorization or license as may be required by the telecommunications regulator.



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2. Transparency

This refers to the principle that the owners of communications infrastructure (government-owned or private) shall operate by providing full, consistent and open disclosure to the services applicants and strive to employ usable and easily understood information. If not publicly available, sufficient information about the terms of any open access arrangement must be made available to any interested parties, so that any access seeker may be aware of access terms and conditions. Transparency may be implemented by means of a reference offer or by another mechanism that provides enough information to requesting parties as determined by the telecommunications regulator.

3. Pricing

Prices for the provision of the communications infrastructures shall be fixed by the owners of such infrastructures as may be prescribed or directed by the telecommunications regulator, consistent with internationally accepted principles, with due consideration of information obtained during the course of public consultations. Pricing for access to passive infrastructure should be cost-oriented and pricing for access to active infrastructure should be market-based.

In view of the ICT market in Afghanistan, application of the principle of market-based pricing shall be consistent with international best practices to the largest extent possible given the operating environment in Afghanistan.

Pursuant to the Policy on Open Access and Competitive Provisioning, the price charged for services offered by the government organizations, owners of communications infrastructures, and/or the operator or operators determined to have significant or dominant power in the market shall be determined on the basis of costs the services provider incurred in rendering such access services, not in proportion to the prevailing market prices. To this end, the telecommunications regulator shall specify how to price services, but not prescribe prices, and shall prevent uneconomic, anti-competitive pricing of the services by communications providers in the market as determined appropriate through introducing relevant procedures and regulations.





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4. Exchange Traffic and International Gateways

The exchange of traffic between different networks is fundamental for ensuring communication between users of different networks. Where such traffic is classified as being provided over Internet protocol (IP), Internet exchange points (IXPs) (where ISPs exchange Internet traffic among their networks) can play a critical role in providing more efficient and cost-effective exchange of traffic within a national market as opposed to transiting such traffic through third-party facilities located in foreign jurisdictions where such traffic is to be delivered back to the national market. This policy allows private companies, government entities, and non-profit entities to operate IXPs in order to minimize local IP traffic being exchanged outside Afghanistan and returned, thereby reducing costs to consumers and improving network performance.

ICT Providers shall be eligible to enter into contracts with international private or government entities to interconnect facilities, exchange traffic, or any other commercial agreement relating to terrestrial fiber, microwave, or satellite facilities. Such exchange and transit agreements will allow for Afghanistan to leverage its geographic location to serve as a transit point to connect backhaul and backbone networks to undersea and wholesale networks located in other national jurisdictions. Such exchanges and transit facilities shall be permitted and appropriately certified or licensed, with access subject to reasonable tariff structures to be determined by the telecommunications regulator, with due consideration given to information obtained during the course of public consultations

5. Reasonableness and Right of Refusal

As the provision of infrastructures under private sector or government control cannot be unlimited, this policy shall not require ICT Providers to develop communications infrastructures but will permit such operators to obtain use of communications infrastructure through access services. However, access must be fair and reasonable in that fair and reasonable requests for access should be granted without discrimination and in due course. Available infrastructure shall be shared with the market subscribers/applicants on a first-come-first-serve basis. Rejection of an application for access shall only be possible under the following circumstances:



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1. The applicant requests services with technical specifications beyond the technical capability of the service provider and negotiations to resolve this problem do not produce the desired results; or
2. If the requested communication infrastructures have already been distributed and the service provider does not have additional capacity

Access that would result in increased cost for the underlying infrastructure provider shall be addressed in the pricing terms and conditions approved by the telecommunications regulator.

If ICT infrastructure operators reject an application for access under terms and conditions established by regulation, the applicant may appeal to the telecommunications regulator for review and shall be entitled to an open hearing by the telecommunications regulator; resolution of the dispute shall be communicated via a written and publicly available decision. Further, redress of disputes over Open Access, including status of available capacity, shall be resolved through public hearings and written, publicly available decisions.

Note: This policy was approved by the High Economic Council and President of Afghanistan; any changes to this policy, new related policies, or parts of policies shall be developed in consultation with private and public stakeholders by the Ministry of Communications and Information Technology, and shall be presented to the High Economic Council or Cabinet for approval. The telecommunications regulator shall register the communications infrastructures, monitor them and track reports related to the provision of such infrastructures in the market. If required, the telecommunications regulator shall consult with the operators in the market regarding building additional capacities and extend cooperation to the extent possible, to develop the required communications infrastructures.

(Abdul Razaq Vahidi)
Minister of Communications and IT,
Ministry of Communications and IT (MCIT),
Islamic Republic of Afghanistan;
Kabul; Afghanistan

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