



**UGANDA
COMMUNICATIONS
COMMISSION**

**UGANDA COMMUNICATIONS COMMISSION
GUIDELINES ON VARIATION AND WITHDRAWAL OF
RADIO SPECTRUM AUTHORIZATION**

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1. INTRODUCTION

The Radio Spectrum is a limited resource that is a prerequisite to the operation of radio communication services. It is therefore essential that the assigned radio frequency spectrum is used optimally and in compliance with the terms and conditions of the respective authorization issued for grant of the use of the same.

Uganda Communications Commission (the Commission) has developed these guidelines to facilitate the fulfilment of provisions of sections 5(1), 24, and 25 of the Uganda Communications Act of 2013 (the Act) towards the realization of maximum social-economic benefit from the available radio frequency spectrum.

The authority to develop this guide is derived from among others, Sections 5(1)(c) and 25(1)(b) of the Uganda Communications Act, 2013 (the “Act”), the Uganda Communications (Licensing) Regulations for radio communication services and installation and operation of radio communications services’ equipment.

2. AMENDMENT

These guidelines shall be subjected to periodic reviews to enable inclusion of any changes as a result of evolution in the radio communications industry, changes in policy or regulatory direction as well as emerging regional and international best practices.

3. OBJECTIVE

The objectives of this guide are to;

- i)* improve compliance to the provisions of the Act, regulations issued thereunder, and terms and conditions for radio frequency spectrum assignment;
- ii)* promote optimal utilization of assigned radio frequency spectrum to extract the utmost social-economic benefit. Optimal in this case refers to the most favourable use of the spectrum in terms of maximization of its technological, social, and economic value. This includes but is not limited to, efficient use, equitable and affordable access, innovation, and competition.

4. INTERPRETATION

The terms in this guide shall carry the interpretation used in the Uganda Communications Act of 2013 and the respective radio regulations, unless the otherwise defined below;

“Act” means the Uganda Communications Act of 2013;

“Assigned frequency” means the centre of the carrier frequency band assigned by the Commission to a radiocommunication station;

“Assigned frequency band” means the frequency range within which the emission of a radio-communication station is authorized;

“Minister” means the minister responsible for communications in Uganda;

“Operational License”; shall refer to the grant to a person the permission to:

- establish and operate communication apparatus or infrastructure under sections 21 and 22 of the Act, or
- broadcast under section 27 of the Act.

“Radio Spectrum” refers to the electromagnetic waves in the range of 3KHz to 3000GHz;

“Stakeholders” all parties with an interest in the spectrum resource either directly or indirectly;

“Spectrum Assignee” shall refer to a person (*natural or legal*) to whom the right to use the assigned radio frequency spectrum has been granted.

“Spectrum Authorisation” shall refer to the grant to a person the right to use the specified frequency including installing and operating a radio-communication apparatus/station on the assigned radio frequency or frequencies at a specified location or within a defined geographical area, under the specified terms and conditions;

“Spectrum Authorization Variation” means the modification of any of the provisions of the spectrum authorization.

“Spectrum Authorization Withdrawal” shall refer to the cancellation of the right to use the respective spectrum.

5. APPLICABLE LEGISLATION AND REGULATIONS

This guide shall be applied together with the following statute and frameworks.

- i) The provisions of the Act 2013 including, sections 5 (1)(c), and 25;
- ii) The Uganda Communications (Licensing) Regulations 2019;
- iii) The Uganda Communications Commission Radio Spectrum Management Guidelines in force;
- iv) The Uganda Communications Commission Spectrum Assignment Framework 2019;

- v) Any decisions or directives issued by the Commission however so described;
- vi) The terms and conditions outlined in the radio frequency spectrum authorizations.

6. SCOPE

This guide outlines principles, practices, and procedures for variation and withdrawal of radiofrequency spectrum authorization in Uganda.

7. APPLICABILITY AND EXCEPTION

- (i) This guide shall only apply to the radiofrequency spectrum for which authorization is granted on an individual basis and not class/group-based authorizations;
- (ii) The guide shall however not apply to entities exempted under section 23 (b) of the Act.

8. SPECTRUM AUTHORIZATION VARIATION AND WITHDRAWAL MECHANISMS

8.1 Spectrum Authorization Variation

- (1) The Commission may add to, or vary any of the terms and conditions of a radio frequency spectrum authorization or the assigned radio frequency spectrum therein to;
 - (i) avert or curb interference;
 - (ii) ensure the fulfilment of the objectives of the Act;
 - (iii) facilitate compliance with any other national law;
 - (iv) comply with any international commitments entered by the Commission or the Government of the Republic of Uganda.
- (2) The variation of a radio frequency spectrum authorization may include but is not limited to the following;
 - (i) the assigned frequency (ies);
 - (ii) the amount of authorized spectrum;
 - (iii) the duration of the authorization;
 - (iv) the geographical area covered by the authorization;
 - (v) the technical parameters associated with the authorization;
 - (vi) the addition or removal of any other terms and conditions of the authorization.
- (3) the Commission shall, before effecting the variation, assess the impact of the proposed variation on the quality of service and users of the radio-communications service, taking into consideration;
 - (i) the nature of the use of the radio frequency spectrum in provision of the service;

- (ii) alternative radio frequency spectrum that may be used to provide the same service;
 - (iii) the availability of substitutes or alternative technologies that can be used for the provision of the same or similar service;
 - (iv) the likelihood that the variation would result in the best use of the spectrum.
- (4) Any variation of radiofrequency spectrum authorization shall be implemented in a manner that allows the assignee(s) what the Commission, in its judgment, shall consider being sufficient time within which any associated changes to the network, apparatus, stations, systems, or communication services should be made considering the purpose of the variation and the impact of any delays.

8.2 Spectrum Authorization Variation Procedures

8.2.1 Variation with Agreement

Either the Commission or the radio spectrum Assignee may seek the agreement of the other party to various provisions of a radio frequency spectrum authorization.

(a) Variation initiated by the Commission

- (1) Such variation by the Commission may be necessitated, among others, to;
- (i) align with changes in policy, the Act and/or regulations issued thereunder;
 - (ii) divest an entity resulting from a merger or acquisition of part of the spectrum holding to ensure balanced spectrum holding to curb spectrum concentration and mitigate anticompetitive effects
 - (iii) accommodate technology evolution and foster adoption of new technologies;
 - (iv) align to a change in or under the operational license or in the operations of the assignee;
 - (v) mitigate interference;
 - (vi) re-farm due to the international treaty.
- (2) Where in its judgment, the Commission determines that variation of a radio frequency spectrum authorization is required, it may before effecting the variation;
- i) notify the particular radio frequency spectrum assignee in writing, or;
 - ii) publish the variation notice in an appropriate communication media if the required variation will affect other spectrum assignees operating in the spectrum band.

- (3) The notification shall specify;
- i)* the intended purpose of the proposed variation, and;
 - ii)* the period in which the assignee shall make a representation in respect to the proposal(s) made in the variation notice.
- (4) The Commission may specify a period not exceeding thirty (30) calendar days from the date of the notification, dependent on the urgency to effect the respective variation, in which the assignee may make representation in the proposed variation.

(b) Variation initiated by the Spectrum Assignee

- (1) Such variation initiated by the assignee may be necessitated, among others, to facilitate
- i)* change in the operating geographical area or the location of installations,
 - ii)* change in equipment or operational parameter (s);
 - iii)* change in services or nature of operations of the assignee;
 - iv)* change in ownership of the assignee;
 - v)* introduction of new services or adoption of new technologies.
- (2) Where the spectrum assignee seeks the approval of the Commission to vary its spectrum authorization, the application shall specify;
- i)* the reasons for which the spectrum authorization variation request is being made;
 - ii)* the impact of the requested spectrum authorization variation on the quality of the associated service and its users' experience;
 - iii)* the preferred period in which the spectrum authorization variation should be made;
- (3) Upon receipt of the notification in (2), the Commission shall;
- i)* Evaluate the impact of the proposed variation on service provision and users and on other assignees;
 - ii)* the Commission shall then communicate its position on the subject matter informed by the findings in 3(i) above not later than sixty (60) calendar days from the date of the receipt of the notification.

8.2.1 Variation Without Agreement

- (1) Subject to sections 5 (1) (c) and 25 of the Act, the Commission may, without the agreement of spectrum assignee vary the radio frequency spectrum authorization;
- a)* where either the Act or applicable regulations, have been amended in such a manner as to necessitate the variation of a radio frequency spectrum authorization;

- b) to align the radio frequency spectrum authorization to national laws, regulations, national frequency table of allocation, changes in licensed operations, or a directive issued by the Minister under the Act;
 - c) for failure by the radio spectrum assignee to adhere to the obligations or commitments associated with the spectrum authorization;
 - d) if the operations of the radio frequency spectrum assignee cause harmful interference to other operations within the band, adjacent bands, or to operations across the borders;
- (2) The Commission shall before effecting the variation, serve a notice giving justification and reasonable timelines in which the proposed variations shall be effected;
- a) If any representation is received before the timelines specified in the notice, the Commission shall consider the representation provided, and shall either;
 - i) reject the representation (*with justification*); or
 - ii) amend the proposed variation in accordance with the representation provided or such manner, as the Commission deems appropriate, consistent with the Act, the Uganda Communications (Licensing) Regulations 2019, the national broadband policy 2018, and other prevailing radio spectrum management frameworks and guidelines.
 - b) In either case in 2(a) above, the Commission shall issue a directive in writing to the spectrum assignee requiring that effect be given:
 - i) to the proposed variation as specified in the notice or;
 - ii) to the variation as amended by the Commission within the specified timelines;
 - c) Any spectrum assignee aggrieved by the decision of the Commission in 2(b) above may, within fourteen (14) calendar days of receipt of the directive, submit an appeal to the Commission. The grievance handling mechanism under section 9 herein shall apply.
 - d) Where the variation is occasioned by 8.2.1(1)(c), consideration of representation in subsection 8.2.1(2)(a) above may result into;
 - i) prescribing time during which the assignee shall be required to remedy the offending act or conduct;
 - ii) require the operator to pay a fine not exceeding the equivalent of ten percent of its gross annual revenue or;
 - iii) both i) & ii) above.

8.3 Withdrawal of Spectrum Authorization

The Commission may withdraw a radio frequency spectrum authorization, including any specific exemption(s), waiver(s), or special consideration (for experimenting (s), a pilot(s), or a demonstration(s) associated with or independent of the running authorization.

8.3.1 Withdrawal of an Exemption or Waiver

- a) The Commission may withdraw any standing or applicable exemption(s) or waiver(s) or special consideration previously issued by written notice to the holder of that exemption(s), waiver(s) or special consideration;
- b) The withdrawal notice in a) above may necessitate taking immediate action/effect where;
 - i) harmful interference is caused;
 - ii) the assigned radio frequency spectrum is used contrary to the associated terms and conditions or obligations;
 - iii) the national security and public safety are at stake;
 - iv) the need for alignment with changes in the national frequency table of allocation is required;

8.3.2 Withdrawal of Spectrum Authorization

- (1) Without prejudice to any other measures that may be taken for non-compliance with the terms and conditions of spectrum authorization, the Commission may withdraw a radio frequency spectrum authorization on any of the following grounds;
 - (i) assignee enters liquidation or is otherwise declared insolvent or bankrupt by relevant government authorities;
 - (ii) upon withdrawal or expiration of the operational or service license associated with the radio spectrum authorization;
 - (iii) assignee has repeatedly breached the terms and conditions of the spectrum authorization;
 - (iv) for protection and preservation of national security;
 - (v) upon cessation of the need to use the radio frequency spectrum including but not limited to conclusion/end of associated research, pilot, or demonstration period;
 - (vi) where the spectrum assignee is using the spectrum to engage in or is supporting activities amounting to a treasonable offense under the Penal Code Act; or

- (vii)* where the spectrum assignee has ceased to be an eligible person as determined by the Act or other relevant laws;
- (viii)* upon the willful surrender of the radio frequency spectrum authorization by the assignee;
- (ix)* for failure to honor imposed fines, penalties, or other dues to the Commission within the prescribed period;
- (x)* for causing harmful interference to communications services in other jurisdictions across the borders of Uganda's national territory;
- (xi)* for implementing any changes in the technical specification or requirement under the authorization without prior approval from the Commission;
- (xii)* for failure to geographically operate as specified in the spectrum authorization or confine operations within the authorized geographical area;
- (xiii)* if the authorized spectrum is deemed no longer feasible for operation in the geographical region due to high potential for causing interference;
- (xiv)* If for six (6) consecutive months for telecommunications service or three (3) consecutive months for broadcasting and other services, the assignee shuts off the services for which it was issued this spectrum authorization;
- (xv)* Failure to return to the Commission, within the stipulated period, a signed undertaking to abide by the terms and conditions of spectrum authorization;
- (xvi)* For non-payment or late payment of the annual fees for usage of the Assigned Radio Frequency Spectrum;
- (xvii)* For underutilization or non-utilization of the assigned frequency as determined by the Commission based on the criteria specified by the Commission;
- (xviii)* Failure by the assignee to bring into use the assigned radio frequency as stipulated in the radio frequency spectrum authorization;
- (xix)* Failure by the assignee to establish and operationalize the radio frequency spectrum within the stipulated period from the grant of authorization to relocate;

- (2) The Commission shall before withdraw a radio frequency spectrum authorization, provide a notice to the assignee indicating;
- (i) the reason for withdrawal;
 - (ii) a reasonable period in which the withdrawal will take effect;
 - (iii) the period for which a representation in respect to the proposed withdrawal may be made.
- (3) The Commission shall consider any representation submitted in response to the withdrawal notice and may accordingly proceed as had specified or as deemed necessary under the relevant provisions of the law.

8.4 Limitation of Liability

The Commission shall not be held responsible in any manner for any damages suffered or expenses incurred by the radio frequency spectrum assignee as a result of any variation to the terms and conditions or withdrawal of the radio frequency spectrum authorization.

9. GRIEVANCE HANDLING MECHANISM

- (a) A spectrum assignee may refer to the Commission any grievance caused under any section of these guidelines;
- (b) The Commission shall consider and respond to the received grievance(s), taking account of the reasons expressed therein and/or rationality, not later than sixty (60) calendar days from the date of receipt, except in exceptional circumstances;
- (c) In considering a grievance, the Commission shall be entitled to request and receive all such necessary information as may be required to decide;
- (d) The decision of the Commission shall be binding;
- (e) The consideration by the Commission of a grievance shall not prejudice the aggrieved party to refer the matter to the Communications tribunal or courts of law.

10. KEY STAKEHOLDER RESPONSIBILITIES

a) The Commission

- (i) Under these guidelines, the Commission shall regularly review and update the provisions of these guidelines to ensure continued relevance and effectiveness;
- (ii) Where a radio frequency spectrum authorization has been withdrawn by the Commission for any reason, the Commission may inspect the respective radiocommunications station, apparatus, or system to ensure that the radio frequency and station/apparatus is no longer in use as applicable;
- (iii) The Commission will institute proceeding of the criminal offense of unlawful use of radiocommunications apparatus and/or radiofrequency for any use of the radio frequency and/or radiocommunications station/apparatus after the date of withdrawal.

b) Spectrum Assignee

The spectrum assignee shall;

- (i) where the need for radio frequency ceases or the radiocommunications station/apparatus is no longer in use, formerly request the Commission to withdraw the radio frequency spectrum authorization;
- (ii) provide notice to the Commission of any intentions to suspend the use of the assigned frequency spectrum in not less than six (6) and three (3) calendar months in advance of the switch off for telecommunications and other communication services respectively;

11. INFORMATION MANAGEMENT

The Commission shall keep information generated as a result of implementing these guidelines.