



TELECOMMUNICATIONS INFRASTRUCTURE RIGHT OF WAY REGULATORY GUIDELINES

Afghanistan Telecommunications Regulatory Authority (ATRA)

ISLAMIC REPUBLIC OF AFGHANISTAN

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PART I: PRELIMINARY

Pursuant to Chapter 9, Article 28 of the Telecom Law of the Islamic Republic of Afghanistan, the Afghanistan Telecommunications Regulatory Authority (ATRA) hereby makes the following Regulatory Guidelines to regulate the granting of land for the use of telecommunications right of way for underground & over-ground telecommunications infrastructures.

1.1 Purpose

In pursuant of its exercise and power under the Telecom Law, Chapter 9, Article 28, the ATRA, from time to time will review or amend these regulatory guidelines as deemed applicable due to prevailing circumstances.

1.2 Scope of Application

The provisions of these regulatory guidelines apply to all telecommunications providers (Licensee or Applicant) seeking the use of telecommunication right of way in Afghanistan.

2 PART II: Powers of Authorizing Authorities

2.1 Powers of Authorizing Authorities

- 2.1.1 As per Article 28 (5) of Telecom Law, ATRA can in accordance with the consensus of relevant authority and or the owner of land to permit the installation, excavation and or extension of ducts on the ground, underground or routing of the telecom operators or service provider networks in any type of lands used as per the conditions set by ATRA. To better coordinate the rights of way implementation between the governing body or authority of right of way in Afghanistan, all telecom operators to approach relevant authorities through ATRA and comply with the relevant laws and regulations.
- 2.1.2 The following provisions are in pursuant to the Expropriation Law and the Regulation on Linear Land Expropriation Projects of the Islamic Republic of Afghanistan pertaining to the governing body or authority of right of way in Afghanistan. Expropriation Law designates the Afghanistan Land Authority as the coordinating authority to administer all right of way activities in all vicinities, including those under the jurisdictions and or domain of government or a private owner including community or tribal leadership in collaboration with Land Expropriators (Bodies or Authorities such as municipalities or other ministries). Right of way activities under the Afghanistan Land Authority shall include, but not limited to:
- 2.1.2.1 Application for right of way use
 - 2.1.2.2 Acquisition of property for right of way use
 - 2.1.2.3 Technical specifications to guide right of way implementation
 - 2.1.2.4 Dispute resolution arising from right of way activities
- 2.1.3 The following shall apply to both the Afghanistan Land Authority and city municipalities in regard to right of way concerning the public, private including communities or tribal leadership land and or property under their respective jurisdiction or domain of authority. They shall:
- 2.1.3.1 coordinate, implement, and monitor the implementation of these Regulatory Guidelines concerning telecommunications right of way construction, it's improvement and maintenance in the country;

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- 2.1.3.2 comply with Government's policy for the development of telecommunications right of way in all aspects of construction, its improvement and maintenance including human resources, technical specification and adopt operating procedures, safety regulations related to work sites, machinery and equipment;
 - 2.1.3.3 accord administrative and technical approval for construction, improvement and maintenance;
 - 2.1.3.4 encourage and promote private sector participation in carrying out telecommunications right of way activities;
 - 2.1.3.5 adopt and promote environmentally friendly techniques in the implementation of road activities;
 - 2.1.3.6 incur expenditures and mobilize machinery, as required, in the case of natural disasters and other damages inflicted to road; and
 - 2.1.3.7 plan, construct, maintain and manage all telecommunications right of way under its jurisdiction.

2.2 Powers and Responsibilities of the Land Authority

2.2.1 The Land Authority shall in the scope of Law on Expropriation and Regulation on Linear Land Expropriation Projects exercise the following powers with regard to telecommunications right of way in consultation and collaboration with ATRA:

- 2.2.1.1 formulate policies for telecommunications right of way;
- 2.2.1.2 develop and implement long term master plan telecommunications right of way;
- 2.2.1.3 develop, coordinate and organize the implementation of telecommunications right of way;
- 2.2.1.4 approve standards for the road construction, maintenance works and regulations regarding the control, management and use of telecommunications right of way;
- 2.2.1.5 develop and implement policies for the promotion of telecommunications right of way
- 2.2.1.6 construction industry, and provide for the maintenance of uniform standards and quality in that industry;
- 2.2.1.7 determine and approve compensation for use of telecommunications right of way under its jurisdiction;

2.3 Powers and Functions of ATRA Relative to the Use of Telecommunications Right of Way

2.3.1 The ATRA is the regulatory authority that issues licenses fixed line network, optical fiber and other telecom service providers and operators to deploy infrastructure in Afghanistan, and shall in the scope of Law for Regulating Telecommunication Services have the following powers and functions pertaining to telecommunications right of way activities in consultation and collaboration with Land Authority, municipalities and other relevant stakeholders:

- 2.3.1.1 coordinate, implement, and monitor the implementation of these regulatory guidelines;
- 2.3.1.2 provide guidance to optical fiber operators and other telecom infrastructure licensees in implementing these regulatory guidelines; and
- 2.3.1.3 shall serve as intermediary between telecom operators and external governmental agencies with oversight responsibilities of telecommunications right of way activities.

2.4 Responsibilities of Telecom Operators

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- 2.4.1 Telecom licensees and optical fiber operators are to adhere to these regulatory guidelines fully. In the case of doubt, the aligning provisions in the ordinances, guidelines and regulations below shall take prominence:
- 2.4.1.1 the provisions of the Law for Regulating Telecommunication Services;
 - 2.4.1.2 the Linear Expropriation Regulations of the Islamic Republic of Afghanistan;
 - 2.4.1.3 ordinances, guidelines and regulations of the Afghanistan Land Authority and or local governments relative to the land used for telecommunications right of way as per the regulations;
 - 2.4.1.4 ordinances, guidelines and regulatory procedures such as for Congested Right of Way of ATRA relative to infrastructure sharing to land used for telecommunications right of ways;
 - 2.4.1.5 all other concerned government agencies guidelines and procedures including but not limited to repairs, maintenance and risk mitigation measures of the land sites used for telecom projects, as specified in PART II of these regulatory guidelines.

3 PART III: Applying for Right of Way Use

3.1 Applying for Right of Way Use

- 3.1.1 The information along with supporting documents to be provided by the licensee in its application for the use of telecommunications right of way shall contain:
- 3.1.1.1 a copy of the license granted by the ATRA;
 - 3.1.1.2 the details of projects including linear (underground and aerial) and other telecommunications infrastructure proposed to be laid and or installed ;
 - 3.1.1.3 the mode of and the time duration for execution of the work;
 - 3.1.1.4 the time of the day when the work is expected to be done in case the licensee expects the work to be done during specific time of the day;
 - 3.1.1.5 the details of expenses of the proposed work that will be undertaken by the licensee;
 - 3.1.1.6 the inconvenience that is likely to be caused to the public and the specific measures proposed to be taken to mitigate such inconvenience;
 - 3.1.1.7 the specific measures proposed to be taken to ensure public safety during the execution of the work;
 - 3.1.1.8 any other matter relevant, in the opinion of the licensee, connected with or relative to the work proposed to be undertaken; and
 - 3.1.1.9 any other matter connected with or related to the work as may be specified, through a general or special order, by the Afghanistan Land Authority, municipality, concerned ministry or appropriate local government authority:
 - 3.1.1.9.1 Provided that the licensee shall, while making the application, give a specific commitment on whether it undertakes to discharge the responsibility for restoration, to the extent reasonable and prudent, of the damage that the appropriate authority shall necessarily be put in consequence of the work proposed to be undertaken.
- 3.1.2 Every application under PART III Section 3.1 shall meet the requested requirement including all fees.

3.2 Grant of Permission by Appropriate Authority

- 3.2.1 The appropriate authority shall examine the application with respect to the parameters as set forth in its respective regulations or guidelines as well as the following:
- 3.2.1.1 the route or location planned for the proposed telecommunications infrastructure project and the possible interference, either in the establishment or maintenance of such telecommunications infrastructure, with any other public infrastructure that may have been built on the location and or laid along the proposed route;
 - 3.2.1.2 the time duration for execution of the work and the time of the day that the work is proposed to be executed;
 - 3.2.1.3 the responsibility for restoration of any damage that the appropriate authority may necessarily be likely to put in consequence of the work proposed to be undertaken;
 - 3.2.1.4 assessment of measures to ensure public safety and inconvenience that the public is likely to be put to in consequence of the work proposed and the measures to mitigate such inconvenience indicated by the licensee; and
 - 3.2.1.5 any other matter, consistent with the provisions of the Telecom Law and these rules, connected with or relative to the establishment or maintenance of areal or over-ground or underground telecommunications infrastructure, through a general or special order by the ATRA, appropriate national or local authority.
- 3.2.2 The appropriate authority shall within a period specified in its respective ordinance, guidelines or regulations:
- 3.2.2.1 grant permission on such conditions including, but not limited to, the time, mode of execution, measures to mitigate public inconvenience or enhance public safety and payment of restoration charge, as may be specified, subject to the provisions of the Telecom Law and these rules; or
 - 3.2.2.2 reject the application for reasons to be recorded in writing provided that no application shall be rejected unless the applicant licensee has been given an opportunity of being heard on the reasons for such rejection; and
 - 3.2.2.3 The licensee has been given time to remedy the reasons for triggering the rejection.

3.3 Grant of Permission on Conditions

- 3.3.1.1.1 Permission shall be deemed to have been granted if the appropriate authority fails to either grant permission under PART III, Section 3.2 of these regulatory guidelines or refrain from giving the licensee the opportunity of being heard on the reasons for rejection pursuant to PART III, Sections 3.2.2.1 and 3.2.2.2.
- 3.3.1.1.2 Where the appropriate authority accepts the undertaking by the licensee to discharge the responsibility to restore the damage that such appropriate authority shall necessarily be put in consequence of the work, the appropriate authority, while granting permission under PART III, Section 3.1 may seek a bank guarantee for an amount in lieu of expenses for restoration of such damage, as security for performance in the discharge of the responsibility.

4 PART IV: Undertaking of Right of Way Work

4.1 Obligations of Licensee in Undertaking Right of Way Work

- 4.1.1 The licensee shall make the payment of expenses or submit the bank guarantee as determined by the appropriate authority within a period of thirty days (or the time specified in its ordinance, guidelines or regulation) from the date of grant of permission and prior to the commencement of work of laying the underground telecommunications infrastructure:
- 4.1.2 The appropriate authority may, at its discretion, extend the said period specified in PART IV, Section 4.1.1 for payment of expenses or submission of bank guarantee on an application made by the licensee seeking such extension.
- 4.1.3 The licensee shall ensure that:
 - 4.1.3.1 prior to the commencement of work of laying the underground telecommunications infrastructure and at all times during the execution of work, measures to mitigate public inconvenience and provide for public safety are implemented;
 - 4.1.3.2 the work of laying underground telecommunications infrastructure is carried out in accordance with the conditions specified in the grant of permission by the appropriate authority; and
 - 4.1.4 the provisioning of positional intelligence, through appropriate technology, of all underground telecommunications infrastructures to enable the appropriate authority, and to obtain real time information on its location.
- 4.1.5 ensure that the contractor(s) and or subcontractor(s) implementing the telecommunications infrastructure comply with the ordinance and provisions of these regulatory guidelines and regulations of relevant authorities.

4.2 Powers of Appropriate Authority to Supervise Right of Way Work:

- 4.2.1 The appropriate authority may supervise the execution of work to ascertain if the conditions imposed in the grant of permission under PART III, Section 3.3 of these Regulatory Guidelines;
- 4.2.2 The appropriate authority may, on the basis of such supervision, impose such other reasonable conditions as it may think fit;

4.2.3 If the appropriate authority comes to the conclusion that the licensee has willfully violated any of the conditions for grant of permission under PART III, Section 3.3 of these Regulatory Guidelines, it may forfeit, in full or in part, the bank guarantee submitted by the licensee and withdraw the permission granted to the licensee, for reasons to be recorded in writing; and

4.2.3.1 Said action to forfeit bank guarantee by licensee shall not be taken under PART III, Section 4.2.3 unless the licensee has been given an opportunity of being heard.

4.3 Obligations of Licensee in Undertaking Right of Way Work:

4.3.1 The licensee shall ensure that:

4.3.1.1 prior to the commencement of establishment and maintenance of over-ground telecommunications infrastructure and at all times, the measures to mitigate public inconvenience and ensure public safety, including structural safety of such over-ground telecommunications infrastructure are implemented;

4.3.1.2 the work of establishment and maintenance of over-ground telecommunications infrastructure is carried out in accordance with the conditions specified in the grant of permission by the appropriate authority.

4.4 Construction Performance Bond

4.4.1 Any of the following forms of security provided at permittee's option:

4.4.1.1 Individual project bond;

4.4.1.2 Cash deposit;

4.4.1.3 Security of a form as may be deemed appropriate by the Afghanistan Land Authority or otherwise by the appropriate authority defined in the Law for Land Acquisition and or Regulations on Linear Land Expropriation Projects;

4.4.1.4 Letter of Credit, in a form acceptable to the Afghanistan Land Authority or otherwise to the appropriate authority defined in the Law for Land Acquisition and or Regulations on Linear Land Expropriation Projects;

4.4.1.5 Self-insurance, in a form acceptable to the Afghanistan Land Authority or otherwise to the appropriate authority defined in the Law for Land Acquisition and or Regulations on Linear Land Expropriation Projects; and

4.4.1.6 Any form of construction bond acceptable to the Afghanistan Land Authority or otherwise to the appropriate authority referred to in the Law for Land Acquisition and or Regulations on Linear Land Expropriation Projects.

5 PART V: Technical Specifications, Compensation and Dispute Resolution

5.1 Technical Specifications, Location and Alignment

5.1.1 The technical standards for telecommunications right of way shall be set by the Afghanistan Land Authority in coordination with the Ministry of Public Works, municipality and other concerned government agencies. The Afghanistan Land Authority shall also develop manuals, technical guides setting standards for construction and maintenance purposes.

5.1.2 In addition to the technical standards pursuant to PART V, Section 5.1 the appropriate agency granting permission must be cognizant of following when granting and denying applications for use of telecommunications right of way:

5.1.2.1 environmental considerations;

5.1.2.2 geological stability considerations;

5.1.2.3 protection of sacred and cultural sites;

5.1.2.4 preservation of agricultural land;

5.1.2.5 socio-economic considerations;

5.1.2.6 traffic safety considerations; and

5.1.2.7 other relevant considerations for the jurisdiction containing the land

5.2 Right of Appropriate Authority to Seek Amendment and Removal

5.2.1 A Licensee or Applicant for the use of a telecommunications right of way shall comply fully with the provisions of these Regulatory Guidelines and all ordinances, guidelines and regulations of the right of way granting agency. In the event that the telecommunications infrastructure licensee or optical fiber operator violates the provisions of these Regulatory Guidelines and other ordinances, guidelines and regulations of a permission granting entity and said agency decides to seek revocation of the project's permit, said proceeding shall be done in conformity with the dispute resolution procedures of the granting entity

5.3 Compensation

- 5.3.1 Compensation for the use of telecommunications right of way shall be executed under the terms specified in Chapter 4 of the Linear Expropriation Regulations of the Islamic Republic of Afghanistan and shall take into consideration the following:
- 5.3.1.1 compensation for use of private land for telecommunications right of way shall exclusively be negotiated between the Licensee or Applicant and the private land owner. Licensee or Applicant shall refrain from any form of coercion or intimidation toward the private land only in the acquisition of the land. The land owner shall set the price and the Licensee or Applicant may, at its discretion bargain with the land owner.
- 5.3.1.2 bargaining may take into consideration the following:
- 5.3.1.2.1 the exclusive use of the land by the Licensee or Applicant in the case of an underground infrastructure. In that instance the land owner will be refrained from using the outer layer or the over-ground portion of the land; or
- 5.3.1.2.2 where the land owner is allowed to use a part or whole of the outer layer or the over-ground of the land for his or her use, while the underground portion is used by the Licensee or Applicant for part of, or for the entire duration of the land use agreement period.
- 5.3.1.3 where the land is under the jurisdiction of a community or tribal leadership, the said parties may:
- 5.3.1.3.1 act as the custodian of the land;
- 5.3.1.3.2 negotiate the term of compensation for the land; and
- 5.3.1.3.3 setup a committee to ascertain the fair market value of the land and engage the Licensee or Applicant. The committee may therefore act as the administrator of the land on behalf of the community or tribal leadership
- 5.3.1.4 where the land is under the jurisdiction of the city or municipal authority, similar approach as specified in PART V, Section 5.3 of these Regulatory Guidelines may be applied.
- 5.3.2 In case the ordinance of these Regulatory Guidelines about compensation for the use of telecommunications right of way differs from that in the Linear Expropriation Regulations, the provisions in the regulations prevail.

5.4 Dispute Resolution

5.4.1 Disputes between licensee and appropriate authority:

- 5.4.1.1 Any dispute arising between a licensee and the appropriate authority in consequence of these Regulatory Guidelines shall be referred to the dispute resolution provisions stipulated by the granting entity or the Linear Expropriation Regulations of the Islamic Republic of Afghanistan. In the case of doubt, the provisions on dispute resolution will apply.

6 PART VI: Short Title, Commencement, Extent and Repeal

Short Title and Commencement

6.1 Short Title

6.1.1 These Regulatory Guidelines shall be called the Telecommunications Right of Way Regulatory Guidelines of 2019 of the Islamic Republic of Afghanistan.

6.2 Commencement

6.2.1 These Regulatory Guidelines shall:

6.2.1.1 come into force on the date of publication in the National Gazette of Afghanistan;

6.2.2 be modified, changed or repealed exclusively by ATRA based on prevailing circumstances deemed by ATRA; and

6.2.3 be enforced pursuant to the Linear Expropriation Regulation of the Islamic Republic of Afghanistan