

# REGULATION REGARDING THE RIGHTS OF WAY IN EXECUTION OF TELECOMMUNICATION SERVICES

## FIRST PART

### Purpose, Scope, Base and Definitions

#### Purpose

**Article 1-** The purpose of this Regulation is to regulate the methods and bases of the rights of way necessary for the operators showing activity at the telecommunication sector to establish and utilize the infrastructural facilities as necessitated by the service.

#### Scope

**Article 2-** This Regulation covers the rights and obligations of the operators servicing as per the related legislation and the undersigned authorisation agreement with the Authority, concession agreement and/or the telecommunication licence or general authorisation granted by the Authority and the immovable owner and/or the right owner on the immovable from where the telecommunication infrastructure to be passed provided that the immovable belonging to the public or under common usage of the public arising from the rights of way, and the principles and procedures regarding these rights and obligations.

#### Legal Basis

**Article 3-** This Regulation has been prepared based on the 12th and 14th articles of 406 issued Telegraph and Telephone Law and the 2813 issued Radio Law.

#### Definitions

**Article 4-** The terms used in this regulation are defined as below;

**a) Rights of way :** The privileged rights granted to the operators for to pass under, above and over the public and private proprietary areas for the purposes of establishing, removing, maintaining, repairing, etc. of the telecommunication infrastructure,

**b) Rights of way price:** The price to be paid by the operator to the rights of way supplier in return of the rights of way,

**c) Rights of way Supplier :** The immovable owners and/or the right owner on the immovable provided that the immovable belonging to the public or under common usage of the public regarding the rights of way are included.

**ç) Operator :** shall mean a capital company, including Türk Telekom, which provides telecommunication services and/or operates telecommunication infrastructure under an authorisation agreement or a concession agreement made with and/or a telecommunication licence or a general authorisation obtained from the Authority

**d) Board:** The Telecommunication Board

**e) Authority :** The Telecommunication Authority

**f) Parties:** The operator and the rights of way supplier

**g) Immovable Owner:** Real persons, private legal judicial persons and Public Institutions and Establishments of which the immovable they possess is to be utilized in the scope of the rights of way,

**ğ) The Right Owner on the Immovable:** Real persons, private legal judicial persons and Public Institutions and Establishments that possess a similar but limited right on the immovable being subject of ownership,

**h) Telecommunication Infrastructure :** Every kind of network units including the switching equipment, hardware and software, terminals and lines that permit for the realization of telecommunication over or by them,

Besides the definitions in the concerning regulations shall be valid for the definitions included in this regulation but not included herein above.

## **SECOND PART**

### **Scope of Rights of way and Principles**

#### **Scope of The Rights of way**

**Article 5-** Rights of way covers the works to be done by the operator to give service by passing every kind of telecommunication infrastructure and their supportive equipment from top, under and over the land and roads, squares, beaches, territorial waters and lakes belonging to the public and the immovable belonging to private possession to be used in the scope of the rights of way and the utilization of the proprietary areas by the operator for the purposes of establishing, modifying, controlling, maintaining, repairing, etc. of this infrastructure in the frame of the Act no. 406 and provisions of this regulation.

**Article 6-** The below principles are regarded as base during the implementation of this Regulation:

- a) Efficient and productive utilization of the country resources,
- b) Provision of an effective and sustainable competition environment,
- c) The utilization of the rights of way being primarily dependent on the mutual agreement of the parties,
- ç) Ensuring that the rights of way application be technically possible and economically reasonable and feasible.
- d) In case a telecommunication infrastructure exists on the immovable to be utilized in the scope of the rights of way within the frame of this regulation and authority arrangements which was decided for common settlement and facility sharing; giving priority to common settlement and facility sharing before way of right demand of the operator.
- e) Ensuring that the rights of way utilization does not give permanent damage to the immovable and continuously hamper usage of the rights of the rights of way supplier on this immovable,
- f) Evaluation of applications containing rights of way to be done without admitting any delay and acting transparent without differentiation between the operators at similar conditions by Way of Rights Supplier Public Institutions and Establishments
- g) Seeking the special conditions resulting from environmental protection, city and country planning,
- ğ) During the application of the rights of way, ensuring that the conditions arising from the legislation and the conditions arising from defense, national security, public order requirements and emergency state requirements are reserved,

## **THIRD PART**

### **Agreement and Prices regarding the rights of way**

#### **Freedom of Agreement**

**Article 7-** The parties are free to make any agreements related to the rights of way provided that these do abide by the related legislation, authorisation and concession agreement, telecommunication licences, general authorisation and Institutional arrangements and provided that provisions of Civil Law dated 22/11/2001 and no 4721 are reserved.

#### **Principles on Rights of way Price**

**Article 8-** (1) The rights of way cost which can be demanded by rights of way supplied is freely determined between the parties provided that the principles specified in this regulation are sought and it does not cause for abusing of this right.

(II) Prices and indemnifications that are demanded under such names as feasibility, investigation, examination, license, ground damage price, location change price and price for stopping the existing activity, etc. are covered by the operator unless otherwise is expressed in rights of way agreement made between the parties.

#### **The Disagreement of the Parties**

**Article 9-** In case the parties can not come to an agreement, settlement of disagreements are provided by the courts in the frame of the concerning laws.

## **FOURTH SECTION**

### **Obligations**

#### **Obligations of rights of way supplier**

**Article 10-** (1) The rights of way supplier is obliged to conform to principles mentioned in 6<sup>th</sup> article of this regulation for rights of way implementation. The rights of way supplier shall take or permit to be taken all the necessary measures, provided that the costs are borne by the operator, for the aim of the realization of the activities to be executed by the operator in the scope of the rights of way in a continuous and reliable manner.

(2) The rights of way supplier is obliged to keep away from such activities that shall threat or damage the activities to be executed by the operator and the telecommunication infrastructure belonging to the operator, while using his/her such rights on immovable regarding the rights of way. The rights of way supplier is obliged to indemnify the damages that it caused on the telecommunication infrastructure belonging to the operator provided that the provisions of above paragraphs are reserved.

#### **Obligations of the Operator**

**Article 11-** (1) Operator is obliged to conform to principles mentioned in 6<sup>th</sup> article of this regulation for rights of way implementation and to indemnify any kind of damages that it caused on the immovable in the shortest time while utilizing the rights of way.

(2) The operators send every kind of information and documentation which are seen necessary by the Authority regarding the rights of way to the Authority within the period to be determined.

#### **Contract and Information Form**

**Article 12-** (1) The operators sign "Contract and Information Form" enclosed as Annex-1, before they start to use rights of way and then submit to the Authority.

## **FIFTH SECTION Other Provisions**

### **Nationalization**

**Article 13-** In case the activities foreseen in this regulations necessitates; It can be applied to competent authorities for the purpose of nationalization within the bases mentioned in 2942 issued Nationalization Law

### **Condition of Trees**

**Article 14-** It is of primary importance that the trees located on the passage ways and the surroundings are protected while using the rights granted in the framework of the rights of way. For the aim of realizing continuous works for the installation of the telecommunication infrastructure and public service, in case the trees pose a barrier for the installation or removal of the infrastructure or may cause a failure at the infrastructure, first of all the trees are to be moved to another location. In case this is not possible, trimming, cutting and similar operations can be realized at the level of obliged to be done. A period of 15 (fifteen) days following the warning is granted to the tree owner so that he/she can realize these processes on his/herself. If the necessary operation are not done or done insufficiently at the end of this period, the operator performs these processes by itself. Every kind of damage and expense arising from such operations are borne by the operator.

### **Condition of historical artifacts and cultural properties**

**Article 15** The protection of assets in the status of natural and historical artifacts and cultural properties in rights of way implementation is done within the framework of the provisions of related legislation.

### **Condition Related to the Other Infrastructure**

**Article 16-** (1) The telecommunication infrastructure and of the operator and their supporting equipment shall be installed as not to damage sewerage, water, gas channels, railways, electrical installations, other telecommunications infrastructure and similar public service infrastructure already present on the immovable where the rights of way is to be benefited. The operator who installs new infrastructure acts by ensuring necessary coordination with present public service infrastructure association. The costs arisen from measures to be taken to prevent interruption of mentioned public services in necessary conditions are indemnified by the party using rights of way.

(2) During the utilization of the rights of way, in case replacing, removing, similar type of conditions are deemed to be inevitable for the public service infrastructure present on the mentioned immovable; the operator informs the public service infrastructure institution 15 (fifteen) days beforehand. The related institution providing the public service can either perform the operations as per the decision it has taken and informed the operator within 7 (seven) days following the written notification by the operator regarding the necessary replacement, removing and similar operations; or it can bring its own experts during the performing of these operations. Following the abovementioned studies, the operator is obliged to transform the immovable to its conditions just as before the studies have started, i.e., it original state. All the expenses arising from the studies are borne by the operator.

(3) In case the concerning Public Institutions and Establishments requires; the operator is obliged to submit a letter of commitment in order to ensure fulfillment of its obligation expressed herein above for rights of way implementation

**Rights of Way Agreement in case of transfer of the authorization**

**Article 17-** In case of transfer of authorization, it is accepted that rights of way agreement is also valid with the same conditions between rights of way supplied and the new operator unless otherwise is alleged by rights of way supplier in order to prevent interruption of public services.

**Enforcement**

**Article 18-** This Regulation comes into force as by the date of its issuing.

**Execution**

**Article 19-** The provisions of this Regulation are executed by the President of the Telecommunication Board.

<b>Letter of Commitment and Information Form</b>
<p>We inform that we install telecommunication infrastructure and their supportive equipment whose detail and implementation project is approved by ..... on geographical line in ..... as company of ..... having ..... (type of granted authorization certificate shall be written) dated ..... and no .....; and we undertake that we conform to every kind of arrangements to be published regarding the matter by the Authority and arrangements of other Institutions and Establishments and we shall personally obtain permission, licence and approval certificates from them and the other private/judicial persons affected.</p>
<p>Scope and duration of rights of way demand:</p>
<p>Existing telecommunication infrastructure on immovable to be user in the scope of rights of way                      Not exists ( )                      Exists ( )</p> <p>Owner of existing telecommunication infrastructure: .....</p> <p>Usage purpose of existing telecommunication infrastructure: .....</p> <p>Reason (technical, economical etc.) of not-running for facility sharing although there is an available telecommunication infrastructure on the immovable to be used in the scope of rights of way is mentioned herein below:                      .....                      .....                      .....</p>
<p>The immovable to be used in the scope of rights of way is adequate from technical aspect for usage for the mentioned telecommunication service. Details are given herein below:                      .....                      .....                      .....</p>
<p>The immovable to be used in the scope of rights of way is the most adequate among the alternative ways in order to give the mentioned telecommunication service. ( )                      The immovable to be used in the scope of rights of way has no-alternative in order to give the mentioned telecommunication service. ( )                      Its technical description is herein below:                      .....                      .....                      .....</p>

The immovable to be used in the scope of rights of way has no-alternative in order to give the mentioned telecommunication service. ( )  
Its technical description is herein below:

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We undertake that we indemnify any kind of damage which may be sourced from usage of Rights of Way in the mentioned immovable, in the shortest time.

Every kind of information and document to be demanded by the Authority included the following but not limited with them shall be informed to the Authority within the period to be determined by the Authority:

- Plans of lands affected by rights of way and certificates describing ownership conditions
- Detailed projects describing status of underground, ground, aerial passages and facilities.
- Documents showing that all affected public and private parties give permission, licence, and approval regarding the matter.
- If any damage occurs; documents showing that it was indemnified and removed.
- Judicial and administrative lawsuits sued by the parties because of rights of way and all administrative and private application documents

Other explanations:

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Signature

Note: Detailed explanations may be submitted as an annex.