

INSIGHT

Kenya Plans Cheaper, Standalone Licence for Data Centres

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In September 2026, the Communications Authority of Kenya (the Authority) published a consultation paper proposing a standalone licence for co-location data centres (the Proposal). If adopted, the Proposal would move data centres out of the Network Facilities Provider Tier 2 (NFP-T2) licence category, under which the revised telecommunications market structure established in April 2026 (the Market Structure) currently regulates them, and into a dedicated licence (the Data Centre Licence) carrying significantly lower initial fee.

The Proposal responds to a mismatch that has existed since the Market Structure took effect. NFP-T2 was designed primarily for entities that establish and operate telecommunications network facilities across the country, whereas co-location data centres, as the Authority itself records, provide co-location, power and cooling services and do not transmit signals, use spectrum or provide subscriber-facing services.

Additionally, the change comes at a significant time for the sector, with Kenya's data centre market valued at approximately USD 266 million in 2025 and projected to reach USD 805 million by 2031, with facilities of up to 44 MW already under construction. The licensing terms settled now will therefore govern much of the capacity being financed today.

The Proposal would also bring Kenya closer to the approach taken in other markets competing for data centre investment. For instance, Singapore's Digital Infrastructure Bill, read for the first time in Parliament on 8 September 2026, aims to create dedicated licences for data centres directed at security, resilience and environmental sustainability. Kenya would also move ahead of Tanzania, which, under rules issued in March 2026, still licenses public data centres within its network facilities category.

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Below are the key features of the Proposal and the points operators, investors and lenders should watch.

a) Lower fees and a fifteen-year term

The proposed Data Centre Licence would carry an application fee of KES 5,000 (approx. USD 39), an initial licence fee of KES 100,000 (approx. USD 770), and an annual operating fee (AOF) of KES 80,000 (approx. USD 620) or 0.4% of annual gross turnover, whichever is higher, for a term of fifteen years. By comparison, under the NFP-T2 license, the initial fee is KES 15 million (approx. USD 116,000), and the minimum AOF is KES 800,000 (approx. USD 6,200), so the Proposal would reduce the fee paid by a data centre licensee by KES 14.9 million (approx. USD 115,000) at the outset and up to KES 720,000 (approx. USD 5,600) for a facility with annual turnover above KES 200 million (approx. USD 1.5 million), however, the AOF would be the same under either licence, as both charge 0.4% of turnover. Additionally, the universal service levy under the Kenya Information and Communications Act (KICA), currently charged at 0.5% of annual gross revenue from licensed services, would continue to apply alongside the AOF.

b) Who will need the licence

The Data Centre Licence is intended to cover entities that provide co-location data centre services, including the attendant supporting services. Importantly, entities already holding NFP or Applications Service Provider (ASP) licences may establish and operate data centres without a Data Centre Licence, so that facilities run by licensed telecommunications operators may continue under their existing licences, while independent and carrier-neutral operators would need to apply for the new licence. The consultation paper does not, however, define a co-location data centre, and operators should consider whether facilities built for a single anchor customer, or operated for a group's own use, will fall within it.

c) Interconnection and connectivity within the facility

The most significant gap in the Proposal concerns the services that make a co-location facility commercially useful, namely the cross-connects that link customers to one another and to carriers through a meet-me room, internet exchange points hosted in the facility, and internet connectivity supplied to customers. This matters because, under KICA, a telecommunication system is defined broadly enough to capture any cable that carries data or signals, and it is an offence for a licensee to connect to its licensed system any telecommunication system that its licence does not cover. Unless the final framework authorises these activities expressly, operators may still require NFP or ASP authorisation for them, which would erode much of the saving the Proposal offers. In our view, submissions on this point are likely to matter most.

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d) Fees on electricity revenue

The AOF is calculated on “Annual Gross turnover”, which the consultation paper does not define. Power is one of the core services that the consultation paper attributes to data centres, and electricity supply is regulated separately under the Energy Act, 2019, so that including electricity charges in turnover would result in operators paying communications fees on the cost of power. The point carries particular weight for facilities investing in their own renewable generation, which are increasingly common given that peak demand on the national grid has risen from 2,439.06 MW in December 2025 to 2,549 MW in July 2026, and the reserve margin has narrowed to about 3.3%.

e) The interim period and financing

Finally, the Authority proposes to finalise the framework in the 2026/2027 financial year and to implement it, through consequential amendments to the Market Structure, in 2027/2028. In the meantime, data centres remain subject to NFP-T2, which the Authority’s transitional provisions applied upon gazettment of the Market Structure without exceptions, and the Proposal does not set out how existing NFP-T2 licensees or pending applicants will migrate. Operators with facilities in development, and the investors and lenders financing them, should therefore factor the interim licensing position into their project costs and timelines. Further, the licence conditions have not been published, and lenders will no doubt want to see whether the new licence retains the NFP-T2 requirement for the Authority’s prior consent, before any encumbrance can be placed which would affect the licence.



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Conclusion

The Proposal is a welcome step that would align the form of licensing with what data centres do and lower the cost of entry. Its value to operators and investors will, however, depend on the detail that the Authority has yet to settle, in particular the scope of the licence, the revenue on which fees are charged and the terms of transition.

The Authority has invited written comments within thirty days of its notice, which was published on or about 8 September 2026. Submissions may be made by email to datacentres@ca.go.ke, through the online form on the Authority's website or by post to the Director General, and we would encourage operators, investors and lenders with an interest in the sector to participate

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