



REPORT OF THE PUBLIC INQUIRY ON THE DRAFT GUIDELINES ON PROCEDURE FOR GRANTING APPROVAL TO DISCONNECT COMMUNICATIONS OPERATORS (AS AMENDED)

1.0 INTRODUCTION

The Nigerian Communications Commission (the Commission) pursuant to its powers under *Section 72 of the Nigerian Communications Act 2003 (the Act)* amended the Guidelines on Procedure for Granting Approval to Disconnect Communications Operators (draft Guidelines).

Based on the Commission's participatory rule-making procedure, the draft Guidelines was published on its website for comments from the general public, especially communications operators and other stakeholders.

Further to this, the Commission received five (5) submissions from the following stakeholders:

1. ATC Nigeria Wireless Infrastructure Limited (ATC)
2. IHS Nigeria Limited (IHS)
3. MTN Nigeria Communications Plc. (MTN)
4. Airtel Networks Limited (Airtel)
5. Emerging Markets Telecommunication Services Limited (Trading as 9Mobile)

A Public Inquiry was scheduled to hold on May 22, 2024, and all stakeholders were duly notified. A Notice of the Public Inquiry on the draft Guidelines was published in the Daily Trust and Guardian Newspapers of Tuesday, April 16, 2024.

2.0 THE PUBLIC INQUIRY

The Public Inquiry held as scheduled at the Conference Room of the Commission, from 11:20 am, on May 22, 2024. Staff of the Commission, operators, and interested stakeholders attended both physically and virtually.

The Executive Commissioner, Stakeholder Management (ECSM), Ms. Rimini Makama, represented by Mr. Efosa Idehen, the Director, Compliance Monitoring and

Enforcement (DCME) Department, gave an Opening Remark, welcoming everyone to the Forum. He noted that the Public Inquiry is a testament to the Commission's dedication to transparency and inclusivity, ensuring that the voices of all stakeholders are heard and considered. He highlighted that regulatory instruments have played vital roles in shaping our communications landscape, and it is essential that they are revisited and refined to address emerging challenges, trends, and opportunities. He explained that as the Industry continues to evolve, there may be instances where disconnections of operators become necessary and the Guidelines lays out the procedure, through which such approvals are granted, ensuring that they are carried out in a transparent and accountable manner.

DCME enjoined all participants to freely make contributions and send in feedbacks that would assist the Commission in developing the Guidelines.

Engr. Auwalu Abdullahi (Principal Manager, Technical Standards and Networks Integrity (TSNI) Department), gave an overview of the draft Guidelines, highlighting the proposed introductions and amendments to the Guidelines. This was followed by a presentation by Dr. Mohammed Suleh Yusuf (Principal Manager, Legal & Regulatory Services (LRS) Department), on issues raised by stakeholders in the various submissions made on the draft Guidelines.

A. GENERAL OVERVIEW OF THE GUIDELINES ON PROCEDURE FOR GRANTING APPROVAL TO DISCONNECT COMMUNICATIONS OPERATORS

In recent times, there has been a growing increase of licensees' failure to settle interconnect indebtedness arising from termination of traffic, despite collection of the interconnect revenue from their respective carriers.

Section 72(1) of the NCA, empowers the Commission to review, modify, vary or repeal its regulatory instruments as at when necessary. The Commission has therefore deemed it necessary to review these Guidelines.

The objective of the Guidelines is to curtail and end interconnect indebtedness in the Industry, by amending the disconnection process to make it more effective. The Guidelines will also discourage unfair practices, thereby making the Industry attractive and friendly for licensees as well as investors.

B. REVIEW OF SUBMISSIONS RECEIVED PRIOR TO THE PUBLIC INQUIRY

The Commission had prior to the Public Inquiry, reviewed submissions received from stakeholders. Responses thereto are set out below:

ATC

1. Paragraph 1 (4) – *Tariffs paid by consumers to Operators are inclusive of the interconnection charge, and an Operator shall upon receipt of such tariffs ensure that it deducts and sets aside all interconnection fees payable to its interconnecting counterpart in a separate account in line with the Accounting Separation Framework of the Commission. The Operator shall effect payment thereof in accordance with the terms of duly executed interconnection agreements.*

Comments:

- The peculiarities of the operations of Network Facilities Providers (“NFPs”) must be considered, seeing that consumers of NFPs are not ordinarily charged any fee that is to be remitted to a 3rd party for the latter’s services. Payments to NFPs, are effected at the end of the month after invoicing and reconciliation.
- ATC recommends:
 - i. An upfront payment of an amount (caution deposit), adequate to cover the cost of minimum of One (1) month service being provided, paid into a designated interest-yielding account, that can be used to off-set debt owed the NFPs by any debtor customer; and
 - ii. The right to disconnect a defaulting debtor, is automatically invoked upon a request by an NFP to access the warehoused caution deposit, evidenced by proof of an unpaid invoice of a preceding month.
- **Note:** This aligns with the contractual terms consented to by NFPs and their customers in the executed contractual agreements, submitted to and approved by the Commission.
- ATC further recommends that the definition of interconnection include **infrastructure sharing and collocation service**, to bring it in tandem with the peculiarities of NFPs’ operations.

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

2. Paragraph 2(1) (b) – *The interconnected operators must have accurate billing systems consistent with the standards and specifications determined by the Commission. No Operator is permitted to have a billing system that is not type-approved to ensure compliance with the standards and specifications as determined by the Commission.*

Comment:

A proviso is necessary, to protect NFP's due to the peculiarities of their operations. NFP billings are done through manual invoicing, as opposed to operators who use metering and billing systems which may require type approval.

ATC recommends this Paragraph should include a proviso that will protect NFP's, for instance, *“without prejudice to the operations of NFP's whose billings are done manually, all other interconnected operators must have accurate billing systems consistent with the standards and specifications determined by the Commission....”*

Commission's Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines

3. Paragraph 2 (2) – *The Commission shall in granting approval for the disconnection of an operator be guided by the need to ensure that the interest of subscribers of the affected network is protected.*

Comments:

- NFPs customers are individual corporate consumers, which typically are not end users of communications services.
- To protect the interest of NFPs, ATC reiterates its earlier recommendation that funds should be deposited in any interest yielding account, for the purpose of ensuring payment to NFPs, which will prevent the need of considering disconnection.
- ATC invites the NCC to bear in mind that, it is unsustainable commercially to expect NFPs to bear debt of operators that received upfront payment of the services from subscribers.
- ATC also invites the Commission to note that, NFPs always subsidize debtor customers' operations to the detriment of NFPs, which adversely impacts the financial viability of NFPs and exposes them to indebtedness to vendors and suppliers.
- ATC recommends that, NFP's should be allowed to disconnect any debtor customer that fails to settle overdue debt within Thirty (30) days of accrual of the debt, in line with the contractual rights of NFP's and report such disconnection to the Commission. This will serve as a deterrent to others and will protect NFP's from running out of pocket, in providing unpaid power and other services to debtor customers. Some sites of NFPs use public electricity supply and receive no tolerance of their debts from DISCOs, whenever in debt.

Commission's Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

4. Paragraph 2 (4) – *The Commission would at all times only allow the disconnection of out-bound calls from a respondent's network, provided howsoever that in the case of disconnection on grounds of indebtedness that any revenue generated from the termination of calls on a debtor operators' network will be specifically used to set off the level of indebtedness of the debtor operator.*

Comments:

Customers of NFPs i.e. Mobile Network Operators (MNOs), do not make outbound calls and neither can consumers of the MNOs make calls to consumers of NFPs. As such, where an MNO is disconnected by NFPs, the disconnection is not partial but total. This throws up issues of the practicability of the provisions in respect of disconnection by NFPs.

ATC requests for clarifications on the applicability of this section to NFPs.

Commission's Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

5. Paragraph 5 (1) (c) & (d) – *(c) That the Applicant had prior to the request for approval to disconnect exchanged Call Data Records (CDRs) with the Respondent on demand; and (d) that such CDRs had been reconciled and the outstanding amount agreed by both operators.*

Comment:

Due to the manual invoice billing system by NFPs, ATC recommends that the Commission adds another subsection to take care of the operations of NFPs' thus: *"Invoices issued by NFPs to its customers shall be used to reconcile outstanding amount agreed by both parties"*.

Commission's Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

IHS

Comments:

There should be consistency in the terminologies used to describe the Communications operators and the infrastructure provider. Terms such as, NFPs, Interconnect Exchange Licensee, Interconnect Exchange Operator, Operator are used interchangeably, convey conflicting meanings.

Commission's Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

1. Paragraph 1 (4) – *Tariffs paid by consumers to Operators are inclusive of the interconnection charge, and an Operator shall upon receipt of such tariffs ensure that it deducts and sets aside all interconnection fees payable to its interconnecting counterpart in a separate account in line with the Accounting Separation Framework of the Commission. The Operator shall effect payment thereof in accordance with the terms of duly executed interconnection agreements.*

Comments:

IHS suggests amendment to include NFPs.

This separation of account obligation should also extend to the payment or provision for the payment of infrastructure services, provided by and be treated in the same manner interconnection charges for active service provision have been recognized. The payment of tariff by a consumer, is based on the understanding that the component inputs required for the service is being paid for and that the operator through the NCC has set the right pricing tariffs including Interconnect Rate, and other cost elements to arrive at such tariff. It therefore behooves that rentals for sites are treated in the same manner as service providers' interconnection.

Commission's Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

2. Paragraph 2(1) (a) – *There is a subsisting interconnect agreement between both parties duly filed with the Commission.*

Comment:

IHS suggests an amendment to include NFPs scenario.

“Interconnect Agreement” - Interconnect Agreement should be defined and extended to cover Infrastructure Service Agreements (ISA) between NFPs and MNOs/ISPs/SPs providing active communications service, especially as it is this same Guidelines that guides the process for the disconnection of these Service Providers (active) in the event of default and breach.

Commission’s Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

3. Paragraph 2(1) (b) – *The interconnected operators must have accurate billing systems consistent with the standard and specifications determined by the Commission. No Operator is permitted to have a billing system not type-approved to ensure compliance with the standards and specifications determined by the Commission.*

Comments:

“Interconnected Operator” is not defined. IHS suggests that this definition should cover both active Service Providers and NFPs. **“Billing system”** should include, *“in the instance of NFPs, a pricing table agreed by parties in the interconnect agreement”*

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

4. Paragraph 2(3) – *The Commission shall consider sustainable Quality of Service (QoS) of the networks in approving disconnections for Network Facility Provider.*

Comments:

- IHS requires further clarification from the NCC, as NFPs may become hamstrung in their options. It is an established fact that QoS will be negatively impacted due to any act of disconnection.
- Ultimately, QoS will be impacted if the business or operations of NFPs become economically or financially unsustainable, if it is not able to timeously collect its lawful revenues or is being owed without recourse to quick regulatory remedy and as a result forced to shut down operation.
- The Commission must always distinguish between two basic scenarios here; the disconnection between MNOs and that between an MNO and a NFPs.

Commission's Response:

The Commission notes these comments and will make distinguishing variations in its final reviews, which will align with the provisions of *Section 100 of the Act*.

5. Paragraph 2(4) – *The Commission would at all times only allow the disconnection of out-bound calls from a respondent's network, provided howsoever that in the case of disconnection on grounds of indebtedness that any revenue generated from the termination of calls on a debtor operators network will be specifically used to set off the level of indebtedness of the debtor operator.*

Comments:

There are no remedial or mitigating provisions for NFPs. In the manner provided for disconnection of outbound and harnessing of the revenue generated from the termination of calls on the debtor operator network. IHS suggests an arrangement where a debtor network to NFPs is also able to mitigate its exposure in such manner as:

- i. *A partial shutdown or withdrawal of services in pre-determined locations or pockets of locations could be considered.*
- ii. *Compel the defaulter operator to remit revenue generated within a pre-agreed cluster or location(s) of the Service Provider to be remitted or committed to the defraying of its indebtedness to the NFPs as an interim measure or mitigation.*

Commission's Response:

The Commission notes these comments and will make distinguishing variations in its final reviews, which will be aligned with the provisions of *Section 100 of the Act*.

6. Paragraph 2(5) – *Other relevant issues to guide the decision of the Commission shall include the public interest in observing the rule of law and the need to entrench good corporate governance practices among operators.*

Comments:

Rephrase by inserting the italicized words –

Other relevant issues to guide the decision of the Commission shall include the public interest in observing the rule of law, and the need to entrench good corporate governance practices among, *and between operators and Network Facilities Providers.*

In making its decisions, the Commission shall consider other issues such as the public interest in upholding the rule of law and fostering good corporate governance practices

within the Communications Industry. Furthermore, the Commission shall recognize the vital role of NFPs and ensure fair treatment, transparency, and equitable business practices between operators and NFPs.

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

7. Paragraph 3(1) – *Every Operator (hereinafter referred to as “Applicant”) has a right to apply to the Commission for approval to disconnect an interconnected operator (hereinafter referred to as “Respondent”) for any of the following reasons.*

Comments:

Rephrase by inserting the italicized words –

Every Operator or *Network Facilities Provider* (hereinafter referred to as “Applicant”) has a right to apply to the Commission for approval to disconnect an interconnected operator (hereinafter referred to as “Respondent”) for any of the following reasons.

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

8. Paragraph 3(2) – *Applications for approval to disconnect an Operator on the grounds of failure or refusal to settle interconnect indebtedness should at all times be made on NCC Disconnection Form 1.....*

Comment:

Rephrase by inserting the italicized words –

An Application for approval to disconnect an Operator on the grounds of failure or refusal to settle interconnect indebtedness *should always* be made on NCC Disconnection Form 1.....

Commission’s Response:

This comment is noted.

9. Paragraph 3(3) - *The information to be provided to the Commission under Paragraph (2) above would however not be required where the request for disconnection is made for reasons other than failure or refusal to settle interconnect indebtedness.*

Comment:

IHS suggests a distinguishing or segmentation of interconnect indebtedness-

- i. MNOs/Services Providers in the active segment of the industry and;
- ii. NFPs in the passive segment.

Commission’s Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

10. Paragraph 3(5) – *The Commission may approve an application where the Respondent fails to respond within the Five (5) working days provided in Paragraph 3 (4) without further recourse to any of the parties.*

Comment:

IHS suggests the operative word be changed to “shall” if there is ample evidence that the Respondent received the notification or failed to seek an extension of time to respond.

Commission’s Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

11. Paragraph 3(7) – *the Commission may take the decision outlined in Paragraph 3 (5) and the failure to respond.....*

Comment:

The word “may” should be changed to “shall”

Commission’s Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

12. Paragraph 5(1) – *In considering a request for approval to disconnect an Operator, the Commission will take into account the following:*

Comment:

Rephrase by inserting the italicized word –

In considering a request for approval to disconnect an Operator, the Commission will *consider* the following:

Commission’s Response:

This comment is noted.

13. Paragraph 5(1)(c) – *That the Applicant had prior to the request for approval to disconnect exchanged Call Data Records (CDRs) with the Respondent on demand; and*

Comment:

Insert after CDR “... *or in the case of Network Facilities Provider demanded for the amount or payment...*” This is just to ensure inclusiveness.

Commission’s Response:

This comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

14. Paragraph 5(2) – *The debt must have been outstanding for thirty (30) calendar days inclusive of the period agreed between the parties in their interconnection agreement”.*

Comments:

Paragraphs 5(2) and 5(3) can be infused into Paragraph 5 (1) (e) and 5 (1) (f), since the Paragraph is still speaking to what the Commission will consider a request for approval to disconnect an Operator.

Where the cumulative amount owed is equal or greater \geq than three (3) months contractual use fee.

IHS highly recommends that this is considered as one of the major **CP** to disconnecting a Respondent without recourse to them.

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

15. Paragraph 5(3) – *In the event that the Respondent has a previous record of not meeting debt obligations within the last two (2) years, the duration allowed for.....*

Comments:

Rephrase by inserting italicized word –

If the Respondent has a previous record.....

Two (2) years is a long time. IHS proposes a reduction to Three (3) months.

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

16. Paragraph 5(4) (c) – *The antecedents of the Respondent vis-à-vis payment of interconnection indebtedness to its interconnecting parties in the last two (2) years.*

Comment:

IHS proposes a reduction to Three (3) months.

17. Paragraph 5(5) - *For purposes connected with the determination of the total amount of indebtedness owed by parties, where an Operator fails to exchange reliable CDRs after fifteen (15) calendar days of the demand thereof, the CDRs of the other interconnecting party shall be deemed as the proper and correct records of indebtedness of the parties.*

Comments:

Insert at the end of the sentence – *In like manner, where an Operator/Network Facilities Provider fails to exchange reconciliation records after Fifteen (15) calendar days of the demand thereof, the record of the other party shall be deemed as the proper and correct record of indebtedness between both parties*

Another provision to provide inclusiveness

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

18. Paragraph 5(6) – *The determination in sub-paragraph (5) above deeming the CDRs of one interconnecting party.....*

Comments:

Rephrase as follows – “The determination in sub-paragraph (5) above deeming the CDRs/Reconciliation Records of one interconnecting party the correct record of indebtedness between the two parties shall be communicated to the parties by the Commission within three (3) working days from the day the determination was made.”

Another provision to provide inclusiveness.

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

19. Paragraph 6(1) – Without prejudice to *provisions* of any paragraph of these Guidelines, the Commission may at any time before rendering its decision on the request for approval to disconnect, opt to invite the parties to a *hearing meeting* on the application.

Comment:

Rephrase by inserting italicized words – Without prejudice to *the* provisions of any paragraph of these Guidelines, the Commission may at any time before rendering its decision on the request for approval to disconnect, opt to invite the parties to a *hearing* on the application.

Commission’s Response:

This comment is noted.

20. Paragraph 6(5) – *In the event that the Commission is unable to give its decision within the timeframe stated in Paragraph 6(3).....*

Comments:

Rephrase Paragraphs as follows –

If the Commission is unable to give its decision within the period stated in Paragraph 6(3), the reasons shall be communicated to both parties and a new date of the decision stated.

Where the Commission fails to give a decision within Thirty (30) working days of the receipt of all requested comments or conclusion of hearing as required under Paragraph 6(1) hereof, approval would be deemed given.

This will ensure an end to regulatory intervention.

Commission’s Response:

These comments are not accepted because they are not in line with the provisions of *Section 100 of the Act*. The Commission takes the liberty to quote the section verbatim below:

“Notwithstanding the terms and conditions of any interconnection, a party thereto shall not at any time and in any circumstance disconnect or discontinue interconnection to any interconnecting party without the prior written approval of the Commission”

21. Paragraph 7 (1) – *If the indebtedness or a part thereof remains unpaid as at the date agreed for payment in the undertaking made under Paragraph 6 (1), the Commission shall publish a notice to the subscribers of the debtor Operator informing them that the Operator is unable to pay its indebtedness.*

Comments:

Insert the italicized words –

.....the Commission shall publish a notice to the subscribers of the debtor Operator/*Network Facilities Provider*, informing them that the Operator/*Network Facilities Provider* is unable to pay its indebtedness.

This will provide inclusiveness.

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

22. Paragraph 7(3) – *Pre-Disconnection Notice to subscribers required under the subparagraph (1) hereof shall also be issued in all circumstances where the Commission has made a decision to grant approval to disconnect any debtor Operator or any other case, other non-settlement of interconnection indebtedness*

Comments:

Rephrase the Paragraph by adding the italicized words as follows –

A Pre-Disconnection Notice to subscribers *as* required under the Sub-Paragraph (1) hereof shall also be issued in all circumstances where the Commission *decides* to grant approval to disconnect any debtor Operator or *in* any other case, *except for* non-settlement of interconnection indebtedness

Commission’s Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

23. Paragraph 9(1) – *Where a determination is made on the merits that a request for approval to disconnect should be granted, the Commission reserves the right to authorize an Applicant*

to partially disconnect the Respondent on terms to be decided by the Commission. For the purpose of these Guidelines, Partial Disconnection shall be limited to the disconnection of only outbound calls from the Respondent's network to the Applicant's network.

Where a determination is made on the merits that a request for approval to disconnect should be granted, the Commission reserves the right to authorize an Applicant to partially disconnect the Respondent, on terms to be set by the Commission and communicated to the Applicant. For NFPs and for the purpose of these Guidelines, partial disconnection shall constitute the disconnection of not more than 50% of the Respondent's equipment on the Applicant's towers. If the Respondent fails to settle its debt within fifteen (15) working days after partial disconnection, the Commission shall grant the complete disconnection of the Respondent.

IHS suggests a distinguishing or segmentation of interconnect indebtedness –

- i. MNOs/Services Providers in the active segment of the industry and;
- ii. NFPs in the passive segment. This is to reflect each segment's peculiar circumstances.

Commission's Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

24. Paragraph 10(1) – *In any event where approval for partial disconnection is granted, if the Commission is not satisfied with the remedial efforts made by the Respondent subsequent to the approval, the Commission may take any or all of the under-listed steps:*

Comment:

Rephrase by inserting italicized words –

In any event where approval for partial disconnection is granted, if the Commission is not satisfied with the remedial efforts made by the Respondent *after* the approval, the Commission may take any or *all* the under-listed steps:

Commission's Response:

This comment is noted.

25. Paragraph 10(2) – *Without prejudice to any other provisions of these Guidelines, the Commission may take any or all of the remedial steps in Paragraph 12(1)(a)-(c)-(d) in relation to any Operator or Respondent with a record of not meeting debt obligation(s).*

Comment:

Rephrase by inserting italicized word –

Without prejudice to any other provisions of these Guidelines, the Commission may take any or *all* the remedial steps in *Paragraph 12(1)(a)-(d)* in relation to any Operator or Respondent with a record of not meeting debt obligation(s).

Commission’s Response:

This comment is noted.

26. New Paragraph and Sub-Sections to be inserted -

Comments:

Paragraph 11(1) – *Where a Network Facilities Provider is the applicant, the Commission shall in granting approval for the disconnection, be guided by the need to ensure that the interest of the NFP, which is always the creditor, in question, is protected.*

Paragraph 11(2) – *The Commission shall consider all scenarios, including the quantum of debt, the age of the debt, the willingness displayed by the debtor operator to repay the debt and the need to maintain a sustainable QoS of the networks in approving disconnections for NFPs.*

Paragraph 11(3) – *During the pendency of an application by a NFP to disconnect an Operator on the grounds of indebtedness or otherwise, the Commission shall direct that the debtor operator cannot be accommodated by any other NFP until the debt owed the applicant is completely paid or a scheme of payment agreed.*

Paragraph 11(4) – *The Service Level Agreements (SLAs) between a NFP and its customers shall cease to be implemented/inoperative in a case where the customer is owing the NFP and shall remain so until there is a determination/agreement regarding such debt.*

Paragraph 11(5) – *To reduce the exposure of the NFP regarding the debt, and in line with section 9(1) above, the NFP shall have the ability to reduce the number of the debtor’s sites that it is maintaining until such a time that the entire debt is liquidated.*

Paragraph 11(6) – *The onus of the responsibility of meeting the NCC’s prescribed KPIs on the NFP’s sites, shall be on its debtor customers, where the customers are not paying for the service.*

Paragraph 11(7) – *In the event of a disconnection dispute, the NFP’s responsibility is to its “Primary Customer”, which in this case is indebted to the NFP. As such, the NFP shall not be liable for SLA/KPIs the Primary Customer has with others.*

Commission’s Response:

These comments and recommendations are not accepted because they are not in line with the provisions of *Section 100 of the Act*. The Commission takes the liberty to quote the section verbatim below

“Notwithstanding the terms and conditions of any interconnection, a party thereto shall not at any time and in any circumstance disconnect or discontinue interconnection to any interconnecting party without the prior written approval of the Commission”

27. Paragraph 13(1) – *Where an Operator has been disconnected for reason of indebtedness, the interconnect agreement between both parties shall automatically terminate, and such Operator shall*

Comment:

Insert the italicized words –

Where an Operator/*Network Facilities Provider* has been disconnected for reason of indebtedness, the interconnect agreement between both parties shall automatically terminate, and such Operator shall.....

Commission’s Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

28. Paragraph 13(3) – *In order for a reconnection to be made to the Applicant, the Respondent shall be required to provide a Bank Guarantee to the Applicant to ensure prompt payment of fees.*

Comment:

Rephrase and insert italicized words –

For a reconnection to be made to the Applicant, the Respondent shall be required to provide a Bank Guarantee to the Applicant to ensure prompt payment of interconnection *or facility* fees.

Commission’s Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

29. Paragraph 14(1) – *Operators may at any time negotiate and agree upon terms for repayment of outstanding debts.*

Comment:

Rephrase the whole sentence –

Operators/Network Facilities Operators may negotiate and agree on terms for repayment of outstanding debts.

Commission’s Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

30. Paragraph 16(2) – *“Applicant” means a licensee bringing an application for disconnection.*

Comment:

Insert the italicized words –

“Applicant” means a licensee, bringing an application for disconnection and this includes a Network Facility Provider.

Commission’s Response:

The comment is noted and will be taken into consideration in the final review of the Draft Guidelines.

31. Form 1 – 5.6

Form 2 – 4.5

Details of Compliance with Dispute Resolution Mechanism contained in Interconnect Agreement.

Comment:

- Reference to arbitration in our contracts relates to and is required not only in the case of unpaid debts but also for material breaches of the contract. The same applies for items raised with the Commission for disconnection.
- Thus, reference in the NCC Forms 1 & 2 seeking details of compliance with arbitration process before filing a disconnection request should be expunged.
- IHS already has a contractual right to switch off erring customers, but is unable to alter this bit of the contract due to the existing NCC Guidelines which requires IHS to seek the Commission’s approval before effecting a disconnection.

- The basis for seeking approval from the Commission to disconnect a customer relates to undisputed outstanding debts; not disputed ones which are subject to arbitration.

Commission's Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

MTN

1. Paragraph 1(4) – *Tariffs paid by customers to Operators are inclusive of the interconnection charge, and an Operator shall upon receipt of such tariffs ensure that it deducts and sets aside all interconnection fees payable to its interconnecting counterpart in a separate account in line with the Accounting Separation Framework of the Commission. The operator shall effect payment thereof in accordance with the terms of duly executed interconnection agreements.*

Comment:

MTN recommends that licensees be required to adhere to the provisions of the Accounting Separation Framework (ASF) by submitting their regulatory financial statements. This will ensure compliance with the ASF without singling out specific obligations from the Framework.

Commission's Response:

The comment is noted and will be considered.

2. Paragraph 2(1) (c) – *Parties must have fully exhausted all the dispute resolution options contained in their interconnection agreements for resolving the dispute, billing issue or other interconnect debt issues in question.*

Comments:

MTN is of the opinion that this inclusion of this Paragraph increases technicalities in the process and may hamper the disconnection process as indebted parties are prone to abuse the requirement for dispute resolution. In some instances, indebted licensees resort to raising disputes on undisputed transactions in a bid to delay the process of disconnection.

Furthermore, the Commission as the regulator is in a quasi-judicial function and has the duty to protect all parties' interests by hearing all requests for approval to disconnect. Thus, in line with the ethos of the Constitution of the Federal Republic of Nigeria and decided cases, justice and not technicalities should be the target.

Accordingly, the Commission must ensure that the rights of parties to approach the Commission for a resolution, as guaranteed under *Section 73 of the NCA 2003*, is not frustrated.

The Commission should also note that in several instances, indebted licensees have only met their obligations upon the intervention of the Commission, despite several entreaties from owed licensees. If this Paragraph had been enforced, such cases would have remained unresolved today, as the defaulting party can use the provision as a defense to frustrate the dispute resolution process. Where the Commission is inclined to encourage parties to resolve the issues before making a request for dissolution, the Commission should be mindful of the fact that it has prevented licensees from including credit management clauses as well as intervening in commercial agreements. This has inadvertently caused the issue of indebtedness, which the Commission expects parties to resolve, and is unfair to the claimant.

Thus to ensure the principles of justice and speedy dispute resolution are not diminished, the Commission should not restrict licensee's right to approach it for dispute resolution. As such, the Paragraph should be removed or replaced with a Paragraph that does not make exhaustion of dispute resolution a condition precedent.

Commission's Response:

These comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

3. *Paragraph 3(4) – In every request for approval to disconnect made under paragraph 3 (1) (a-e) above, the Commission shall within three (3) working days of receipt of the request, forward the request to the respondent requiring its comments and/or reasons within five (5) working days why approval should not be granted for the disconnection. Provided that the Commission may request further documents or information to be submitted by the Applicant within three (3) working days of the application request and will only forward to the respondent after the further request has been fulfilled.*

Comment:

While MTN recognizes the Commission's inclusion of the requirement of the additional information from the applicant, the implementation of the timeline has always been a challenge. In previous applications for disconnection, it takes between Six (6) months to One (1) year to secure an approval for disconnection as the Commission is quite reluctant to grant such approvals. Additionally indebted operators often abuse the process leading to further delays. Thus, as recommended above, MTN urges the Commission to set a strict timeline for conclusion of all disconnection approvals and adhere to the Guidelines in all cases in the interest of timely resolutions.

Commission’s Response:

The essence of this Review is to provide clear timelines and compliance benchmarks as captured in the new Schedule 3 of the Draft under review.

4. Paragraph 3(5) – *The Commission may approve an application where the respondent fails to respond within five (5) working days provided in paragraph 3(4) without further recourse to any of the parties.*

Comments:

MTN recommends the Commission changes “may” to “shall” for regulatory certainty, where it is proven that parties have deliberately failed to respond to the Commission’s request for comments. It is suggested that the Commission treat like an undisputed claim as it sits in a quasi-judicial capacity.

Commission’s Response:

The essence of this Review is to provide clear timelines and compliance benchmarks as captured in the new Schedule 3 of the Draft under review.

5. Paragraph 3(7) – *Where the respondent fails to make a written response to the request for disconnection in line with Paragraph 3(4), the Commission may take the decision outlined in Paragraph 3(5) and the failure to respond shall be taken as an indication that the respondent has no response and the Commission may take a decision based on the submissions of the Applicant in NCC Disconnection form 1.*

Comment:

For regulatory certainty, “may” should be changed to “shall” where it is proven that parties have deliberately failed to respond to the Commission’s request for comments.

Commission’s Response:

The essence of this Review is to provide clear timelines and compliance benchmarks as captured in the new Schedule 3 of the Draft under review.

6. Paragraph 5(1) – *In considering a request for approval to disconnect an operator, the Commission will take into account the following:*
 - (b) – *That the Applicant maintains a separate interconnection account in line with the accounting separation framework of the Commission.*

Comments:

This Paragraph should be amended to read, *“that the licensee must comply with the requirements of the accounting separation framework”*. As such the Applicants must have submitted their Regulatory Financial Statements in accordance with the provisions of ASF. This is to ensure full compliance with ASF at all times, rather than on the requirement for separate interconnect accounts.

Commission’s Response:

These comments are noted and will be considered.

7. Paragraph 5(4) – *In addition, the decision of the Commission on a request for approval shall be guided by the following considerations:*
 - (b) – *The Statement of the Interconnection Accounts of the applicant and the respondent.*

Comment:

Amend to read, *“Applicant should have submitted their Regulatory Financial Statements”*.

Commission’s Response:

The comment is noted and will be considered.

8. Paragraph 6(1) (2) – *Without prejudice to the provisions of any paragraph of these guidelines, the Commission may at any time before rendering its decision on the request for approval to disconnect, opt to invite the parties to a hearing meeting on the application. Provided that such a hearing meeting shall be convened not later than five (5) working days after the submission of NCC Disconnection form 2 by the respondent.*
 2. *Where at such a meeting a respondent shows demonstrable efforts by the payment of at least 50% of the indebtedness, the respondent would be required to sign an undertaking on terms acceptable to the applicant. Provided that the payment of the 50% shall be made within five (5) working days of the execution of this undertaking or the final date of the hearing meeting, whichever is earliest.*

Comment:

This Paragraph should be amended to apply to only first time indebted licensees. Where a licensee has previously been the subject of a request for approval to disconnect, or has been previously disconnected, MTN recommends that such licensees be excluded from a hearing. Based on past experiences, mediation rather prolongs the process as indebted parties have in practically all instances defaulted on the resolutions reached at the meeting.

Furthermore, the Commission is reluctant to apply the sanctions agreed upon at these meetings, leading the applicant to make several more applications before any progress is recorded. In one such instance, the Commission has convened three meetings with the respondent making repeated payment plans without adhering to any. However, the Commission is yet to disconnect the party.

Paragraph 6(2) should be amended to require parties strictly adhere to the conditions of the undertaking made at such meetings. Where the defaulting party does not adhere to the undertakings made at such meetings, the Commission should automatically grant the approval to disconnect without recourse to either party.

A timeline should also be specified of not later than Seven (7) days from the effective date of compliance with the terms.

Commission’s Response:

These comments are noted and will be considered.

- 9. Paragraph 6(3) – *Refusal to execute an undertaking or non-compliance with the terms of an undertaking will result in the grant of approval to disconnect the respondent and the Commission may also impose other administrative measures where necessary.*

Comment:

Paragraph 6(3) should be amended as follows, “*where the defaulting party does not adhere or comply with the undertaking made at such meetings, the Commission should automatically grant approval to disconnect without recourse to either party*”.

The Commission should commit to a timeline which should not be more than Seven (7) days from the effective date of compliance with the terms.

Commission’s Response:

The essence of this Review is to provide clear timelines and compliance benchmarks as captured in the new Schedule 3 of the Draft under review.

- 10. Paragraph 6(4) – *The decision by the Commissionto the parties within ten (10) working days of the receipt of all requested comments or conclusion of hearing as required by paragraph 6(1) hereof.*

Comment:

The Commission should include a Paragraph that, where a defaulting party fails to submit documents, a decision should be made within Ten (10) working days, upon conclusion of hearings based on available documents.

Commission's Response:

The essence of this Review is to provide clear timelines and compliance benchmarks as captured in the new Schedule 3 of the Draft under review.

11. Paragraph 6(5) – *In the event that the Commission is unable to give its decision within the timeframe stated in Paragraph 6(3), the reasons shall be communicated to both parties and a new date of the decision stated.*

Comment:

The new date for a decision should not exceed Ten (10) days, as there must be finality in interconnection cases due to the prolonged nature of disputes which may take One (1) year to conclude.

Commission's Response:

The essence of this Review is to provide clear timelines and compliance benchmarks as captured in the new Schedule 3 of the Draft under review.

12. Paragraph 7(2) – *The Pre-Disconnection Notice to subscribers shall be published by the Commission in two and by SMS to all subscribers of the debtor Operator.*

Comment:

The Publication should be an obligation for the Commission. This is because the defaulting party may not want to send SMS messages to their subscribers.

Commission's Response:

The comment is noted and will be considered.

AIRTEL

1. Paragraph 3 – Request for Approval to Disconnect: **Proposed modifications with respect to timelines.**

Comment:

Paragraph 3(8) – Airtel recommends that the extension period given to the Respondent to make its submission be modified thus: “*A Respondent upon a written request to the Commission may be granted an extension period for filing its response required under Paragraph 3(4) of this Guidelines, provided that such an extension shall be at the discretion of the Commission, and it shall not be longer than three (3) working days without any option of further extension after the initial period within which the Respondent is to make its written response.*”

Commission’s Response:

This comment is noted and will be considered.

- 2. Paragraph 5 – Conditions for the Grant of Approval to Disconnect for Indebtedness: 1 (c) & (d) – Exchange of Call Data Records (CDRs), reconciliations and confirmation of outstanding amount by the parties.

Comment:

In line with international best practice, an exchange of CDRs is conditional on either of the parties raising a dispute. To avert unnecessary delays in the settlement of overdue interconnect obligations, it is recommended that the exchange of CDRs is subject to a dispute, otherwise, it is not applicable. Consequently, please modify the item 1(c) thus: *“That the Applicant had prior to the request for approval to disconnect exchanged Call Data Records (CDRs) with the Respondent if there is a dispute on the debt.”*

Commission’s Response:

The comment is noted and will be considered.

- 3. Paragraph 5(5) – *For the purposes connected with the determination of, where an Operator fails to exchange reliable CDRs after fifteen (15) calendar days,*

Comment:

Given the determination of the NCC to frontally address interconnect indebtedness in the Industry, it is recommended that the timeline for the parties to provide CDRs be reduced from fifteen (15) to ten (10) calendar days.

Commission’s Response:

This comment is noted and will be considered.

- 4. Paragraph 6(3) – *Refusal to execute an undertaking or non-compliance with the terms of an undertaking will result in the grant of approval to disconnect the respondent*

Comment:

Airtel respectfully recommends that a timeline be stipulated within which the Respondent is required to execute the undertaking, failing which the Commission should progress with the disconnection application.

Commission’s Response:

This comment is noted and will be considered.

5. Paragraph 12 – Disconnection of Interconnect Exchange Licensees

- i. The Commission is respectfully requested to waive the publication of the notice in national newspapers as Interconnect Exchange Licensees do not have subscribers.
- ii. The proposed grace period should be reduced from Twenty One (21) to Ten (10) days to ensure uniformity across the industry.

Commission’s Response:

These comments are noted and will be considered.

6. Paragraph 13(3) – *In order for a, the Respondent shall be required to provide a Bank Guarantee to the Applicant to ensure prompt payment of interconnection fees.*

Comment:

Airtel recommends the modification of the sentence by adding a “pre-payment option” thus: *“In order for a reconnection to be made to the Applicant, the Respondent shall be required to provide a Bank Guarantee or prepay the Applicant on interconnection fees.”*

Commission’s Response:

The comment is noted and will be considered.

EMTS

1. Paragraph 2(1) (b) – *The consistent with the standard and specifications determined by the Commission. No Operator is permitted to have a billing system that is not type-approved to ensure compliance with the standards and specifications as determined by the Commission.*

Comment:

EMTS suggests that the Commission carries out proper stakeholder engagements before arriving at the standards to ensure all required factors are taken into consideration.

Commission’s Response:

The Commission’s approach has always been participatory and stakeholders’ engagement has always been a key component of its regulatory activities.

2. Paragraph 6(2) – *Where at such a meeting a Respondent shows demonstrable efforts by the payment of at least 50% of the indebtedness, the Respondent would be required to sign an undertaking on terms acceptable to the Applicant. Provided that the payment of the 50% shall*

be made within five (5) working days of the execution of the undertaking or final date of the hearing meeting, whichever is earliest.

Comment:

Where the indebted party has shown commitment to pay up to 50% of the debt, the Commission should allow for a payment plan to be agreed by the parties, and not be restricted to five (5) working days to make payment.

Commission's Response:

This comment is noted and will be considered.

3. Paragraph 9(1) – *Where a determination is made on the merits that a request for the approval to disconnect should be granted, the Commission reserves the right to authorize an applicant to partially disconnect the Respondent on terms to be decided by the Commission. For purpose of these Guidelines, Partial Disconnection shall be limited to the disconnection of only outbound calls from the Respondent's network to the Applicant's network.*

Comment:

If a disconnection is approved by NCC, it is expected that only outbound traffic route to the creditor party is blocked, and not the number ranges of the indebted party. The indebted party should be able to terminate the calls through Clearing House Partners and to other networks

Commission's Response:

These comment are noted and will be considered.

4. Paragraph 10(1) – *In any event where approval for partial disconnection is granted, if the Commission is not satisfied with remedial efforts made by the Respondent subsequent to the approval, the Commission may take any or all of the under listed steps:*
 - (a) *Direct the migration of such operators to interconnect through a licensed Interconnect Exchange*
 - (b) *Decline any request for regulatory services or assistance and upon such conditions as the Commission may specify*
 - (c) *Publish names of operators with record of indebtedness in the newspapers*
 - (d) *Direct interconnect exchange licensee to disconnect the Operator.*

Comment:

Regarding Paragraph (1) (d) – Disconnection from Clearing House Partners is a total shutdown of the indebted partners operational activities which does not foster business

continuity. This should not be an option to be considered in the Guidelines as the implication is that any opportunity to pay its debt will be totally forestalled for that already struggling Operator.

Commission’s Response:

The comment is noted and will be considered.

5. Paragraph 15(1) – *Parties to an interconnection agreement may request and agree on the provision of bank guarantees to their interconnecting partners to ensure prompt payment of interconnection fees.*

Comment:

EMTS trusts that this provision would not be interpreted to mean that Parties can only use Bank Guarantees. Parties should be allowed to decide on options to adopt to ensure prompt payment of interconnection fees, and not to be restricted to bank guarantee only.

Commission’s Response:

The comments are noted and will be considered.

C. COMMENTS RAISED AT THE PUBLIC INQUIRY

IHS

1. On the proposed Paragraph 11 by IHS

Comments:

- *Paragraph 11.4* contemplates the operation of the SLA during the pendency of the debt obligation. Thus, all obligations regarding the payment of fines and penalties among others, for failing to meet with the SLA during the subsisting debt period should be ceased until the debt has been defrayed by the debtor operator.
- *Paragraph 11.6* provides for the cessation of NCC’s KPI evaluation for sites owned by the indebted operators. NFPs should be exempted from attaining the KPIs in respect of sites owned by indebted operators, pending the defrayment of their debts.

Commission’s Response:

- The Commission would work towards finding the right balance, where the SLA would not be deemed completely excluded, but also the NFP would not be

strictly compelled to comply with the terms of the SLA, while being owed by the debtor operator.

- All other comments have been duly noted and will be treated accordingly.
2. On the Timelines for approving the disconnection of indebted operators

Comments:

- Delays surrounding the disconnection procedures have prolonged the defrayment of debt by owing operators. Therefore, the timelines as provided for in the Guidelines should be strictly adhered to and enforced by the Commission.

Commission's Response:

The comment has been duly noted and will be treated accordingly.

MTN

3. Observation that some comments they submitted were not covered during the presentation.

Comments:

- The Commission should provide post-disconnection support to the applicants concerning the difficulties encountered in recovering debt from a disconnected debtor operator after receiving approval from the Commission.
- The Commission should include additional sanctions on indebted operators, such as; possible denial of regulatory services, suspension of their licenses, or reporting indebted operators to the credit bureau.
- The Commission should grant applicants the right to deny the indebted operators other licenses after disconnection has been approved.
- The Commission should consider giving a summary ruling on all disputed debts and mandate that parties substantiate all claims made. After both parties have submitted their Disconnection Forms, and the Commission has reviewed same.
- The Commission should consider granting applicants the right to reduce support to indebted operators, while the disconnection proceedings are ongoing.

Commission's Response:

- All comments submitted to the Commission and highlighted have been covered during the presentation.
- The current Guidelines already made provisions for post-disconnection remedies.

- The Commission would work towards strengthening the post-disconnection remedies and all other comments would be duly considered.
4. Responding to the comment made by EMTS that; a Disconnection of Interconnect Exchange Licensee may be termed disconnecting the wider ecosystem of operators who are connected to that Interconnect exchange.

Comment:

The publication by the Commission granting approval for an operator to disconnect an IEL gives other operators that are connected to the indebted IEL, ample time to port to a different IEL pending the determination of the disconnection proceedings. As such, this does not constitute a disconnection of the wider ecosystem.

Commission's Response:

The comments are noted and will be taken into consideration in the final review of the Draft Guidelines.

D. GENERAL COMMENTS

Mr. Ayiabari A. Kigbara (Manager, Public Affairs Department) thanked everyone for coming and concluded the session on the review of the Draft Guidelines on Procedure for Granting Approval to Disconnect Communications Operators.

The Public Enquiry ended at 13:35pm

Dated thisday of June, 2024.

Dr. Aminu Maida
Executive Vice-Chairman/CEO
NIGERIAN COMMUNICATIONS COMMISSION