



**REPORT OF THE PUBLIC INQUIRY  
ON THE  
NIGERIAN COMMUNICATIONS E-WASTE  
REGULATIONS AND  
DISASTER RECOVERY GUIDELINES**

**1.0. INTRODUCTION**

The Nigerian Communications Commission (the Commission), pursuant to its powers under Section 70 of the Nigerian Communications Act 2003 (the Act) developed the draft E-waste Regulations (the Regulations) and the draft Disaster Recovery Guidelines (the Guidelines) for the Communications industry. Based on the Commission's participatory rule-making procedure, the E-waste Regulations and Disaster Recovery Guidelines were published on its website for comments from the general public, especially telecommunications operators and other stakeholders.

As required by law, a Public Inquiry on the E-waste Regulations and Disaster Recovery Guidelines was scheduled for March 5, 2019 and a Notice of the Public Inquiry was published in Daily Trust and New Telegraph Newspapers on Monday February 11, 2019.

However, the Commission did not receive any comments from operators and stakeholders prior to the Public Inquiry.

**2.0. THE PUBLIC INQUIRY**

The Inquiry held as scheduled at the Conference Hall of the Commission. The forum commenced at 11:13am and was chaired by the Executive Vice Chairman, Professor Umar Garba Danbatta (EVC). Staff of the Commission and over Sixty-one (61) persons representing telecommunications operators, interested stakeholders and the media attended the forum.

The EVC welcomed participants to the forum. He explained the importance of having a proper legal framework to regulate e-waste in the telecommunications sector, stating that e-waste was now becoming the fastest growing waste stream in the world. In his address, the EVC cited a recent report by the World Economic Forum which estimated that this waste stream increased by about 48.5 million tonnes in 2018. He defined e-waste as electrical or electronic equipment that is waste, including all components, sub-assemblies and consumables that are

part of the equipment at the time the equipment becomes waste. While noting that over 75% of electronics imported into Nigeria were irreparable and toxic junk, he stated that this menace remains rampant due to the low GDP per capita/low income and the desperate quest for information by Nigerians. He further opined that the prevalence of e-waste has raised a lot of pollution issues which should be managed, because of the resultant effects on humans and the environment.

The EVC also stated that the Commission, in line with its commitment to sustain phenomenal successes recorded in the industry, developed the Disaster Recovery Guidelines to mitigate disasters that might affect business continuity in the industry and jeopardise the phenomenal success already recorded in the industry. He noted that the Guidelines was part of the Commission's wider risk management initiatives, aimed at protecting telecoms companies from the threat of emergencies in their operations.

Subsequently, the EVC enjoined all participants to freely make their contributions and raise issues that would assist the Commission in developing robust regulations and guidelines that would enhance development of the industry and the entire economy.

Thereafter, the Director, Legal & Regulatory Services Department, Mrs Yetunde Akinloye, gave a short overview of the E-Waste Regulations and Disaster Recovery Guidelines as follows:

**A. General Overview of the E-waste Regulations and Disaster Recovery Guidelines**

***E-waste Regulations***

The Regulations is made up of Thirty-One (31) regulations and structured into Sixteen (16) parts. Also included in the Regulations is one (1) Schedule, nine (9) Forms and four (4) Tables. The Regulations outlines the responsibilities and obligations of stakeholders in the e-waste value chain, such as the manufacturer, collection and disposal facilities agent, vendors, consumers or bulk consumers, recyclers, importers and transporters. The Regulations applies to all type-approved Electrical and Electronic Equipment and activities carried out by any person in relation to Electrical and Electronic Equipment used in the telecommunication industry.

***Disaster Recovery Guidelines***

The Guidelines comprises Ten (10) paragraphs which are structured into five (5) parts, two (2) Schedules and one (1) Annexure. The Guidelines, which applies to all Communications Network Facilities and Service Providers in Nigeria, seeks

to address the major causes of communications system failures such as emergencies, disasters, terrorist or cyber-attacks, loss of infrastructure and network congestion.

After the short overview, the Deputy Director, Legal & Regulatory Services Department, Mr. Gwa Tobbie Mohammed, requested participants to comment on the draft Regulations and Guidelines. He reiterated that the essence of requesting for comments from relevant stakeholders was for the Commission to ensure that all concerns were duly considered and adopted, where necessary, in the final Regulations and Guidelines.

Thereafter, the following comments/contributions were made by MTN Nigeria Communications Limited, National Environmental Standards and Regulations Enforcement Agency (NESREA), ATC Wireless Nigeria Limited and a representative from the Association of Non-Governmental Organisations in Nigeria.

## **B. Review of Comments on the E-waste Regulations**

### **1. Responsibilities of Telecommunications Operators**

#### **Comment**

What role(s) should be played by telecommunications operators, who are major contributors of e-waste, as this is not explicitly stated in the E-waste Regulations?

#### **Response**

The role(s) to be played by telecommunications operators depend on their status at any given point in time. Although not explicitly mentioned and assigned any specific responsibilities, telecommunications operators adequately fit into and are covered under any of the identified stakeholders in the E-waste value-chain in Parts II-VIII and also adequately covered by definitions in Regulations 30 of the Regulations, to wit: bulk consumer, consumer, distributor, e-retailer, importer, operator, manufacturer, vendor etc.

### **2. Overlap of E-waste Regulations with National Environmental (Electrical/Electronic Sector) Regulations (NER)**

#### **2.1. Comment**

Most of the provisions of the E-waste Regulations are already covered under NESREA's National Environmental (Electrical/Electronic Sector) Regulations (NER).

## **Response**

Sector specific rule can be made, even where a national rule of general application has been made on the same issue. The E-waste Regulations is not a duplication of the NER, as it addresses issues that pertain to the telecommunications sector.

Furthermore, though NESREA is saddled with the responsibility of setting and enforcing standards for environmental protection in Nigeria, there is nothing under its establishing Act that suggests that it is the only agency or government institution with mandate on the legal regimes on matters related to the environmental and public safety. This regime is administered by an array of institutions and the power to do is connected to their principal powers or functions, supported by the enabling laws creating them. The Nigerian Communications Commission, benefits from this window and is enabled to make regulations on matters related to E-waste and other related issues, pursuant to the provisions of Sections 4, 70, 132 to be in conjunction with Sections 130 and 134 of the Nigerian Communications Act, 2003.

Also, nowhere in the NESREA Act, is any mention or reference made by name or explanation in relation to the telecommunication sector. It is important to state that matters of quality, specifications, standard and performance indicators of Type Approved EEE relates not only to the safety of the equipment in relation to customers alone, but the general public and the environment at large. It will therefore not be out of place for an Agency that is principally empowered to make regulations in relation to Type Approve EEE that enters into Nigeria, to regulate the life cycle of such Type Approve EEE by imposing responsibilities for its management on stakeholder within the value chain end to end.

## **2.2. Comment**

Most stakeholders have already subscribed to NESREA's Extended Producer Responsibility (EPR) programme, which has provisions likely to overlap with those contained in the E-waste Regulations. Also, enforcement of the EPR by NESREA is due to commence by end of March 2019.

## **Response**

No doubt, most stakeholders may have already subscribed to NESREA's EPR programme; there is however, no likelihood of overlap with the Commission's EPR programme. While the NESREA EPR programme is general in scope, the Commission's EPR programme is specific in context and application. It is also important to state that, the EPR implementation process under the Commission's E-waste legal regime is an improvement over the inadequacies of the EPR implementation process under

NESREA's E-waste legal regimes (National Environmental (Electrical/Electronic Sector) Regulations, 2011, S.I. No 23 Gazette No. 50, Vol. 98 of 25th May, 2011 and the NESREA EPR Operational Guidelines, 2014). Unlike the implementation process under the NESREA EPR, the Commission's EPR implementation regime presents a more realistic and clearly defined collective system of collection and management of E-waste to address Nigeria's peculiarities in E-waste chain collection mechanism. There is a clearly set out elaborate procedure, channel or mechanism for the implementation of the EPR approach to ensure efficient channelization of E-waste that will prevent leakages (the mechanism of 'channelization' of Type Approved Electrical and Electronic Equipment (EEE) from the producer down to the consumer and from the consumer up to the producer [end to end]).

### **2.3 Comment**

What was the rationale behind the Commission's decision to develop the E-waste Regulations to run parallel with NESREA's National Environmental (Electrical/Electronic Sector) Regulations (NER)?

#### **Response**

Sector specific rule can be made, even where a national rule of general application has been made on the same issue. The E-waste Regulations is not a duplication of the NER, as it addresses issues that pertain to the telecommunications sector.

### **2.4 Comment**

There is a likelihood of an institutional conflict of interest between the Commission and NESREA as the NER already addressed all the issues pertaining to E-waste. Thus, a query was raised on whether there are gaps in the existing NER which the E-waste Regulations seeks to address.

#### **Response**

Sector specific rule can be made, even where a national rule of general application has been made on the same issue. The E-waste Regulations is not a duplication of the NER, as it addresses issues that pertain to the telecommunications sector. The Commission is however prepared to collaborate with NESREA or any other relevant agency with regards to the Regulations.

## **3. Legal Capacity of the Commission to develop the E-waste Regulations**

### **Comment**

Does the Nigerian Communications Act 2003 empower the Commission to develop regulations on E-waste?

**Response**

The Commission is empowered to develop the E-waste Regulations by virtue of Sections 4 and 70 of the Nigerian Communications Act 2003. *See also our response under 2.1 above.*

**4. Waste Management****Comment**

The Regulations should cover stakeholders involved in the process of re-using, reduction and recycling of E-waste.

**Response**

This comment relates to stakeholders like refurbishers and dismantlers. These categories of stakeholders were initially captured but later expunged from the Regulations due to concerns regarding its scope of responsibility and more particularly the scope of the application of the type approval standard set out by the Commission. As for the recyclers, they have been adequately identified and responsibilities assigned to in the E-waste value chain.

**5. Responsibilities of Manufacturer****Comment**

Regulation 3(d)(ii) imposes on the manufacturer the responsibility of setting up a collection system that will allow distributors and retailers to accept any Electrical and Electronic Equipment (EEE) which has reached its end of life from all private household and final holders free of charge. How will this obligation be actualised in the absence of any form of incentive to the manufacturer?

**Response**

The issue of incentives is purely discretionary and can be addressed through administrative policy or executive orders, without the necessity of stipulating it as a legal provision in a legislation.

**6. Responsibility of Importer****6.1. Comment**

How will Regulation 8(1) affect bulk EEE users such as infrastructure companies (INFRACOs)? Would they need to register and obtain a licence from the Commission before importing equipment, including laptops, rectifiers etc?

**Response**

Yes, the only recognized exception is the proviso to Regulations 1.

*“...Provided that the manufacture and supply of EEE use for national defence, security and other similar strategic applications shall be excluded from provisions of these Regulations.”*

**6.2. Comment**

Would INFRACOs have to submit Form EEE 5 as contained under Regulation 8(3) for all types of shipment of EEE to be used by them?

**Response**

Yes

**6.3. Comment**

Since Regulation 8(6) prohibits importation of EEE containing any toxic or hazardous substance, would back-up lead and lithium ion batteries not be affected by this provision?

**Response**

No. Even though, Regulation 8(6) appears to be an absolute restriction, its strength has been neutralized by the provision of Regulation 8(8). These provisions should therefore be read together.

**6.4. Comment**

In view of the fact that some new technology materials/equipment such as lithium ion batteries do not yet have recycling programs, how would Regulation 8(8) be applied?

**Response**

This was contemplated by these Regulations; the environmentally sound management of these kinds of EEE has been taken care of under Regulation 4.

**7. Reducing the Use of Hazardous Substances**

**7.1. Comment**

The word “may” under Regulation 17(5) should be replaced with “shall”.

**Response**

The exercise to be conducted by the Commission in relation to the obligation (...conduct random sampling...) under the Regulations is not time bound. The use of the word ‘may’ in the provision is therefore the most appropriate in the circumstance.

**7.2. Comment**

Regulation 17(7) is in conflict with NESREA’s National Environmental (Electrical/Electronic Sector) Regulations (NER).

### **Response**

No. More so, the comment is speculative as it fails to identify the specific provision(s) in NER that the E-waste Regulations conflict with. Regulation 17(7) is incidental and it flows from the enabling regulatory powers of the Commission to make Regulations in relation to Type Approved EEE imported in Nigeria.

## **8. Exposure Control from Electromagnetic Fields**

### **8.1. Comment**

There is need to have a clear definition of “*nearness to kindergarten, schools, playgrounds, hospitals and other forms of gathering in need of special considerations*” under Regulation 18(2).

### **Response**

This is not necessary. Regulation 18(2) should not be read in isolation, it should be read in conjunction with Regulation 18(1) (a) and Tables 1, 2, 3 and 4 of the Regulations. Equally, being a technical matter which is flexible because of the innovative nature of technology, it is safe to leave it open to policy guidelines, which may change from time to time, given the circumstance and technology involved.

### **8.2. Comment**

The Environmental Impact Assessment Act already makes “*Transparency and open discussion with local authorities and population prior to and during the installation or establishment of facilities*” as contained under Regulation 18(3) an EIA requirement. Will there be any synergy in reconciliation of requirements?

### **Response**

Regulation 18(3) is incidental and it flows from the enabling regulatory powers of the Commission to make Regulations in relation to Telecommunications facilities in Nigeria. The Provision also serve as confirmatory tool of satisfaction of other regulatory obligations that may have been imposed by other sister Regulatory Agencies, in line with the provisions of Section 135 of the Nigerian Communications Act, 2003.

### **8.3. Comment**

There is need to clarify what the buffer zone and set back, if any, around any radiation emitting facility would be under Regulation 18(4).

### **Response**

Regulation 18(4) should be read in conjunction with Regulation 18(1) and Tables 1, 2, 3 and 4 of the Regulations. More so, the comment relates to



matters of implementation. Equally, being a technical matter which is flexible because of the innovative nature of technology, it is safe to leave it open to policy guidelines, which may change from time to time, given the circumstance and technology involved.

## **9. Sanctions for Violation**

### **9.1. Comment**

What monitoring mechanisms have been put in place to ensure that only authorised vendors carry out transportation of E-waste such as batteries, especially in remote locations?

#### **Response**

The comment is purely on the issue of implementation. The Commission will evolve strategies to monitor compliance and these strategies may change from time to time. More so, as part of monitoring mechanism, the E-waste Regulations have provisions dealing with licensing and permits requirements.

### **9.2. Comment**

The sanction contained under Regulation 23(1) should be reviewed as it seems excessive.

#### **Response**

Lax sanctions encourage violation of laws, hence the necessity for stiffer sanctions.

## **C. Review of Comments on the Disaster Recovery Guidelines**

### **1. Implementation of the Guidelines**

#### **1.1. Comment**

Since most operators had, prior to the development of the Guidelines, invested in disaster recovery plans for their various organisation, would these existing plans have to strictly comply with the specifications contained under Schedule 1 of the Guidelines?

#### **Response**

Yes. This is because the Disaster Recovery Guidelines presents a more robust, well structured, easy to key-in and sector specific emergency telecommunication infrastructural recovery plan, built on the four pillar of: Emergency responses, Restoration and repair, Reconstruction of the destroyed for functional replacement and Reconstruction for redevelopment.

**1.2. Comment**

Will operators receive any form of support/assistance from the Commission with regards to the implementation of the provisions of the Guidelines?

**Response**

Yes. See Paragraph 8(1), (2) etc. of the Guidelines.

**1.3. Comment**

Are operators required to carry out specific tests in respect of their disaster recovery plans? If so, this should be specified under the Guidelines.

**Response**

This has already been provided for under Paragraphs 3(5), (6), (7) and (8) of the Guidelines

**3.0. CLOSING REMARKS**

June Nezianya, Principal Manager, Legal & Regulatory Services thanked all the participants at the Public Inquiry and encouraged them to forward their contributions and comments with regards to the Regulations and Guidelines within two weeks from the date of the forum.

The Public Inquiry ended at 12.45pm.

**Dated this 5<sup>th</sup> day of March 2019**

**Professor Umar Garba Danbatta, *FNSE, FRAES, FAEng*  
Executive Vice Chairman/CEO  
Nigerian Communications Commission**