



REPORT OF THE PUBLIC INQUIRY ON GUIDELINES ON COMMON AND PREMIUM SHORT CODES OPERATION IN NIGERIA

INTRODUCTION

The Nigerian Communications Commission (the Commission) pursuant to the powers conferred on it by Sections 57, 58, 70 and 71 of the **Nigerian Communications Act, 2003** (the Act) developed and issued draft guidelines on Common and Premium Short Code operation in Nigeria. The Guidelines were published on the Commission's website for comments from the telecommunications operators, the general public and other stakeholders.

A Notice of Public Inquiry on the Guidelines was published on January 9, 2010 in the Guardian and ThisDay Newspapers. The publication requested members of the public to review the draft Guideline and submit comments on or before the close of business on Friday January 29, 2010.

By the close of business on 29th January, 2010, the Commission had received four (4) comments in respect of the scheduled Public Inquiry. The submissions were made by the following stakeholders

1. Celtel Nigeria Limited trading as Zain
2. MTN Nigeria Communications Limited
3. Emerging Markets Telecommunication Services Limited
4. Streamsowers & Kohn

THE PUBLIC INQUIRY

The Public Inquiry took place on 9th February, 2010 at the Conference Hall of the Commission, in Abuja.

PARTICIPATION

Participants at the forum were drawn from licensed telecom operators, the Media and other corporate organizations. A total number of Fifty Three (53) participants attended the public inquiry.

OPENING

The Inquiry commenced at 12:00 pm and was chaired by the Executive Vice Chairman /CEO of the Commission. Other members of Management and Staff of the Commission were also in attendance. The Executive Vice Chairman welcomed everyone to the Public Inquiry. He explained that the Public Inquiry was part of the Commission's consultation processes aimed at involving the general public as well as stakeholders in the discharge of the Commission's regulatory functions.

He noted that the Guidelines are developed to provide a regulatory framework for the operation of common short codes, licensing of content aggregators and protection against misuse. He informed participants that the present national numbering plan is undergoing a general review to integrate /harmonize short codes administration and management alongside other services utilizing numbering resource.

He enjoined all participants to freely make their contributions and to raise issues that would assist the Commission in coming up with guidelines that would enhance development in the value added sector of the industry. He assured participants that all views and comments would be taken into consideration in finalizing the Guideline.

PRESENTATION BY THE COMMISSION ON THE PROCEDURES

The Commission's presentation on the Guidelines on Common and Premium Short Codes was made by the Director, Legal and Regulatory Services Ms Josephine Amuwa while the review of the submissions received from stake holders was made by the Assistant Director, Legal and Regulatory Services, Mrs. Yetunde Akinloye.

REVIEW OF SUBMISSIONS RECEIVED

Further to the submissions received by the Commission prior to the Public Inquiry the Commission had reviewed same and the responses thereto are set out below.

1. Comment

There were several comments made regarding the need to have a definition/interpretation Section so that some of the terms used in the guidelines can be clearly defined to avoid ambiguity.

Response

Comment noted and accepted. The Guidelines will be amended to either have a definition section or expand the existing explanatory notes to include all necessary definitions.

2. Comment

There was a comment that the title of the guidelines be changed to Guidelines on Short Code operation in Nigeria in order not to leave room for speculation as to its application.

Response

Comment noted and accepted. Guidelines will be reviewed and amended accordingly.

3. Comment

There was a comment relating to the Explanatory notes to the effect that the guidelines seem to suggest that Short and Premium codes are only used for SMS and MMS whereas they can be used for voice services as is the case with emergency and customer care services.

Response

Comment noted and accepted. Guidelines will be reviewed accordingly.

4. Comment

There were comments wanting to know whether the Commission intends to migrate and harmonize the existing short codes with the new ones to be created or whether they would be revoked.

Response

Comment noted. The Commission intends to undertake an audit of the existing short codes which shall be reviewed along with the National Numbering Plan.

5. Comment

There was a comment that short codes are not within the meaning of Section 1(i) and Section 128(1) of the Nigerian Communications Act, 2003.

Response

The above assumption is not correct because under Section 1(2) of the Numbering Regulations 2008 short codes are defined as numbers.

6. Comment

There was a comment that there was a need to update the existing National Numbering Plan as this would address the segmentation of the short codes.

Response

The National Numbering Plan is currently undergoing a review. However, this does not hinder the operation of the Short and Premium codes.

7. Comment

Related to the above is another comment that the Commission should develop a National Short Code Plan similar to the existing National Numbering Plan to deal only with the Short and Premium codes.

Response

This issue will be considered during the review of the National Numbering Plan which is ongoing.

8. Comment

There were several comments regarding the categorization of codes as contained in the Explanatory notes, Sections 1.3 and 3.3, most comments were to the effect that the definition of codes into short and premium codes simpliciter was quite restrictive. Most comments stated that short codes can be in 3, 4 or 5 digits.

One comment received was to the effect that the guidelines failed to recognize that there were short codes which are shorter than 5 digits and which were also not being used to deliver premium service.

Response

Comment noted. Guidelines will be reviewed and amended accordingly to reflect 3 digit numbers for common codes use for emergency services

9. Comment

There was a comment in respect of Section 1.3 to the effect that the guidelines only make provision for 5 digit short codes without taking into consideration that the codes to be used for emergency services are usually 3 digits.

Related to this also are several comments that the guideline has not taken cognizance of the fact that 3 digit short codes are already been used by network operators to provide services which are not premium rated.

Response

Comment noted and will be taken into consideration before the guidelines are finalized.

10. Comment

There were several comments on Sections 1.4 and 4.1 dealing with the creation and constitution of the industry group. Most comments received support the need for the industry group, however there were divergent views regarding the composition of the group. Some commentators would want the group to be made up only of network operators whilst others say the group should be expanded to include the Commission. There was yet a 3rd comment that the industry group should include network operators, the Commission and the Content Aggregators.

Response

Comment noted. The Commission will take all interests into account in line with international best practice.

11. Comment

There was a comment that the industry group to be created by the Commission should be a standing group rather than an ad hoc one.

Response

Comment noted.

12. Comment

There was a comment in respect of Section 1.4 dealing with the constitution of an industry group to the effect that it would seem the commission has a boundless discretion which might be misused.

Response

The Commission at all times carries out its actions efficiently, effectively and in a non discriminatory and transparent manner as provided by Section 4(2) of the NC Act 2003.

13. Comment

There was a comment in respect of Section 3.1 dealing with the licensing of content aggregators to the effect that content aggregators be issued with a class license which would set out in details the required technical, managerial and commercial capabilities.

Response

Comment noted.

14. Comment

There was a comment regarding Section 3.2 dealing with the scope and operation of the guidelines to the effect that it should not include consumers for whose benefit the guidelines exist in the first place.

Response

Comment noted and accepted.

15. Comment

There was a comment regarding Section 4.1 about the administration of the short codes by the Industry Group to the effect that the Group should only play an advisory role.

Response

Comment noted. The Commission will take into account all the interest of all stakeholders on the issue before arriving at a decision.

16. Comment

There were several comments regarding Section 4.5 to the effect that there is no need to refer disputes between the parties to the Commission since the agreements entered into by the parties usually provides the mode of resolving such disputes. Matters should only be referred to the Commission after the parties have failed to resolve them in accordance with the provisions.

Response

Comment noted. The Commission is empowered to resolve disputes under the Act to resolve disputes in accordance with their agreements its powers under the Act cannot be curtailed.

17. Comment

There was a comment relating to Sections 5 which deals with the Code of practice/Operational guidelines to the effect that it amounted to a duplication of the provisions of the Consumer Code of practice and was accordingly unnecessary.

Response

It is to be noted that the code of practice in this guideline is more specific to the area of operation of short codes.

18. Comment

There was a query as to whether the Commission intends to approve a more detailed Code of Practice to regulate Short and Premium Codes or it will be solely based on the Guidelines.

Response

The regulation of the short codes will be based on the Guidelines and also all applicable laws and regulations relating to the provision of such service. The Commission also undertakes regular reviews of all its guidelines and regulations due to the fact that the telecommunications industry is always evolving.

19. Comment

There were several comments on Section 5.2 dealing with liability for contravention of the Guidelines. Some commentators were of the opinion that such responsibility should be shared between the service providers and the network operators, some felt that the network operators should be solely responsible for the contravention while yet some commentators felt the responsibility should be wholly borne by service providers who are the owners of the content.

Response

Section 146 of the Nigerian Communications Act, 2003 puts the liability on licensees to ensure that the network facilities are not used for or in relation to the Commission of any offence under any law in operation in Nigeria. This liability cannot be waived by a subsidiary legislation.

The service providers may not be a licensee of the Commission so the network operator must bear the primary responsibility in this case since they have the contracts with the service providers.

20. Comment

There was a comment regarding Section 5.3 on the need for clarity as to which stake holder is referred to as licensee in that section.

Response

Comment noted and accepted. Reference is made to Comment 1 above. The definition section will adequately address this issue.

21. Comment

Comments were received regarding Section 5.5 which deals with the obligation of service providers to keep text messages sent for a minimum period of 6 months. The comments were to the effect that the network operators do not have the capacity to do so.

Response

Network operators can adequately expand their networks to meet this requirement.

22. Comment

There was also another comment on Sections 5.10 and 6.1 that the responsibilities placed on network operators to maintain a customer support help desk and that all advertising and promotional materials to clearly include names and details of the network operators should be placed solely on content owners and not network operators.

Response

Please refer to response to comment 18 above.

EVC'S Response

At the end of the Commission's presentation further comments and questions were taken and the EVC responded accordingly. Highlights of the comments and responses are as follows:

Comment:

Wireless Application Service Providers of Nigeria (WASPAN) commented that there was no fairness in the way Short Codes were presently being managed and administered in Nigeria. It commended the efforts of the Commission to regulate the administration of Short Codes and Premium numbers in Nigeria through the Guidelines. WASPAN

suggested that the body to be responsible the administration of Short Codes should be expanded to include members of WASPAN

Response:

The comment was noted and the Commission will review the activities of the body with a view to collaborating with it.

Comment:

One Number also commends the effort of the Commission and called for the Commission to regulate the issue of revenue sharing between network operators and application Service Providers which was said to be lopsided in favor of Network operators. The best sharing formula at present is 60:40, however some operators have a 75.25 sharing formula which is onerous.

Response:

The Commission noted the Comment and undertook to respond appropriately.

Comment:

Zain commented on the duration for which a text message sent to a short code should be stored by operators as being too onerous.

Response:

The Commission will conduct an in house study to determine an appropriate time for the storage of SMS for short codes transactions.

Comment

Content Providers commented that operators usually deny content providers access for no just cause and sometimes disconnect them without notice.

Response:

Access should not be refused if properly requested and further noted that it is not right to disconnect a provider of service who already has access.

Comment:

Some operators do not settle bills of content providers as at when due.

Response:

The Commission frowns at the habit of owing money by operators and advised the operators to pay their bills as at when due.

Comment:

A participant wanted to know if television programmes that utilize premium rate numbers will be regulated.

Response:

The television programmes are usually provided through Content Providers and there are established statutory bodies like the National Broadcasting Commission that regulate broadcasting with prescribed codes and guidelines. The Commission thereafter received a submission from GTS- Infotel and most of

the issues raised in its submission had been dealt with at the Inquiry. However it raised some other issues

Comment:

The Commission should publish available common short codes on a periodic basis

Response:

Comment noted.

Way Forward

The EVC stated that based on the contributions and comments made there might be a need to set up a Working Group to look into all the issues that had been raised. Consequently, he called on participants who were interested in being part of the Working Group to indicate their interest by leaving their contact details with the Commission.

CLOSING

The EVC thanked the participants and stakeholders for attending the Public Inquiry. He assured that the Commission will continue in its practice of consulting widely with the industry, the consumers as well as other stakeholders for effective rule-making process and administration. He called a participant to give the vote of thanks.

Dated the ____ day of _____, 2010

**Legal & Regulatory Services
Nigerian Communications Commission**