



**REPORT OF THE PUBLIC INQUIRY ON THE
NATIONAL ROAMING GUIDELINES, COLLOCATION AND INFRASTRUCTURE
SHARING GUIDELINES (AS AMENDED) AND BUSINESS RULES ON ACTIVE
INFRASTRUCTURE SHARING**

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:

- (i) Draft National Roaming Guidelines;
- (ii) Draft Collocation and Infrastructure Sharing Guidelines (as amended);
and
- (iii) Business Rules on Active Infrastructure Sharing.

Based on the Commission's policy of participatory rule-making, the Guidelines and Business Rules were published on its website for comments from the general public, especially telecommunications operators and other stakeholders.

Further to this, the Commission received submissions from the following stakeholders:

1. IHS Nigeria Limited
2. Alliance for Affordable Internet
3. ATC Nigeria Wireless Infrastructure Limited
4. Smile Communications Limited
5. Airtel Networks Limited

As required by the Act, a Public Inquiry on the Guidelines was scheduled for December 16, 2020 and a Notice of the Public Inquiry was published in Punch Newspapers and Business Day Newspapers on Wednesday November 18, 2020.

2.0. THE PUBLIC INQUIRY

The Public Inquiry held virtually as scheduled, commencing at 11:00am and was chaired by the Executive Vice Chairman, represented by the Head, Telecommunications Law and Regulations Unit, Ms. Helen Obi. Over Ninety (90) participants attended the Public Inquiry, including Staff of the Commission,

and representatives of telecommunications companies and other interested stakeholders.

The EVC welcomed participants to the forum, explaining that the Inquiry was part of the rule-making process adopted by the Commission to ensure wide consultations in the development of frameworks for the telecommunications industry. He noted that National Roaming and Active Infrastructure Sharing are initiatives used in achieving improved coverage, cost reduction and efficient utilization of scarce network resources by Regulatory agencies. Furthermore, the Commission has been driving collocation and infrastructure sharing through its licensing and regulatory processes.

The EVC enjoined all participants to freely make their contributions and raise issues that would assist the Commission in developing and issuing regulatory instruments that will continually contribute to the development of the industry and sustain its positive contributions to the Nation's Gross Domestic Product (GDP).

Thereafter, the Deputy Director, Technical Standards and Network Integrity (TSNI) Department, Engr. Edoyemi Ogoh gave a short overview of the regulatory instruments which were subject of the public inquiry. Dr. Mohammed Suleh-Yusuf (Senior Manager) and Mr. Temitope Lawal (Deputy Manager) both of the Legal & Regulatory Services Department, gave presentations on comments received from stakeholders on the Three (3) draft regulatory instruments prior to the Public Inquiry.

A. GENERAL OVERVIEW OF THE NATIONAL ROAMING GUIDELINES, COLLOCATION AND INFRASTRUCTURE SHARING GUIDELINES AND BUSINESS RULES ON ACTIVE INFRASTRUCTURE SHARING

National Roaming Guidelines

The Guidelines is made up of 5 (Five) parts of 35 (Thirty-Five) sections. Also included in the Guidelines are 2 (Two) Schedules. The Guidelines delineates its scope and application. It applies to operators who have been issued Unified Access Service Licences and holder of such licence subsequently issued by the Commission which authorize such licensee to provide National Roaming Services.

Collocation and Infrastructure Sharing Guidelines

The first Guidelines was issued in 2006 to ensure operators met their roll-out obligations. As such, sharing of active elements of network infrastructure was expressly disallowed. However, in view of the need to reduce/eliminate duplicity of network elements that can be shared, the Commission identified the need to review the Guidelines in this light.

Business Rules on Active Infrastructure Sharing

The Business Rules is made up of 8 (Eight) Sections. Also included in the Business Rules are Two (2) Schedules. The Business Rules seeks to manage the processes for active infrastructure sharing amongst Telecommunications Service providers licenced

by the Commission and applies to licenced telecommunications operators in Nigeria who own or are in control of facilities or infrastructure whose active elements can be shared.

B. REVIEW OF COMMENTS RECEIVED BEFORE THE PUBLIC INQUIRY

1. IHS Nigeria Limited comments on National Roaming Guidelines and Business Rules on Active Infrastructure Sharing

1.1 Comment

The Nigerian Telecoms Industry is not mature for the introduction of Active Infrastructure Sharing (AIS), giving the dearth of towers. According to the Operator, there are just over 30,000 towers to serve approximately 200m people in Nigeria. In its opinion, the Operator believes Nigeria needs more towers (i.e., 70,000 – 80,000) to meet coverage demands.

Response

One of the objectives of active infrastructure sharing framework is to optimize OPEX and improve CAPEX efficiencies. As such, AIS will enable the increased rollout of required infrastructure especially in currently uncovered areas as well as improve and extend coverage in already covered areas for operators. In addition, meeting rollout obligations is one of the prerequisites for entering into AIS arrangements.

1.2 Comment

AIS is more relevant in markets where independent Tower Companies (TowerCos) are mostly non-existent (e.g., Europe), since such markets must have achieved a significant maturity and tower density before MNOs in these markets would be encouraged to actively share infrastructure. In the Operator's opinion, this is not the case in Nigeria where there exists licensed independent TowerCos who only recently purchased majority of the tower assets from MNOs at a premium.

Response

The operating environment in Europe and Nigeria is markedly very different. As a result, AIS is a means of ensuring the investments of operators are deployed in such a way that the national objective of providing telecommunications services to all Nigerians is enhanced.

1.3 Comment

Nigeria still grapples with poor QoS and intermittent disruption to service since the number of subscribers per tower sits around 5,700 (184,000,000 subscribers vs. 31,000 towers). In the Operator's view, AIS will reduce the number of towers and increase the number of subscribers per tower, hence hugely contributing to a deterioration in quality of service.

Response

There are checks and balances to ensure a proper review of all AIS arrangements

between operators to ensure QoS is not impacted.

1.4 Comment

Introduction of AIS and National Roaming will provide a disincentive to TowerCos' investment as demands for new towers will be stifled while investments in existing towers will be put into jeopardy with a reduction in existing tenancy.

Response

As stated earlier, one of the objectives of AIS and NR is to improve CAPEX efficiencies and optimize OPEX, as such, duplication of telecommunications infrastructure will be minimized. There will still be demand for Tower infrastructures that will be required to extend coverage in both existing and new areas as may be applicable.

1.5 Comment

Introduction of AIS and National Roaming will threaten the principle of sanctity of contract and can lead to an erosion in investor confidence and the ability of TowerCos to access much needed funds at good interest rates, unless the regulations recognize and respect the sanctity of contracts.

Response

Negotiations of AIS and National Roaming Agreements shall not impact the obligations that parties have under any subsisting Collocation Agreement(s) registered with the Commission, as they are bound by such terms.

1.6 Comment

Due to the prevailing decline in the Nigerian GDP and contraction of the economy, it has become very difficult for operators to secure investors funding. According to the Operator, introduction of these regulatory instruments in their current forms could further worsen the current situation.

Response

The whole essence of a consultative process is to collate inputs, observations and suggestions from stakeholders. However, it is of benefit to the industry as same level of investments will lead to increased reach for operators' services when compared to existing scenario. In addition, subscribers would have better access to services subscribed to leading to improved QoS experience.

1.7 Comment

Where NCC decides to proceed with AIS and National Roaming, the regulatory instruments should stipulate that existing MNOs collocation contracts with the TowerCos must run their full tenure before the NCC will approve any AIS and National Roaming requests from the MNOs.

Response

Negotiations of AIS and National Roaming Agreements shall not impact the obligations that parties have under any subsisting Collocation Agreement(s)

registered with the Commission, as they are bound by such terms.

1.8 Comment

The draft regulatory documents should provide a two-year interim process to enable the industry and all stakeholders to prepare adequately for the new regime, since the current weak macroeconomic climate in Nigeria marked by a recession, inflationary pressure and rising unemployment is not an ideal time to shake up the telecommunications sector with new policies of this nature.

Response

This AIS and NR Framework draft document was put in place with the full participation of the industry from inception. The industry provided the critical inputs articulated in the documents. The documents has been in preparation since 2017, and all stakeholders should have been making required arrangements for its implementation about three years after.

1.9 Comment

AIS and National Roaming should be restricted on two key fronts – Technology and Geography. On technology, AIS and National Roaming should only be deployed to newer technologies like 5G onwards. Older technologies (2G, 3G, 4G) should be excluded. On geography, AIS and National Roaming should be restricted to rural and under-served areas. MNOs should not share or roam in urban areas since these areas present more valuable opportunities for competitive differentiation in terms of network quality, in-building coverage, service features etc.

Response

The Commission espouses technology neutrality. Hence services should be available irrespective of the technology utilized in providing that service. However, based on criticality and impact of a technology, special considerations may be made by the Commission. In this instance, 2G, 3G and 4G technologies are established technologies widely used within the country and excluding these will seriously impact the need for a NR and AIS framework.

1.10 Comment

New licensees should be granted access to National Roaming nationwide for a fixed duration of 2 years which should give them ample time to rollout their network. Also, incumbents should be restricted to National Roaming in rural and underserved communities. Notwithstanding this, the Commission should reserve the right to order cessation of National Roaming Agreements where the erlangs/data traffic of a specific location crosses a certain threshold.

Response

QoS monitoring and assessment is one of the mechanisms that will be utilized to assess the impact or otherwise of NR and AIS arrangements across the country. The Commission will take applicable decisions as it deem required based on the results of the assessments and any other relevant consideration. The objective of the NR and AIS framework is to increase network deployment per capex spend.

The Commission in reviewing agreements for AIS and NR arrangements will take this objective into account.

(This Comment may be further reviewed upon receipt of inputs from the Licensing & Authorisation and Policy Competition & Economic Analysis Departments)

1.11 Comment

MNOs considering AIS should be mandated to seek the consent of TowerCos before entering any AIS arrangements. The Operator suggested the inclusion of consent forms to the list of forms at the Appendix of the draft Business Rules on AIS with clear provisions relating to procedure for requesting and obtaining consent from the TowerCos before any sharing arrangement could be carried out on the sites.

Response

Only the Commission's consent can be sought for any arrangements between licensees within the industry. Consent can only be sought from TowerCos as it relates to items to be deployed on site that may require space, power, cooling, security etc or impact the physical integrity of the site infrastructure of the applicable TowerCo.

1.12 Comment

Since TowerCos have expended a lot of resources in building, upgrading and converting some sites into multi-tenant sites to accommodate collocation, these kinds of base stations should be excluded from AIS arrangements even when the contracts expire. However, if customers want to convert them to AIS sites after the expiry of the initial contract, such conversion must be done according to financial terms agreed between parties.

Response

As already stated, one of the objectives of AIS and NR is to improve CAPEX efficiencies and optimize OPEX, as such, duplication of telecommunications infrastructure will be minimized. There will still be demand for Tower infrastructures that will be required to extend coverage in both existing and new areas as may be applicable.

1.13 Comment

TowerCos should be clearly included as part of the parties contemplated by the AIS Business Rules, i.e., as Infrastructure Providers. This is in view of the fact that indebtedness is a ground for refusal of a sharing request, and there is ample evidence that the brunt of the indebtedness in the industry is being borne by Towercos and these debts run into billions of Naira. TowerCos should therefore not be disenfranchised from the operation of the Business Rules.

Response

Consideration may be given to TowerCos in the amended Collocation and Infrastructure Sharing Guidelines to include indebtedness as a reason for denial of passive infrastructure collocation request by TowerCos.

2. IHS Nigeria Limited comments on Collocation and Infrastructure Sharing Guidelines (as amended)

2.1 Comment

The amendment of Paragraph 4(2) should include active elements and the definition of “Access Provider” under Paragraph 6(1) as “any Access Provider who owns or has control of a facility amenable to sharing” means that TowerCos are included as part of the players for AIS, and can provide certain active elements.

Response

Acceding to this request will immediately confer a Mobile Virtual Network Enabler (MVNE) status on TowerCos without a need for licensing. This is not the intent of the amendment.

2.2 Comment

There is need for the Commission to clarify: (i) the process it intends to apply in expanding the list of infrastructure that can be shared (amended Paragraph 4(4)); (ii) the process by which MNOs and TowerCos can request to add active elements (amended Paragraph 4(4)).

Response

If the Commission deems it fit to include certain infrastructure in the sharing list, it may consult stakeholders for views and then proceed to amend the relevant section of the Guidelines. A request to add to the list of infrastructure can be made to the Commission and an industry meeting held to discuss same and a decision reached. The process for amending the relevant section of the Guideline can then be carried out by the Commission.

2.3 Comment

Regarding the amended Paragraph 5(2), the Operator is concerned that the Commission’s right to “*review all infrastructure sharing agreements and arrangements to ensure consistency with relevant Licence(s) and reduce the risk of a lessening of competition*” will impact existing investments which are based on freely negotiated agreements with MNOs and other parties. The Operator therefore stated that the Commission should not continue with the suggested retroactive reviews and revisions to contracts as these may have far reaching implications for the investor community and the telecoms industry’s ability to raise foreign direct investments needed to meet the capital gap to address the dearth in infrastructure.

Response

The purpose of the amendment is not to have a retroactive effect. The review of agreements by the Commission is at the point of submission for registration. Notwithstanding, this paragraph will be amended to be subject to the provision of Paragraph 7(4) – (6) of the Collocation & Infrastructure Sharing Guidelines (as amended).

3. Alliance for Affordable Internet (A4AI) comments on National Roaming Guidelines

3.1 Comment

A4AI recommended that Paragraph 3(1) should be redrafted to expand the scope of these Guidelines to include holders of any licences validly issued by the Commission and which contain a condition that makes the holder eligible to enter into a national roaming service agreement.

Response

Accepted.

This comment may be further reviewed upon receipt of input from the Licensing & Authorisation Department.

3.2 Comment

Paragraph 4 – Since “Roaming Provider” refers to the party who a Roaming Seeker seeks to enter into a national roaming agreement with and/or requests a national roaming service, the phrase should be changed to “Roaming Requested Party”.

Response

What is important is the understanding of the term. The terminology used communicates the essence.

This comment may be further reviewed upon receipt of inputs from other relevant Departments within the Commission.

3.3 Comment

The interpretation section does not provide a definition of who a “duly authorised service provider” (Paragraph 4(1)) is. The following definition was thereafter proposed: *“a Licensee that has sought and obtained the permission and/or authorization and/or concession of the Commission to enter into a national roaming agreement”*.

Response

Please see Paragraph 3(1) which outlines the category of Service Providers that are covered under the scope of the Guidelines: *“These Guidelines shall apply only to Service Providers that have been issued Unified Access Service Licences and such other licences that may be subsequently issued by the Commission, which authorise the licensees to provide National Roaming Services”*.

This comment may be further reviewed upon receipt of input from the Licensing & Authorisation Department.

3.4 Comment

Paragraph 4(6)(b) – A4AI suggested that the Guidelines should provide circumstances in which insufficient capacity as a basis for refusing a roaming request may be justified.

Response

The acceptable utilization levels of network resources are specified in the QoS Regulations 2013. This, in addition to other relevant regulatory instruments published by the Commission, will be utilized in assessing operators' network capacities. See also Paragraph 5(3) that lists the other Regulations and Guidelines that would be taken into consideration under NR.

3.5 Comment

Paragraph 4(6)(c) – The Commission in investigating insufficient capacity as a ground for refusing a roaming request should require that the party relying on insufficient capacity should bear the burden of proving that insufficient capacity exists.

Response

In carrying out its investigations, the Commission expects the party claiming insufficient capacity to prove same. Also, the Commission has in place mechanism to confirm this based on collected data.

4. Alliance for Affordable Internet (A4AI) comments on Collocation and Infrastructure Sharing Guidelines (as amended)

4.1 Comment

Paragraph 5(1) – While guidelines related to roaming are being issued, infrastructure sharing arrangements that were closed prior to them should not be forgotten.

Response

This is one of the reasons why the Collocation and Infrastructure Sharing Guidelines is being amended.

4.2 Comment

Paragraph 5(3) – The specific circumstances in which the Commission may determine a discontinuation or revision of a collocation agreement should be described in the Guidelines, as operators need to have clear guidance on the limitations of their infrastructure sharing agreements.

This comment may be further reviewed upon receipt of input from the Licensing & Authorisation and Policy Competition & Economic Analysis Departments.

Response

This provision makes reference to “inconsistencies with relevant Licence(s)” and “risk of lessening of competition”. As such, the determination will be made in line with the provisions of the relevant Licence Conditions, Licensing Regulations, Competition Practices Regulations etc. Thus, the general principle is what is required to be stated in this Guidelines.

4.3 Comment

Paragraph 5(3)(b) – The reference to “lessening of competition” demands specific

thresholds and should take specific consideration of the standards set by the Commission in determining what constitutes a lessening of competition under the Competition Practice Regulations 2007, and/or by the Federal Competition and Consumer Protection Commission in how it may assess an anti-competitive agreement.

Response

The Commission's various applicable regulatory instruments (including the Competition Practices Regulations) and competition determinations are used to determine the state of competition in any required segment of the industry.

This comment may be further reviewed upon receipt of input from the Policy Competition & Economic Analysis Department.

5. ATC Nigeria Wireless Infrastructure Limited comments on Business Rules on Active Infrastructure Sharing

5.1 Comment

Paragraph 2(a) – From the reading of this provision, it is unclear if the phrase “facility or infrastructure” as used here, is limited to active equipment, or includes passive equipment. It would be best to avoid any ambiguity and clearly state so. ATC therefore recommended that the definition be revised to differentiate between active and passive equipment.

Response

Facility or infrastructure as used here relates to Active Infrastructure. This is because these Business Rules only apply for active infrastructure sharing.

5.2 Comment

Paragraph 2(b)(ii) –This provision fails to recognize that a substantial number of masts and towers on which AIS will be hosted, are owned by TowerCos, Accordingly, the interests of TowerCos need to be taken into account before a third party can install equipment on their sites pursuant to an AIS arrangement. The definition should be amended to include that where the MNO does not own or control the passive infrastructure hosting the active equipment that is to be shared, such the MNO must obtain the written consent of the owner or controller of the passive infrastructure before AIS can occur.

ATC therefore recommended the following amendment: *“MNOs shall provide capacity on their infrastructure to other operators on a bilateral, non-discriminatory basis but subject to the terms of any contract by which either or any of the MNOs is bound. The right of first refusal would apply where the Infrastructure Provider has overcome the reason for the initial denial of the Infrastructure Seeker”.*

Response

Only the Commission's consent can be sought for any arrangements between licensees within the industry. Consent can only be sought from TowerCos as it relates to items to be deployed on site that may require space, power, cooling,

security etc or impact the physical integrity of the site infrastructure of the applicable TowerCo.

This comment may be further reviewed upon receipt of inputs from other relevant Departments within the Commission.

5.3 Comment

Paragraph 2(b)(iii) – This provision should be clear that any mutual agreement on AIS between MNOs as it pertains to tariffs and charges for such infrastructure sharing should be subject to any contract under which either or any of the MNOs is bound. This is to protect sanctity of long terms contracts entered between some MNOs and TowerCos.

ATC therefore recommended the following amendment: *“Where MNOs enter into agreements for AIS, tariff and charges for such infrastructure sharing shall be mutually agreed without prejudice to any existing contract to which either or any of the MNOs is bound. However, where there is an existing price determination, such will be applicable to the extent that such price determination recognizes and protects the interests of third party owners of passive infrastructure on which any relevant AIS is to be hosted.”*

Response

Negotiations of AIS Agreements shall not impact the obligations that parties have under any subsisting Collocation Agreement(s) with TowerCos registered with the Commission, as they are bound by such terms.

5.4 Comment

Paragraph 2(b)(iv) – The phrase “licensed telecommunications operators” may inadvertently include TowerCos, who own and control the third-party infrastructure on which AIS is to be hosted. ATC therefore recommended the following amendment: *“Only holders of telecommunication licenses are allowed to enter an infrastructure sharing agreement under Business Rules”.*

Response

This provision and explanation of who a licensed telecommunications operator is will be redrafted to indicate that: *Only licensees whose license scope allows for the deployment of active infrastructure for the delivery of their services are allowed to enter into Active Infrastructure Sharing arrangements.*

5.5 Comment

Paragraph 2(b)(viii) –The listed grounds for refusal to share active infrastructure are insufficient. ATC therefore recommended the following amendment: *“The ground for refusal of sharing under these Business Rules will be insufficient capacity, compatibility, compliance with existing contractual commitments, and prior indebtedness under other services such as interconnection. The Infrastructure Provider shall inform the Infrastructure Seeker and the Commission of the grounds for refusal with adequate data within 5 (five) working days”.*

Response

“Compliance with existing contractual commitments” is very wide and may be susceptible

to different interpretation, use and abuse.

5.6 Comment

Paragraph 2(b)(ix) –The decision of the Commission under the Business Rules should be open to judicial review. ATC therefore recommended the following amendment: “*Any disagreement on commercial terms during negotiation for infrastructure sharing, which parties are unable to agree on, shall be referred to the Commission for resolution, and the decision of the Commission shall be binding on the parties subject to judicial review*”.

Response

The right to be heard by a court is inherent. See Section 36 of the 1999 Constitution which entitles every person to be heard by a court.

5.7 Comment

Paragraph 2(b)(x) – The Business Rules should specify who is empowered to make the determination that the AIS arrangement will expedite roll-out. ATC therefore recommended the following amendment: “*Meeting the roll-out obligation as spelt out in an MNO’s Licence Condition is a pre-condition for entering into an AIS agreement. However, where it is established by the Commission that an AIS will expedite such roll-out, the Infrastructure Provider may grant such request*”.

Response

Accepted. The Commission will determine if the AIS arrangement will expedite rollout.

5.8 Comment

Paragraph 2(b)(xi) –The decision of the Commission under the Business Rules should be open to judicial review. ATC therefore recommended the following amendment: “*Any dispute regarding tariffs and charges between parties to an AIS agreement shall be referred to the Commission for resolution, and the decision of the Commission shall be binding on parties subject to judicial review*”.

Response

The right to be heard by a court is inherent. See Section 36 of the 1999 Constitution which entitles every person to be heard by a court.

5.9 Comment

Paragraph 2(b)(xii) –ATC stated that there was no index for how this development will be measured as well as no confirmation on whether failure on the part of the Infrastructure Seeker to build its own Transmission Core Network (TCN) and Operating Support System (OSS) will be penalized or serve as a ground for termination of the Infrastructure Sharing Agreement. It therefore recommended that the Commission provide clarity on this provision in view of our comments.

Response

There are rollout obligations included as part of the Conditions of the Licence issued to operators. In this regard, the Commission is empowered to assess the extent of compliance with these rollout obligations. However, the suggestion in

terms of potential penalties will be considered, in line with the provisions of Second Schedule, Part A, Item 6 of the Enforcement Regulations 2019.

5.10 Comment

Paragraph 2(b)(xiii) – “The Infrastructure Provider is expected to continuously take necessary measures to augment the capacity of its network elements for sharing in order to meet the Infrastructure Seeker’s demand and not compromise on service delivery”. This imposes additional cost implications on the Infrastructure Provider as a direct result of this imposed sharing arrangement. The bandwidth for this measure is also not clear as the term “necessary measures” is subjective. ATC therefore recommended that the developments that may be considered as “necessary measures” should be clearly indicated to avoid any misinterpretation or ambiguity.

Response

Noted. Necessary measures means measures that will ensure the Infrastructure provider continually meets the specified KPI targets as stated in the QoS Regulations 2013.

5.11 Comment

Paragraph 2(b)(xv) – ATC stated that termination following revocation of the licence should apply by operation of law and lead to immediate termination. Termination arising from an uncured breach of contract should operate pursuant to contractual terms and should not be subject to approval by the Commission. ATC therefore recommended the following amendment: “Prior written approval of the Commission must be obtained where an Infrastructure Provider intends to terminate its agreement with an Infrastructure Seeker save where such termination is based on the following grounds: a) Revocation of Infrastructure Seeker’s Licence or failure to renew expired Licence; or b) Consistent breach of commercial obligations by the Infrastructure Seeker”.

Response

“Consistent breach of commercial obligations” may be interpreted by parties differently; as such, may lead to disputes. Thus, the mechanism to obtain the Commission’s approval before termination on this basis becomes necessary since the Commission can make a determination of whether there has been consistent breaches, based on assessment of information obtained from parties. However, the Commission notes the other suggestion about revocation of licence been applicable by operation of law and same will be considered accordingly.

5.12 Comment

Paragraph 2(b)(xvi)– “The Commission may direct the Infrastructure Provider to suspend its service to the Infrastructure Seeker within fifteen (15) working days of receipt of the notice of termination. Where the Infrastructure Seeker does not resolve the reason for termination within three (3) months from the date of suspension, the Infrastructure Provider may terminate the agreement”. This suggests that the service will remain active when terminated and that the Commission may direct suspension as an interim measure. This may be too meddlesome in the commercial arrangements between parties and should be deleted. The Commission will always have powers to revisit any disputes between licensees in accordance with the dispute resolution guidelines. ATC therefore

recommended that the provision should be deleted.

Response

This does not suggest the service will remain active. It means the suspension of the arrangement and service pending final termination, if the reason for the suspension is not addressed within 3 months from the date of suspension. Revisiting a dispute after termination has been approved may become complicated especially where the reason for suspension is resolved.

5.13 Comment

Paragraph 3(a) – ATC stated that if an MNO does not own and control the tower infrastructure on which such AIS will be hosted, it will need to confirm that it is contractually allowed to do so. ATC therefore recommended the following amendment: *“Prior to the commencement of any negotiation for AIS, all MNOs must ensure that they are in good regulatory standing with the Commission and confirm that any required contractual approval has been obtained”*.

Response

These Business Rules apply to sharing of Active Infrastructure, not Passive Infrastructure. As such, the negotiations on AIS between relevant licensees are different from any subsisting Collocation Agreements between MNOs and TowerCos. The Commission’s regulatory power to approve AIS arrangements cannot be shared with any of its licensees.

5.14 Comment

Paragraph 3(e) –The grounds for refusal of an application for AIS contained in this paragraph suffices where the MNO owns and controls the passive infrastructure on which the AIS will be hosted. If the passive infrastructure is owned and controlled by a third party – for example, a TowerCo – the failure to reach agreement with the TowerCo regarding such AIS shall be a valid ground for refusal of sharing. ATC therefore recommended the following amendment: *“An Infrastructure Provider shall reserve the right to refuse an application for AIS on grounds of insufficient capacity, network incompatibility, failure to obtain any required third party consent, and indebtedness of the Infrastructure Seeker to the Infrastructure Provider on other telecommunications services”*.

Response

The Commission’s regulatory power to approve AIS arrangements cannot be shared with any of its licensees. However, the concerns of TowerCos will be further reviewed to ascertain ways of addressing same in the Guidelines.

5.15 Comment

Paragraph 3(b) –Parties should have the flexibility to mutually extend the negotiation period beyond 2 months. ATC therefore recommended the following amendment: *“The timeframe for negotiation and conclusion of the technical, legal and commercial aspects of the agreement shall not exceed 2 (two) months from the date of receiving the request or such extended period as the parties may mutually agree in writing”*.

Response

Not accepted. Existing timeline specified is reasonable and adequate to conclude the required agreement and it ensures that Active Infrastructure Sharing arrangements are not unduly delayed.

5.16 Comment

Paragraph 3 (l) –The decision of the Commission under the Business Rules should be open to judicial review. ATC therefore recommended the following amendment: *“In the event of any dispute between the Infrastructure Provider and Infrastructure Seeker which cannot be resolved amicably, the aggrieved party shall refer the matter to the Commission for resolution. The decision of the Commission in that regard shall be final and binding on parties subject to judicial review”*.

Response

The right to be heard by a court is inherent. See Section 36 of the 1999 Constitution which entitles every person to be heard by a court. However, the word “final” shall be deleted from this paragraph.

5.17 Comment

Paragraph 6(a)(ii) –Where the AIS is hosted on third party infrastructure, the Infrastructure Provider shall be responsible for clearing all faults occurring on the passive infrastructure that is impeding AIS.ATC therefore recommended the following amendment: *“The Infrastructure Provider shall be responsible for clearing all faults associated with the host passive infrastructure or network element(s) it is sharing, except where such fault is traced to the Infrastructure Seeker’s interface, in which case the Infrastructure Seeker shall be responsible for clearing such faults”*.

Response

Not accepted. This paragraph already places the responsibility on the Active Infrastructure Provider to resolve faults associated with its network elements. Such faults may be directly or indirectly related to the Network element being shared.

5.18 Comment

Paragraph 6(b) – *“The Infrastructure Provider shall make every effort to ensure the Infrastructure Seeker enjoys the same level of availability as its own customers and maintain such level as contained in the Quality of Service Regulations developed by the Commission”*. This may prove difficult to enforce as there are no indices to measure compliance. ATC therefore advised that the Guidelines should be amended to clearly state each relevant index.

Response

This suggestion will be considered for possible inclusion in the Business Rules. However, there are metrics for measuring availability of network elements. These will be used depending on the sharing arrangement scenario.

5.19 Comment

Paragraph 7(a) –The Infrastructure Provider should also consider any configuration

restrictions to which it may be subject pursuant to contract. ATC therefore recommended the following amendment: *“The Infrastructure Provider shall take into consideration the Infrastructure Seeker’s technical requirements contained in its Form A and any configuration restrictions to which it may be subject pursuant to contract, in order to accommodate same in its engineering planning and network design”*.

Response

In this regard, only technical requirements will be considered in determining whether an Infrastructure Provider’s engineering plan and network design can accommodate an Infrastructure Seeker’s AIS request.

5.20 Comment

Paragraph 8(a) –If the passive infrastructure is owned or controlled by a third party, such third party’s interests should be recognized and protected in a multilateral agreement. ATC therefore recommended the following amendment: *“Subject to any regulatory framework developed by the Commission, an AIS agreement may be one-way or bilateral or multilateral”*.

Response

This concern will be further reviewed by the Commission to ascertain ways of addressing same in the Guidelines.

5.21 Comment

Paragraph 8(b) –If the passive infrastructure is owned or controlled by a third party, any rental costs payable to such party should be recognized in the costing methodology for AIS. ATC therefore recommended the following amendment: *“The charge determination shall be bilateral, and the cost made available to the Infrastructure Seeker shall take into consideration both capital expenditure and recurrent expenditure, including any costs associated with the rental of passive infrastructure. However, where the Commission has made a cost determination, same shall take precedence over any bilateral agreement by parties”*.

Response

All relevant costs are considered in cost determination and approval of same by the Commission. Hence rental costs will ordinarily form part of the recurrent expenditure.

6. Smile Communications Limited comments on National Roaming Guidelines and Business Rules on Active Infrastructure Sharing

6.1 Comment

Paragraph 4(6)(b) of Guidelines on National Roaming and Paragraph 3(e) of the Business Rules on Active Infrastructure Sharing – Smile suggested that the Commission should include a third ground for refusal of request as follows: *“Where the Roaming Provider or Infrastructure Provider is limited by its hardware and technological capability”*. This is because there are cases where Operators due to limitation of their hardware and technology may be unable to provide sharing components or roaming services and this should be considered as additional grounds for refusal. (See Paragraph 4(g) of

the Business Rules on AIS for justification).

Regarding Indebtedness as a reason for refusal of request, Smile suggested that the item of indebtedness for other services such as interconnect be removed and that Parties should be given the opportunity to discuss on issues of indebtedness prior to the refusal of a Roaming request.

Response

Hardware is related to Capacity. However, inclusion of Technological Capability will be considered.

Regarding debt as a reason for Infrastructure sharing refusal, the issue of debts in the industry is concerning, hence this condition is key to ensuring incidence of indebtedness does not increase further in the industry.

6.2 Comment

Paragraph 3(f) of Business Rules on Active Infrastructure Sharing – The same provision should be replicated in the National Roaming Guidelines as follows: “*The Home Network has the right to reserve not more than 25% of spare capacity for its short/emergency needs*”.

Response

Accepted.

6.3 Comment

Paragraph 14(2) of Guidelines on National Roaming–“GSM IR121” should be amended and replaced with “GSM IR21”

Response

Accepted. Editing correction will be made to reflect GSM IR21.

6.4 Comment

Paragraph 15(3)(d) of Guidelines on National Roaming –“SGGS” should be amended and replaced with “SGSN”.

Response

Accepted. Editing correction will be made.

6.5 Comment

Paragraph 9(1) of Guidelines on National Roaming –The duration for National roaming services should be amended to a 5 year term with a provision for extension or renewal.

Response

3 years will be retained as the Roaming Seeker is meant to roll out its own infrastructure to gradually be less dependent on the Roaming Provider’s network.

6.6 Comment

Paragraph 2(b)(xv) of Business Rules on Active Infrastructure Sharing – “Prior written approval of the Commission must be obtained where an Infrastructure Provider intends to terminate its agreement with an Infrastructure Seeker based on the following grounds: a) Revocation of Infrastructure Seeker’s Licence or failure to renew expired Licence; b) Consistent breach of commercial obligations by the Infrastructure Seeker”. Smile suggested that item (b) be reviewed to include a phrase that Parties are to discuss on issues of indebtedness.

Response

Rejected. Discussions on issues of indebtedness should be had and an acceptable agreement reached between parties to prevent escalation to be Commission.

6.7 Comment

The Commission should include a paragraph in the Guidelines on National Roaming and Business Rules on Active Infrastructure Sharing that regulates the calibre of sharing/roaming partners in an agreement. It therefore recommended the following: *“Where there a roaming or sharing request emanates from a proposed Roaming Seeker, priority should be given to a Smaller operator (Roaming Seeker) over the larger operator (Roaming Seeker)”.* Thus, where a Roaming Provider has few capacity left on its network and then receives a request to either share infrastructure or roaming, priority should be given to a Smaller operator who indicates the need for roaming partnership or AIS.

Response

Roaming and Infrastructure Sharing requests will be granted on a first come first served basis. However, in the scenario that requests are received on same date from two licensees, the request from the smaller operator may take precedence.

This comment may be further reviewed upon receipt of inputs from other relevant Departments within the Commission).

7. Smile Communications Limited comments on Collocation and Infrastructure Sharing Guidelines (as amended)

7.1 Comment

Paragraph 4(2) – Smile commended the Commission for expanding the types of infrastructure amenable for sharing. It therefore recommended that this clause remains as is without any form of conditions attached to this.

Response

Noted.

8. Airtel Networks Limited comments on National Roaming Guidelines

8.1 Comment

National Roaming should be driven by commercial expediency, not regulated by

any government body, because it has complications of inter-operability and this is laid out in GSMA Worldwide strictures.

Response

National Roaming (NR) is very similar to International Roaming in operational methodology. NR aims to improve overall customer QoS experienced across the country and hence it is being instituted by the Commission to drive this objective.

8.2 Comment

There is need to make provisions for flexibility in terms of timeframe for the completion of the request, depending on the network complexities and the parties involved in the negotiation for National Roaming.

Response

The timeframe specified is adequate for assessment of requests. All operators already have well over a decade of experience in implementing Roaming.

8.3 Comment

Given that National Roaming erodes the competitive advantage derivable from coverage, it could become a disincentive to making continued investment in network enhancement. As such, an operator should not be constrained by a regulated pricing regime but be allowed to negotiate any potential roaming arrangement based on pure commercial parameters towards recouping such investments.

Response

This is the reason why there is a time duration of 3 years specified for NR agreement and the requirement for NR Seekers to continually deploy infrastructure to be less dependent on other networks. This the Commission will monitor effectively to ensure that NR seekers continually rollout their own infrastructure.

9. Airtel Network Limited comments on Collocation and Infrastructure Sharing (as amended) Guidelines and Business Rules on Active Infrastructure Sharing

9.1 Comment

On Active Infrastructure Sharing, there is need for the Commission to insulate Mobile Network Operators (MNOs) from any potential extra charges that the Collocation and Infrastructure Sharing Licensees may seek to impose by explicitly forbidding the imposition of extra charges on MNOs as a result of roaming or sharing of active infrastructure. Furthermore, the Integration/ initial set up cost for both networks and IT interfaces should be duly assessed to ensure proper pricing of the service by the parties.

Response

This comment may be further reviewed upon receipt of inputs from Policy Competition & Economic Analysis Department.

9.2 Comment

Paragraph 2(b)(ix) and Paragraph 2(b)(xi) of Business Rules on Active Infrastructure Sharing – The Operator opines that the absence of an empirical cost study to guide NCC’s intervention/arbitration, particularly on commercial related matters could result in a situation where decisions are taken without due consideration of all the cost components of providing the infrastructure sharing and this kind of scenario places the Infrastructure Provider at a disadvantageous position. In the absence of such cost study, Airtel suggested that operators should be allowed to set their charges based on purely commercial terms or understanding of parties.

Response

This comment may be further reviewed upon receipt of inputs from Policy Competition & Economic Analysis Department.

9.3 Comment

Paragraph 3(f) of Business Rules on Active Infrastructure Sharing – “*An Infrastructure Provider has the right to reserve not more than 25% (twenty five percent) of spare capacity for its short term or emergency need*”. Airtel recommended that “short term” and Emergency needs” be defined in the Business Rules to ensure regulatory certainty and transparency in the emerging regime. Airtel further pointed out that in practice, it is not always feasible for the Infrastructure Provider to reserve 25% of spare capacity for its use, after entering into Active Infrastructure Sharing Arrangements. It therefore requested the Commission to share a mechanism of achieving the target to effectively guide the parties.

Response

This will be considered. However, the 25% specified relates to pre-commencement of the active infrastructure sharing. In addition, ensuring adequate capacity for optimal QoS delivery at every point in time is a usual operational practice of Service Providers.

9.4 Comment

Paragraph 4(2) of Collocation and Infrastructure Sharing Guidelines– Airtel recommended that Dark Fibre should be included as one of the infrastructure amenable to sharing.

Response

This will be considered.

C. REVIEW OF COMMENTS RECEIVED AT THE PUBLIC INQUIRY

GUIDELINES ON NATIONAL ROAMING

1. MTN

1.1 Comment

One of the conditions to be satisfied before a national roaming request can be

granted should be compliance with minimum network roll-out obligations.

Response

This is already captured in the Guidelines as the Commission is empowered to determine whether an operator has met the network roll-out obligations specified in its operational licence.

1.2 Comment

Paragraph 7 of the Guidelines should provide that where parties are unable to reach an agreement on roaming terms, the matter should be referred to arbitration in accordance with the provision of the Commission's Dispute Resolution Guidelines. MTN therefore proposed the following amendment: *"if after 60 days from the date that the Licensee receives the Roaming Proposal, the Licensee and the Requesting Operator have not entered into a Roaming Agreement or have not agreed to any interim arrangement, the Licensee must submit or agree to submit the matter to arbitration in accordance with the Commission's Arbitration Rules and Procedures, as amended from time to time. The Licensee shall agree that the arbitral tribunal shall have all necessary powers to determine all of the questions in dispute (including those relating to determining the appropriate terms of the Roaming Agreement and those relating to procedural matters under the arbitration) and that any arbitral award or results under this condition of license shall be final and binding with no right of appeal. The Licensee must participate fully in such arbitration and follow all directions of the arbitral tribunal in accordance with the Commission Arbitration Rules and Procedures and any arbitration procedures established by the arbitral tribunal"*.

Response

A review of this provision will be considered.

1.3 Comment

Under Paragraph 4(4), "15 days" should be amended to "15 working days". Under Paragraph 4(5)(c), 60 days should be extended to 90 days. Under Paragraph 4(5)(h), 90 days should be extended to 120 days.

Response

The Commission will review the respective timelines.

1.4 Comment

Under Paragraph 4(5)(g), the clause 'The Roaming Provider' should be replaced with 'neither party' or 'both parties'.

Response

This will be reviewed accordingly.

1.5 Comment

Under Paragraph 4(6)(b), technological incompatibility should be added as a ground for rejecting a National Roaming request. Technological incompatibility refers to a scenario where a Roaming Provider will have to undergo a major architectural change/design to accommodate a roaming request which may affect existing subscribers' on the Roaming Provider's network.

Response

The operator will need to provide the Commission with more information regarding how this suggestion impacts its network architecture.

1.6 Comment

Currently, Paragraph 19(e)(ii) is reflective of international roaming scenarios. MTN therefore suggested that since both parties to a National Roaming agreement are local, direct peering should be adopted for improved Quality of Service/Experience instead of GPRS Roaming Exchange (GRX).

Response

The Commission will review and consider the flexibility of the proposal.

1.7 Comment

It was suggested that National Roaming traffic exchange between operators should be routed over a dedicated link, for easy reconciliation of bills.

Response

Rejected. This could lead to complications in the call routing process, hence not an efficient means in roaming traffic.

2. Emerging Markets Telecommunications Services Limited**2.1 Comment**

The 3-year duration for the agreement should not be sacrosanct before a termination can occur. Parties should be able to terminate the agreement before this period elapse, based on certain triggers.

Response

The grounds upon which approval of the Commission is required before termination can occur are set out under Paragraph 10. Parties are at liberty to provide for other grounds for termination in their respective agreements.

2.2 Comment

Paragraph 22(4) which provides that the Called Party Pays should be expunged.

Response

This suggestion will be further reviewed vis-à-vis the objectives of national roaming.

2.3 Comment

Under Paragraph 17(5), should the terminal display on the mobile phone of a Roamer be that of the Host Network or Home Network?

Response

The terminal display on the mobile phone of a Roamer should be that of the Home Network. This paragraph will be amended accordingly.

2.4 Comment

A new sub-paragraph should be added to Paragraph 27, to the effect that the visited network must provide network KPIs for all the clusters being visited. The granularity of the frequency can be agreed but the KPIs cannot be fewer than what has contained in this provision.

Response

The Commission will further review the proposed KPIs vis-à-vis the Quality of Service Regulations. Notwithstanding this, all subscribers would be treated equally.

3. Smile Communications Limited

3.1. Comment

Meeting minimum network roll-out obligations should not be one of the eligibility requirements for national roaming as this will exclude Mobile Virtual Network Operators (MVNOs) that have no infrastructure.

Response

The Commission is currently developing a licensing framework for MVNOs to ensure no stakeholder is at a disadvantage.

3.2. Comment

Indebtedness in other services e.g. interconnection should not be a ground for refusal of a national roaming request since the services are different.

Response

Rejected.

4. GSMA

4.1. Comment

The Commission should monitor the implementation of national roaming services with a view to gradually stepping back from regulation as the market matures.

Response

This comment has been noted.

4.2. Comment

GSMA urged the Commission to adopt a light-touch approach to regulating National Roaming. It therefore recommended that the deletion of all references to requirements for prior approval for agreements and/or termination of agreements under Paragraphs 1(2) and 10(1) and replace with: *“If within 10 working days from the date of submission the Commission does not find any cause for concern enough to communicate to the entities involved in the agreement, such an agreement should be deemed having had no objection by the Commission”*. For agreements where the NCC finds no cause for regulatory concern, the NCC should issue a ‘Letter of No Objection’ within the 10 working days.

Response

This comment was received late and would form part of the subsequent review by the Commission.

4.3. Comment

Paragraphs 8(1) and (2) provides context within which the NCC shall intervene in instances where parties are unable to arrive at an agreement, and also specifies the nature of interventions in such instances (i.e., prescribing terms and conditions, including roaming charges). GSMA however suggested that rather than introducing a new line of action that will form the NCC's intervention, the intervention should be based on existing regulatory instruments, including the provisions of the Competition Practices regulations, and the NCC's prevailing arbitration rules. It therefore proposed the following amendments: (1) Delete the entire provision; or (2) Delete the entire provision and amend Paragraph 7(2) as follows: *"Where a resolution is not reached, either party may request the Commission to make a determination in line with the principles and context of the Competition Practices Regulation"*.

Response

This comment was received late and would form part of the subsequent review by the Commission.

4.4. Comment

Paragraph 14(4) stipulates that *"operators who have agreed to Roaming are required to redesign their radio networks to accommodate additional traffic for the duration of the National Roaming Agreement"*. GSMA opines that this requirement may be onerous and could potentially hinder the achievement of the objectives of allowing National Roaming. This is especially as the stipulation is broad and does not seem to contemplate instances where operators who have agreed to provide roaming services do already have sufficient ability to accommodate the additional roaming traffic without having to conduct an exercise to redesign the radio networks. Furthermore, section 6(b) of the draft guidelines already succinctly speaks to the need to have sufficient capacity to accommodate a roaming request and, as such, there may not be a need to impose a specific and 'blanket' requirement related to capacity. It therefore made the following suggestions: (1) Delete the entire provision; or (2) Amend as follows: *"Where technically necessary, Operators who have agreed to Roaming are required to redesign their radio networks....."*

Response

This comment was received late and would form part of the subsequent review by the Commission.

4.5. Comment

GSMA stated that the Competition Practices Regulations 2007 provides guidance and principles (in great detail) for commercial agreements in the industry. It therefore recommended the amendment of Paragraph 3(3) to include specific mention of the *Competition Practices Regulations* as one of the documents that the Guidelines should be read in conjunction with.

Response

This comment was received late and would form part of the subsequent review by the Commission.

COLLOCATION AND INFRASTRUCTURE SHARING GUIDELINES (AS AMENDED)

1. ATC

1.1. Comment

Would the Commission consider allowing Tower companies to own but not operate active infrastructure (neutral hosts) in the amended collocation Guidelines?

Response

This will inevitably make the tower companies MVNEs without having a licence to carry out this service. The Commission needs to develop the right set of licensing framework for this model.

2. GSMA

2.1. Comment

GSMA urged the Commission to adopt a light-touch approach to regulating Collocation and Infrastructure Sharing. It therefore recommended that the deletion of all references to requirements for prior approval for agreements and/or termination of agreements under Paragraph 7(5) and replace with: *“If within 10 working days from the date of submission the Commission does not find any cause for concern enough to communicate to the entities involved in the agreement, such an agreement should be deemed having had no objection by the Commission”*. For agreements where the NCC finds no cause for regulatory concern, the NCC should issue a ‘Letter of No Objection’ within the 10 working days.

Response

This comment was received late and would form part of the subsequent review by the Commission.

BUSINESS RULES ON ACTIVE INFRASTRUCTURE SHARING

1. Facebook

1.1. Comment

The Business Rules on Active Infrastructure Sharing does not envisage scenarios where Mobile Network Operators (MNOs) outsource their active infrastructure sharing or act as neutral hosts, as is obtainable in other markets. These other models should be considered.

Response

The Commission notes that these models may be classified as managed services.

The Commission is currently developing a licensing framework for such services.

2. Emerging Market Telecommunications Services Limited

2.1. Comment

There should be a section defining the following terms:

- a. Multi Operator Core Network (MOCN)
- b. Multi Operator Radio Access Network (MORAN)
- c. Gateway Core Network Operator (GCN)

Response

The Commission notes this and will be incorporated in the Definition section.

2.2. Comment

EMTS suggested that Paragraph 2(b)(x) should stipulate that the Commission can allow MNOs access AIS but limited to a scope commensurate to fulfilled rollout obligations.

Response

AIS is not to be used by MNOs to circumvent meeting the roll-out obligations stipulated in their Licence. In this instance, AIS will only be allowed where it is established that it will expedite such roll-out.

3. Alliance for Affordable Internet

3.1. Comment

The Business Rules should provide for the unbundling of infrastructure.

Response

The Commission needs to develop the right set of licensing framework for this model.

4. GSMA

4.1. Comment

GSMA urged the Commission to adopt a light-touch approach to regulating Active Infrastructure Sharing. It therefore recommended that the deletion of all references to requirements for prior approval for agreements and/or termination of agreements under Paragraphs 3(j) and 2(b)(xv) and replace with: *“If within 10 working days from the date of submission the Commission does not find any cause for concern enough to communicate to the entities involved in the agreement, such an agreement should be deemed having had no objection by the Commission”*. For agreements where the NCC finds no cause for regulatory concern, the NCC should issue a ‘Letter of No Objection’ within the 10 working days.

Response

This comment was received late and would form part of the subsequent review by

the Commission.

4.2. Comment

GSMA stated that Paragraphs 2(b)(ix), 2(b)(xi) and 8, all of which requires all disagreements on commercial terms be referred to the Commission for resolution, have the effect of introducing duplicate regulations as the Competition Practices Regulations 2007 provides guidance and principles (in great detail) for commercial agreements in the industry. It therefore recommended the deletion of these paragraphs and the amendment of Paragraph 1(iii) to include specific mention of the *Competition Practices Regulations* as one of the documents that the Business Rules should be read in conjunction with.

Response

This comment was received late and would form part of the subsequent review by the Commission.

3.0. GENERAL COMMENTS

The Head, Telecommunications Law and Regulations Unit thanked everyone for coming and assured them that all comments submitted by stakeholders will be considered by the Commission before the draft regulatory instruments are finalised.

Furthermore, stakeholders were encouraged to forward any additional comments to the Commission on or before Wednesday December 23, 2020, for consideration.

The Public Inquiry ended at 1:42pm.

Dated this 16th day of December 2020

Professor Umar Garba Danbatta, *FNSE, FRAES, FAEng, FNIEEE*
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