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NIGERIAN COMMUNICATIONS ACT, NO. 19, 2003
ANNUAL OPERATING LEVY REGULATIONS, 2022.



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SCHEDULES

S. I. No. 89 of 2022

NIGERIAN COMMUNICATIONS ACT, NO. 19, 2003
ANNUAL OPERATING LEVY REGULATIONS, 2022

[6th Day of June, 2022]

Commence-
ment.

In exercise of the powers conferred on it by Section 70 of the Nigerian Communications Act, No. 19, 2003 and all other powers enabling it in that behalf, the Nigerian Communication Commission, makes the following Regulations —

PART I—OBJECTIVES AND APPLICATION

1. The objectives of these Regulations are to —

Objectives.

(a) create and provide a regulatory framework for the effective and efficient administration of the annual operating levy regime by the Commission ;

(b) stipulate the mode and methods of assessment and payment of annual operating levy ; and

(c) specify guiding standards and principles for the administration by the Commission of the annual operating levy regime.

2.—(1) These Regulations shall, subject to the provisions of the Act, apply to the administration of annual operating levy regime by the Commission.

Application.

(2) The annual operating levy shall, except as stipulated in these Regulations, be payable by holders of individual licences issued by the Commission from time to time, and in accordance with the classification specified in Part C of the Second Schedule to these Regulations.

(3) The Commission may at any time, upon due and prior publication, expand the scope of application to include holders of class licences upon such terms and conditions as the Commission shall specify.

(4) Where the provisions of these Regulations are inconsistent with the conditions of any licence, with respect to the payment of the annual operating levy and other applicable levies, the provisions of these Regulations shall prevail and subsist to the extent of the inconsistency.

PART II — ASSESSMENTS AND PAYMENTS FOR ANNUAL OPERATING LEVY

3.—(1) A licensee that is a network operator shall pay to the Commission an annual operating levy assessed at two and a half percent of the licensee's net revenue for the relevant period being its Gross Revenue less its Roaming cost, interconnect cost and value-added services payable to value-added services providers for the period, provided that for the holders of internet service provider licence, only bandwidth cost is allowed to be deducted from gross revenue to arrive at the net revenue for the relevant period.

Annual
operating
levies and
assessment
rates.

(2) A licensee that is a non-network operator shall pay an annual operating levy to the Commission, assessed at one percent of the licensee's gross revenue for the period.

(3) The portion of revenue generated from the value added services payable to value added service providers shall be considered as an allowable deduction from the gross revenue of the network operators.

(4) The network operator shall —

(a) fully disclose the portion of revenue referred to in sub-regulation (3) of this regulation in the network operator's audited accounts ; and

(b) quarterly provide the Commission with details of the revenue showing the amount payable to each value-added services licensee for the period.

(5) Where a licensee defaults in the commencement of its commercial services as specified in its licence, or a licensee declares a negative net revenue, the Commission shall, without prejudice to any sanction as may be provided in the Act, licence, the Enforcement Regulations or these Regulations, demand the payment of an annual operating levy from the Licensee.

(6) The Annual operating levy of the licensee referred to in sub-regulation (5) of this regulation shall be payable and assessed each year at ten percent of the Licence fees calculated from the Commercial Launch Date as stipulated in the applicable Licence until the licensee commences commercial service.

(7) The Commission may, from time to time, review, change or modify the assessment rates of the annual operating levy stipulated in sub-regulations (1), (2) and (3) of this regulation.

(8) A review or modification of the assessment rates of the annual operating levy shall be in accordance with the provisions of the Act and licences which shall be published by the Commission prior to the commencement date of the revised rates.

(9) Without prejudice to the provisions of these Regulations, the Commission may from time to time specify record collection mechanisms on which basis the annual operating levy may be assessed.

(10) Where a licensee engages in any communications business for which it does not hold a licence, the licensee shall be charged an annual operating levy on such business based on the rate applicable to its existing licence.

4.—(1) The annual operating levy shall be paid by —

(a) holders of licences listed in Part A of the Second Schedule to these Regulations—

(i) in respect of the first year of the licence tenure, not later than ninety days after the end of that year, and

(ii) after the first year of the licence tenure, quarterly in arrears and not later than thirty days after the end of each quarter of the year ; and
(b) holders of licences listed in Part B of the Second Schedule to these Regulations annually within thirty days of the submission of the Licensee's annual audited accounts to the Commission.

(2) The payment of annual operating levy by licensees specified in sub regulation (1)(a) and (b) of this regulation shall be based on the self- assessment procedures stipulated in regulation 5 of these Regulations.

(3) Where the Commission demands the payment of annual operating levy from a licensee in accordance with regulation 3(5) of these Regulations, the licensee shall make payment of the assessed annual operating levy within thirty days from the date of receipt of an invoice from the Commission.

(4) The invoice referred to in sub-regulation (3) of this regulation shall be issued annually by the Commission at, or soon after each anniversary date of the applicable licence.

(5) The assessment of the annual operating levy payable —

(a) by holders of the licences listed in Part A of the Second Schedule to these Regulations—

(i) in respect of the first year of the licence shall be based on the audited financial statement of the licensee, where available and where not available, on the management accounts of the licensee for the relevant period, and

(ii) shall be carried out quarterly after the first year of the licence tenure and based on the licensee's quarterly management accounts for the relevant quarter ;

(b) by holders of the licences listed in Part B of the Second Schedule to these Regulations shall be based on the audited financial statements of the licensees ; and

(c) by the network operators pursuant to regulation 3(5) of these Regulations shall be based on ten percent of the licence fee paid by the licensee to the Commission upon the issuance of its licence, and this fee shall be payable annually for the period the licensee remains non-operational.

(6) An assessment based on management accounts shall be relied upon by the Commission for a period of six months only and the licensee shall submit its audited financial statement within that period.

(7) Without prejudice to the provisions of these Regulations, the Commission may from time to time specify and publish such additional accounting records, details and documentation on which basis the annual operating levy may be assessed by licensees.

(8) A holder of a licence not listed in the Second Schedule to these Regulations shall, except otherwise stated in the conditions of the licence, be required by the Commission to pay the annual operating levy in accordance with regulation 4(1)(a) and (b) of these Regulations.

Annual operating levy self-assessment by licensees.

5.—(1) Based on the licensee's financial records and documentation stipulated in regulation 4 of these Regulations, an eligible licensee that is subject to regulation 3(1) of these Regulations shall carry out a self-assessment of the annual operating levy payable by it using the standard self-assessment documentation specified in the First Schedule to these Regulations as may be modified and published by the Commission from time to time.

(2) Based on the self-assessment specified in sub-regulation (1) of this regulation but subject to the provisions of regulation 9 of these Regulations, an eligible licensee shall pay its annual operating levy within the timelines stipulated in regulation 4 of these Regulations.

(3) The annual operating levy self-assessment and payment documentation of each eligible licensee for each payment period, including the accounting records, the standard self-assessment documentation and the evidence of payment shall be compiled and forwarded to the Commission by the licensee not later than seven working days from the date of each payment.

PART III — ACCOUNTING RECORDS AND STANDARDS

Maintenance of accounting records by licensees.

6.—(1) A licensee shall, subject to specific relevant licence conditions, maintain accounting records of its business.

(2) The accounting records shall be with such detail and in such format that the—

(a) activities of its licensed undertakings and the revenue generated from such undertakings are separately identifiable and attributable in its book and distinguishable from the revenue generated from or related to any other business or other activities that the licensee may be engaged in ; and

(b) deductions made in compliance with sanctions as may be imposed on it by the Commission are expressly stated in full detail and separately identifiable.

(3) A licensee's accounting records shall be detailed to explain, identify and relate each transaction in the records to each of the licensee's licensed undertakings.

Submission of financial statements to the Commission by licensees.

7.—(1) A licensee shall, within one hundred and eighty days from the end of its financial year, submit annually to the Commission, its audited accounts for the preceding financial year including any financial records and documentation as the Commission may specify from time to time.

(2) A licensee's audited accounts shall contain the licensee's accounting policies and a detailed breakdown of the licensee's cost of sales and revenue.

8. The audited financial statements of a licensee shall conform to the International Financial Reporting Standard and Statement of Accounting Standards or such other accounting standards as may from time to time be prescribed and published by the relevant international or national accounting body empowered by law to do so.

Accounting standards for communications industry.

9.—(1) Upon receipt of the audited financial statement or management account of a licensee, the Commission —

Verification of financial statements and review of licensees' annual operating levy.

(a) may exercise any of its powers under Chapter V, Part IV of the Act for the purposes of verifying the accuracy of the financial statements of licensees or obtaining clarifications or additional information on such financial statement ; and

(b) shall in the case of audited financial statements, compare the information and details contained in the statement with the licensee's unaudited management accounts for the relevant period in order to determine the accuracy of the annual operating levy assessments paid by the licensee for the period.

(2) Where in the opinion of the Commission, the audited financial statement of a licensee indicates that the licensee has underpaid its annual operating levy for the period covered by the financial statement the —

(a) Commission shall notify the licensee in writing of the incorrect assessment detailing the specific errors contained in the licensee's self-assessment, based on which the licensee shall be issued a re-assessed levy ; and

(b) licensee shall, within seven days from the date of the receipt of the notification, pay the re-assessed levy to the Commission, if it has no objection to the re-assessment carried out by the Commission pursuant to paragraph (a) of this sub-regulation.

(3) Where the licensee has objection to the re-assessment referred to in sub-regulation (2) (a) of this regulation, it shall within seven days from the date of receipt of the notification and re-assessed levy—

(a) notify the Commission of its objection to the re-assessed levy ; and

(b) present the parameters used in assessing the initial annual operating levy paid to the Commission for reconciliation.

(4) The Commission shall, upon receipt of the parameters used in assessment of the annual operating levy by the licensee, re-assess the computed levy for the licensee.

(5) For the purpose of reconciling or re-assessing the levy payable, the Commission may invite the licensee to a meeting to provide further clarification on any issue arising from the parameters used by the licensee for self-assessment.

(6) The Commission shall within fourteen days from the date of receiving the licensee's objection in sub-regulation (3) of this regulation communicate the result of there-assessment to the licensee in writing, which shall be final and conclusive upon the licensee.

(7) The licensee shall within fourteen days of the re-assessment by the Commission pay the outstanding levy based on the re-assessed annual operating levy to the Commission.

(8) Where there is an over-assessment of a licensee's annual operating levy by the Commission, the excess amount shall be deducted from the next applicable annual operating levy payable by the licensee.

PART IV — SANCTIONS AND PENALTIES

Sanctions
and
penalties.

10.—(1) Any non-compliance with the requirements of these Regulations including delay in payments, non-submission of required information to the Commission and submission of false or misleading information to the Commission shall attract the sanctions and penalties specified in the Act and the Enforcement Regulations.

(2) A licensee who fails to submit its audited financial statements to the Commission within the period specified in these Regulations is liable to a —

(a) general administrative fine of three million Naira ; and

(b) daily administrative fine of three hundred thousand Naira payable for as long as the contravention persists and calculated from the date following the due date for the submission of the audited financial statements.

(3) A licensee who fails to pay its annual operating levy within the specified period is liable to a general administrative fine of three million Naira in addition to the daily fines stipulated in Part B of the Second Schedule to the Enforcement Regulations.

PART V — MISCELLANEOUS

Revocation
and savings.

11.—(1) The Annual Operating Levy Regulations, 2014 is revoked.

(2) Anything done under the revoked Regulations shall be deemed to be done under these Regulations to the extent that it is not inconsistent with the provisions of these Regulations.

12.—(1) In these Regulations —

“*Act*” means Nigerian Communications Act, No. 19, 2003 ;

“*Annual Operating Levy*” means the levy that is payable by eligible licensees pursuant to these Regulations and the licences ;

“*Bandwidth Costs*” means the costs incurred by an internet service provider operator in either providing international bandwidth capacity to enable access to the internet or capacity to international destinations ;

“*Commercial Launch Date*” means the deadline specified in a licence for the commencement of commercial services provision by the licensee ;

“*Commission*” means the Nigerian Communications Commissions established under the Act ;

“*Enforcement Regulations*” means the Nigerian Communications (Enforcement Processes etc.) Regulations 2019 issued and published by the Commission ;

“*Financial Statement*” includes —

(a) disclosure of accounting policies ;

(b) statement of financial position (balance sheet) ;

(c) statement of profit or loss and any other comprehensive income (profit or loss accounts) ;

(d) statement of cash flow ;

(e) historical financial summary ;

(f) directors’ report ;

(g) notes to the accounts which must include the breakdown of turnover and cost of sales ; and

(h) such other documents and materials as the Commission may specify and publish from time to time or contained in the Licences ;

“*Gross Revenue*” means the Licensee’s total amount of sales recorded during the relevant period ;

“*Interconnect Cost*” means the costs incurred, payment made (or invoices payable) by the Licensee for the settlement of interconnection obligations to interconnecting partners during the relevant period ;

“*Licence*” means any Licence that has been granted by the Commission pursuant to the Act and includes subsisting Licences that were granted by the Commission prior to the commencement date of the Act ;

“*Licensee*” is as defined in the Act and includes Network Operators and Non-Network Operators ;

“*Negative Net Revenue*” means the cost of sales is more than the revenue generated or reported by the licensee for the relevant period ;

“*Net Revenue*” means the Licensee’s Gross Revenue less its Interconnect, Roaming and Bandwidth Costs for the relevant period ;

“*Network Operator*” means any Licensee who owns and operates a communications network including in particular Network Facilities Provider and Network Services Provider as defined in the Act ; and

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“Non-Network Operator” means any Licensee who is eligible to pay Annual Operating Levy but is not a Network Operator ;

“Roaming Costs” means the costs incurred by an operator when its subscribers roam on other networks outside the country, and it is payable by operator A to operator B for all telecommunications services utilised by Operator A’s subscribers roaming on operator B’s network.

(2) Unless otherwise defined in these Regulations, the terms and expressions used in these Regulations shall have the same meanings and intendments as defined in the Act.

Citation.

13. These Regulations may be cited as the Annual Operating Levy Regulations, 2022.

FIRST SCHEDULE [Regulation 5 (1)]

ANNUAL OPERATING LEVY SELF-ASSESSMENT FORM

1. Category of Licence.
2. Name of Company.
3. Address.
4. Year of Assessment.
5. Year-End.
6. Basis of Assessment —

(a) Audited Account (b) Management Account

(c) Other Financial Projections

7.(a) Computation of Annual Operating Levy for Network Operators (AOL).

Year	Gross Revenue ₦	Interconnect Cost ₦

Year	Gross Revenue ₦	Interconnect Cost ₦	Roaming Cost ₦	VAS Payable ₦	Net Revenue ₦	2.5% Payable ₦

7.(b) Computation of Annual Operating Levy for Non-Network Operators (AOL)Year

Signature

Name of Representative

Date

Signature

Name of Officer.....

for : Nigerian Communications Commission

Date.....

SECOND SCHEDULE

[Regulation 2(2) and 4 (1), (5) and (8)]

PART A — QUARTERLY PAYMENT OF ANNUAL OPERATING LEVY

- | | |
|------------|---------------------------------|
| <i>No.</i> | <i>Licence</i> |
| 1. | National Carrier Licence. |
| 2. | Unified Access Service Licence. |

PART B — ANNUAL PAYMENT OF ANNUAL OPERATING LEVY

- | | |
|------------|--|
| <i>No.</i> | <i>Licence</i> |
| 1. | Sales and Installation of Terminal Equipment (Individual) —
(a) Satellite Telecommunications Terminal Equipment ; and
(b) Major Network and Switching Equipment including (a) above
and switching equipment of up to and more than 600 - line capacity. |
| 2. | Infrastructure Sharing and Collocation Services Licence. |
| 3. | Unified Access Services Licence. |
| 4. | Interconnect Exchange Licence. |
| 5. | Mobile Number Portability Licence. |
| 6. | Full International Gateway Licence. |
| 7. | Internet Exchange Licence. |
| 8. | Metropolitan (Fibre) Network Licence. |
| 9. | Global Mobile Personal Communications Satellite Licence (GMPCS). |
| 10. | Interconnect Exchange Service Licence. |
| 11. | International Data Access Gateway Licence. |
| 12. | National Long Distance Operator Licence. |
| 13. | Open Access Fibre Network Licence |
| 14. | Commercial Trunk Radio Network Service Licence. |
| 15. | Mobile Virtual Network Operator Licence |
| 16. | International Submarine Cable Infrastructure and Cable Landing Station
Licence —
(a) Submarine Cable ; and
(b) Terrestrial cable |
| 17. | Value Added Service Licence —
(a) Call Directory Services ;
(b) Special Numbering Services ;
(c) Call Centre Services ;
(d) Content Service using Short Code ;
(e) Automated Vehicle Tracking Services ; and
(f) Aggregator Service. |

18. Internet Service Provision Licence.
19. Private Network Links — (Telephony Services — Fixed/Wireless) —
 - (a) National ; and
 - (b) Regional.
20. Private Network Links — Local Exchange Operator Licence.

PART C – CLASSIFICATION OF NETWORK AND NON-NETWORK LICENCES

NETWORK		NON-NETWORK	
S/N	Licence	S/N	Licence
1.	Internet Service Provision (ISP)	1.	Collocation and Infrastructure Sharing
2.	Interconnect Exchange	2.	Automated Vehicular Tracking
3.	Interconnect Gateway	3.	Non-Commercial Closed User
4.	Interconnect Date Access (IDA)	4.	Sale and Installation
5.	International Cable Infrastructure and Landing Station	5.	Value Added Services
6.	Metropolitan Fibre Cable	6.	Electronic Directory
7.	Open Access Fibre Infrastructure Network (INFRACO)	7.	Value Added Service (VAS) - Aggregator
8.	Private Network Links (PNL) - Local		
9.	Private Network Links (PNL) - Regional		
10.	Private Network Links (PNL) - National		
11.	Unified Access Services		
12.	National Long Distance Operator		
13.	Internet Exchange Services		
14.	Global Mobile Personal Communication System (GMPCS)		
15.	Public Mobile Communication (PMC) — Trunk Radio		
16.	Mobile Number Portability		
17.	Central Equipment Identification Registry		
18.	National Carrier		
19.	Wholesale Wireless Access Service		
20.	Digital Mobile Licence (DML)		

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MADE at Abuja this 6th day of June, 2022.

PROFESSOR UMAR GARBA DANBATTI, FNSE, FRAES
FAE ng, FNIEEE
Executive Vice-Chairman/CEO
Nigerian Communications Commission

EXPLANATORY NOTE

*(This note does not form part of these Regulations
but is intended to explain its purports)*

These Regulations provide for the assessment and payment of the Annual Operating Levy by License.