



Report of the Public Inquiry on Consultation Guidelines

INTRODUCTION

The Nigerian Communications Commission [“the Commission”] pursuant to the powers conferred on it by Sections 3 and 70 of the Nigerian Communications Act, 2003 [“the Act”] developed and issued the draft Guidelines for Consultations with the stakeholders and members of the public.

The draft guidelines were published on the Commission’s website for comments from operators, stakeholders and members of the general public.

The notice of the public inquiry was advertised in two National Daily Newspapers i.e. Thisday Newspaper, Monday, December 31, 2007 and the Guardian, Thursday January 3, 2008.

The notice required interested stakeholders and members of the public to submit their comments and observations on the draft Guidelines to the Commission before the close of business on January 24, 2008.

By the close of business on the 24th of January 2008, the Commission received submissions and comments from:

- CELTEL Nigeria Limited
- MTN Nigeria Communications Limited

THE INQUIRY

The Inquiry took place on the 29th of January 2008 at the Conference Hall, Nigerian Communications Commission, Abuja at 11: 00am.

The EVC, Engr. Ernest C. A. Ndukwe, welcomed stakeholders to the Inquiry and stated that the general objective of the Guidelines is in line with the Commission’s function of making and enforcing necessary Regulations and Guidelines under the Act to give full force and effect to the provisions of the Act. He also mentioned that due to the fast growing nature of the Telecommunications sector in Nigeria, there is the need to provide the necessary regulatory regime to ensure the continuous growth and development of all sectors of the Nigerian economy.

He stressed on the importance of the public inquiry process as it enables stakeholders to make an input in the rule making process of the Commission. Participants were further encouraged to make any comments as maybe deemed necessary.

The Director of Legal Services, Steven Andzenge analyzed the draft Guidelines and answered questions raised by the stakeholders. Stakeholders were assured that submissions and comments made at the inquiry would be incorporated into the report of the public inquiry and published in accordance with the Act.

CONSIDERATION OF COMMENTS

The Commission hereby summarizes all the comments received and the Commission’s responses. These comments and those received before the inquiry have been duly considered.

1. Comment

Operator seeks a clear distinction between “guidelines” and “regulations” and claims that the terms are used interchangeably by the NCC. The operator also suggested that “Subject to the NCC’s clarification on the difference between Guidelines and Regulations, and on the understanding that Regulations creates binding and enforceable obligations, and respectfully request that the Document be made a Regulation rather than a Guideline.”

Response

The NCC does not use the terms “guideline” and “regulations” interchangeable but rather specifies if a document is published as a guideline or regulation.

Section 71(1) of the Nigerian Communications Act, 2003 (“The Act”), provides that in making regulations, NCC shall hold public enquiries, while section 71(3) provides that in making guidelines, NCC may hold public inquiries.

We are of the opinion that the title should remain “Consultation Guidelines” because this will give parties flexibility in administration.

2. Comment

Operator suggests that NCC should not have the discretion to determine what issues should be subjected to consultation as contained in Paragraph 5(i) and (iii). The operator further suggests that some consultations should hold only for the purpose of enacting subsidiary legislation.

Response

International best practice indicates that a regulator determines what issue to consult on and when to hold consultations. Consultations with the industry is in line with the principle of transparency and international best practice requirement that regulators should consult as widely and as frequently and on as many issues as possible.

3. Comment

Operator is of the opinion that by the provisions of Section 71(1) of the Act, consultation must be by way of public inquiries, and that informal consultations are not covered by the Act.

Response

Section 71(1) and (2) of the Act make it mandatory for the Commission to conduct an inquiry as a condition for making “regulations” but section 71(3) gives the Commission the discretion whether or not to conduct an inquiry before issuing “guidelines”.

Consequently, consultations that will lead to issuance of guidelines or general consultations on policy formulation may not require public inquiry and Section 71 is clear that the Commission may then adopt any procedure it deems fit.

4. Comment

Operator welcomes the provisions allowing changes to consultations.

Response

Noted

5. Comment

Operator states that the Draft guidelines do not provide for timelines and goes further to suggest some timelines.

Response

Timelines are covered by Paragraphs 11, 12 and 19 of the Guidelines. They are also flexible enough to be adapted to the circumstances of each consultation. The 21 days time for response is to ensure consistency with the Act.

6. Comment

Operator complains about the term “internal” consultation in Paragraph 9.

Response

Noted. The word should be “informal” not “internal”

The correction will be reflected in the Guidelines accordingly.

7. Comment

Operator asks for clarification on whether the 21 days required for formal responses are “calendar” days or “working” days. Operator proposes that they should be working days and also notes that where public inquiries are to be held, time cannot be abridged to be shorter than 21 days.

Response

The Commission had always worked on the basis of “calendar” days. Except there is a need to prolong timelines, it should remain as calendar days. The word “calendar” will be inserted in Paragraph 19 of the Guidelines. The Commission agrees that where public inquiries are held, the response time should not be shorter than 21 days in compliance with the provisions of the Act.

8. Comment

Operator suggests that every consultation must be subjected to the outcome of a “pre-consultation” process in which stakeholders should decide whether or not such consultation should hold in the first place.

Response

As stated above International best practice indicates that a regulator determines what issues to consult on and when to hold consultations. We believe that this practice serves the industry better.

9. Comment

Operator suggests annual publication of planned consultations.

Response

Noted. The Commission will try and accommodate this request subject to the proviso that the Commission can exercise its discretion to hold consultations on topics which may not have been included in the annual plan in urgent situations.

10. Comment

Operator views consultation as “intervention” and asks NCC to be cautious. Operator also suggests that consultations should be kept to the minimum and that it should be based on clearly set objectives and goals in order to avoid “arbitrary consultation process”.

Response

While consultation could lead to intervention eventually, consultation is not a regulatory intervention nor does it connote a regulatory intervention. Rather it is the internationally recognized mode for Regulators to feel the pulse of the public and ensure their views are as much as practicable considered in the exercise of its regulatory powers.

11. Comment

Operator suggests that reasons be given where NCC declines a request for consultation.

Response

Noted

12. Comment

Operator holds the view that paragraph 5(iii) should include a caveat to the effect that NCC “will not unreasonably reject requests” for consultation to address key issues arising from multiple complaints.

Response

This provision empowers NCC to hold consultation where it notes multiple complaints. It cannot therefore decline consultation that it has initiated.

13. Comment

Operator concedes the right of NCC to review consultation process and consultation documents in Paragraph 8 but notes the need for regulatory transparency and objectivity.

Response

Noted

14. Comment

Operator wants prior notice for abridgement of time in Paragraph 12.

Response

Noted

15. Comment

Operator requests that consultation documents be issued for every consultation.

Response

The provisions of paragraphs 13 and 14 already provide for consultation documents in the case of formal consultations but in the case of informal consultations, consultation documents are not issued.

16. Comment

Operator commends NCC & suggests publication of responses without disclosing identity of the respondents.

Response

The choice has been left to the Stakeholders. The stakeholder may choose confidentiality in some consultations while opting for full disclosure in others.

CONCLUSION

The Commission, in its principle of participatory regulation will align the final regulation with the findings of the Public Inquiry in order to achieve the goal of the Commission.

The report of the inquiry is hereby published in accordance with the provisions of Section 60 of the Nigerian Communications Act, 2003.

Dated this ----- day of March, 2008

Engr. E. A. Ndukwe (OFR)

Executive Vice-Chairman/CEO