



REPORT OF THE PUBLIC INQUIRY ON THE DRAFT GUIDELINES ON DISPUTE RESOLUTION (AS AMENDED)

1.0 INTRODUCTION

The Nigerian Communications Commission (the Commission) pursuant to its powers under *Section 72 of the Nigerian Communications Act 2003 (the Act)*, amended the Guidelines on Dispute Resolution (draft Guidelines).

Based on the Commission's participatory rule-making procedure, the draft Guidelines was published on its website for comments from the general public, especially communications operators and other stakeholders.

Further to this, the Commission received four (4) submissions from the following stakeholders:

1. MTN Nigeria Communications Plc. (MTN)
2. Airtel Networks Limited (Airtel)
3. IHS Nigeria Limited (IHS)
4. ATC Nigeria Wireless Infrastructure Limited (ATC)

A Public Inquiry was scheduled to hold on May 22, 2024, and all stakeholders were duly notified. A Notice of the Public Inquiry on the draft Guidelines was published in the Daily Trust and Guardian Newspapers of Tuesday, April 16, 2024.

2.0 THE PUBLIC INQUIRY

The Public Inquiry held as scheduled at the Conference Room of the Commission, from 13:40 pm, on May 22, 2024. Staff of the Commission, operators, and interested stakeholders attended both physically and virtually.

Mrs. Princess Greatness Eze (Senior Manager, Legal and Regulatory Services (LRS) Department) gave an overview of the draft Guidelines, highlighting the proposed introductions and amendments to the Guidelines. This was followed by a presentation by Miss. Anthonia Adaba (Manager, LRS Department), on issues raised in the various submissions made by stakeholders on the draft Guidelines.

A. GENERAL OVERVIEW OF THE DISPUTE RESOLUTION GUIDELINES

The Guidelines was intended for small claims consumer disputes involving amounts in dispute not exceeding One Million Naira (₦1, 000,000.00). However, the Guidelines has made provisions for claims higher than One Million Naira (₦1, 000,000.00).

Based on the current financial realities of the Nigerian economy, it is exigent that the Commission moves with these times, and the only way to achieve this is for the Commission to enhance the parameters for its dispute resolution procedures.

B. REVIEW OF SUBMISSIONS RECEIVED PRIOR TO THE PUBLIC INQUIRY

The Commission had prior to the Public Inquiry, reviewed submissions received from stakeholders. Responses thereto are set out below:

MTN

1. The Challenge of an Arbitrator

Comments:

The Draft Guidelines made no provision for the challenge of the appointment of an arbitrator, where circumstances exist that may give rise to justifiable doubts as to the arbitrator's competence, impartiality, independence or availability. The Commission is invited to note that *Section 8 (3) of the Arbitration and Mediation Act (AMA) 2023*, provides that an arbitrator may be challenged:

- a. If circumstances exist that give rise to justifiable doubts as to his impartiality or independence.
- b. If he does not possess the qualifications.

Based on the aforementioned, MTN strongly advocates for the incorporation of a specific timeframe, following the Commission's communication of the arbitrator selection to the involved parties. This timeframe should allow either party to contest the arbitrator's appointment on legitimate grounds. MTN proposes a period of Seven (7) days, from the notification date, for parties to raise challenges regarding the arbitrator's selection.

Subsequently, an additional Seven (7) days' period should be allocated for the Commission to respond to the challenge, or appoint a replacement of an arbitrator if necessary. This recommendation aims to instill confidence in the fairness and impartiality of the dispute resolution process. By providing parties with a clear opportunity to challenge arbitrators' appointments within a defined timeframe, the

proposed mechanism mitigates the likelihood of parties resorting to judicial intervention.

Furthermore, it ensures transparency and accountability in the selection process, thereby fostering trust among stakeholders. Implementing such a provision not only strengthens the integrity of the arbitration process, but also contributes to the overall effectiveness of dispute resolution mechanisms. By addressing potential concerns regarding arbitrator impartiality in a timely manner, parties can engage in arbitration proceedings with greater confidence, thereby facilitating smoother and more efficient resolution of disputes in the communications sector.

Commission's Response:

The comments are well noted and will be considered by the Commission.

2. Recognition and Enforcement of the Award

Comments:

Generally, an arbitral award when made is immediately recognized, binding and ready for enforcement. In harmony with this, *Rules 8.7 of the Arbitration Rules* and *8.4 of Short Form Procedure* provide that awards made under the procedure are final and binding on the parties, until it is set aside by a competent court of law. However, *Section 78 (2) of the Act* provides thus:

“A decision made by the Commission under this Port may be enforced by the Court as if the decision is a judgment of such Court provided that the Commission has issued a certificate to the complainant for leave to proceed to the Court for the enforcement of the decision”.

Generally, for an award to be enforced in a court of law, there is no requirement that a party is to procure a certificate to proceed. According to *Section 57 (2) & (3) of the AMA 2023*, all that is required of an applicant for the enforcement of an award is to supply the court with:

- a. The duly authenticated original award or a duly certified copy thereof.
- b. The original arbitration agreement or a duly certified copy thereof.

An award can be simply enforced by the leave of the court, in the same manner as a judgment or order by leave of the court, without the need for a certificate. It is worthy of note, that the grounds upon which the Commission will refuse to issue the certificate and the timeline within which such a certificate is to be issued are not stipulated, thereby, leaving room for uncertainty and the increased possibility of dispute escalations to the Federal High Court for a judicial review.

Commission's Response:

The comments are well noted and will be considered by the Commission.

3. Timeline for Arbitration decision in Interconnect Disputes under Chapter 4

Comments:

Rule 10.2 of the Rules for the Arbitration of Interconnection Issues and Disputes provides that: *"The Arbitrator shall issue its final decision and file same with the Commission not later than Six (6) months after the filing of the petition for arbitration which period may be extended by the arbitrator after due consultation with the Commission"*.

It is MTN's considered view that the proposed Six (6) months' timeframe for reaching arbitration decisions, in interconnect disputes is excessive. In the fast-paced Communications sector, delays in resolving disputes have significant financial implications for operators and the liquidity needed for their daily operations and the quick accumulation of huge amounts of interconnection debt, where the issue is not quickly resolved. In such instances, there is a need for the Commission and its selected arbitrators to balance the need for a thorough consideration of the issues, alongside the need to reach agreements and resolve disputes quickly and efficiently. The longer the dispute remains unresolved, the greater the potential for financial losses and operational disruptions, particularly in disputes involving debt, where the owing party may continue to incur more debt during the arbitration process.

This undermines the effectiveness of arbitration as a dispute resolution mechanism. MTN recommends a review of the timeline and suggest a period of Three (3) months maximum, without the possibility for extension as a more reasonable timeframe. A shorter and definite timeline would promote expeditious resolutions to mitigate financial losses and operational disruptions. Thus, the Arbitrator shall issue its final decision and file same with the Commission, no later than Three (3) months after the filing of the petition for arbitration. As the Commission is aware, in line with the Constitution, our courts have adopted the practice where judgements in election petitions are issued within One Hundred and Eighty (180) days, from the date of the filing of the petition.

Consequently, MTN recommends the inclusion of the Rule in the Guidelines to ensure timely and speedy closure of the interconnection disputes.

In the alternative, the Commission should consider a Fast-track arbitration process for interconnection disputes - an expedited procedure designed to yield a final award in a short period of time. Faster results are achieved simply by shortening procedural timelines, while ensuring comprehensive examination of complexities inherent in

interconnection issues. Interconnect related issues are critical to the operations of communications operators and can have significant implications. Therefore, there is a pressing need for a mechanism that allows for the expedited resolution of interconnect related issues.

Commission's Response:

The comments are well noted and will be considered by the Commission.

4. Calculation of Time Periods

Comments:

In the interest of clarity, MTN recommends that for the purpose of calculating timelines as stipulated in these Guidelines e.g., whether the period shall begin to run on the day the notice is received or on the next day; or on which day a notice will start to run if the notice is received on a holiday or a non-business day and whether holidays or non-business days are included in calculating the notice periods and timelines.

Commission's Response:

The comments are well noted and further review will provide the clarity during the final consideration.

AIRTEL

1. Rules 1.3 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *The procedure is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means of resolving consumer-related disputes in the Communications Sector.*

Comment:

Airtel needs to have a clear definition of "consumer related" disputes, considering that arbitration disputes must arise from written contracts.

Commission's Response:

This comment is well noted and will be considered by the Commission.

2. Rules 2.1 of the of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *A party wishing to commence an arbitration under these rules (the Claimant) must have exhausted all dispute resolution procedures laid down by the service provider without resolution of the complaint.*

Comments:

There is need to define the class of persons who can be parties to an NCC arbitration. Are the parties limited to NCC licensees? If persons who are not licensees can be parties, how will the award be enforced?

Commission's Response:

The comments are well noted and will be considered by the Commission.

3. Rule 5.3 (d) of the Arbitration Rules – *Receive and take into account any oral or written evidence as the Arbitrator shall decide to be relevant.*

Comment:

This is contradicting Chapter 1 under the Explanatory note which states thus “*The Arbitrator shall make the decision without an oral hearing on document / only and it is important to include upon which a party wishes to rely*” as well as Clause 5.4 – Arbitrator Procedure.

Commission's Response:

The comment is well noted and will be considered by the Commission.

4. Rule 8.3 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *Arbitration proceedings must be concluded within Sixty (60) days from the date of commencement.*

Comments:

Airtel suggests that there should be a provision in this Rules empowering the arbitrator or the Commission to extend the time (beyond Sixty (60) days) within which the arbitration must be concluded, when necessary, to avoid an invalidation of awards rendered after Sixty (60) days. Further to the above, two questions arise. What are the legal implications of proceedings not completed within Sixty (60) days? Would the awards from these proceedings still be valid or susceptible to challenges in court?

Commission's Response:

The comments are well noted and will be considered by the Commission.

5. Rule 4.1 of the Arbitration Rules – *On receipt of a notice for Arbitration pursuant to the provisions of Clause 2 hereof or the execution of the submission agreement pursuant to the provisions of Clause 3, the Commission shall appoint a tribunal from its panel of arbitrators. The tribunal shall consist of three persons. However, a sole arbitrator may be appointed if the circumstance and the case so warrant.*

Comments:

Airtel recommends that the default number of arbitrators should be One (1). Considering that the arbitration is limited to claims of Ten Million Naira (₦10,000,000) only or less, a tribunal of three (3) arbitrators is not cost effective for the parties and the proceedings are likely to be lengthy. A tribunal of three (3) arbitrators may be appointed in exceptional cases, where the circumstance and the case so warrant.

Commission's Response:

The comments are well noted and will be considered by the Commission.

IHS**1. Explanatory Notes****Comment:**

The need for consistency is required for the term this framework will bear. The heading refers to a “procedure”. In other parts, there is the use of the words ‘procedure’, ‘guidelines’ and ‘rules’. One term needs to be adopted for consistency. The term “procedure” is apt in the circumstance.

Commission's Response:

The comment is well noted and will be considered by the Commission.

2. Rule 1.4 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *The Guideline does not apply to claims.....***Comment:**

IHS suggests a change of the word “Guideline” to “Procedure”

Commission's Response:

This comment is well noted and will be considered by the Commission.

3. Rule 2.1 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *A party wishing to commence an arbitration under these Rules (hereinafter referred to as the “Claimant”) must have exhausted all dispute resolution procedures laid down by the service provider without resolution of the complaint.***Comments:**

The explanatory notes refer to this framework as a “procedure”. For consistency, ‘procedure’ should be used instead of rules. Ideally, subordinate rules of procedure may

be made under the procedure. However, to maintain the simplicity of the procedure, the use of the word ‘rules’ may not be necessary.

IHS suggests the Rule be rephrased to – *“Party wishing to commence an arbitration under this Procedure (herein referred to as the “Claimant”) must have exhausted all the dispute resolution procedures laid down by the service provider without resolution of the complaint.”*

Commission’s Response:

The comments are well noted and will be considered by the Commission.

4. Rule 2.2 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *Where there is no existing arbitration agreement with the other party, the party wishing to commence an arbitration under these Rules (the Claimant) shall...*

Comment:

Rephrase clause as follows *“Where there is no existing arbitration agreement with the other Party (herein referred to as the “Respondent”), the Claimant Under this Procedure (the Claimant) shall...”*

Commission’s Response:

The comment is well noted and will be considered by the Commission.

5. Rule 2.3 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *Upon due completion of the Request for Arbitration Form, the form shall be served by the Respondent with copy to the Commission.*

Comment:

Rephrase clause as follows – *“Upon due completion of the Request for Arbitration Form, the Form shall be served on the Respondent with a copy to the Commission.”*

Commission’s Response:

This comment is well noted and will be considered by the Commission.

6. Rule 2.5 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *Within Twenty One (21) days of confirmation of acceptance from the Commission the Claimant shall forward to the Commission in duplicate a statement establishing its case together with the supporting documents (hereinafter collectively referred to as the “claim documents”)*
Rule 2.6 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *A copy of the claim documents will be sent by the Commission to the Respondent who shall within Twenty One (21) days of its receipt send to the Commission*

in duplicate its defence and any counterclaim together with the supporting documents (hereinafter collectively referred to as the “defence documents”).

Comments:

IHS suggests the phrases “Claim Documents”, “Defence Documents” and “Reply Documents”

Commission’s Response:

The comments are well noted and will be considered by the Commission.

7. Rule 3.1 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *A sole Arbitrator appointed by the Commission at such stage as considered appropriate shall conduct the arbitration. The Commission shall notify the parties of the Arbitrator appointed.*

Rule 3.3 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *The Arbitrators appointed in accordance with the provisions of this clause shall be and remain at all times independent of any of the parties and the Commission and shall determine the dispute in an impartial and timely manner.*

Comments:

Add “*together with the details of such Arbitrator*” at the end of Rule (1).

An arbitrator appointed must submit a “*no conflict*” declaration after profiling both parties to guarantee the integrity of the Procedure.

Commission’s Response:

The comments are well noted and will be considered by the Commission.

8. Rule 7.2 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *Costs of the arbitration shall include registration fees, the Arbitrator’s fees and expenses and those of any experts and administrative costs in accordance with the prevailing rates established by the Commission.*

Comment:

It is suggested that there is a scale an arbitration should work with. Since the disputes are resolved on documents, the scale could be benchmarked against a monetary claim or against other factors such as complexity and the time to be spent on the dispute.

Commission’s Response:

This comment is well noted and will be considered by the Commission.

9. Rule 8.3 of the Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration – *Arbitration proceedings must be concluded within Sixty (60) days from the date of commencement.*

Comments:

First, there is confusion as to when arbitration commences. *Clause 2.4 and 2.9* conflict and must be resolved as to when arbitration commences. Second, it is hardly possible that arbitration under the procedure will be concluded within Sixty (60) days, when the parties' documents take about Sixty Three (63) days to conclude. Third, will an arbitration not concluded within Sixty (60) days be invalid?

There must be a little flexibility for unforeseen circumstances.

Commission's Response:

The comments are well noted and will be considered by the Commission.

10. Chapter 2 (Arbitration Rules)

Rule 1.1 – *“This procedure has been established by the Nigerian Communications Commission (“NCC”) pursuant to the provisions of Sections 4(p) and 75(2) of the Nigerian Communications Act (hereinafter referred to as (The Act) 2003 as a means of resolving disputes in the Communications Sector”.*

Comments:

There are too many fundamentals of what Arbitration Rules must contain that are missing here. (i) Joinder of parties (ii) Confidentiality (iii) Challenge of Arbitrators (iv) Challenge of Award (v) Replacement of Arbitrator (vi) Interim Preservation Measures (vii) Form and Effect of Award (viii) Termination of Proceedings (ix) Correction of Awards/Additional Awards etc.

All these must be reflected in the Rules for completeness.

Commission's Response:

The comments are well noted and will be considered by the Commission.

11. Rule 1.2 – *The procedure is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means to resolving disputes in the Communications Sector.*

Comment:

These are the overriding principles upon which the Procedure was formed and has been stated in the Procedure. There is no need to repeat this in the Rules.

Commission’s Response:

This comment is well noted and will be considered by the Commission.

- 12. Rule 2.5 – *For the purpose of these rules the arbitration is deemed to have commenced on the date when the Respondent receives the Notice of Arbitration.*

Comment:

This Rule further creates ambiguity as to when Arbitration commences.

Commission’s Response:

This comment is well noted and the review will provide this clarity during the final consideration.

- 13. Rule 3.2 – *The Arbitration commences upon the parties entering into a Submission Agreement.*

Comment:

Again, this has changed the commencement of Arbitration. There must be a uniformity of when Arbitration commences.

Commission’s Response:

This comment is well noted and the review will provide this clarity during the final consideration.

- 14. Rule 4.1 – *On receipt of a Notice for Arbitration pursuant to the provisions of Clause 2 hereof or the execution of a Submission Agreement pursuant to the provision of Clause 3 the Commission shall appoint a Tribunal from its Panel of arbitrators. The Tribunal shall consist of three persons. However, a sole Arbitrator may be appointed if the circumstance and the case so warrant.*

Comment:

The question here is - why appoint a tribunal when the procedure talks about a Sole Arbitrator? IHS believes this procedure applies to small claims and if so, the use of the word ‘tribunal’ defeats the intended purpose.

Commission’s Response:

The comments are well noted and the review will provide this clarity during the final consideration.

15. Chapter 4 (Rules for the Arbitration of Interconnect Issues & Disputes) - Appointment of Technical Adviser

Rule 6.1 – *The Commission may designate one or more Commission staff personnel or an outside consultant to serve as Technical Adviser to the Arbitrator.*

Comment:

There is a need to state or peg the qualifications of those who are to be designated as Technical Advisers to the Arbitrator

Commission’s Response:

This comment is well noted and will be considered by the Commission.

16. Chapter 5 (Code of Conduct for Arbitrators and Guidelines of Good Practice) 3 – Elements of Bias

Comment:

IHS suggests that this is rephrased – Elements of Bias/Conflict of Interest

The elements and bias are quite nebulous and almost impossible to codify. Decisions have it that the “appearance” of bias could be said to be a bias. IHS suggests that the issue of bias be decided within the circumstances of each particular case.

Commission’s Response:

This suggestion is noted and the Commission will review the provision further.

ATC

1. Chapter 1 - Nigerian Communications Commission short form procedure applicable for small claims consumer disputes arbitration.

Comment:

The Guidelines does not apply to claims in which the amount in dispute or compensation claimed exceeds Ten million Naira (₦10,000,000) or that which involves complicated issues of law or where there is likely to be examination of witnesses.

This section did not expressly provide for the categories of operators within the Communications sector, which it applies to, a gating issue that may arise is the applicability of the small claims rules to ATC as a Network Facilities Provider (NFP).

ATC's business model is B2B, and not with individual customers, and governed by contractual terms willingly entered into by parties, which include dispute resolution mechanisms.

ATC recommends NPFs be exempted from the application of this section, and confine it to disputes between MNO's and individual consumers.

Commission's Response:

It should be noted that the statutory baseline for this Guidelines in *Section 4 and 75 of the Act* neither provides this restrictions being suggested nor limit applicability of the dispute resolution powers of the Commission. Hence, the financial benchmark does not infer applicability restrictions as to parties. Hence, this recommendation is not accepted by the Commission.

2. Chapter 2 - These Rules shall be known as Nigerian Communications Commission Arbitration Rules

Comments:

There is a need for NCC to clarify the scope of the application of the Arbitration Rules as well as the nature of disputes it applies to. It should be noted that the business of NFPs relates to Infrastructure sharing and collocation only. Without prejudice to section 73-76 of the *Act* on the Commission's powers to resolve disputes, ATC stands by its recommendation in 1 above that the Commission should respect the sanctity of contracts when it borders on alternative dispute resolution mechanisms.

Commission's Response:

It should be noted that the statutory baseline for this Guidelines in *Section 4 and 75 of the Act*, neither provides this restrictions being suggested nor limit applicability of the dispute resolution powers of the Commission. Hence, the financial benchmark does not infer applicability restrictions as to parties. Hence, this recommendation is not accepted by the Commission.

3. Chapter 3 - Nigerian Communications Commission Mediation Procedure Rules

Comment:

The Commission should kindly clarify if this amounts to an amendment of *Sections 73-76 NCA 2003* on the Commission's powers to resolve disputes that binds all licensees.

Commission’s Response:

This comment is well noted and the review will provide this clarity during the final consideration.

4. Chapter 4 - Nigerian Communications Commission Rules for Arbitration of Interconnection Issues and Disputes

Comment:

The Interconnection Arbitration Rules expressly stipulates the nature of disputes to which it applies to – i.e. unresolved interconnection issues.

Commission’s Response:

This comment is well noted and the review will provide this clarity during the final consideration.

C. COMMENTS RECEIVED AT THE PUBLIC INQUIRY

The Commission did not receive any comment or submission from stakeholders during the Public Inquiry.

D. GENERAL COMMENTS

Miss. Queen Amina Agbo (Senior Officer, LRS Department), gave the vote of thanks, expressing gratitude to the Management of the Commission, in ensuring the smooth running of the Pubic Inquiry. She further appreciated all stakeholders for their insightful contributions, and feedback in assisting the Commission in developing the various regulatory instruments.

The Public Enquiry ended at 13:20 pm

Dated thisday of June, 2024.

**Dr. Aminu Maida
Executive Vice-Chairman/CEO
NIGERIAN COMMUNICATIONS COMMISSION**