



Report Of the Public Inquiry on ISP Regulations

INTRODUCTION

The Nigerian Communications Commission [“the Commission”] pursuant to the powers conferred on it by Sections 70 (2) of the Nigerian Communications Act, 2003 [“the Act”] developed and issued the Guidelines for the Provision of Internet Service (ISP).

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 and Regulations 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
- Starcomms Nigeria Limited

THE INQUIRY

The Inquiry took place on 30th of January 2008 at the Conference Hall, Nigerian Communications Commission, Abuja at 12pm.

The Executive Vice Chairman [EVC], Engr. Ernest C. A. Ndukwe welcomed the operators and stakeholders and thanked them for attending the public Inquiry. He stated that the public inquiry was a consultative process for members of the public and stakeholders in the industry in accordance with the Rule-making process specified in Section 71 of the Nigerian Communications Act 2003 [the Act].

The EVC further stated that the general objective of the Guidelines is in line with the Commission's function of making and enforcing necessary rules 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.

The Director of Legal Services Department, 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. All comments received were duly considered.

1. Comment

Operator specifies that there is a need to clarify whether the Guidelines are applicable to the provision of data services of a nature as to include access to the internet such as provided by DML, UASL or 2GHz Spectrum licence holders

Response

The draft Guidelines apply to all Internet access or Internet Protocol services, including those provided through mobile devices.

2. Comment

Operator urges the Commission to ensure that a schedule defining these minimum standards as well as those already published by law enforcement agencies like the Economic and Financial Crimes Commission (EFCC), the Nigeria Police Force, and other specialist bodies such as the Nigerian Internet Group (NIG) be appended to these Guidelines before the final edition is published. This will ensure that a general code of practice is available for ease of distribution and wide publication by ISPs to end users.

Response

Noted. The Commission will look into the possibility of meeting this requirement.

3. Comment

In providing contact details to enforcement agencies responsible for addressing cyber crime issues, ISPs are required to provide means of contacting the identified representatives of such agencies "outside of normal business hours" under Guideline 6 (b). Such an obligation may extend beyond that which is lawfully expected of organizations and individuals and may infringe on the constitutionally enshrined rights to privacy of the individual (section 37 Constitution of the Federal Republic of Nigeria). Accordingly, operator urges the Commission to amend the provision appropriately.

Response

The required information is not regarding the person in his or her individual capacity, but solely as an authorized corporate representative for emergency contact purposes.

4. Comment

Operator notes that the 12 month window for retention of data in Paragraph 8 may be unduly burdensome on ISPs as storage capacity for data retention requires more capital outlay than their core business. Investing in additional storage capacity may impact on ISPs ability to deliver effective and qualitative services as funds are diverted from core activities. Operator recommends a reduction in the storage time limit from 12 to 6 months.

Response

The Commission is of the considered opinion that 12 months is a reasonable length of time for this purpose.

5. Comment

Paragraph 16 (b) mandates the recipient ISPs to retain internet service related information including but not limited to the content of user messages. Refer to the earlier comments on Guidelines 6 (b) above, and request that the provision be amended to add that caveat that such obligations are subject to the constitutionally guaranteed right to privacy.

Response

Judicial notice is taken of the fact that all rules and laws are subject to the provisions of the Constitution

6. Comment

An ISP acting as mere conduit or providing hosting services is not privy to the content of the communication of parties using its facilities as contained in Paragraph 11. As such an ISP is not readily in a position to ensure compliance of the sending party (user) to a number of guidelines pertaining to commercial mail. As such, the ISP can only use its best efforts to provide information to its users or business partners and also make them aware of appropriate practices prescribed by requesting provisions that they are obliged to uphold.

Response

The Commission is in agreement with operator that ISPs should only have to use best efforts to provide information regarding appropriate email practices. Paragraphs 13 and 14 are consistent with operator's observation.

7. Comment

Operator observes that for greater clarity, time-lines indicated in paragraphs 3, 8 and 16 should be duly qualified with "calendar" hence, "calendar months" in place of "months".

Response

The Interpretation Act, Cap 123, Laws of the Federation defines "month" as "calendar month".

8. Comment

To avoid the proliferation of regulatory oversight by various agencies, a recommendation was made that the clause “and notified to the ISP through the Commission” be inserted immediately after the term “any other authority” in Paragraph 5.

Response

This may not be feasible as other relevant authorities may issue statements on cybercrime prevention or acceptable Internet use and ISPs are expected to inform users of such statements issued by that other authority.

9. Comment

Operator is of the opinion that to avoid undue burden and the proliferation of a request by the Commission or other legal authority, it is recommended that the clause “in accordance to protocols agreed with the Commission or such legal authority” be inserted immediately after the term “legal authority” in Paragraph 6 (c).

Response

Noted. The Commission will consider the establishment of a Working group comprising of members from relevant authorities to agree on the operating practice or protocols from time to time.

10. Comment

Operator is of the view that while six (6) months is acceptable for notice in the case of scheduled upgrade in paragraph 3 (b) there should be provision for one week notice period in cases of emergency upgrades which may occur.

Response

Noted

11. Comment

Operator is of the opinion that the term “Use of a computer” in Paragraph 5 (a) should be excluded from the provisions of the paragraph as it would raise an unduly high responsibility on the ISPs. It should be limited to internet use for unlawful purposes by means of a computer.

Response

Noted. The Guidelines will be amended as recommended.

12. Comment

Operator is of the view that the scope of paragraph 6 (c) appears too vague especially as there is no definition of what constitutes “other legal authority”. Operator suggests that specific mention be made of the authorities i.e. Police, EFCC, NDLEA.

Response

Limiting the scope of the legal authority by inserting the names of such organizations in the Guidelines may create problems as the dynamics of governance may necessitate the establishment of other relevant legal authorities in future.

13. Comment

The production of contents of communications in Paragraph 6 (c) is onerous as it will result in undue allocation of scarce infrastructure to provide capacity to manage such database. Operator suggests that the requirement for supply of contents should be limited to specific

cases where a regulatory or legal authority requests for details of a user whose activity is being monitored.

Response

The Commission considers this a reasonable period.

14. Comment

Operator submits that the responsibility of the ISPs under Paragraph 10 (c) should be limited to provision of advise to parent purchaser who have disclosed that the services is being procured for juvenile use. Each purchaser should be responsible for the procurement of the software that is capable of restricting their children or ward from gaining access into prohibited sites.

Response

The ISP has an obligation to make available the necessary software on request by parents or guardians to control access to prohibited sites.

CONCLUSION

The Commission has taken note of all submissions and has carefully considered the view points made further by stakeholders in this report. The Guidelines will be amended were necessary prior to the publication.

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

Engr. E. A. Ndukwe (OFR)

Executive Vice-Chairman/CEO