



Report of Public Inquiry on Interconnection Regulations

INTRODUCTION

The Nigerian Communications Commission (“the Commission”), pursuant to powers conferred on it by Sections 70 and 99 of the Nigerian Communications Act, 2003 (“the Act”) published notice that it shall hold a Public Inquiry on the Interconnection Regulations. In further compliance with statutory requirements, the draft Regulations were published on the Commission’s website and comments thereon invited from stakeholders and the general public.

Notice of the Public Inquiry was also published on Friday, August 18, 2006 in two national newspapers. Interested members of the general public were invited to review the draft Regulations and submit their review comments to the Commission. As at Thursday September 14, 2006 the last day for submission of comments, the Commission had only received comments from three (3) operators, namely:

- Starcomms Limited
- Medallion Communications Limited, and
- Interconnect Clearinghouse Nigeria Limited.

After the close of the submission period, MTN Nigeria Communications Limited and Vee Networks Limited also caused their submissions to be served on the Commission.

The Commission held the Public Inquiry on September 21, 2006 where the comments received prior to the deadline for submission of comments were duly considered. The comments received after the submission deadline were however considered after the Public Inquiry and are included as part of this Report

PROCEEDINGS AT THE INQUIRY

The Public Inquiry started at 11.00 a.m. at the Conference Room of the Commission.

The Executive Vice Chairman thanked stakeholders for attending the forum and stated that the regulation of interconnection was considered world-over as the single most important issue in the development of a competitive telecommunications market-place. He said the Commission realizing this

had made the Telecommunications Network Interconnection Regulations 2003 (the Regulations) which was now being reviewed with a view to:

- Aligning it with the Nigerian Communications Act 2003 which was enacted after the Regulations was made
- Addressing major challenges faced by the industry, and
- Taking cognizance of industry best practices

The EVC said that PWC was contracted to review the Regulations and that the due process of publication of the reviewed regulations and invitation for stakeholders' comments had been followed. He thanked stakeholders who made submissions and gave assurances that their comments and those made by other stakeholders after the close of the period for submission of comments would be taken into consideration by the Commission before the regulations are finalized.

Presentation by the Commission

The presentation by the Director, Legal Services highlighted some of the innovations which the review seeks to introduce in the Telecommunications Networks Interconnection Regulations 2003. The innovations include:

- Regulation 2 (3) (a) – mandates the Commission to develop service descriptions and conditions to be published as Model Interconnection Offer
- Regulations 2 (2) (b) and 5 (5) – makes provisions for procedure to be adopted where a requested party is required to have in place a Reference Interconnection Offer (RIO).
- Regulation 2 (6) – requires operators who obtain information from other operators in the course of negotiating for interconnection to protect the confidentiality of the information.
- Regulation 4 (8) – Sets a time-limit of 35 days within which the Commission, on receipt of a request, should notify an operator of its decision whether or not to grant a request to terminate an interconnection agreement.
- Regulation 5 (3) – empowers the Commission to compel parties to commence negotiation for interconnection within 28 days from date of first request. Under the Existing regulations, it is 90 days.
- Regulation 6 (3) – The description of services for which interconnection charges can be set has been defined to include fixed call termination using near-end hand-over and fixed call termination using far-end hand-over.
- Regulation 7 (9) – Places an obligation on a requested party to provide information to the Commission and a requesting party that capacity at a requested PoI is insufficient.

- Regulation 7 (13) – Requires licenced telecommunications operators to establish a technical committee to develop a Code of Practice relating to Calling Line Identification (CLI).
- Regulations 17 (4) – Provides that the Commission may refuse to intervene in a dispute between parties for failure to reach agreement in an interconnection negotiation only on grounds that the matter is frivolous or trivial.
- Regulations 19 – contains definition of the following new terms
 - Far-end hand-over
 - Near-end hand-over
 - Fixed Call termination
 - Industry Code of Practice on CLI

Consideration of Stakeholders Comments

Comments made by operators within the time allotted for submission of comments were also responded to as follows:

1. Comment

A recommendation was made that provisions should be inserted in the Regulations requiring new operators to interconnect with dominant operators through interconnect exchange operators especially in situations when it is not technically feasible to immediately interconnect with dominant operators.

Response

This would not reflect the legal framework for interconnection set out in the Act. This framework supports commercial negotiation of interconnection within the framework provided by the Act and the Regulations, while enabling the placing of obligations on operators and/or intervention by the Commission in interconnection negotiation and agreements.

2. Comment

It was suggested that to solve the problem of interconnect indebtedness, the Regulations should provide that interconnection agreements should contain a clause requiring a bank guarantee for an amount covering the volume of traffic at the end of a month.

Response

There are a number of methods for addressing interconnect indebtedness. While bank guarantees may be appropriate in some circumstances, they may not be so in others. The draft Regulations provide for the Commission in consultation with the industry to

develop standard terms and conditions, which can include terms and conditions on payment, billing and indebtedness/credit management. This is not the appropriate place to address the detail of interconnection agreements themselves.

3. Comment

The regulations should allow only operators that have met all their regulatory obligations and have demonstrated ability to meet interconnect settlement to be entitled to continuous interconnection. It is advisable for the Commission in response to due diligence conducted by requested operators to notify the operators that certain operators have displayed bad faith in meeting their interconnect obligations and are therefore not entitled to interconnect.

Response

This approach is not consistent with the framework set out in the Act, which sets out the rights and obligations on operators with regard to interconnection. The Commission is required to consider each set of negotiations referred to it, agreements registered with it and requests for determination made to it on case-by-case basis, including whether or not a party is discussing interconnection in bad faith.

4. Comment

Regulation 1 (2) relates only to fixed operators and there are no similar provisions for Mobile operators. The provision is onerous and may be technically unreasonable where the different locations do not have MSCs. Moreover, it is possible for duplicated routing to result with its attendant effect on transmission resources. The regulation should encourage interconnect point only at locations where the other party also has interconnect resources and not at all locations.

Response

The Commission notes that the technical aspect of interconnect which are to be read together with these Regulations require mobile operators to have interconnection points in every state capital hence this provision does not only affect fixed operators. This approach is considered necessary, proportionate and appropriate taking into account the interconnection market, the retail market and the issues raised during the discussions on interconnection rates. The structure is also consistent with the draft Interconnection Rate Determination. We note that Regulation 1(4) is sufficiently flexible to enable operators who cannot meet the requirements immediately to put in place an interim solution

5. Comment

Regulation 2 (2) (a) and (c) – The six (6) weeks set as time-limit for concluding negotiations failing which the Commission may intervene is short considering that the Commission also takes time to respond to due diligence search by the requested operator on the operating status of the requesting operator. The date should be 6 weeks from the date the Commission confirms the requesting operator's status.

Response

See previous response on Comment 3. Taking into account the proposals for the preparation of a Model Interconnection Offer, this period is considered to be sufficient and appropriate. For the avoidance of doubt, the Commission does not unduly delay providing response to due diligence requests from operators. The Commission believes that the period of six weeks is adequate and not unreasonable for parties to hold fair negotiations and agree on interconnection terms failure upon which the Commission will then intervene.

6. Comment

Regulation 2 (2)(a) – The time-frame of six (6) weeks, calculated from the commencement of negotiation, after which the Commission may at its own initiative intervene in interconnection negotiations should be reduced to three (3) weeks.

Response

Six (6) weeks is considered an appropriate period for the parties themselves to negotiate interconnection before the Commission intervenes.

7. Comment

Regulation 2 (2) (a) - The Commission need not intervene in negotiations unless and until parties are unable to execute a valid agreement. There is cause for intervention in the absence of manifest inability to conclude on the part of the parties.

Response

Most interconnection regimes provide for a cut-off period for negotiations after which the regulator can intervene, either at the request of the parties or on its own initiative. This approach prevents one or other of the parties extending for an unduly long period the discussions and enables a point to be determined at which negotiations can be considered to have broken down.

8. Comment

Regulation 2 (1) (a-c) – The following responsibilities placed on the Commission should also be placed on operators

- encourage and secure adequate interconnection and interoperability of services;
- carry out its functions in a way that promotes efficiency sustainable competition and gives the maximum benefit to users and;
- take all necessary measures to remove any restrictions which may prevent licensed telecommunications operators from effectively negotiating interconnection agreements between themselves

Response

These duties relate to the exercise by the Commission of its regulatory functions regarding interconnection. Commercial organizations do not have such functions or any

equivalent functions. It is not therefore appropriate to extend duties to organizations that do not exercise regulatory functions.

9. Comment

Regulation 3 (1)–(13) – The provisions on agreements on interconnection does not seem to apply to interconnect agreement that are already in existence prior to the date of the Regulation.

Response

Agreements are to be subject to the provisions of Act and Regulations. Interconnect parties are therefore required to ensure that all agreements are consistent at all times with the Act and Regulations. Where new provisions in the Regulations affect interconnect agreements, operators have the responsibility to ensure such agreements are reviewed to bring them into consonance with the law.

10. Comment

Regulation 4 (7) – The three (3) months notice to remedy a breach of agreement after which an operator can terminate the agreement without further notice was considered too long. An alternative period of forty-five (45) days was recommended.

Response

This is the same period as in the current Regulations. No reasons or examples are provided as to why it is considered too long. Three months is considered an appropriate period, taking into account all the various occurrences that could lead to a breach and to the actions needed to remedy a breach.

11. Comment

Regulation 4 (8) – Additional provisions should be included setting a time-limit after 35 days within which approval can be deemed to have been given consequent upon failure by the Commission to respond to a request for termination or disconnection.

Response

The Commission must act within 35 days, ensuring a positive action on its part, e.g. notification of a decision. The Commission cannot be passive. Section 100 of the Act states that disconnection cannot occur without the Commission's prior written consent. On that basis, it was not considered appropriate or necessary to include deeming provisions.

12. Comment

Regulation 7(1) – Physical interconnection should commence immediately upon parties having reached agreement and should not be delayed until approval of their agreement by the Commission since the Commission can always ask parties to modify terms that are contrary to the Regulations.

Response

The Commission notes that although the Act requires that all agreements be registered with the Commission, it is customary for parties preparatory to execution of

interconnection agreements to conduct tests which involve the physical interconnection of their networks. This practice is acceptable to the Commission.

13. Comment

Regulation 10 – The criteria for determining a “Dominant Operator” has not been set by the Commission.

Response

Noted but this does not invalidate including in the draft Regulations provisions dealing with dominant operators. We note that work on the issue of dominance is being done by another set of advisers under the competition regulations. Additionally, the Commission is presently working on commissioning a study to assist in the actual determination of dominance in every aspect of the telecommunications market in Nigeria.

14. Comment

Regulation 17 - The stipulated time-frame for various actions is too long and would defeat the purpose of ensuring interconnection. Invariably, this would affect business which in telecommunications is dependent on ability to market a product quickly.

Response

The amended time periods were considered taking into account best practice and the need for due process. The Commission considers the stipulated period as reasonable. We will however look at the time-lines again before finalization.

COMMENTS MADE AT THE INQUIRY

The Commission received comments from stakeholders at the Public Inquiry.

Vee Networks Limited made comments in line with their written submission which was received by the Commission after the close of the period for submission of comments. It was posited that

1. There are omission in the regulations on minimum acceptable standards for billing equipment, time-frame for billing reconciliation and framework for raising and resolving billing disputes.
2. The concept of near-end and far-end handover is welcome but before it is implemented, the Commission should set equipment standards and require operators who cannot meet the standards to utilize the services of interconnect clearinghouses or rely on CDRs generated by their interconnect partners.
3. The framework for regulatory intervention by the Commission should be ex-post with a view to correcting activities that threaten competition. It was proposed that where the Commission is to intervene and make decisions that affect an operator, the operator should be involved in the dispute resolution process and also that provision should be made recognizing dispute resolution by technical experts within the framework of interconnection agreements.

4. Since Unified Licensees are also authorized to provide mobile services, the Commission should make provisions for new numbering plan for them recognizing that their new status will affect interconnect billing.
5. Since interconnect clearinghouse do not have switches, the regulations should recognize their right to access and not interconnection.
6. The Terms of Reference of the Technical Committee established by Regulation 7 (13) should be expanded beyond what is now stated to include other interconnection issues.

The EVC responded assuring stakeholders that the well-taken comments will be considered in detail before the regulations are finalized. The initial response proffered was;

1. The Commission noted the comments on billing standards etc. and promised to review the regulations to incorporate the observations. It was reiterate that based on a recommendation by PWC if an operator opted not to have a billing system but to depend on the billing system of its interconnect partners, the Commission will not object if this is the agreement of parties.
2. Regulations are guides hence it is not in all cases that they should be expected to be ex-post. Moreover, since they also serve as protection for the weak in society, it may not be wise to wait and come up with regulations after the effect.
3. The Commission notes that procedural steps on dispute resolution outlined in interconnection agreements require parties to first try to settle their disputes before recourse to the Commission. Moreover, Dispute Resolution Guidelines of the Commission have also specified settlement procedures which are deemed adequate for the settlement of disputes.
4. The issue of mobile services being provided by Unified Licensees has already been taken care of as all Unified Licensees have new numbers for their mobile services to aid proper interconnect billing.
5. On whether interconnect clearinghouses are entitled to access or interconnection, the Commission has already ruled on this matter to the effect that interconnect clearinghouses are entitled to interconnection.

GENERAL COMMENTS

The Commission urged operators to work towards seamless interconnection comparable with global trends.

The Commission has taken note of all submissions and has carefully considered the views of stakeholders. Necessary amendments will be included in the final Regulations.

Dated this 27th day of October, 2006

Engr. E. A. Ndukwe (OFR)

Executive Vice-Chairman/CEO