



Report of the Public Inquiry on Numbering Regulations

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 Numbering Regulations with the stakeholders and members of the public.

The draft regulations 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 Commission later received comments from Starcomms Nigeria Limited after the expiration of the deadline for the submission of comments. Also, comments were received from two other operators but these comments failed to address the specific issues set out in the Regulations.

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 Ndukwe welcomed stakeholders to the Inquiry and stated that the general objective of the Regulations 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.

Regulations No

1. Comment

The Commission was urged to promote the harmonization of Commercial short codes currently in use across the respective networks in the proposed new numbering regime and the Regulations as well as encourage the current cross network cooperation amongst mobile operators with respect to the adoption of a common Commercial short code regime.

Response

The Commission in line with its regulatory functions will continue to promote the harmonization of commercial short codes across networks in Nigeria. To accord with the cardinal objective of ensuring the effective and efficient utilization of number resource which are scarce, the Commission intends to amend the National Numbering Plan with a view to ensuring optimum utilization of numbers including short codes.

4. Comment

Clarification is required regarding what a “defined number” means.

Response

The word “defined” will be deleted to ensure clarity and better understanding of draft Regulation 4. More so, the National Numbering Plan identifies the Numbers.

5. Comment

It remains unclear exactly what the actual difference between a block which is classified as “expected to become assignable” and one classified as “retained” should be. It is proposed that since both classes are for blocks of numbers whose usage conditions may not have been clearly identified and are reserved to address future requirements, then the Commission may wish to consider one general classification for such numbers which may be “reserved” or “retained” for future use.

Response

The Commission appreciates the need to simplify the provisions of the Regulations in line with its practice. However, in this case, there are distinctions between a block which is classified as “expected to become assignable” and one that is classified as “retained”. The distinction is explained in Regulation 5. Number being scarce resource has to be efficiently managed. The categorization does not diminish this objective; rather, it will assist in ensuring proper management of number resources.

1. Comment

“Usage Conditions” should be specified and explained in the Draft Regulation in order to ensure greater clarity. Operators also want clarification as to the word “charges” and the phrase “if the numbers are not telephone numbers” within the context of regulation 6.

Response

The comments and observations are noted. The phrase ‘Usage Condition’ is defined in Regulation 52 of the draft Numbering Regulations. However, to ensure a better sense of clarity and avoid ambiguities, clause 6 (c) & (d) will be deleted so as to make the possible changes in Usage Conditions much more precise.

In order to ensure the desired clarity, the word “charge” will be defined to include fees or tariff rates applied to Numbers;

In other respects, Regulation 6 seems to specify Usage Conditions adequately.

2. Comment

The second paragraph of Regulation 7 seems to suggest that “Usage Condition of Numbers” may not come at the time of the Assignment, but at a later stage.

Retrospective applicability of “Usage Conditions” as suggested here creates a great potential for substantial usage contrary to such “Usage Conditions” that will be known later.

For regulatory certainty and the avoidance of undesirable consequences of possible massive use of numbers contrary to the “Usage Conditions”, it is strongly suggested that the second paragraph of this Regulation be expunged and that “Usage Conditions” should be stipulated at the time of the Assignment.

It was also observed that the change of usage conditions of numbers may work hardship on a lawful assignee if the usage conditions applicable at the time of grant of the assignment have changed between the point of use.

It is necessary for the Regulations to define clear modalities for the change of the usage conditions for blocks previously allocated to specified licensees. These modalities will equally need to define a compensation scheme to replace numbers/blocks duly allocated to a licensee but which no longer satisfies the usage conditions for the proposed service.

Response

The Commission appreciates the need for ensuring regulatory certainty and it has at all times conscientiously strived towards this because it is only when regulations are certain that the compliance regime will be high. However, the Commission notes that since the telecommunications sector is dynamic, conditions of use may change. For example, the general level of charges for a service might fall significantly, in which case it would be unfair on other service providers, as well as on customers, if one service provider were able to use Numbers appropriate to the new lower level of charge while charging significantly more. Also, with premium rate services, new scams are frequently invented; the Commission should have powers to change the conditions of use to prevent such scams.

Usage Conditions (and therefore changes in Usage Conditions) are circumscribed by Regulation 6; on the whole the Commission strongly feels that this provides the best match between regulatory certainty and flexibility. It should be noted that the two (2) paragraphs of Regulation 7 are not contradictory but complimentary.

In the circumstances, no compensation is feasible or likely to be needed. An assignee is sufficiently put on notice by the provision of the Regulation.

3. Comment

The need for stakeholder consultation in the regulatory process is not a discretionary one as suggested by the inclusion of the word, “may”. The prevailing telecommunications regulatory framework, has entrenched and encourages the need for constant stakeholder consultation with all relevant stakeholders in the industry and this is enshrined in the NCA 2003 (see also regulation 34)

In order to safeguard the interest of all parties and in keeping with the need for regulatory transparency and objectivity, it is necessary to ensure that the review process is conducted in a clear and transparent manner. Accordingly, it was recommended that regulation 8 be amended to state that the Commission “shall consult with all licensees and relevant stakeholders.”

Response

The Regulation is appropriate as it is because the Commission has at all times consulted with stakeholders. The Commission is usually guided by the provisions of the Act, particularly Section 72 thereof on issues of consultation. The word “shall” is used in the relevant part of the section that requires consultation. It is a fundamental understanding that the Commission is not bound by advices received from external advisory groups hence the use of the word “may”.

11. Comment

The time-lines stipulated for the notifications are inadequate given the scale of the planning required in assuring effective communication and implementation of the plans among partners in the entire value chain required to guard against undesirable effects.

For greater clarity, the time-lines (notification period) need to be appropriately qualified as “calendar months”.

The Regulation (11) does not indicate clearly what role different stakeholders will play, who will be responsible for what, and who will bear the cost of the advertisements to be undertaken. These issues will need to be clearly established in the regulations so that each party is aware of its obligations thereunder.

Response

The observation on the time lines stated in Regulation 11 is noted. However, it needs to be mentioned that residential customers typically need a much shorter period of notice than business ones. Also, the work needed by foreign administrations should generally be very small. However, as the planning period needed by service providers could be twelve months in some circumstances there should be no difficulty in providing six months for customers and foreign administrations. The suggested time frame will be looked into.

By virtue of the provisions of Section 123 of the Interpretation Act, 1990 “month” means “calendar month”.

The responsibilities or cost allocations, are operational issues for all stakeholders and would be based on varying rational extent of involvement. It should be recognized that the benefits of the modifications should accrue to service providers and all stakeholders in general.

15. Comment

Clarification was sought about the meaning of the phrase “...an End User was taking service through the Number within the previous three (3) months or some longer period.” in Regulation 15 (C).

Response

The period of quarantine is intended to ensure that numbers are not passed on to new End Users when the former End Users may still want them. A period of three months or more should suffice for this. However, draft regulations omitted to say that usually Numbers had to be Available before End Users were allowed to take service from them; this will however be clarified in the Regulations.

16. Comment

It was suggested that the subsisting application forms may be amended to incorporate some of the requirements of this Regulation.

Response

Agreed.

17. Comment

In order to assure transparency and regulatory certainty, the regulation should specify eligibility criteria for grant of Assignment.

The grant or refusal of an application for Assignment should be based on the eligibility criteria. Reasons for the grant or refusal should be conveyed in the response to the applicant.

Response

Regulation 18 highlights some of the factors the Commission should take into consideration in arriving at a decision on an application for an Assignment. These factors are no doubt sufficient guide. It is not good regulatory practice for the Regulation to state all such factors as some factors are unforeseen and therefore can not be immediately known until events unfold. Further more, Regulation 19 sufficiently deals with the mandatory requirement for the Commission to communicate its decision including the reasons for any refusal of an application within one (1) month of receiving the application.

25. Comment

It is considered that the time-line in Regulation 25(b) allowed for the withdrawal of a number is excessive and would not encourage rational use of number. Also the timing of withdrawal should be tied to the date of assignment rather than the date of the application.

Where blocks are withdrawn further to Regulation 25 (C), it may be necessary for the Commission to ensure that licensees' interest are duly safeguarded by creating an appropriate compensation mechanism, by which costs may be refunded to licensees or alternate assignments made to the affected licensees.

Response

The suggestion on Regulation 25(b) is adopted. However, for the purpose of consistency similar changes will be made to Regulations 16 and 18. Together these changes oblige service providers to plan their numbering one year ahead, instead of three years.

The Commission will always carry out its regulatory functions in an effective and transparent manner. Thus, where the Commission withdraws a Block for the purpose of advancing a clearly identified national interest as provided in Regulation 25 (c), by the provision of Section 126(2) of the Act, the Commission may pay a reasonable amount of compensation to the holder of the assignment.

26. Comment

It was suggested that the timing of the notification to a licensee of a proposal to withdraw a block be revised to a minimum of six (6) months instead of the three (3) months in the draft Regulation.

Response

This is noted for consideration.

27. Comment

The need for a precise compensation policy for the replacement of numbers, or the provision of alternates where deemed necessary; and an assigned block is either withdrawn or where by reason of a change in its usage conditions a licensee can no longer take advantage of the said numbers was reiterated.

Response

The Commission adopts its earlier comments on this issue

28&29. Comment

It is unclear what the “contact points” here refer to and the intent of this Regulation.

Response

The observation is noted and necessary steps will be taken to ensure better clarity.

The intention is that the Commission will pass on the contact details when requested but will not be responsible for routing.

30. Comment

Additional timelines be imposed on operators to comply with the request for programming in negotiation of which the NCC may wade into and sanction the non-complying network to whom the numbers have been notified.

Response

The period of at least one (1) month specified is deemed reasonable in the circumstance. One (1) month is the basic time frame required but an operator could choose to give the required notification earlier

Part IX. Comment

No definition of Number Portability provided, it was suggested that this be added.

Response

This is noted.

34. Comment

It is notable that a Direction under the NCA is a mandate issued by the NCC to a licensee to remedy the breach of a provision(s) of the NCA or license condition or subsidiary legislation.

It was respectfully submitted that the NCA does not contemplate the issuance of a Direction to licensee to provide Service Provider Number Portability or any other service or undertaking as such amounts to an undue administrative action.

Response

It is submitted that for the purpose of an effective and efficient Number Portability system in Nigeria, the issuance of Direction to licensees is within the contemplation of the Act. The exercise of that power, if and when it becomes necessary is legally justifiable and in the interest of the industry. It will therefore not amount to an undue administrative action. To cover the field, it may be important to add "regulations" to "decisions" or "directions".

Furthermore, it should be appreciated that number portability will be introduced only after consultation.

35. Comment

Regulation 35 is clear within the context of sub-section (b), Number Portability, but unclear within the context of sub-section (a). Clarification is therefore required as to the circumstances, context and applicability of Regulation 35(a).

A porting solution that requires the routing of traffic to the ported number through the donor network, may not be the most effective option for both licensees and their customers and may lead to an additional layer of switching to the detriment of the subscriber and the overall network call quality. Accordingly, it is proposed that the Commission reviews its position and amend the regulation on routing of traffic.

The Commission in arriving at any decision on number portability should note that the industry committee it established on numbering plan and number portability is in the process of deliberation and has not submitted its final resolutions.

Response

Necessary clarifications will be provided on Regulation 35(a) in order to bring out the issues and ensure clarity.

The comment on the routing of traffic is noted. Indeed, the routing of traffic through the donor network may not be the most appropriate way of implementing number portability.

The Commission will in taking decisions or steps on the issue of number portability be guided by the report of the Committee set up. But it must be appreciated that the report of the Committee will only be advisory and not binding.

36. Comment

With the exception of sub-section (c) of Regulation 36 which appears to apply to a ported number, it is unclear under what circumstance or context a licensee would undertake to provide service to a number assigned to another licensee.

Clarification was therefore required regarding the context, intent and applicability of Regulation 36(a), (b) and (d).

Response

The intention is to ensure that service providers do not use numbers assigned to others except in very specific circumstances. A service provider might seek to do so if, for example, its own application for an Assignment had been refused and it wanted the numbers.

38. Comment

It was suggested that this Regulation be re-drafted thus:

Numbers may only be transferred by one licensee to another upon the transfer of the operating license from the benefactor to the beneficiary.

Response

The Regulation in issue will be re-considered against the background of the comments made with a view to ensuring the desired clarity.

40. Comment

Clarification was required regarding the circumstance, context, intent or applicability of the statement "Every Licensee shall change the End User taking service through a Number.

Response

Though, the practice of moving a number between End Users may be unusual in mobile networks it is widespread in fixed networks. For example, a shop or a house may be sold, and the new owner may wish to retain the old Number.

42. Comment

It is unclear what "removal" (of a number from service) means as this term is not defined or specified in the "Utilization Status" of numbers under Regulation 15.

Moreover, Regulation 42 appears too wide in view of the fact that there are several reasons that could be responsible for removal by a licensee of a Number from service.

Furthermore it was observed that for the Commission to require Licensees to offer compensation to End Users whose Numbers are removed from service, there equally needs to be a similar mechanism put in place by the Commission for the compensation of Licensees whose numbers are withdrawn from service. This will also ensure that Licensees are not unduly burdened and that the general compensation framework is fair and equitable to all parties.

Response

This will be reviewed and the variant of “provide a service to an End User through a Number” instead of “remove service”, “take service”, and “use Numbers” will be adopted. Though this is more verbose it should reduce any problems with understanding.

Also, a new clause will be added to Regulation 42 to indicate how long inactive users will keep their Numbers in order to make the provisions of the said Regulation clearer.

On the agitation for compensation to licenses upon the withdrawal of numbers, the Commission refers to its earlier response under Regulation 25.

43. Comment

Person authorized’ by the Commission should be defined and should include Law enforcement agencies.

Response

The suggestion that ‘Persons authorized’ should be defined is noted but the problem associated with this is that the enumeration of Persons authorized can not be exhaustive. Therefore, every case or situation will have to be decided on its merits.

46. Comment

Regulation [46] appears to be self contradictory. For greater clarity, it was recommended that the latter part of the Regulation be re-phrased.

Response

There is no contradiction between the first part of Regulation 46 and the later part of that same Regulation as alleged. The provisions of both parts are complimentary; while the first part makes it mandatory for the Commission from time to time to publish the schedule of fees, the later part makes it incumbent for the Commission to supply such schedule on request.

47. Comment

As a national resource, numbers are managed and administered in the national interest. Numbering fees may be imposed as tax or administrative fees.

The regime in Nigeria is not one of a tax imposed by the Government, but one of an administrative charge for the service of number administration provided by the NCC.

It is therefore covered within the Annual Operating Levy (AOL) paid by operators (at 2.5% of a Licensee’s Net Turnover), representing a general charge for regulatory (administrative) services provided by the NCC.

Charging separately for the service of number administration with a subsisting AOL charge amounts to duplication of charges. Should the regime of charging separately for numbers subsist, then the NCC would be required to ensure accounting separation for this distinct service.

Where imposed, numbering fees are administrative in nature, accordingly, the Commission was urged to review any fees in this regard. In imposing administrative fees, the quantum of the fee payable should be computed with a view to recovering the cost of providing the service.

Since the fees are administrative fees are of general application, the Commission is urged to engage with operators prior to formalization of the fees as was done for the spectrum pricing regulations. This will allow for a clear, concise and transparent process where the indices employed in determining the numbering fees are apparent and acceptable all stakeholders.

Response

Fees payable for Assignments are separate and distinct from the Annual Operating Levies charged. The two are not the same either in meaning and application; while one is a fee, the other is a levy and the two are governed by different legislations or laws and regulations.

Furthermore, the Act does not require that the fees for Assignment cover only the administrative expenses of the Commission nor did it demand for separate accounting. Regulation 47 indicates what the fees will be based on.

The comments on the need for the fees to be reasonable are noted. The Commission assures that the fees will be reasonable in the circumstances. The factors to be taken into account in determining the fees payable are already enunciated in Regulation 47 considered earlier on. It is to be noted that clear and transparent parameters have been provided.

48. Comment

It was noted that the payment of renewal fees would be incompatible with:

- i. The impending regime of Number Portability as operators would be paying for Numbers that are no longer on its network; and
- ii. The requirements of the NCC to have subscribers retained indefinitely on the network. It is noted that many of these subscribers are highly inactive and do not generate revenue to cover the number renewal charges.

Response

In response to the first point above, the Commission states that the Numbers would still be in an Assignment to operators. Presumably it is expected that successful service providers, would gain and lose roughly equal quantities of Numbers through Number Portability.

The Commission notes the second comments and will re-evaluate the matter.

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