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NIGERIAN COMMUNICATIONS ACT, 2003
ANNUAL OPERATING LEVY REGULATIONS, 2014



ARRANGEMENT OF REGULATIONS

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S. I. No. 29 of 2014

**NIGERIAN COMMUNICATIONS ACT
(No. 19 OF 2003)**

ANNUAL OPERATING LEVY REGULATIONS, 2014

[24th Day of July, 2014] Commence-
ment.

In exercise of the powers conferred on it by Section 70 of the Nigerian Communications Act, 2003 and of all other powers enabling it in that behalf, The Commission makes the following Regulations—

PART I—APPLICATION AND OBJECTIVES

1—(1) These Regulations shall subject to the provisions of the Act, apply for the administration by the Commission of Annual Operating Levy regime. Application.

(2) The Annual Operating Levy shall except as stipulated in these Regulations, be payable by all holders of Individual Licences issued by the Commission from time to time.

(3) The Commission may at any time, upon due and prior publication, expand the scope of application to include holders of Class Licences upon such terms and conditions as the Commission shall specify.

(4) Where the provisions of these Regulations are inconsistent with the conditions of any licence, with respect to the payment of the Annual Operating Levy and other applicable levies, the provisions of these Regulations shall prevail and subsist to the extent of the inconsistency.

2. The objectives of these Regulations are to— Objectives.

(a) create and provide a regulatory framework for the effective and efficient administration by the Commission of the Annual Operating Levy regime and all matters related thereto ;

(b) stipulate the mode and methods of assessment of Annual Operating Levy and the payment modes thereof ; and

(c) specify guiding standards and principles for the administration by the Commission of the Annual Operating Levy regime.

PART II—ASSESSMENTS AND PAYMENTS FOR ANNUAL OPERATING LEVY

3. (1) Every Licensee that is a Network Operator shall pay to the Commission an Annual Operating Levy assessed at two and a half percent of the Licensee's Net Revenue for the relevant period being its Gross Revenue less its Roaming, Interconnect and Bandwidth Costs for the period. Annual Operating Levies and Assessment Rates.

(2) Every Licensee that is a Non-Network Operator shall pay annually to the Commission an Annual Operating Levy assessed at one percent of the Licensee's Net Revenue for the relevant period being its Gross Revenue less its Roaming, Interconnect and Bandwidth Costs for the period.

(3) The portion of revenue generated from the value added services payable to Value Added Service providers shall be considered as an allowable deduction from the gross revenue of the network operators.

(4) The portion of revenue referred to in sub regulation (3) of this regulation shall be fully disclosed in the network operator's audited accounts.

(5) Where a Licensee defaults in the commencement of its commercial services as specified in its Licence, the Commission shall, without prejudice to any sanctions as may be provided in the Act, Licence, the Enforcement Regulations or these Regulations, demand the payment of an Annual Operating Levy from the Licensee.

(6) The Annual Operating Levy of the Licensee referred to in sub-regulation (5) of this regulation shall be payable and assessed each year at ten percent of the Licence fees calculated from the Commercial Launch Date as stipulated in the applicable Licence until provision of commercial services is commenced by the Licensee.

(7) The Commission may, from time to time, review, change or modify the assessment rates of the Annual Operating Levy stipulated in sub-regulations (1), (2) and (3) of this regulation.

(8) A review or modification of the assessment rates of the Annual Operating Levy shall be in accordance with the provisions of the Act and Licences and shall be published by the Commission prior to the commencement date of the revised rates.

Annual
Operating
Levy
Payment
Timelines.

4.—(1) The Annual Operating Levy shall be paid by—

(a) holders of Licences listed in Part A of the Second Schedule to these Regulations—

(i) in respect of the first year of the Licence tenure, not later than ninety days after the end of that year ; and

(ii) after the first year of the Licence tenure, quarterly in arrears and not later than thirty days after the end of each quarter of the year.

(b) holders of Licences listed in Part B of the Second Schedule to these Regulations annually within thirty days of the submission of the Licensee's annual audited accounts to the Commission.

(2) The payment of Annual Operating Levy by Licensees specified in sub regulation 1 (a) and (b) of this regulation shall be based on the self-assessment procedures stipulated in regulation 5 of these Regulations.

(3) Where the Commission demands the payment of Annual Operating Levy from a Licensee in accordance with regulation 3(5) of these Regulations, the Licensee shall make payment of the assessed Annual Operating Levy within thirty days from the date of receipt of an invoice from the Commission.

(4) The invoice referred to in sub regulation (3) of this regulation shall be issued annually by the Commission at or soon after each anniversary date of the applicable Licence.

(5) The assessment of the Annual Operating Levy payable—

(a) by holders of the Licences listed in Part A of the Second Schedule to these Regulations—

(i) in respect of the first year of the Licence shall be based on the audited Financial Statement of the Licensee, where available and where not available, on the Management Accounts of the Licensee for the relevant period ; and

(ii) shall be carried out quarterly after the first year of the Licence tenure and based on the Licensee's quarterly Management Accounts for the relevant quarter ;

(b) by holders of the Licences listed in Part B of the Second Schedule to these Regulations shall be based on the audited Financial Statements of the Licensees ; and

(c) by the Network Operators pursuant to Regulation 3(5) of these Regulations shall be based on ten percent of the Licence Fee paid by the Licensee to the Commission upon the issuance of its Licence; and this fee shall be payable annually for as long as the Licensee remains non-operational.

(6) Assessment based on Management Accounts shall be relied upon by the Commission for a period of six months only within which the Licensee shall submit its audited Financial Statement.

(7) Without prejudice to the provisions of these Regulations, the Commission may from time to time specify and publish such additional accounting records, details and documentation on which basis the Annual Operating Levy may be assessed by Licensees.

(8) A holder of a Licence not listed in the Second Schedule to these Regulations shall except otherwise stated in the conditions of the licence be required by the Commission to pay the Annual Operating levy in accordance with regulation 4(1)(a) and (b) of these Regulations.

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Annual
Operating
Levy Self-
assessment
by
Licensees.

5.—(1) Based on the Licensee’s financial records and documentation stipulated in regulation 4 of these Regulations, every eligible Licensee that is subject to regulation 3(1) of these Regulations shall carry out a self-assessment of the Annual Operating Levy payable by it using the standard self-assessment documentation contained in the First Schedule to these Regulations as may be modified and published by the Commission from time to time.

(2) Based on the self-assessment specified in sub-regulation (1) of this regulation but subject to the provisions of regulation 9 of these Regulations, every eligible Licensee shall pay its Annual Operating Levy within the timelines stipulated in regulation 4 of these Regulations.

(3) The Annual Operating Levy self-assessment and payment documentation of each eligible Licensee for each payment period, including the accounting records, the standard self-assessment documentation and the evidence of payment shall be compiled and forwarded to the Commission by the Licensee not later than seven working days after each payment date.

PART III—ACCOUNTING RETURNS AND STANDARDS

Maintenance
of
Accounting
Records by
Licensees.

6.—(1) A Licensee shall without derogating from specific relevant Licence Conditions, maintain accounting records of its business.

(2) The accounting records shall be with such detail and in such format that the—

(a) activities of its licensed undertakings generally and the revenue generated from such undertakings are separately identifiable and attributable in its book and distinguishable from the revenue generated from or related to any other business or other activities that the Licensee may be engaged in ; and

(b) deductions made in compliance with sanctions as may be imposed on it by the Commission are expressly stated in full detail and separately identifiable.

(3) A Licensee’s accounting records must be sufficiently explicit and detailed to explain, identify and relate each transaction therein contained to each of the Licensee’s licensed undertakings.

Submission
of Financial
Statements
to the
Commission
by
Licensees.

7.—(1) Every Licensee must within one hundred and eighty days from its Financial Year end, submit annually, to the Commission its audited accounts for the elapsed Financial Year including all such financial records and documentation as the Commission may specify from time to time.

(2) A Licensee's audited accounts must contain the Licensee's accounting policies and a detailed breakdown of the Licensee's cost of sales and revenue.

8. The audited Financial Statements of every Licensee shall conform to the International Financial Reporting Standard and Statement of Accounting Standards or such other Accounting Standards as may from time to time be prescribed and published by the relevant international or national accounting body authorised to do so.

Accounting
Standards for
Communica-
tions
Industry.

9.—(1) Upon receipt of the audited Financial Statement or Management Account of a Licensee, the Commission—

Verification
of Financial
Statements
and review
of Licensees'
Annual
Operating
Levy.

(a) may exercise any of its powers under Chapter V of the Act for the purposes of verifying the accuracy of the Financial Statements of Licensees or obtaining clarifications or additional information with regard thereto ; and

(b) shall in the case of audited Financial Statements, compare the information and details contained in the statement with the Licensee's unaudited Management Accounts for the relevant period in order to determine the accuracy of the Annual Operating Levy assessments paid by the Licensee for the period.

(2) Where in the opinion of the Commission, the audited Financial Statement of a Licensee indicates that the Licensee has underpaid its Annual Operating Levy for the period covered by the Financial Statement—

(a) the Commission shall notify the Licensee in writing of the incorrect assessment detailing the specific errors contained in the Licensee's self-assessment ; and

(b) the Licensee shall within seven days from the date of receipt of the notification referred to in paragraph (a) of this sub-regulation—

(i) notify the Commission of its objection to the re-assessed levy ; and

(ii) present the parameters used in assessing the initial Annual Operating Levy paid to the Commission for reconciliation.

(3) The Commission shall upon receipt of the parameters used in assessment of the Annual Operating Levy by the Licensee, re-assess the computed levy for the Licensee.

(4) In reconciling or re-assessing the levy payable, the Commission may invite the Licensee to a meeting to provide further clarification on any issue arising from the parameters used by the Licensee for self-assessment.

(5) The Commission shall within fourteen days from the date of receiving the Licensee's objection in sub regulation (2) (b) of this regulation communicate in writing the result of such re-assessment and this shall be final and conclusive upon the Licensee.

(6) The Licensee shall within fourteen days of the re-assessment by the Commission pay the outstanding levy based on the re-assessed Annual Operating Levy to the Commission.

(7) Where the Licensee has no objection to the re-assessment by the Commission, it shall within seven days from the date of the receipt of the notification pay the re-assessed levy to the Commission.

(8) Where there is an over-assessment of a Licensee's Annual Operating Levy by the Commission, the excess amount shall be deducted from the next applicable Annual Operating Levy payable by the Licensee.

PART IV—SANCTIONS AND PENALTIES

Sanctions
and
Penalties.

10.—(1) Non-compliance with the requirements of these Regulations including but not limited to delays in payments, non-submission of required information to the Commission and submission of false or misleading information to the Commission shall attract the sanctions and penalties specified in the Act and the Enforcement Regulations.

(2) The failure by a Licensee to submit its audited Financial Statements to the Commission within the period specified in these Regulations shall attract a—

(a) general administrative fine of three million Naira ; and

(b) daily fine of three hundred thousand Naira payable for as long as the contravention persists and calculated from the date following the due date for the submission of the audited Financial Statements.

(3) The failure by a Licensee to pay its Annual Operating Levy as at when due shall attract a general administrative fine of three million Naira in addition to the daily fines stipulated in Part B of the Second Schedule to the Enforcement Regulations.

PART V—MISCELLANEOUS

Interpretation.

11.—(1) In these Regulations—

“*Act*” means Nigerian Communications Act, 2003 ;

“*Annual Operating Levy*” means the levy that is payable by eligible Licensees pursuant to these Regulations and the Licences ;

“*Commercial Launch Date*” means the deadline specified in a Licence for the commencement of commercial services provision by the Licensee ;

“*Commission*” means the Nigerian Communications Commissions established under the Act ;

“*Enforcement Regulations*” means the Nigerian Communications (Enforcement Processes etc.) Regulations 2005 issued and published by the Commission; as may be amended from time to time ;

“*Financial Statement*” includes—

- (a) disclosure of accounting policies ;
- (b) balance sheet ;
- (c) profit and loss accounts ;
- (d) statement of cash flow ;
- (e) historical financial summary ;
- (f) Directors’ report ;
- (g) notes to the accounts which must include the breakdown of turnover and cost of sales ; and
- (h) such other documents and materials as the Commission may specify and publish from time to time or contained in the Licences.

“*Gross Revenue*” means the Licensee’s total amount of sales recorded during the relevant period ;

“*Interconnect Cost*” means the costs incurred, payment made (or invoices payable) by the Licensee for the settlement of interconnection obligations to interconnecting partners during the relevant period ;

“*Licence*” means any Licence that has been granted by the Commission pursuant to the Act and includes subsisting Licences that were granted by the Commission prior to the commencement date of the Act ;

“*Licensee*” is as defined in the Act and includes Network Operators and Non-Network Operators ;

“*Net Revenue*” means the Licensee’s Gross Revenue less its Interconnect, Roaming and Bandwidth Costs for the relevant period ;

“*Network Operator*” means any Licensee who owns and operates a communications network including in particular Network Facilities Provider and Network Services Provider as defined in the Act ; and

“*Non-Network Operator*” means any Licensee who is a value added service provider and relies on the Network Operators to provide its value added services.

(2) Unless otherwise defined in these Regulations, the terms and expressions used in these Regulations shall have the same meanings and intendments as defined in the Act.

12. These Regulations may be cited as the Annual Operating Levy Regulations, 2014. Citation.

ANNUAL OPERATING LEVY SELF-ASSESSMENT FORM

1. Category of Licence.
2. Name of Company.
3. Address.
4. Year of Assessment.
5. Year-End.
6. Basis of Assessment—

(a) Audited Account (b) Management Account

(c) Other Financial Projections

7. Computation of Annual Operating Levy (AOL)

<i>Year</i>	<i>Gross Revenue</i> ₦	<i>Interconnect Cost</i> ₦	<i>Net Revenue</i> ₦	<i>2.5% Payable</i> ₦
<i>Total</i>				

Signature.....
 Name of Representative.....
 Date.....

Signature
 Name of Officer.....
 for : Nigerian Communications Commission
 Date.....

SECOND SCHEDULE (Regulation 4)

PART A—QUARTERLY PAYMENT OF ANNUAL OPERATING LEVY

No. Licence

1. National Carrier Licence.
2. Unified Access Service Licence.

PART B—ANNUAL PAYMENT OF ANNUAL OPERATING LEVY

No. Licence

1. Infrastructure Sharing and Collocation Services Licence.
2. Digital Mobile Licence.
3. Electronic Directory Information Services Licence.
4. Fixed Wireless Access Licence.
5. International Gateway Licence.
6. Internet Exchange Licence.
7. Metropolitan (Fibre) Network Licence.
8. Global Mobile Personal Communicating System (GMPCS).
9. Interconnect Exchange Operator Licence.
10. International Data Access Gateway Licence.
11. International Gateway Licence.
12. National Long Distance Licence.
13. Prepaid Card Calling Services Licence.
14. Public Mobile Communications Licence (Trunk Radio Services).
15. Public Mobile Communications Licence (Vehicular Tracking Services).
16. Installation of Terminal or Other Equipment.
17. Sales and Installation of Terminal Equipment (Major and Satellite).
18. International Submarine Cable Infrastructure and Cable Landing Station Licence.
19. Value Added Service Licence.
20. Internet Service Provision Licence.
21. Private Network Links Licence (LEO).
22. Private Network Links (Regional/National).
23. Private Network Links Employing Satellite (VSAT).

MADE at Abuja this 24th day of July, 2014.

DR EUGENE JUWAH
Executive Vice Chairman
Nigerian Communications Commission

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EXPLANATORY NOTE

*(This note does not form part of the above Regulations
but is intended to explain its purport)*

These Regulations provide for the assessment and payment of the Annual Operating Levy by Licensees.