



## **REPORT OF THE PUBLIC INQUIRY ON ADVERTISEMENT & PROMOTIONS HELD ON 14<sup>TH</sup> JULY 2009 AT THE CONFERENCE HALL OF THE COMMISSION.**

### **Participation**

The Commission held this public inquiry on Guidelines on Advertisement and promotion pursuant to section 71 of the Nigerian Communications Act, 2003. The Inquiry commenced at 11:45 am with few operators in attendance.

### **The Inquiry**

The EVC welcome all participants and stakeholders to the two day Public Inquiry. He reminded participants that the inquiries were organized pursuant to section 71 of the Nigerian Communications Act, 2003 in order to afford stakeholders an opportunity to contribute to the development of the Guidelines. The EVC stated that Guidelines on Advertisements and Promotions; Amended Guidelines on Technical Specifications for the Installations of Masts and Towers: Procedure for the Management of Satellite Fillings, commercial Satellite Communication Guidelines and Amended Frequency Spectrum (Fee & Pricing Regulations would be considered at the Public Inquiry.

The EVC noted that the Telecommunications Sector is inundated with numerous challenges; to face these challenges the Commission has endeavored to develop Guidelines and relevant regulatory instruments to meet the day to day challenges of the sector.

Highlighting the purpose and objective of the Guidelines the EVC said the Guidelines on Advertisements and promotions are to ensure ethical marketing and promotional standards and to set minimum requirements and standards for advertisements and promotions by licensed telecommunications operators.

The EVC assured the Participants and other stake holders that the Commission intends to work with stakeholders towards recording further positive changes and growth in quality of telecom service provisioning by monitoring and enforcing the provisions set by these Guidelines.

He Thanked those operators who have already sent in constructive submissions, comments and inputs and assured all that these submissions and those that will be presented later during the course of the Inquiries will be taken into consideration in finalizing the Regulatory instruments.

## **Participants Comments**

Deputy Director, Legal Services (DDLs) made a presentation on Advertisements and Promotions on behalf of the Commission. She said the Commission had summarized all comments received as well as the Commission's responses. She informed participants that all submissions were received within the stipulated deadline of July 3, 2009.

Commenting further she informed the inquiry that six responses were received from Celtel Nigeria Limited trading as Zain, MTN Communications, Visafone Communications Limited, Emerging Markets Telecoms Services Limited (Etisalat), Association of Licensed Telecoms Operators of Nigeria (ALTON) and Consumer Affairs Bureau of the Commission.

The Comments received from stake holders were summarized into Twenty Five items by the Commission and all were responded accordingly.

Find below the summary of comments and responses.

### **1. Comments:**

There was a comment that the Guidelines attempts a novel regulation of an otherwise extraneous telecoms subject (Advertisement) – already provided for under the Advertisement Practitioners Council of Nigeria (APCON) Act No. 55 of 1988, cap 7, LFN. The comments further stated that the APCON Act covers the field of vetting of advertisement and that the Guidelines will foster a case of multiple regulations and attempt by the Commission to regulate non- telecom subject.

#### **Response:**

The Commission notes the comment for further consideration.

### **2. Comments:**

There was a comment that the Regulator should restrict itself to its area of core competence, which is, telecommunications, and not venture into the territory of advertising which is better dealt with by APCON, the statutory authority established to regulate standards and requirements for advertising.

#### **Response:**

The Guidelines is not intended to venture into area of advertising which the Commission recognizes is effectively regulated by the Advertising Practitioners Council of Nigeria. It is a regulatory effort by the Commission to ensure effective compliance by Telecom operators with the Advertising Code of Practice issued by APCON.

### **3. Comment**

There was a comment that the Commission should primarily be concerned with the regulation of cost, tariffs and prices of products and services on offer by telecoms companies and should not dabble into different prices and medium for advertisement which the APCON Act covers.

#### **Response:**

The Commission notes the comment.

**4. Comment**

There was a comment that advertising media continue to evolve and therefore to regulate what medium of advert to be used by Licensees would stifle innovations and amount to micromanaging the operators.. Companies take advantage of new advert medium to reach their target customers, e. g. 'face book', sponsorship of events, internet pod casts, etc.

**Response:**

The Commission notes the comment and would consider it.

**5. Comment**

There was a comment that the provision on comparative advertising is commended and are suitable in curtailing disparaging advertorials or copyright issues.

**Response:**

The Commission notes the comment.

**6. Comment**

There was a comment that the provisions on Internet Connections are welcomed as they are necessary in protecting the rights of the subscribers.

**Response:**

The Commission notes the comment.

**7. Comment**

An operator commented that the entirety of Section 4 which provides for the regulation of promotions does not specifically address the issue of Licensees obtaining approvals from other Government Agencies like the Lagos State Lottery Board (LSB) and the National Lottery Regulatory Commission (NLRC) which have claimed supervisory authority over promotions by telecoms operators. The Operator had assumed that the Commission would step in to assist in solving the problem of multiple and confusing regulations and not add to the problem.

**Response:**

The Commission states that by its regulatory oversight it has, where necessary and where there is a perceived overlap, intervened, on the request of telecom operators, to address the rising issues of multiplicity of sectoral legislation.

**8. Comment**

There was a comment that Section 4 (i) did not provide whether operators should also obtain approvals/licence from other State/Federal Government Agencies, neither did it indicate which authority should supersede the other in terms of enforcement.

**Response:**

The Commission notes the comment for further review.

**9. Comment**

There was a comment that the application form is welcomed as it provides a standardized format for all operating companies. The comment further stated that it is however astonishing that Licensees are required to pay an outrageous application fee of N250, 000.00 with no justification for such a high fee, and would amount to multiple levies. An application fee of N1, 000.00 was proposed.

**Response:**

The Commission notes the comment.

**10. Comment**

There was a comment that Section 4 subsections (iii) through (xvi) are satisfactory.

**Response:**

The Commission notes the comment.

**11. Comment**

An operator commented that geographical balance of promotions is not ideal. The reason being that promotions are tools used by telecom companies to reward loyalty from subscribers and also to stimulate consumption, and that consequently, rewards from promotions are strictly and transparently distributed in line with consumption patterns. Any interference with this normal distribution pattern will open promotions to unfair manipulation by Licensees.

**Response:**

The Commission's position subsists. The Commission further states that spread of promotions to reflect geographical balance would also stimulate patronage for the operating companies by consumers in those regions.

**12. Comment**

An operator commented that Part 5 through to Part 7 may stand.

**Response:**

The Commission notes the comments.

**13. Comment**

There was a comment that the Commission's right to place appropriate sanctions on defaulting Licensees must not be heavy-handed and should be exercised in such a way that it serves as an effective deterrent to companies only and not amount to a penalty which could lead to the demise of operating companies. Particularly Part 8 (b) which provides for withdrawal of Operators License and imposition of N5Million fine for failure to register any promotions with the Consumer Protection Council are examples of excessive penalties capable of truncating the operations and life span of telecom Licensees.

**Response:**

The Commission notes the comment for further consideration.

**14. Comment**

An operator commented that by the release of the draft Guidelines under review, the inference is that there are three regulatory agencies with a direct statutory oversight over advertising and marketing in Nigeria. These agencies would appear to be the Advertising Practitioners Council of Nigeria, the Consumer Protection Council, and the Nigerian Communications Commission.

**Response:**

See our response in Table 1.2. above.

**15. Comment**

There was a comment that APCON was established and charged with the general duty of regulating and controlling the practice of advertising in all its aspects and ramifications and determining the requisite standards and skills for entry into the profession, etc. Pursuant to its powers, therefore, APCON has developed comprehensive rules and regulations to guide all stakeholders with regard to administration of advertising and marketing practice in Nigeria.

**Response:**

The Commission agrees with the comment.

**16. Comment**

An operator commented that due credence should be given to the professional competence of APCON by the Commission in matters relating to advertising and marketing promotions as well as the need to avoid incidence of multiple taxation and regulation in the industry by the establishment of three sets of separate processes, approval/permits and fees.

**Response:**

The Commission agrees with the comment

**17. Comment**

There was a comment that marketing and advertising practice in Nigeria is very generic and applicable to all industries in Nigeria. The Advertising code of practice issued by APCON covers the essence and concept of advertising with due recognition to statutory sector regulators. The Nigerian Communications Commission is duly recognized in the code as the statutory regulator for the communications industry.

**Response:**

The Commission notes the comment.

**18. Comment**

There was a comment that within the context of NCC's draft Guidelines on Advertisements and Promotions, it proposes to delineate the role of registering market promotions to CPC, whereas the body to accord such recognition is APCON and not CPC.

The CPC Act of 1992 did not make reference to the regulation of advertising and promotions as part of the core functions of CPC.

**Response:**

The Commission notes the comment.

**19. Comment**

An operator commented that there are concerns that the Commission as the industry's champion of light touch regulation opposed to the incidence of multiple taxation and regulation, would seek to impose three (3) separate layers of multiple regulatory and taxation regimes with respect to advertising and promotions on the industry. The Comments further stated that while there is room for collaboration amongst all three agencies, the purview of each is well defined and each regulatory authority should focus on its established competencies within the stipulated ambit of its powers and functions.

**Response:**

Please refer to our comment in table 1.0. above.

**20. Comment**

There was a comment that there are instruments at the NCC's disposal to achieve the same goals intended by the Guidelines without the need for further instrument as proposed. The comment further stated that:

- i. Operators are already duty bound to adhere to set standards for quality and grade of service by virtue of the Quality of Service Regulations, the NCA, 2003 and other licence obligations.
- ii. Interconnect regulations of the Commission and licence obligations suffice to regulate retail and wholesale tariffs.
- iii. With reference to the Commission's right to withdraw promotions, it is evident with directions issued in the recent past, that there are sufficient instruments already at the disposal of the Commission to achieve the said purpose.
- iv. The sanctions in the Enforcement Guidelines are more than adequate to apply to the Licensees without the need for further provision as envisaged in the proposed Guidelines.

**Response:**

The Commission agrees with the above comments and would reevaluate the need to enact the proposed Guidelines on Advertisements and Promotions.

**21. Comment**

An operator commented that unlike the APCON Act, 1988 (section 1 (d) which specifically empowers APCON with "regulating and controlling the practice of advertising in all its ramifications". The NCA, 2003 does not contain any provision specifically empowering the NCC to regulate advertising, although section 106 (2) (d)

provides that the Consumer Code to be published by operators and the NCC should include provisions on “the advertising or representation of services”.

**Response:**

The Commission states that the provision of Section 106 NCA, 2003 empowers the Commission to make and publish Guidelines and Regulations regarding Consumer Code of Practice and other matters of telecoms concern.

**22. Comment**

An operator commented that paragraph 17 of the NCC’s Consumer Code of Practice Regulations acknowledges that “the Advertising Practitioners Council of Nigeria (APCON) regulates advertising practices in Nigeria, and has established the Nigerian Code of Advertising Practice. Licensees shall comply with the advertising standards, in addition to the rules regarding the advertising or promotion of telecommunications services set out in the General Code.” The comment further stated that the provision of the Regulations represents the ideal situation; hence the specification of detailed Guidelines contradicts the said paragraph 17.

**Response:**

The Commission notes that the provision of APCON and the consequent recognition of the Advertising Code of Practice by the Commission’s Consumer Code Regulations does not in any way restrict the Commission from exercising the powers conferred on it by Section 106 NCA, 2003

**23. Comment**

An operator observed that the respective definition of “advertisement” and “promotion” are imprecise and conflicting. The definitions did not specify who the article “their” refers to.

**Response:**

The observation is noted for review.

**24. Comment**

There was a comment that the Commission’s statutory mandate to withdraw approvals where the terms upon which the approvals was granted has been breached is acknowledged. The comment however suggested that where a withdrawal of approval is contemplated, the Licensee should be informed and given a hearing before the Commission’s prerogative to withdraw approval is exercised.

**Response:**

The comment is noted.

**25. Comment**

There was a comment that Section 4 of the Guidelines amounts to duplicity of functions, particularly that the Commission has signed into a Memorandum of Understanding (MoU) with the CPC.

**Response:**

The Commission states that the essence of the MoU as clearly stated is to avoid regulatory overlaps between the two agencies. The essence of Section 4 is to enhance further collaborations between the two agencies and to ensure the attainment of market transparency and adequate consumer protection.

**Consideration Of Comments On Guidelines On Advertisements & Promotions**

Commenting on the presentation, Damiah Udeh representing Etisalat argued that the presentation captured all comments sent by Etisalat. He further reiterated that section 4 of the draft Guidelines was duplicity of taxation and Regulation. He requested that since the Commission had recognized the powers of APCON to regulate Adverts and Promotions, the Commission should jettison the whole process. Despite that, he commended the Commission for a thorough job.

While responding to the operator's comment the EVC stated that Guidelines on Advertisements and Promotions were conceived as a result of awful Advertisements and Promotions by some operators. He stated that he had recognized the existence of duplicity of rules between the Guidelines and APCON. Consequently, he reassured stakeholders that that the Commission has noted and will act on the observations raised. He also reassured stakeholders that some aspects of the Guidelines as presently constituted would be looked into holistically and where necessary expunged clauses that contradict the provision of APCON and other relevant laws.

The EVC particularly guaranteed stakeholders that fee payable for promotions as currently stated in the Guideline would be drastically reviewed.

Finally, he thanked all those that attended the Public Inquiry. The Public Inquiry ended at 12:25pm.

**Legal Services Directorate  
Nigerian Communications Commission**