



REPORT OF THE PUBLIC INQUIRY ON THE ANNUAL OPERATING LEVY REGULATIONS (AS AMENDED)

1.0. INTRODUCTION

The Nigerian Communications Commission (the Commission) pursuant to its powers under Section 72 of the Nigerian Communications Act 2003 (the Act) commenced the process of reviewing the Annual Operating Levy Regulations 2014 (Draft AOL Regulations).

Based on the Commission's policy of participatory rule-making, the Draft Regulations was published on its website for comments from the general public, particularly its licensees and other stakeholders.

Further to this, the Commission received submissions from the following stakeholders:

1. Airtel Networks Limited
2. MTN Nigeria Communications Limited
3. IHS Nigeria Limited
4. Smile Communications Limited
5. VDT Communications Limited
6. Mobile Intelligence Limited
7. Huawei Limited
8. Perchstone and Graeys Limited

As required by Section 58 of the Act, a Public Inquiry on the Draft AOL Regulations was scheduled for July 29, 2021 and a Notice of the Public Inquiry was published in Punch Newspapers and People's Daily Newspapers on Monday July 19, 2021.

2.0. THE PUBLIC INQUIRY

The Public Inquiry held virtually as scheduled, commencing at 11:00am and was chaired by the Executive Vice Chairman, Professor Umar Garba Danbatta ***FNSE, FRAES, FAEng, FNIEEE***. The Chairman of the Commission's Board of Commissioners, Professor Adeolu Akande, also attended the Inquiry alongside Engr. Ubale Ahmed Maska, (the EC-TS), Mr Adeleke Adewolu, (the EC-SM), Alhaji Abdulazeez Salman, a Board Commissioner and Chairman of the Board

Committee on Licensing. The Virtual Public Inquiry was attended by about One Hundred and Twenty (120) participants, including Staff of the Commission, and representatives of telecommunications companies, as well as other interested stakeholders.

The Director Legal and Regulatory Services of the Commission, Ms. Josephine Amuwa, welcomed participants to the forum. In her opening address, she explained that the Inquiry is part of the rule-making process adopted by the Commission to ensure wide consultations in the development of frameworks for the telecommunications industry. She further stated that the Regulations being reviewed is vital to ensuring a fair and competitive market and it also has an impact on balancing the fluid communications market in Nigeria.

The Executive Vice Chairman, Professor Umar Garba Danbatta outlined the importance of the AOL Regulations in the assessment of levies. Subsequently, he enjoined all participants to make their contributions freely and raise issues that will assist the Commission in developing and issuing a regulatory instrument that will continually contribute to the development of the industry and sustain its positive contributions to the Nation's economy.

The Deputy Director, Legal and Regulatory Services, Ms. Helen Obi gave an overview of the amendments introduced in the Draft AOL Regulations, while, Mrs. Chika Anohu, Assistant Director, Finance Services presented the Commission's response to the comments received from stakeholders prior to the Public Inquiry.

A. GENERAL OVERVIEW OF THE ANNUAL OPERATING LEVY REGULATIONS

The AOL Regulations, ensures that all licensees are properly and equitably assessed for the annual operating levy as well as meeting both statutory and regulatory expectations. The purport of the review is to bring the Regulations in line with current realities and sustain the enviable contributions of the communications sector to the Nigeria's Gross Domestic Product (GDP).

B. REVIEW OF COMMENTS RECEIVED BEFORE THE PUBLIC INQUIRY

1. Airtel Networks Limited

1.1 Comment

Regulation 3(1) – In line with the services provided under their licenses, Mobile Network Operators (MNOs) also provide internet services. Furthermore, by virtue of the Quality of Service Regulations, MNOs, are required to report the following KPIs with respect to internet service:

- a. ISP Links (Bandwidth Utilisation)
- b. Latency
- c. Jitters

This implies that MNOs are considered ISPs and as such should be eligible to deduct Bandwidth cost in AOL computation.

Response

MNOs use bandwidth to provide different services, which include transmission service, and internet services to their subscribers. The transmission cost has been factored in determining the interconnect rate for the industry for Network Operators. This will inevitably result in double cost recognition in some services if the Commission considers bandwidth cost as an allowable deduction for the AOL assessment.

Although the Commission is aware that part of the bandwidth is sold to subscribers as an internet service, it will be challenging to segregate the bandwidth cost used for transmission from the portion sold to subscribers for the provision of internet. In a bid to simplify the process, the Commission decided to allow bandwidth cost as a deductible, for AOL assessment of ISPs.

1.2 Comment

Regulation 3(9) – Airtel stated that the continued growth and development in the sector is dependent on regulatory transparency and certainty. Based on this, it stated that the proposed modification under Part II. S. 9 negates the objective of the AOL Regulations 2014 which stipulates the mode and methods of assessment of Annual Operating Levy.

It suggested that this should be expunged in order to avoid arbitrariness and regulatory uncertainty, which will in turn make it challenging for Network Operators to effectively make provisions for their AOL obligations.

Response

The Commission has noted the observation, however this mechanism is crucial, for records collection and not mode of assessment

This Mechanism is without prejudice to the Commission’s powers to issue directions, Guidelines and Regulations.

1.3 Comment

Part V – Miscellaneous: The NCC recently published Guidelines on National Roaming, 2021 but this was inadvertently not taken into consideration in the definition of “Roaming Costs” as this has been restricted to only international scenario.

The Commission is respectfully requested to include national roaming charges in the definition so that same is deductible in AOL computation.

Response

The Commission hereby notes the comments.

2. IHS Nigeria Limited

2.1 Comment

Regulation 3(1) – “For the holders of Internet Service Provider Licence, only bandwidth cost is allowed to be deducted from gross revenue to arrive at the Net revenue for the relevant period” should be added to Regulation 3(1).

Response

Transmission cost is not a deductible cost for AOL assessment because it has been factored in determining interconnect costs. Interconnect cost is already an allowable deduction.

2.2 Comment

Regulation 3(2) – “For holders of Colocation and Infrastructure Sharing Licensees, cost of diesel to base stations is allowed to be deducted from gross revenue to arrive at the Net Revenue for the relevant period” should be added to Regulation 3(2).

Response

The Commission appreciates that this operational cost element is significant, however it cannot be isolated to be a deductible for the licensee.

3. Smile Communications Limited

3.1 Comment

Regulation 3(1) –Bandwidth Cost is a direct cost which is borne by all Network Operators alike. Network Operators provide network services which includes data (internet access) to its customers and this is done upon the purchase of Bandwidth from Third-Parties. The Unified Access Service Licence (UASL) and Spectrum Licence alone does not grant Network Operators the ability to render internet access service to their customers.

Thus, Smile requested that the Bandwidth cost be reinstated and deducted to ensure the true Net Revenue is reflected. It also stated that it incurs Bandwidth cost from Third-Party service providers by purchasing international internet connectivity to render internet service access to its customers. Similarly, the provisioning of voice interconnection across networks cannot be successful without settling interconnect costs to interconnect partners.

Smile therefore proposed that this section be reviewed to reinstate the deduction of Bandwidth Cost across Network Operators and the definition should reflect this accordingly.

Response

The Commission maintains its position that MNOs use bandwidth to provide different services, which include transmission service, and internet services to their

subscribers. The transmission cost has been factored in determining the interconnect rate for the industry for Network Operators. This will inevitably result in double cost recognition in some services if the Commission considers bandwidth cost as an allowable deduction for the AOL assessment.

Although the Commission is aware that part of the bandwidth is sold to subscribers as an internet service, it will be challenging to segregate the bandwidth cost used for transmission from the portion sold to subscribers for the provision of internet. In a bid to simplify the process, the Commission decided to allow bandwidth cost as a deductible, for AOL assessment of ISPs.

3.2 Comment

Regulation 3(9) – Smile requested that the Commission provide clarity on what these records collection mechanisms are and what logical assessment is to be used to ensure adequate understanding of the Regulations. It noted that this new provision constitutes a situation where the Commission may randomly change the mode of computing AOL which may pose hardship in the ease of doing business in the industry. In order to maintain the policy on the Ease of Doing Business, Smile asked the Commission to be mindful of the state of the economy, restoration of foreign investor confidence, microeconomic volatility and inflation. Smile further stated that the inclusion of this provision, presents a mind-set of a loose process of reviewing the computation of AOL which will hamper Network Operators viability in business.

Finally, Smile stated that certain mechanisms should be standard and stated in the AOL Regulations and should not be deviated from without taking into consideration the revenue bottlenecks, and other financial strains in the industry. Hence it recommended that this provision be expunged in order to avoid regulatory uncertainty making it challenging for Network Operators to successfully make good on their AOL obligations. In the event that the Commission decides to move on with this, Smile recommended that before such specifications are cascaded, they should be communicated to the MNOs for comments subsequent to the Public Inquiry to be held in accordance with the Nigerian Communications Act 2003 prior to adoption.

Response

The Commission maintains its position as follows:

“The mechanism is crucial, for records collection and not mode of assessment. This Mechanism is without prejudice to the Commission’s powers to issue directions, Guidelines and Regulations”.

3.3 Comment

Definition of Bandwidth Costs – As noted above, the Bandwidth Costs are not incurred by Internet Service Providers alone as every Network Operator (Smile inclusive) incurs this cost to be able to render internet access through its network facilities. It is important to note that Bandwidth costs are direct costs without which internet access cannot be rendered to the customers. All Network Operators bear

this cost by purchasing same from Third-parties. Thus, Smile proposed that the definition be re-worded to read – “Bandwidth Costs” means the costs incurred by a Network Operator in either providing international bandwidth capacity to enable access to the internet or capacity to international destinations.

Response

The Commission maintains its position that MNOs use bandwidth to provide different services, which include transmission service, and internet services to their subscribers. The transmission cost has been factored in determining the interconnect rate for the industry for Network Operators. This will inevitably result in double cost recognition in some services if the Commission considers bandwidth cost as an allowable deduction for the AOL assessment.

Although the Commission is aware that part of the bandwidth is sold to subscribers as an internet service, it will be challenging to segregate the bandwidth cost used for transmission from the portion sold to subscribers for the provision of internet. In a bid to simplify the process, the Commission decided to allow bandwidth cost as a deductible, for AOL assessment of ISPs.

3.4 Comment

Part V: Interpretation – Smile stated that Roaming also includes National roaming as opposed to just international roaming. The Guidelines on National Roaming, 2021 gives credence to this as well. However, this definition seeks to restrict roaming cost to only international roaming situations. Smile requested the Commission to include national roaming charges in the definition so that the national roaming charge is deductible in the AOL computation. It proposed the following draft: “Roaming Costs” means the costs incurred by an operator when its subscribers roam on other networks within or outside the country. Roaming costs are costs payable by operator A to operator b for all telecommunications services utilised by Operator A’s subscribers roaming on operator B’s network.”

Response

The Commission hereby notes this comment.

3.5 Comment

Schedule 1: Computation of Annual Operating Levy for Network Operators – Smile posited that the Bandwidth Cost be reinstated and deducted as provided in the computation list below:

Year	Gross Revenue	Interconnect Cost	Roaming Cost	Bandwidth Cost	VAS Payable	Net Revenue	2.5%

Response

Not Accepted.

3.6 Comment

Schedule 2: Mobile Number Portability Licence – Smile wished to note that these

licenses do not exist currently. The Mobile Number Portability (MNP) was instituted in 2014 as a service/process of porting which is regulated by the MNP Regulations 2014 and the MNP Business Rules. It was not regarded as a licence and therefore we recommend that this be taken out of this Second Schedule. The NCC did provide a licence to this effect.

Response

The Licence is still in existence and the licensee is operational.

4. MTN Nigeria Communications Plc

4.1 Comment

Regulation 3(1) – MTN recommended that the Commission retains the provision which allows Network Operators to deduct bandwidth cost from AOL with the proviso that ISPs can only deduct bandwidth cost when it relates to AOL computations since they only provide internet service.

Given the services provided by VAS Aggregators and the fees they earn in that regard, MTN also recommended that the fees earned by VAS Aggregators should also be expressly allowed as AOL deductible items for a Network Licensee's AOL assessment.

Response

The Commission maintains its position that MNOs use bandwidth to provide different services, which include transmission service, and internet services to their subscribers. The transmission cost has been factored in determining the interconnect rate for the industry for Network Operators. This will inevitably result in double cost recognition in some services if the Commission considers bandwidth cost as an allowable deduction for the AOL assessment.

Although the Commission is aware that part of the bandwidth is sold to subscribers as an internet service, it will be challenging to segregate the bandwidth cost used for transmission from the portion sold to subscribers for the provision of internet. In a bid to simplify the process, the Commission decided to allow bandwidth cost as a deductible, for AOL assessment of ISPs.

4.2 Comment

Part II: Annual Operating Levies and Assessment Rates – MTN noted that the Regulations does not recognize fees payable to VAS Aggregators despite the role of VAS Aggregators in VAS provisioning.

Response

The Commission has noted this observation and the VAS aggregator fee will be considered.

4.3 Comment

Regulation 3(4) – MTN stated that as the Commission is aware, VAS Aggregators have been introduced as players in the VAS segment and act as intermediaries between Network Operators and VAS providers. Given this new market structure, MTN recommended that the Commission recognizes and reflects the role of VAS Aggregators in this regard.

Response

The Commission has noted this suggestion.

4.4 Comment

Regulation 3(5) – MTN noted the introduction of the rule of negative net revenue, which it believes is aimed at addressing a lacuna in the AOL Regulations 2014. However, the Commission did not specify the AOL applicable to companies that declare negative net revenue or failed to commence operations. Consequently, MTN urged the Commission to clarify what AOL percentage will apply where a licensee is yet to commence operations or declares a negative net revenue for regulatory certainty.

Response

The applicable rate is 10% of the license fees, to be paid annually for the period it has been non-operational or in the situation it declares a negative revenue. This applies to all categories of individual licences. This is clearly stated in Part II Regulation 3(6).

4.5 Comment

Ease of Doing Business: MTN implored the Commission to approach with caution the implementation of the revenue drive. Reducing AOL deductibles and increasing fees for resources, on the other hand, without an impact analysis, will drive up costs for operators and may ultimately set the industry on a degrowth path.

Response

The Commission notes the concerns of MTN.

4.6 Comment

Disallowance of MTN's Bandwidth Cost prior to the review of the Regulations. The Current provision allows bandwidth cost to be deductible in arriving at a Net Revenue until the amendment is concluded. Thus a credit note should be issued to MTN for bandwidth cost paid.

Response

The Commission still maintains that this is NOT an allowable deduction. There will not be any issuance of credit note for bandwidth cost paid.

4.7 Comment

Re-evaluation of the Universal Service Provision Fund Levy: need to allow MNOs undertake critical digital infrastructure projects as designated by the Commission and claim AOL credit to the limit allocated for USPF. By so doing, MTN believes

the Commission will accelerate the closure of access gaps.

Response

The Commission has noted this suggestion.

4.8 Comment

Regulation 3(9) – MTN recommended that the Commission expressly defines the records collection mechanisms on which basis the Annual Operating Levy may be assessed in the Regulations. Alternatively, the Commission could specify that it may from time to time, issue Guidelines/Directions on Annual Operating Levy on records collection mechanisms.

Response

The mechanism is crucial, for records collection and not mode of assessment. This Mechanism is without prejudice to the Commission’s powers to issue directions, Guidelines and Regulations.

5. VDT Communications

5.1 Comment

Regulation 1(2) – The Draft Regulations mentioned “Part C of the Second Schedule” which is supposed to contain Individual Licences classified into Network and Non-Network Licenses for AOL computation. The said Part C of the Second Schedule is missing from the draft Regulations.

Response

Noted, the schedule will be provided

5.2 Comment

Part V – Bandwidth Costs: Definition should be expanded to cover Local and International Bandwidth capacity to enable access to the internet or capacity to Local/International destinations.

Response

Noted

5.3 Comment

Regulation 9(8) – This regulation should consider: “**provide for a refund with interests accruing on any amount outstanding to the credit of the licensee**”.

Response

Licenses have the right to request for refund for any outstanding credit with the Commission.

5.4 Comment

Regulation 10(2) – This should be reviewed to classify operators into categories (Big and Small) based on revenues to apply administrative fine; **for failure to submit audited financial statement to the Commission with different rate of sanctions and penalties and applicable to each category.**

Response

The Commission has noted the suggestion but still maintains that the fines will not be adjusted and is optimistic that licensees will comply.

5.5 Comment

Regulation 10(3) – This should be reviewed to classify operators into categories (Big and Small) based on revenues to: **apply administrative fine for failure to pay AOL to the Commission as at when due with different rate of sanctions and penalties applicable to each category.**

Response

The Commission has noted the suggestion but still maintains that the fines will not be adjusted and is optimistic that licensees will comply.

5.6 Comment

Annual Operating Levy should be applied to; activities of its Licensed undertakings only not on licensees' global revenue.

Response

AOL is charged only on telecommunications activities; that is why the Commission introduced the Guidelines for the Accounting Separation Framework. Also the Regulation has stipulated that the revenue and cost of sale should be broken down (Part III Regulation 7 (2)).

5.7 Comment

Annual Operating Levy Payment Timeline should allow Licensees to spread the payment of AOL within a stipulated period; say between three (3) and six (6) months.

Response

The Commission maintains the stipulated period for AOL payment at six months after the financial year-end while Quarterly payments are expected for UASL and National Carrier Licensees.

6. Mobile Intelligence Limited

6.1 Comment

The Draft Regulations did not address the unique circumstances in the new VAS Aggregator Licence by not specifically itemizing the purchase of Bulk SMS by VAS Aggregators as a cost which must be deducted from gross revenue. Bulk SMS is a direct cost of sales and should be deducted before computation.

Response

Full disclosure of the transaction in the audited account of the licensee will suffice. This has been considered in the past.

7. Perchstone and Graeys**7.1 Comment**

Regulation 2(4) of the Draft Regulations provides that the portion of Revenue referred to in Sub-regulation 3 which is generated from the Value-Added Services payable by VAS providers should be fully disclosed in the audited accounts of the Licensee. It further provides that the operators shall also provide the Commission with details of the revenue every quarter showing the amount payable to each VAS Licensee for the period. This clause is unclear and we recommend that same is drafted clearly to show the intention of the Commission, as well as what is expected of the VAS Licensee. In addition, the method in which the VAS Licensee should provide the Commission details of the revenue every quarter should be included as a Form as prescribed by the Commission from time to time; or be included in the Schedule for ease of reference.

Response

This does not apply to the VAS Licensees. This requirement is directed to the MNOs that are obligated to disclose this information in their financials and report quarterly in their management report.

7.2 Comment

Regulation 2(2) of the Draft Regulations provides that every licensee that is a Non-Network Operator shall pay annually to the Commission an Annual Operating Levy assessed at 1% of the Licensee's Gross Revenue for the period. This provision does not include any allowable deductions for licences under this category and we recommend that some administrative and allowable deductions be included in view of calculating Annual Operating Levy.

Response

No allowable deduction for this category of license is going to be considered.

8. Huawei Technologies Company Limited**8.1 Comment**

The Commission, for the purpose of granting level playing field to all licensees should also consider the payment of AOL for the non-network operators as 1% of net revenue for the relevant period based on the Gross Revenue but less direct cost of sales attributed to such revenue. This will align the provision just as the case of the Network operators whose assessments are based on gross revenue but less the permitted costs.

Response

The intention here is to simplify the assessment of AOL for this category of licensee, and this comes with a reduction of the rate from 2.5% to 1%. The Network operators pay 2.5% after the allowable deductions, not 1%.

8.2 Comment

Will the payment of AOL fee for Licences not in use (being 10% of the License fee) be on historical cost of the licence or the current cost of the licence basis?

Response

The 10% is applicable to licence fee paid.

8.3 Comment

In line with the Draft update, the AOL fee for licences not in use 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. In a situation where the commercial launch date is prior to the implementation date of the updated Annual Operating Levy Regulations, will the assessment be treated retrospectively?

Response

The 10% charge is also provided in the subsisting Regulations. There is no update or change to the percentage to be charged.

C. REVIEW OF COMMENTS RECEIVED AT THE PUBLIC INQUIRY

No further comments were received at the Public Inquiry in respect of the Draft AOL Regulations.

D. GENERAL COMMENTS

Dr. Mohammed Suleh-Yusuf, Senior Manager, Telecoms Laws and Regulations Unit thanked everyone for coming and stated that all comments submitted by stakeholders will be considered by the Commission before the draft regulatory instrument is finalised.

The Public Inquiry ended at about 1:25pm.

Dated this 29th day of July 2021

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Executive Vice-Chairman/CEO
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