

INFORMATION MEMORANDUM

NIGERIAN COMMUNICATIONS COMMISSION

DIGITAL MOBILE LICENSING



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IMPORTANT NOTICE

This Information Memorandum (the “Memorandum”) has been prepared by the Nigerian Communications Commission (the “Commission”) through consultation with its advisors Radio Spectrum International Consulting Ltd (“RSI”), Charles River Associates (“CRA”), Skadden, Arps, Slate, Meager & Flom LLP, Chief Afe Babalola, SAN and Paul Usoro & Co in connection with the proposed allocation of spectrum for Second Generation (2G) mobile services by auction.

The Memorandum is for information purposes only. It is made available on the express understanding that the recipient will only use it for the sole purpose of assisting the recipient in deciding whether it wishes to proceed with a further investigation of possible participation in the Auction. The Memorandum is not intended to form any part of the basis of any investment decision or other evaluation or any decision to participate in the Auction and should not be considered as a recommendation by the Commission or its advisors to any recipient of the Memorandum to participate in the Auction. Each recipient must make its own independent assessment of the potential value of an allocation of 2G spectrum after making such investigation as it may deem necessary in order to determine whether to participate in the Auction. Information in this Memorandum may be subject to update, modification and amendment.

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but not limited to loss of goodwill, downtime, revenue, etc, consequent upon the publication of and/or reliance of such person on this Memorandum or participation in the auction it being understood and agreed that the Commission's liability shall in all cases be limited to such amount as may have been actually paid to the Commission by the Bidder or Applicant.

The Memorandum is also available on the Commission website (www.ncc.gov.ng). In the event of any discrepancy between the electronic and printed versions, the printed version is definitive. For the purposes of the above, recipients of the Memorandum include those interested parties who download the Memorandum from the website.

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Further copies of this document can be downloaded from the Commission website or obtained in person from NCC offices in Abuja and Lagos.

1.1 SUMMARY

1.1.1 Introduction

This Memorandum provides information for interested parties wishing to participate in the forthcoming auction for a licence to operate a digital mobile telecommunications network in Nigeria. The Commission has decided to award four national licences, one of which has been reserved for NITEL/M-TEL. The remaining three licences are therefore available for auction.

The main features of the Memorandum are:

- The rules and timetable for the auction;
- Pre-qualification criteria; and
- The Nigerian telecommunications regulatory requirements.

Upon receipt of their licences, the four licensees will be the only operators legally authorised to deploy second-generation digital mobile networks in Nigeria.

Recipients considering submitting applications to pre-qualify for the auction should note the following key issues:

- Financial and technical plans are not required for pre-qualification. However a deposit will be required along with details of company ownership structures and confirmation of compliance with the rules of the Auction. A Bank Guarantee **will not** be required. A Bidder must be a limited liability company incorporated in Nigeria and must not be related to any other Bidder. Subject to the requirement for a Bidder to be a Nigerian incorporated limited liability company, consortia may bid for a licence.
- Following open consultation with industry members via the Commission's website, four spectrum packages consisting of allocations of both 900MHz and 1800MHz have been defined.
- On completion of the Auction, the successful bidders will be required to effect full payment of the licence fee within 14 business days from the date of licence award.
- All times given in the Memorandum are Nigerian local times.

Further details are provided in the Memorandum.

Recipients of the Memorandum who intend to apply to pre-qualify for the Auction should note that the information contained in the Memorandum does not purport to be

complete. The intention of the Memorandum is to highlight a number of key issues and provide instructions for the Auction process. Recipients will need to continue their own detailed investigations of the relevant issues and where appropriate direct questions to the Commission.

1.1.2 Policy Background

The Commission is committed to facilitating the development of the telecommunications sector and supports the extension of competition in this sector. Following previous licence allocations, mobile operators have failed to roll out viable networks for a number of reasons. The Commission is keen to encourage sustainable competition and by way of the auction process is making available four national licences authorising the use of specific parts of the radio spectrum. Through the auction mechanism the Commission will issue licences to those operators who value the spectrum most highly and hence will utilise it efficiently.

1.1.3 The Auction

An auction is a tool or mechanism available to the spectrum manager to help him or her achieve specified objectives. An auction provides a mechanism for licence winners to be selected, and allows a price for the spectrum to be determined in a market environment. There are many kinds of auctions and this variety allows the spectrum manager to select a design appropriate to the objectives to be achieved.

The Commission has elected to auction three of the four Digital Mobile Licences (“DMLs”) featuring an auction design known as an ascending bid auction with the possibility of using a sealed bid method (the circumstances under which a sealed bid method would be used are outlined in Chapter 4). Ascending bid auctions have been used successfully to award spectrum licences in many countries, including Australia, the United Kingdom and the United States of America. Ascending bid auctions require bidders to submit bids as the price for the DMLs being auctioned increases.

The NCC has set a minimum price (the “Reserve Price”) for the Licences. The Reserve Price is:

USD \$100 million for each Licence.

Bidding will commence at the Reserve Price and increase according to increments specified by the Commission. In each round of the Auction, bidders will be required to confirm whether they are willing to pay the price announced by the Commission. The auction naturally ends when only three bidders remain who are willing to pay the announced price, but it has also been designed to resolve situations where this does not logically occur.

1.1.4 The Auction Location

The Auction will take place at a location to be specified by the Commission in the city of Abuja in the Federal Republic of Nigeria.

1.1.5 The Licences

The licences authorise the use of specified mobile spectrum for a term of fifteen years from the date of award. They contain conditions relating to service obligations and the technical operating parameters of the radio equipment. The Commission reserves the right to revoke a licence should a licence holder breach any of these conditions. A licence holder will have a right of appeal in the event of revocation.

1.1.6 The Pre-qualification process

Bidders are not required to pass a detailed technical test or provide detailed business plans for the services they intend to offer in order to pre-qualify for the Auction. However, Bidders must:

- Provide a USD\$20 million Deposit;
- Submit a completed Application Form including:
 - ⇒ Supporting information on corporate structures;
 - ⇒ Evidence of relevant experience in the telecommunications sector.

1.1.7 Timetable

The auction process will follow the four stages set out below:



There is no pre-set timetable and the Commission reserves the right to determine the overall timetable of the Auction. However, the table below sets out an indicative timetable:

Indicative Timetable of Activities

DATE	ACTIVITY
16 November	Invitation stage Publication of Information Memorandum
21 December	Submission of Applications "Application Date" (Corporate details and signed Bidder Compliance Certificate to be supplied)
21 December	Payment of Deposits "Deposit Date" (deposit funds to have cleared into Nominated Account)
8 January	Pre-qualification stage Notification of Qualified Bidders
12 January	Formal Notification of Auction Date
17 January	Auction stage Auction Date
January/ February	Grant stage Provisional Award Notice Notification of Award of DML Award of DMLs and payment of Licence Fee within 14 days

1.2 POLICY BACKGROUND

Under previous governments the Nigerian telecommunications sector lacked a coherent and consistent policy administration. Though the Federal Government in 1992 passed Act ¹ Number 75 to establish the Commission and proceeded to inaugurate a Board of Commissioners in 1993, the Military government dismissed the Board in 1994. Subsequently the Commission operated as a department of the Ministry of Communications with the Military Communications Minister as the *de facto* licensing authority.

Licences were generally issued without any open competitive process or following established procedures. There was little or no spectrum management in the previous award of mobile licences. Contrary to international best practice, no obligations were imposed on the licensees as to roll out targets, geographical spread of services or grade of service.

These irregularities and the arbitrariness in the licence award process together with the new democratic government’s commitment to facilitating the development of the mobile telecommunications sector have led to the initiation of a fresh award process. The Commission is keen to optimise the use of the radio spectrum, which is a finite and valuable national resource in order to meet objectives for the Nigerian telecommunications market. The auction represents a fair, open and transparent licensing process offering an equal

¹ Formally referred to as "Decree" by virtue of the fact that it was enacted by a military government.

opportunity to all interested parties and will ensure that competent companies capable of significant roll out of services will be licensed.

1.3 THE NIGERIAN TELECOMMUNICATIONS MARKET

1.3.1 Background

Nigeria is the most populous country in Africa; the population is estimated to be 124 million² (with a density of approximately 120 per sq. km).

Telecommunications services were introduced to Nigeria in the late 1880s. When Nigeria gained independence in 1960, there were only 18,724 telephone lines for a population of approximately 40 million. Nigerian Telecommunications Limited (NITEL) was established in January 1985 with the main objective of harmonising the planning and co-ordination of internal and external telecommunications. At present, NITEL is the only national carrier and basic service provider for domestic and international telecommunications services. Its Public Switched Telephony Network (PSTN) has a capacity of around 700,000 lines, of which about 500,000 are connected. The exchange utilisation currently stands at 65% and the time speed is 9,600 BPS.

Conversion of Nigeria's analogue telecommunications exchanges to digital systems commenced in 1989. Currently, about 50% of NITEL's capacity is in digital exchanges. At present, Nigerian Mobile Telecommunication Limited (M-TEL) is the only operator of mobile cellular telecommunications services in the country. M-TEL runs an analogue system with a capacity of 210,000 lines. Less than 40,000 of these are connected to subscribers.

1.3.2 Potential demand

Evidence suggests that there is latent high demand for digital mobile services in Nigeria. This demand can be analysed in terms of the potential number of subscribers.

1.3.2.1 Number of subscribers

- Nigeria has a large population. The population was estimated to be 124m in 1999³ (roughly one sixth the population of Africa). There are approximately 22m households and the adult population numbers around 60m.

² World Bank database www.Worldbank.org

³ World Bank database

1 INTRODUCTION

- The population is very young (over 47% of the population are aged less than 16⁴ years old), which is favourable for future revenues (for example, mobile telephony grew very strongly in Ireland, which also has a young population).
- The fixed line network is underdeveloped
 - Maximum capacity is approximately 700,000 lines, of which around 500,000 are connected (see Figure 1);
 - Tele-density is only around 0.5 per 100;
 - Approximately 52% of main lines are digital;
 - There are only around 1,600 public payphones.
- There is only one mobile network in service. This is analogue and is inadequate to meet modern business demands. There are no operational mobile digital operators.
- The market is supply-constrained, not demand-constrained i.e. if more lines were available, it is believed that many people would take them up immediately.
- The pattern of usage in Nigeria, following a successful auctioning of licences, could be similar to that in neighbouring countries such as Uganda where the number of mobile subscribers has surpassed that of fixed subscribers (see Figure 2).
 - Uganda has a population roughly one-fifth the size of Nigeria's but a similar level of GNP per capita.⁵ Therefore, if Nigeria had the same level of mobile penetration as Uganda, it could have had approximately 405,000 mobile subscribers in 1999 (compared to the actual estimated level of 32,500).
- The dynamism of the African market for mobile telephony is illustrated by its rapid growth. The number of mobile telephony subscribers in Africa was less than 2 million in 1997. This grew to over 3 million by the end of 1998 and is forecast to reach over 5.5 million by the end of this year.⁶ The majority of these subscribers are in South Africa and North Africa.

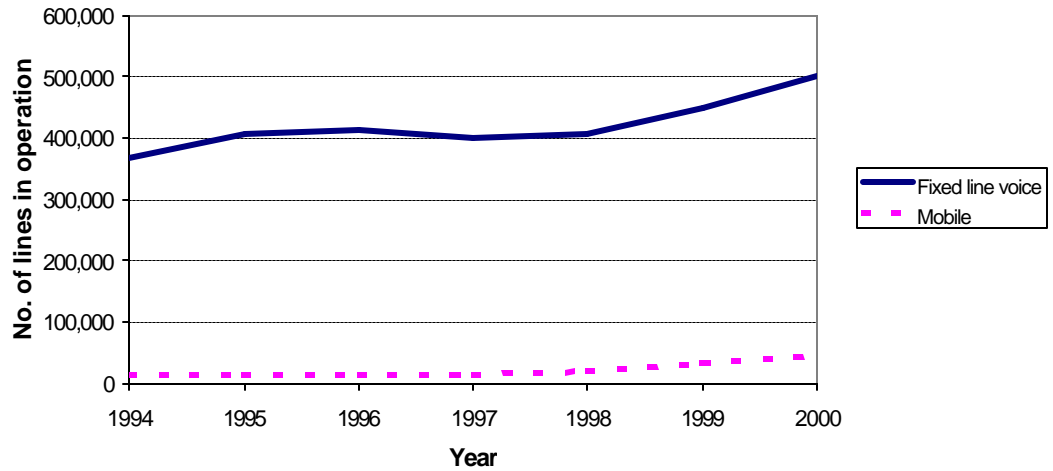
A major policy of the Federal Government objective is to promote the development of the telecommunications sector. To this end the Government aims to ensure that Nigeria surpasses the ITU's minimum recommended tele-density of 1 telephone to 100 people and has set a short-term target of a minimum of 2 million fixed lines and 1.2m mobile lines to be provided within 2 years. The medium-term objective is to ensure that at least 9 million new lines are provided in the next 5 years (see Figure 3).

⁴ Nigerian Investment Promotion Commission, *Investors' guide to Nigeria*

⁵ Uganda's GNP per capita was USD\$320 in 1999, compared to Nigeria's US\$310.

⁶ BMI-T/Mbendi, *Overview: The African Telecommunications Renaissance*, 1999.

Figure 1: Subscribers to communications services in Nigeria, 1994-2000



Source: ITU Yearbook of Statistics 2000; (1998, 1999 estimates)

Figure 2: Subscribers to communications services in Uganda, 1994-99

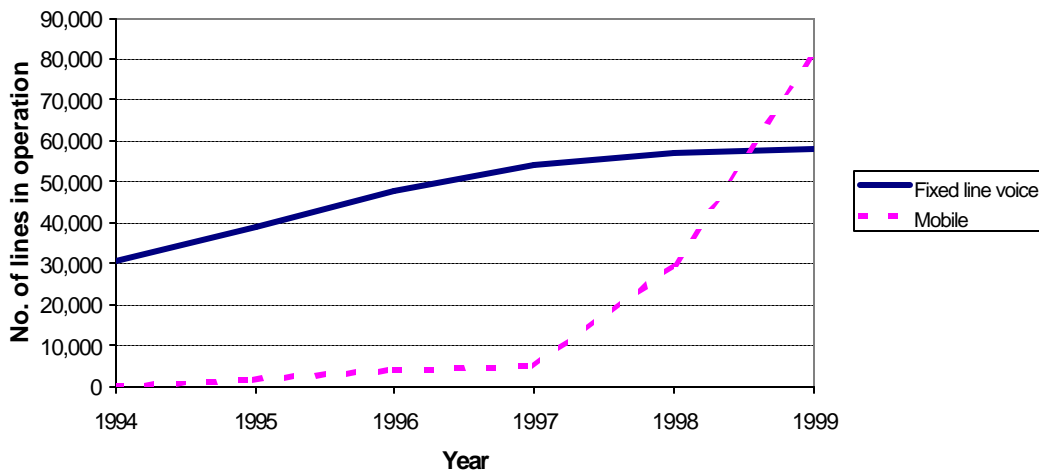
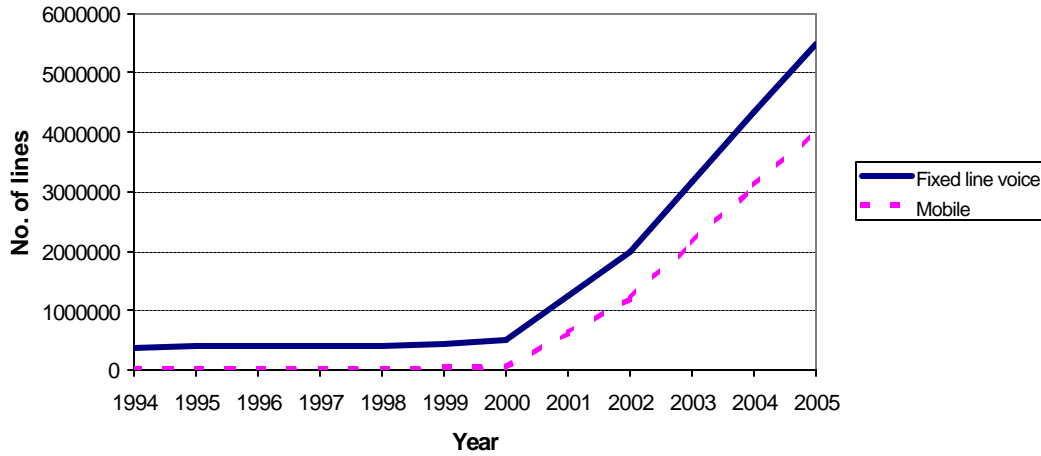


Figure 3: Government targets for telecommunications growth in Nigeria



Source: ITU Yearbook of Statistics, 2000; Government targets

2 REGULATORY ISSUES

2.1 REGULATORY AND COMPETITION ISSUES

The telecommunications industry in Nigeria consists of the following operatives:

- The Federal Government;
- Ministry of Communications;
- The Nigerian Communications Commission; and
- Telecommunications service providers.

The Federal Government is responsible for:

- Giving overall direction for telecommunications development;
- Ensuring that the Telecommunications Policy is consistent with other national policies; and
- Enacting necessary laws and taking other measures in support of the national telecommunications policy.

The Ministry of Communications is responsible for broad telecommunications policy. In particular, this includes:

- Proposing policy options and recommending appropriate legislation to Government;
- Monitoring the implementation of Government policy;
- Establishing policies for promoting universal access Representing Government on international organisations.

Concerns about the poor telecommunications infrastructure in Nigeria, particularly with regard to the low level of connections per capita, led to the initiation of a process of deregulation in the early 1990s and the establishment of the Commission.

The functions of the Commission are set out in the National Telecommunications Policy of July 2000 as follows:

- Licensing of telecommunications operators;
- Assignment and registration of radio spectrum to duly licensed operators;
- Administration of national numbering plan;

- Facilitating private sector participation and investment in the telecommunications sector of the Nigerian economy;
- Promoting and enforcing a fair competitive environment for all operators;
- Defining standards for economic regulation of dominant operators, including tariff regulation;
- Establishing mechanisms for promoting universal access to telecommunications services in Nigeria;
- Establishing and enforcing technical operational standards and practices for all operators including the imposition of penalties for violations; and
- Ensuring that the public interest is protected.

The main objectives of the Commission include the following:

- Creating a regulatory environment to facilitate the supply of telecommunications services and facilities;
- Facilitating the entry of private entrepreneurs into the telecommunications market; and
- Promoting fair competition and efficient market conduct among all players in the industry.

The Commission also sets the guidelines for private sector participation in the telecommunications market and has the power to revoke licences (by following a set procedure) *inter alia*, if it perceives that operating companies are in breach of the conditions of their licences. It can impose other relevant sanctions if companies do not meet the conditions and obligations of their licence.

2.2 INTERCONNECTION

Digital Mobile Operators will have the right to interconnect their networks to the network of a carrier or other licensed operators, under Condition 16 of Schedule 1 of the Licence. If the carrier or licensed operator does not agree on the terms of interconnection, the Commission is authorised to set up a process of arbitration through which the dispute can be resolved. The Commission also has the power to determine, in writing, the principles that apply when agreeing charges payable between licensees or between licensees and a carrier or other operators for the following:

- Interconnection of facilities to networks of another party;
- Carriage of communications across such networks;

- The supply of facilities for the purposes of such interconnection or carriage; or
- Matters related to interconnection of communications more generally.

2.3 OTHER REGULATORY ISSUES

The Commission has authority to take action against a licensee who engages in anti-competitive practices. These practices include:

- Prohibition of unfair cross-subsidies – licensees must ensure that businesses under licence are not unfairly cross subsidised from any other source, except where the licensee is under obligation to provide a service in an area of insufficient demand or prospective demand.
- Prohibition against anti-competitive conduct, including:
 - Collusive agreements to fix the price of any apparatus or service;
 - Boycotting the supply of goods or services to competitors;
 - Entering into exclusive arrangements which prevent competitors from having access to supplies or outlets; and
 - Agreements between licensees to share the available market between them along geographic or customer lines.
- Prohibition on undue preference and undue discrimination;

2.4 LICENCES

2.4.1 Licensing of mobile network operators

A digital mobile operator will require a single licence issued by the Commission under section 12 of Act No. 75 of 1992. The licence authorises an operator to use appropriate equipment in a designated part of the electromagnetic spectrum and permits it to operate a network for the provision of public telecommunications services. It therefore combines terms relating to both the use of spectrum and issues affecting the provision and quality of mobile telecommunications services. All previously issued digital mobile licences and related frequency assignments have been withdrawn, therefore once the auction concludes there will be only four authorised digital mobile operators in Nigeria.

2.4.2 Number of licences to be auctioned and licence fee

The Commission is to licence four spectrum packages in the 900MHz and 1800MHz bands, preserving the band of 1.9/2.1GHz for implementation of IMT2000 as recommended by the ITU.

The fee for the licences will be determined by the auction. Additionally the licences require that an annual operating levy representing 2.5% of the Licensee's audited net revenue be paid within three months of the end of the first year of the Licence, and thereafter quarterly on the Licensee's assessed net revenue within 30 days of the end of such quarter to be adjusted immediately on receipt of the audited annual financial statements of the Licensee.

Each licence will comprise the following blocks of paired spectrum and therefore will be equal in size:

2x5MHz in the 900MHz band
2x15MHz in the 1800MHz band

The four spectrum packages identified by the Commission will be assigned using a random selection method following the conclusion of the auction.

2.4.3 Summary of Licence terms

The Commission has been empowered under Section 12 of the Act to grant a licence in respect of any undertakings listed in the Second Schedule of the Act. One of the undertakings so listed is the provision of public mobile communications services. An aspect of this undertaking is the provision of digital mobile telephony services.

To assist Bidders we have attached as Appendix 1 hereto a copy of the Digital Mobile Licence to be awarded to winning bidders.

2.4.3.1 On grant, each of the Licences shall include the following -

- (a) A term providing that the Licence shall commence on the date of its award and continue in force for fifteen years unless earlier revoked by the Commission in accordance with the terms specified in paragraph (b) below or surrendered by the Licensee;

Licence Revocation

- (b) A term providing that the Commission may not revoke the Licence save at the request or with the consent of the Licensee except *inter alia* :

- (i) If there has been a material breach of any of the terms of the Licence or the provisions in the Licence schedules;
 - (ii) If the Licensee is found, to the reasonable satisfaction of the Commission, to have been involved in any act, or omission of any act, constituting a material breach of the rules and procedures as set out in this Information Memorandum.
- (c) A term providing that the Licence shall not be assigned except with the prior express authorisation of the Commission;
- (d) Terms providing that the Licensee shall pay to the Commission in cash and without set-off or counter-claim the Licence Fee as a single amount WITHIN 14 BUSINESS DAYS from the date of announcement of winners of the Auction;

Refunds of fees

- (e) A term providing that there will be no refund of the Licence Fee, whether in full or in part except at the absolute discretion of the Commission;

Access and Inspection

- (f) A term providing that the licensee shall permit a person authorised by the Commission to have access to the Radio Equipment at any and all reasonable times or, when in the opinion of that person an urgent situation exists, at any time to ensure the Radio Equipment is being used in accordance with the terms of the Licence;

Modification, Restriction and Closedown

- (g) A term providing that a person authorised by the Commission may require the Radio Equipment, or any part thereof, to be modified or restricted in use, or temporarily or permanently closed down immediately if in the opinion of the person authorised by the Commission:
- (i) A material breach of the Licence has occurred; and/or
 - (ii) The use of the Radio Equipment is, or may be, causing or contributing to undue interference to the use of other authorised Radio Equipment;
- (h) A term providing that the Commission may in the event of a national or local state of emergency being declared require the Radio Equipment to be modified or restricted in use, or temporarily or permanently closed down either immediately or on the expiry of such period as it may specify and that it shall exercise this power by a written Notice served on

the licensee or by a general Notice applicable to holders of this class of Licence published in suitable media;

- (i) A term providing that the Licence only authorises the licensee in relation to Radio Equipment operating in the frequency ranges specified for that Licence.

Roaming

- (j) A term providing that the licensee shall not be permitted to roam on to other digital mobile networks within Nigeria until 12 months after Commercial Launch and only with the prior written authorisation of the Commission.

Commercial launch

- (k) A term providing that the commercial launch for licensees shall not be earlier than 90 days after the date of award of the licence. This is to allow licensees to compete equally.

Technical Standards

- (l) A term providing that the Radio Equipment is required to comply with the requirements stipulated by the Commission and the Federal Government of Nigeria.

Roll out and Coverage Obligation

- (m) A term providing that the licensee shall install, maintain and use Radio Equipment in such a way as to enable the provision of services by means of the Digital Mobile Network in the Federal Republic of Nigeria as follows:

- (i) A minimum of 100,000 Lines connected to subscribers 12 months after Commercial Launch;

- (ii) Minimum of 750,000 Lines connected to subscribers 36 months after Commercial Launch;

- (iii) a minimum of 1,500,000 Lines connected to subscribers 60 months after Commercial Launch.

- (n) A term providing that the licensee shall provide by 36 months after Commercial Launch, a minimum of 5% of its total Lines connected to subscribers to each of the geopolitical zones in the Federal Republic of Nigeria as defined in the Licence.

- (o) A term providing that tariffs must be in a form approved by the Commission who will provide written reasons in the event of non-approval.

2.4.3.2 On grant each of the Licences shall also include terms and conditions relating to-

- (a) Technical requirements for the Radio Equipment by the Commission;
- (b) Site clearance;
- (c) Notifications by the licensee to the Commission of changes to the detail of the licensee;
- (d) The maintenance of records and other information and the provision of such records and information to the Commission.

2.5 NITEL AND M-TEL

Although currently state-owned, both NITEL and M-TEL are limited liability companies and operate financially independent of the Federal Government. The two organisations are also to be privatised during 2001.

The Commission has decided to reserve a licence for NITEL/M-TEL.

NITEL/M-TEL will pay the full market price for its licence, which will be determined by the auction.

Upon grant of the Digital Mobile Licence NITEL/M-TEL will be subject to the same licence terms as the other licensees.

2.6 INFRASTRUCTURE PLANNING

Operators will be expected to comply with other regulations such as those concerning site clearance procedures, right of way and the import of necessary radio equipment. They will also be encouraged to enter into site sharing agreements.

The licensee will be allowed reasonable access to the National Carrier's trunk transmission network. In addition, they will be allowed to set up their own long distance inter-city transmission links for the purpose of interconnecting their mobile network areas.

3 SPECTRUM ISSUES

3.1 SPECTRUM

The use of the radio spectrum is planned both at International and National levels in order to co-ordinate the use of particular frequency bands for many different uses.

3.1.1 Frequency bands for second generation (digital) mobile systems

On a worldwide level, two frequency bands are typically used for cellular mobile systems (first and second generation). The first of these is at 800/900 MHz and the second is at 1.8/1.9 GHz.

The 900 MHz band was the first frequency band used for cellular mobile systems and the band where analogue cellular systems were first introduced. With advances in technology, digital systems were introduced in this band in the early 1990's in many countries. Typical cellular technologies used in the 900 MHz band are either based on GSM or CDMA and, together with analogue cellular systems such as AMPS, typically utilise spectrum from around 820 MHz up to 960 MHz. A range of frequency plans are used around the world depending on the available spectrum and the technology used.

The 1800 MHz band is now also used for digital cellular systems worldwide. The two predominant frequency arrangements in operation in this band are based either on GSM operating in the 1800 MHz band or the Personal Communications System ("PCS") arrangements at 1900 MHz.

A number of countries worldwide are now in the process of licensing spectrum for third generation mobile systems (IMT-2000). The spectrum identified for IMT-2000 is in the 2 GHz frequency band, from 1885 – 2025 MHz and 2110 – 2200 MHz (this spectrum includes some which is earmarked for the satellite component of IMT-2000).

Utilisation of the various cellular bands on a worldwide level, and spectrum considerations for the introduction of IMT-2000, are described further in the Sections below.

3.1.2 900 MHz frequency band

The ITU allocated the band 862 – 960 MHz to the mobile service at the World Administrative Radio Conference in 1979 (WARC-79) in Region 1 (Europe and Africa). In Regions 2 and 3, the allocations to the mobile service in this band are 806 – 960 MHz (Region 2) and 610 – 960 MHz (Region 3). In all three Regions, the mobile allocation exists on a co-primary basis with the broadcasting and/or fixed service in all or parts of the band.

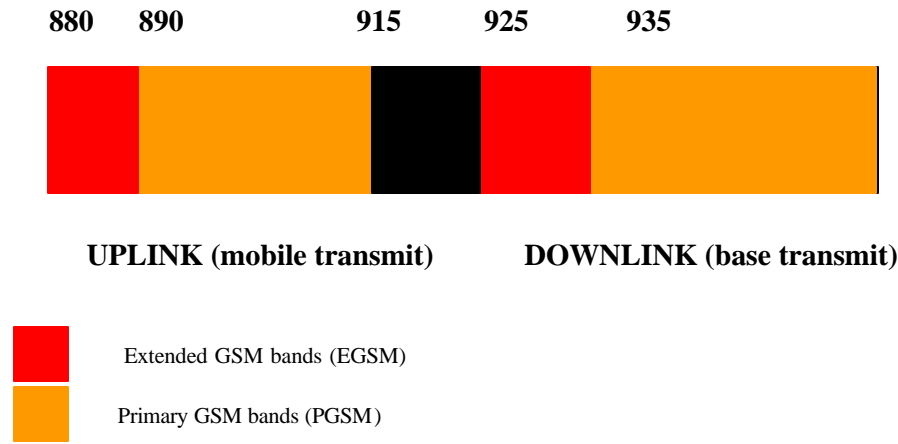
Cellular mobile systems are now operated in most countries around the world in the 900 MHz band, based on a range of technical standards and frequency plans. For second-generation mobile systems at 900 MHz, the predominant technical standards are GSM and CDMA.

For Regions 2 and 3, cellular systems typically operate in frequency plans that start around 820 MHz (e.g. in the USA, 824 – 849 MHz paired with 869 – 894 MHz). First generation mobile systems in this frequency range were typically based on the AMPS standard.

In Europe, a variety of different first-generation cellular systems were first introduced in the 900 MHz band. With technological advancement, and the increasing numbers of cellular mobile subscribers, second generation cellular (digital) systems were introduced in the early 1990's. In Europe, the second generation cellular systems in operation are based on the GSM standard which operates in spectrum from 880 MHz – 960 MHz.

The primary frequency bands for GSM are from 890 – 915 MHz and 935 – 960 MHz, with the lower band being the mobile handset transmit leg and the upper band the base station transmit leg, as shown in the diagram below⁷.

GSM Frequency Plan



⁷ European Radiocommunications Committee, ERC Decision on the frequency bands to be designated for the coordinated introduction of the GSM pan-European communications system, (ERC/DEC/(94)01)

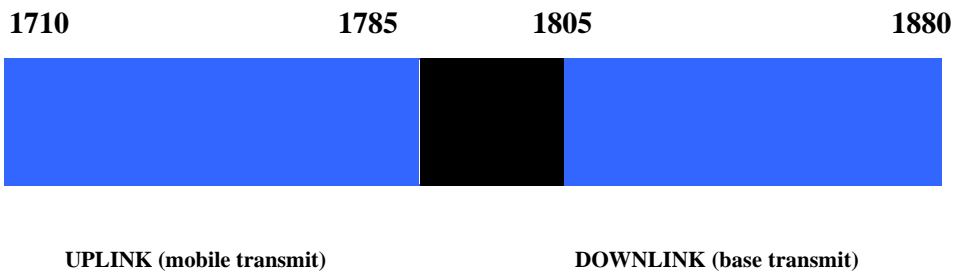
3.1.3 1.8 GHz frequency band

In the 1.8 GHz frequency band, the mobile service is allocated globally in the ITU Radio Regulations from 1710 – 1880 MHz. This allocation exists on a co-primary basis with the fixed service. Above 1880 MHz, further mobile spectrum is also allocated in the Radio Regulations, however this spectrum is identified for IMT-2000 (third generation mobile systems). This identification was made at the World Administrative Radio Conference in 1992 (WARC-92).

Usage of the 1.8 GHz band on a global level is currently divided between those countries utilising the GSM1800 frequency plan and those utilising the PCS frequency plan at 1900 MHz.

The GSM plan is shown in the diagram below⁸:

GSM frequency plan at 1.8 GHz



Following consultation with industry members it was decided to offer spectrum in the 900MHz and 1800MHz bands.

From these bands the Commission is to auction three equally sized spectrum packages. Each package will contain 40MHz of spectrum comprising:

2x5MHz in the 900MHz band
2x15MHz in the 1.8GHz band

The precise position of each licensee's spectrum allocation within the bands will be the subject of random selection by the Commission once the Auction has finished. It is expected that there will subsequent discussion between operators in order to agree the necessary guard bands required to provide protection from interference. Typically, such guard bands would be limited to one or two channels (e.g. one channel (200 kHz) or two channels (400 KHz).

⁸ European Radiocommunications Committee, ERC Decision on the frequency bands to be designated for the introduction of DCS1800, ERC/DEC/(95)03

3.2 TECHNOLOGY

The Commission undertook a public consultation requesting comments from industry members on the preferred technology for the deployment of digital mobile networks. The results were overwhelmingly in favour of the deployment of telecommunications networks based on the GSM specification. Consequently, the Commission is to offer spectrum packages in the 900MHz and 1.8GHz bands for auction, preserving the band of 1.9/2.1GHz for the implementation of IMT2000, as recommended by the ITU in the time frame of two or three years.

GSM was developed as a common European standard and operates in common spectrum across Europe and much of the rest of the world including African countries neighbouring Nigeria. GSM is a digital system allowing for improved frequency efficiency and the provision of narrowband data services as well as voice telephony. There are clear advantages in adopting this technology in terms of international roaming possibilities and the availability and cost of equipment. Operators will be permitted, under the terms of the Digital Mobile Licence to utilise subsequent upgraded GSM standards such as GPRS and EDGE in the future, following notification to the Commission and subsequent amendment of the technical details of the Licence. These upgrades to the GSM standard will allow for the provision of higher bit rates than is possible with GSM (e.g. GPRS will offer packet switched services over GSM at speeds up to 115 kbit/s and EDGE is envisaged to increase the bit rate to 384 kbit/s).

3.3 CROSS BORDER CO-ORDINATION

Under the terms of the Licence the Commission has the capacity to vary the technical parameters of licences in line with co-ordination arrangements with neighbouring countries. This usually takes the form of a Memorandum of Understanding (MoU) with foreign administrations and places restrictions on the permissible field strength at the neighbouring administration's border due to 2G transmissions from within the host country. There are expected to be reciprocal restrictions on operators in neighbouring countries. A requirement to comply with the specifications of any future MoUs is included in the licence.

3.4 BAND CLEARANCE

The Commission has undertaken an exercise to ensure that the spectrum being offered for auction is clear of any other users either mobile or fixed. The Commission will take enforcement action to ensure that licensed operators neither cause nor are the victims of undue interference from other spectrum users.

3.5 SPECTRUM FOR NETWORK BACKBONE

Licences for the use of non-mobile spectrum for the individual point-to-point fixed links forming part of mobile telecommunications infrastructure should be the subjects of separate

applications. The Commission would expect to make spectrum available for this purpose subject to the usual process and conditions.

3.6 FUTURE SPECTRUM ALLOCATION FOR THIRD GENERATION MOBILE

The frequency bands intended for the Third Generation (IMT-2000) terrestrial services are 1885 – 1980 MHz, 2010 – 2025 MHz and 2110 – 2170 MHz. This spectrum is identified internationally for IMT-2000 in the Radio Regulations (via footnote S5.388). A number of countries, including Finland, Germany, UK, Korea and Japan have initiated licensing processes this year to issue licences for operation of third generation mobile networks in the 2 GHz band.

The Commission has not offered spectrum in the 2GHz band for 2G Mobile in order to ensure that this spectrum is available for assignment for 3G services in the future. The use of this band for 3G mobile will offer possibilities of global roaming and the provision of high data rate and multimedia services. Winners of a 2G licence will not automatically be awarded additional 3G spectrum. The allocation of 3G licences will be the subject of a separate licensing process at such time and by such method as is notified by the Commission.

4 AUCTIONS

4.1 INTRODUCTION

Auctions are used throughout the world as a tool for assigning spectrum in circumstances where the demand for licences to use particular tranches of spectrum outstrips the supply. Radio spectrum is a valuable and finite public resource. It supports an enormous range of services and applications and is in increasing demand by many kinds of users. Administrations can charge fees for the use of spectrum either to recover spectrum management costs or at levels which reflect the actual value of the spectrum.

A well-designed auction is both economically efficient and fair. It is economically efficient because licences will go to the highest bidders or in other words to those who value them most and can be expected to make best use of them. An auction forces bidders to estimate the value, to them, of a licence for the spectrum. Depending on the auction form, some or all of this information is revealed to the market during the bidding process. This price discovery reduces bidder uncertainty and improves the efficiency of the auction. Auctions are objective – their outcome is easy to understand, and difficult to challenge. Development of the auction design to suit particular circumstances and objectives is a specialist area. Some examples of different types of auction are as follows:

- *First-price, sealed bid auction*: Buyers simultaneously submit sealed bids, and the object is sold to the highest bidder at the price submitted by this bidder;
- *“English” auction*: the standard, ascending, oral-bid auction which proceeds until no buyer bids any higher;
- *“Dutch” auction*: where the price is lowered until some bidder signals his willingness to buy at that price;
- *Second price, sealed bid auction*: In this type of auction (also known as a “Vickrey” auction after the economist who proposed it), buyers simultaneously submit sealed bids, and the object is sold to the highest bidder at the price submitted by the second-highest bidder.

There are also variations and combinations of the above designs.

4.2 AUCTION DESIGN

The Commission has elected to auction the three DMLs using an auction design that embraces the desirable properties of both ascending bid and sealed bid auctions. Ascending bid auctions have been used successfully to award spectrum licences in many countries, including Australia, the United Kingdom and the United States. Ascending bid auctions require bidders to submit bids as the price for the DMLs being auctioned increases. Sealed bid auctions are often suited to situations where the number of bidders and items is relatively small.

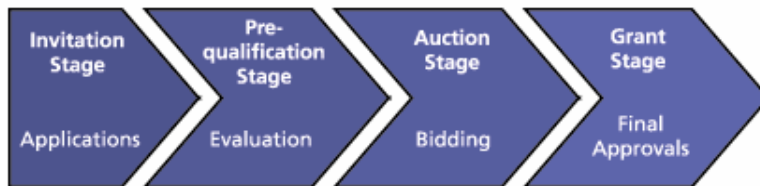
An ascending bid auction has many advantages. It is:

- Transparent – the process is visible and subject to public scrutiny;
- Equitable – winning bidders win simply because no other bidder was willing and able to pay a higher price;
- Objective – complete rules are specified ahead of time and there is little or no room for subjective assessment. Bidders participate on a level playing field;
- Efficient – assets assigned to those who value them most highly.

Moreover, an ascending bid auction promotes accurate price discovery – mitigating the winner’s curse, so that prices more closely reflect true market values.

4.3 AUCTION TIMETABLE

The auction process will comprise four stages:



There is no pre-set auction timetable and the Commission reserves the right to determine the overall timetable of the auction. The table below provides an indicative timetable.

Indicative Timetable of Activities

DATE	ACTIVITY
16 November	Invitation stage Publication of Information Memorandum
21 December	Submission of Applications "Application Date" (Corporate details and signed Bidder Compliance Certificate to be supplied)
21 December	Payment of Deposits "Deposit Date" (deposit funds to have cleared into Nominated Account)
8 January	Pre-qualification stage Notification of Qualified Bidders
12 January	Formal Notification of Auction Date
17 January	Auction stage Auction Date
January/ February	Grant stage Provisional Award Notice Notification of Award of DML Award of DMLs and Payment of Licence Fee within 14 days

Recipients wishing to submit Applications to pre-qualify for the Auction should have read and understood the provisions of the Activity Rules and the Auction Rules, as set out in this document.

The Commission reserves the right not to proceed with the Auction or to change the timing or any other aspect of this proposed process at any time without prior notice. One reason why the Commission may decide not to proceed with the Auction would be if insufficient Bidders submit applications.

4.4 ACTIVITY RULES

4.4.1 Activity Rules

This section describes the rules that govern the activities of Bidders during the Auction. The term "Bidder" refers to the body corporate which submits an application and to which a DML would be awarded following success in the Auction.

A Bidder cannot have a "Bidder Relationship" with another Bidder. A Bidder Relationship is where a Bidder or any person or entity that owns, directly or indirectly, an ownership stake of more than 25% of such Bidder ("Attributable Interest") has, directly or indirectly, an ownership stake of more than 25% in another Bidder or any person or entity that has an Attributable Interest in another Bidder.

The Activity Rules will take effect from the date of submission of Applications. In the event of a breach of the Activity Rules by a Bidder or its Insiders (see section 4.4.2 below), the Commission may, at his sole discretion, exclude that Bidder from the Auction. If a Bidder is excluded from the Auction for a breach of the Activity Rules, the Commission may also declare some or all of that Bidder's Deposit forfeit.

4.4.2 Confidential Information

Certain unpublished information relating to a bid is defined as Confidential Information. Confidential Information means any unpublished information (i.e. not publicly available), which, if known to other Bidders, would affect the price that the other Bidders would be willing to pay for a DML in the auction. Such information would include (but not necessarily be limited to) the Bidder's business case, the Bidder's auction strategy and the highest price it is willing to bid for a DML. Any party to whom Confidential Information in relation to a Bidder is disclosed is deemed to be an "Insider" in relation to that Bidder. Bidders, and Insiders must not convey Confidential Information to any other Bidder or Insiders.

4.4.3 Anti-competitive Behaviour

Bidders must not enter into any arrangements with suppliers of equipment or software that would restrict the supplier's ability to supply such equipment or software to other Bidders for the purposes of planning, building or operating a network to be operated under a DML. Bidders are also not permitted to agree with suppliers of equipment or software any form of restriction as to the prices charged or other terms and conditions that such suppliers may agree with any other Bidder.

4.4.4 Advisers to the Nigerian Communications Commission

Bidders are not permitted to receive advice on matters related to the Auction from any person who has been retained as an adviser to the Commission (or a sub-contractor to such adviser) in relation to the Auction since. Advisers to the Commission in this regard are:

- Radio Spectrum International
- Charles River Associates
- Skadden, Arps, Slate, Meager & Flom LLP
- Chief Afe Babalola, SAN; and
- Paul Usoro & Co

However, providers of finance to a Bidder may receive advice from an adviser to the Commission, provided that the finance provider is not itself a member of the Bidder.

4.5 APPLICATION REQUIREMENTS

Applicants wishing to pre-qualify for the Auction should submit applications in accordance with the requirements of Chapter 5. The Application Form contains detailed instructions to

Applicants as to how information should be presented. It also makes clear which pages of the form will be published to other Bidders as part of the pre-qualification process.

FORM OF RESPONSES AND PROCEDURES FOR SUBMISSION

On submission of Applications, Bidders should provide all of the following:

- Application Form and any required supporting documents
- Bidder Compliance Certificate
- Deposit

The Bidder Compliance Certificate requires the Bidder to certify, amongst other things, that:

- i) It is legally capable of both bidding for and satisfying its obligations under a DML;
- ii) It will comply with the provisions of this document;
- iii) The information provided in its Application is true, accurate and complete; and
- iv) It is not the subject of criminal or civil proceedings that could be expected adversely to affect their business or the Bidder's ability to bid in the Auction.

The Bidder Compliance Certificate must be signed by two directors, or a director and the company secretary, of the Bidder (defined as "**Authorised Officers**").

4.5.1 Pre-qualification Criteria

In order to pre-qualify, the Applicant must satisfy the following:

a) Application Requirements

The Applicant must comply with the requirements for provision of information, the required certification and payment of the Deposit (see Section 4.5.2 below, and Chapter 5 - Application Instructions). Failure to provide any of these documents or to make the payment at the time specified will result in the Applicant not qualifying for the Auction.

b) Ownership restrictions

The Commission must be satisfied that the Bidder does not have a Bidder Relationship with any other Bidder.

If a Bidder has a Bidder Relationship with another Bidder, then it will not pre-qualify.

c) General power of exclusion

The Commission will retain a general power to exclude any Bidder if, in its opinion:

- i) The holding of a DML by that Bidder would be prejudicial to the interests of national security; or
- ii) Any direct or indirect shareholder or Director of the Bidder is not a fit and proper person to have an interest in the Bidder. Account will be taken of responses to all the questions in the Application Form in assessing whether a person is a fit and proper person.

During the Pre-qualification Stage, the Commission may ask a Bidder to provide additional information or documentation relating to its Application. Any request must set a reasonable period for provision. Bidders must use their best endeavours to satisfy the request.

4.5.2 Deposits

On submission of Applications and as a condition of pre-qualification, Bidders will be required to provide a deposit of USD\$20 million (the "Deposit"). In the event that the Bidder is successful in the Auction the Deposit will be offset against payment for the DML. Applicants should note that the Deposit will be deemed to have been submitted only when funds have cleared (i.e. been received) in an account to be managed by Chase Manhattan Bank on the Deposit Day.

4.6 ANNOUNCEMENT OF QUALIFIED BIDDERS

The pre-qualification phase of the Auction begins on the date that Applications are required to be submitted (the "Application Date"). It runs until the beginning of the Auction Stage (the "Auction Date"). Following submission of Applications, the Commission will notify all Bidders of the names of the other Bidders.

Applicants will receive a Qualified Bidder Notice on 8 January 2001 setting out the identity of all other Qualified Bidders.

4.6.1 Bidder Participation Notice

Following notification of Qualified Bidders, the Commission shall issue to each of the Qualified Bidders a Bidder Participation Notice that shall:

- Provide each Bidder with a set of numbered Passwords that a Bidder shall use to confirm to the Commission or the Auction Control Team that any Communication, which the Commission or the Auction Control Team receives during the Auction, has originated from that Bidder.
- The Auction Date;
- The identity of all Bidders who shall participate in the Auction;
- The time at which Round 1 on Auction Day 1 shall start;

- The Attendance Time for Day 1;
- The maximum Announced Price for Auction Day1 (e.g. USD\$150M);
- The exact address of the Auction Location; and
- The location of the Approved Room at the Auction Location.

By 10 January the Bidder shall notify the Commission of the names of up to **SEVEN (7)** Authorised Persons each of whom the Bidder has provided with authority to participate, either jointly or severally, in any way in the Auction on behalf of the Bidder. Two of the Authorised Persons will be the Authorised Officers named on the Bidder's Application.

4.7 AUCTION RULES

4.7.1 The Auction Stage

The Auction Control Team will manage the Auction. The Auction Control Team are the advisors appointed by the Commission, [see section 4.4.4]. The Commission's representatives will be present at the Auction Location throughout the Auction Stage.

The Auction Stage is the period from the Auction Date through to the date the Grant Stage starts. The Auction Stage requires a minimum of four (4) Qualified Bidders. A Qualified Bidder is permitted to win only one Digital Mobile Licence. Bidding can occur only at the Auction Location.

A Qualified Bidder's Bid Team will comprise no more than four Authorised Persons, of whom **ONE** should be Authorised **Officer**.

A Bid Team at the Auction Location will occupy an Approved Room each Auction Day. An Independent Observer who will accompany the Bid Team in the Approved Room will monitor every Bid Team at the Auction Location throughout the Auction Stage.

A Bidder is not allowed to communicate with any other Bidder from the Application Date through to the end of the Auction Stage on matters that could have a material affect on either the price paid for DMLs or the identity of Successful Bidders. Successful Bidders are those Bidders who progress from the Auction Stage into the Grant Stage. The Commission prohibits any and all communications between and among Bidders related to the Auction, including but not limited to: bid strategy, budgets, willingness to pay, valuations, identities of bidders, etc. If a Bidder knowingly and purposely communicates with another Bidder from the Application Date through to the end of the Auction Stage on any matter related to the Auction, he will forfeit his deposit and be excluded from the Auction. For the avoidance of doubt, a Bidder includes his Bid Team and all parties that receive Confidential Information about the auction from the bidder.

A Bid Team will not be allowed to use any Communication Device during an Auction Day. If a member of a Bid Team is found using a Communication Device during an Auction Day, the Bidder will be penalised USD\$100,000 and may be excluded from participating further in the Auction.

A Bid Team can communicate with the Commission or with the Auction Control Team only in writing. This may be undertaken at any time during an Auction Day by placing a Communication in a sealed envelope and handing this to the Independent Observer. A Communication in a sealed envelope must enclose the Bidder's Password applicable for the time at which the Communication is delivered.

4.7.2 Ascending Bid Phase

The Ascending Bid Phase occurs if the number of Qualified Bidders at the Attendance Time on Auction Day 1 is greater than four (4). If the number of Qualified Bidders at the Attendance Time on Auction Day 1 is equal to four (4), the Auction Stage will involve a Sealed Bid Phase [see section 4.7.3 below].

An Ascending Bid Phase continues on an Auction Day if the number of Active Bidders is greater than three (3). Active Bidders are defined in accordance with paragraphs 4.7.2.1 below.

The Ascending Bid Phase will take place over a sequence of Rounds over each Auction Day. There will be a minimum of one (1) Round each Auction Day. The Ascending Bid Phase will start on Round 1 Auction Day 1.

On Auction Day 1 there will be no fewer than two (2) Rounds.

The duration of a Round will be twenty (20) minutes. The Auction Control Team will inform each Bid Team no less than thirty (30) minutes before each Round about the Start Time of the Round and the Finishing Time of the Round.

At the beginning of a Round the Auction Control Team will deliver a Bid Form to each Bid Team in each Approved Room. The Bid Form will include the Announced Price applicable for the Round.

In Round 1 on Auction Day 1 the first Announced Price will be the Reserve Price for each Licence, set at USD\$100 million.

At the beginning of each Round of the Ascending Bid Phase the Auction Control Team will reveal a new Announced Price.

The Announced Price will be stated in multiples of USD\$1million and will increase by a bid increment, typically not more than 10% (rounded up) between any two consecutive Rounds. The Announced Price on an Auction Day will not increase by more than 50% (rounded up) than the Announced Price in the Final Round in the previous Auction Day. On Auction Day 1 the Announced Price cannot exceed the amount stated on the Bidder Participation Form.

On an Auction Day the Final Round will be that Round after which no further Rounds will occur on the same Auction Day during the Ascending Bid Phase. **The Final Round on an Auction Day terminates the Ascending Bid Phase on that Auction Day.** The Auction

Control Team will notify each Bid Team no less than 30 minutes before the start of a Final Round.

4.7.2.1 Actions

At the end of each Round in the Ascending Bid Phase a Bid Team is required to have chosen one Action. The Action a Bid Team can choose depends on the status of the Bidder.

A Bidder is either Active or Inactive.

At the beginning of Round 1 on Auction Day 1 all Qualified Bidders are Active Bidders.

4.7.2.1.1 Actions available to Active Bidders

The Bid Team of each Active Bidder is required to choose one Action from the following three (3) Actions:

- **Yes** – meaning a Bidder confirms that he is willing to pay at least the Announced Price for a DML. If a Bid Team chooses Yes, at the end of the Round the Bidder is Active.
- **Waive** – meaning a Bidder is not sure that he is prepared to pay the Announced Price for a DML. If a Bid Team chooses Waive, at the end of the Round the Bidder is Active. A Bid Team can choose Waive only if it has at least one waiver remaining to use in the Auction.
- **No** – meaning a Bidder confirms he is not willing to pay the Announced Price for a DML. If a Bidder chooses No, at the end of the Round the Bidder is defined as Inactive.

If at the end of Round 1 Auction Day 1 a Bidder is Inactive, that Bidder will forfeit his Deposit.

Each Active Bidder will be able to exercise a maximum of three Waivers throughout the entire Auction Stage. An Active Bidder uses at most one waiver in a Round.

4.7.2.1.2 Action available to Inactive Bidders

An Inactive Bidder cannot participate any further in the Auction if after the Round in which the Bidder becomes Inactive the Ascending Bid Phase has three (3) or more Active Bidders.

An Inactive Bidder can participate further in the Auction **only** if after the Round in which the Bidder becomes Inactive the Ascending Bid Phase has fewer than three (3) Active Bidders. In this case the Inactive Bidder enters the Sealed Bid Phase as an Eligible Bidder [see section 4.7.3 below].

Inactive Bidders who cannot participate further in the Auction are required to leave the Auction Location within twelve (12) hours. If a Bid Team fails to leave the Auction Location within twelve (12) hours and fails to provide a reasonable excuse for his delay, the Bidder

will be fined USD\$100,000. This sum will be deducted from the Bidder's Deposit at the end of the Auction Day the Bidder withdraws from the Auction.

4.7.2.2 The end of the Ascending Bid Phase

The End Round is the Round where at the end of the Round the number of Active Bidders in the Ascending Bid Phase is no greater than three (3).

If the Ascending Bid Phase ends with two (2) or fewer Active Bidders, the Auction Stage enters the Sealed Bid Phase, see section 4.7.3 below.

If the Ascending Bid Phase ends with exactly three (3) Active Bidders the Auction Stage ends and the Successful Bidders enter the Grant Stage.

4.7.2.2.1 The Final Price

If the Auction Stage ends at the end of the Ascending Bid Phase, the Final Price paid will be set equal to the Announced Price in the Last Round.

The **Last Round** is either:

- (i) The Round on an Auction Day nearest the End Round when the Auction Control Team last received three (3) or more Yes responses from the Successful Bidders;

OR

- (ii) If three (3) or more Yes responses have not been received from the Successful Bidders in any Round, it is Round 1 on Auction Day 1

In each of the examples 1-3 below the Last Round is indicated.

4.7.3 Sealed Bid Phase

The Sealed Bid Phase occurs when:

- i. When there are four (4) Qualified Bidders before the Attendance Time for Auction Day 1 – known as Case One;

OR

- ii. When the Ascending Bid Phase ends with fewer than three (3) Active Bidders – known as Case Two.

4.7.3.1 Case One

If there are only four (4) Qualified Bidders the Commission will announce Detailed Rules about the Sealed Bid Phase at the time the names of the Qualified Bidders are published. The Detailed Rules will specify how and when each Qualified Bidder will be required to submit to the Commission a Bid Value. A Bidder's Bid Value is the maximum amount a Bidder

would be willing to pay for a DML. A Bidder failing to submit a Bid Value will forfeit his Deposit. The three (3) Qualified Bidders submitting the highest Bid Values will enter the Grant Stage. The price paid by the three Successful Bidders will be no higher than the third highest Bid Value submitted.

4.7.3.2 Case Two

If the Ascending Bid Phase ends with fewer than three (3) Active Bidders, the Active Bidders responding Yes in the End Round enter the Grant Stage. The number of Active Bidders entering the Grant Stage in this case is defined by “X”, where X may take the value 0, 1 or 2.

Active Bidders who Waive in the End Round will be labelled Eligible Bidders and will enter the Sealed Bid Phase.

Active Bidders after the completion of the Round immediately preceding the End Round and who are Inactive after the completion of the End Round, will also be labelled Eligible Bidders and enter the Sealed Bid Phase.

The Commission shall notify all Eligible Bidders, in a Sealed Bid Notice, of the names of the other Eligible Bidders. The Sealed Bid Notice will also inform the Eligible Bidders the start time of the Sealed Bid Phase.

The Sealed Bid Phase will occur on the same Auction Day the Ascending Bid Phase ends with fewer than three (3) Active Bidders. Eligible Bidders will receive no less than thirty (30) minutes notice before the start of the Sealed Bid Phase. The Sealed Bid Phase will last for no more than twenty (20) minutes.

Eligible Bidders will submit to the Auction Control Team a Bid Value in a sealed envelope. A Bid Value chosen by an Eligible Bidder must be stated in US dollars. The Bid Value an Eligible Bidder chooses cannot lie below the highest Announced Price at which the Eligible Bidder responded Yes in the Ascending Bid Phase, and cannot exceed the Announced Price in the Round at the end of the Ascending Bid Phase.

4.7.3.2.1 The end of the Sealed Bid Phase

The Sealed Bid Phase ends following the Recording of the Bid Values submitted to the Commission by the Eligible Bidders.

The “3-X” Eligible Bidders submitting the highest Bid Values enter the Grant Stage.

Examples where the Auction Stage ends after the Sealed Bid Phase are shown in examples 4-6 below.

If two or more Eligible Bidders submit identical Bid Values such that the number of Eligible Bidders submitting the highest Bid Values exceeds “3-X”, the Tied Eligible Bidders enter a Random Selection Phase. This is illustrated in Example 7 below.

4.7.3.2.2 The Final Price

If the Auction Stage ends at the end of the Sealed Bid Phase the “3-X” Successful Bidders entering the Grant Stage will pay a Final Price equal to the lowest Bid Value submitted by one of the Successful Bidders. Example 4 below illustrates the application of the Final Price in this case.

4.7.4 Random Selection Phase

The Random Selection Phase will involve Tied Eligible Bidders (TEBs). The Random Selection Phase will take place on the same Business Day as the Sealed Bid Phase. Each TEB will be invited by the Commission to use a Random Number Generator, on a computer operated by the Auction Control Team appointed by the Commission. The computer will contain a programme that will select a Random Number with six digits after the decimal point (rounded upwards). An Independent Observer will monitor the Random Number Selection. Each TEB will note his Random Number on the TEB Form. The TEB Form will be sealed and returned to the Auction Control Team.

When a TEB selects a Random Number every other TEB will be prohibited from observing the selection process. TEBs will select their Random Numbers sequentially, in an order determined by the Auction Control Team. Having selected a Random Number a TEB will be required to return to its Approved Room until further notice.

Following the return of the TEB Forms, the Commission will ask a different representative from the Auction Control Team to toss a Coin. This representative will not have been involved in the Random Number Generator process and will not know the selected Random Numbers. The Coin has two values: Heads and Tails. If the Coin lands on Tails, the TEBs with the lowest Random Numbers will be selected to enter the Grant Stage. If the Coin lands on Heads, the TEBs with the highest Random Numbers will be selected to enter the Grant Stage.

4.7.4.1 The Final Price

Following the end of the Random Selection phase, the Final Price is determined to be no higher than the lowest Bid Value submitted by one of the Successful Bidders. This outcome is illustrated in Example 7 below.

4.7.5 Auction Logistics

4.7.5.1 Ascending Bid Phase

In each Round during the Ascending Bid Phase a Bid Form will be provided to each Bid Team. The Bid Form will comprise two identical forms. The Bid Form will be delivered in a sealed envelope to each Active Bidder, along with a Password to match the Password issued

to the Bidder. Delivery of the Bid Form will occur at least one (1) minute before the Start of each Round.

The seal of the envelope containing the Bid Form will be broken in front of the Independent Observer by a member of the Bid Team. The Bid Team and the Independent Observer will examine the Bid Form. If the Bid Form is unmarked and the information on the Bid Form is correct, the Independent Observer will sign the Bid Form. If the Bid Form is marked or contains incorrect information, the Independent Observer will notify the Auction Control Team and a new Bid Form will be issued.

4.7.5.1.1 An Active Bidder Bid Form will display:

Commission seal (seal unique to auction)

Commission signature and time stamp of issue

Independent Observer signature to confirm unmarked form: HERE

Bidder Password: HERE

Auction Day: Round:

Action of Bidder in Previous Round =

Bidder Status: Active

Number of Waivers Remaining:

In the previous Round: Yes Bidders and Names; Waiver Bidders and Names; No Bidders and Names and

Total number of Inactive Bidders and Names

Previous Announced Price =

Increment =

Announced Price =

Mark ONE BOX ONLY - ANY BID FORM WITH MORE THAN ONE BOX MARKED IS INVALID AND WILL MEET WITH A PENALTY OF USD\$10,000:

Yes Waive No

2 AUTHORISED Signatures:

Time of bid entered by Independent Observer

Each Active Bidder will place each signed sheet into two separate envelopes (provided) and seal each envelope. These envelopes will be handed to a member of the Auction Control Team at the entrance to the Approved Room by a Member of the Bid Team. The Independent Observer will observe this handover.

An alarm will be sounded one (1) minute before the beginning and end of each Round.

The collected Bid Forms will be returned to the Auction Control Team in the sealed envelopes containing a Password matching a Password held by the Auction Control Team.

One envelope is chosen at random by the Auction Control Team and opened and the Auction Control Team on a Confirmation Form records the Bidder's Action. The other envelope remains sealed.

The Auction Control Team will issue the Auction Day # Round # Confirmation Form to each Bidder confirming the Action chosen by the Bidder and the Password. At this stage the Bidder has an opportunity to dispute the Record of the Action entry. If a Bidder disputes a Record, this should be notified in writing to the Auction Control Team within five (5) minutes of receipt of the Confirmation Form. **The Auction Control Team will not consider any disputes received after this period.**

If there is a dispute, it is resolved by opening the other sealed envelope. The Auction Control Team, in front of the Bid Team and a representative of the Commission, undertakes the opening of the other sealed envelope. If the two sheets differ, the Bidder will be penalised USD\$100,000 (deducted from the Bidder's Deposit) and may be excluded from further participation in the Auction. In this circumstance the Commission will record the Action shown on the Confirmation Form.

If the two bid sheets are identical but the Confirmation Form is incorrect, the Confirmation Form is adjusted to record the correct Action shown on the two sheets of the Bid Form.

4.7.5.2 Sealed Bid Phase

Each Eligible Bidder in the Sealed Bid Phase will receive a Sealed Bid Form containing a Box in which a Bid Value must be inserted.

The Sealed Bid Form for Case One displays:

Commission seal (seal unique to auction)
 Commission signature and time stamp of issue
 Independent Observer signature to confirm unmarked form: HERE
 Bidder Password: HERE
 Auction Day:
 Bidder Status: Qualified
 Qualified Bidders and Names
 Bid Value in Box = HERE
 FAILURE TO MARK BOX WILL MEET WITH A PENALTY OF USD\$100,000
 2 AUTHORISED Signatures:
 Time of bid entered by Independent Observer here

The Sealed Bid Form for Case Two displays:

Commission seal (seal unique to auction)
 Commission signature and time stamp of issue
 Independent Observer signature to confirm unmarked form: HERE
 Bidder Password: HERE
 Auction Day:
 Bidder Status: Eligible
 Eligible Bidders and Names
 Minimum Bid Value = HERE
 Maximum Bid Value = HERE

Bid Value in Box = HERE

FAILURE TO MARK BOX WILL MEET WITH A PENALTY OF USD\$100,000

2 AUTHORISED Signatures:

Time of bid entered by Independent Observer here

The Sealed Bid Form will be placed in a sealed envelope containing a Password matching a Password held by the Auction Control Team. The Sealed Bid Form in the sealed envelope will be handed to a member of the Auction Control Team at the entrance to the Approved Room by a Member of the Bid Team. The Independent Observer will observe this handover.

An alarm will be sounded one (1) minute before the end of the Sealed Bid Phase.

The Commission will issue a Sealed Bid Confirmation to each Eligible Bidder confirming the Bid Value chosen by the Eligible Bidder and the Password. At this stage the Eligible Bidder has an opportunity to dispute the Record of the Bid Value record. If an Eligible Bidder disputes a Record, this should be notified in writing to the Commission within five (5) minutes of receipt of the Sealed Bid Confirmation Form. **The Commission will not consider any disputes received after this period.**

If there is a dispute, the Eligible Bidder will be required to insert the correct Bid Value on the Sealed Bid Form. In this circumstance the Auction Control Team will penalise the Bidder USD\$100,000.

4.7.5.3 Random Selection Phase

In this phase a Tied Eligible Bidder will receive precise instructions within sixty (60) minutes following the end of the Sealed Bid Phase.

4.7.6 Auction Examples

Suppose A, B, C, D, E and F are Qualified Bidders and enter the Auction Stage. Possible Auction outcomes are shown below in several different examples. In Example 1 the Ascending Bid Phase ends with three Active Bidders. Here the Last Round = Round 1 Auction Day 3. The Last Round defines the Final Price, USD\$190m.

Example 1

Auction Day	Round	Announced Price in USD\$ millions	Actions	Number of Bidders at end of Round	
				Active	Inactive
1	1	100	All 6 Bidders submit Action: Yes	6	0
1	2	110	All 6 Bidders submit Action: Yes	6	0
1	3	120	All 6 Bidders submit Action: Yes	6	0
1	4	130	All 6 Bidders submit Action: Yes	6	0
1	Final	140	5 Bidders submit Action Yes, Bidder A plays Waive	6	0
2	1	150	5 Bidders submit Action Yes, Bidder A says No	5	1
2	Bidder A exits Auction, must leave Auction Location within 12 hours				
2	2	160	5 Bidders submit Action Yes	5	0
2	3	170	5 Bidders submit Action Yes	5	0
2	Final	180	4 Bidders submit Action Yes, Bidder C plays a Waiver	5	0
3	1	190	5 Bidders submit Action Yes	5	0
3	2	200	B and E submit Action Yes, Bidder D says Waive, Bidders C and F say No	3	2
3	B, D and E enter the Grant Stage paying a Final Price 190				

In Example 2 the Ascending Bid Phase ends with three Active Bidders. The Last Round = Final Round on Auction Day 1. The Final Price is USD\$140m. In this example Bidder F plays a Waiver on three separate occasions and then withdraws by playing No.

Example 2

Auction Day	Round	Announced Price in USD\$ millions	Actions	Number of Bidders at end of Round	
				Active	Inactive
1	1	100	All 6 Bidders submit Action: Yes	6	0
1	2	110	All 6 Bidders submit Action: Yes	6	0
1	3	120	5 Bidders submit Action: Yes; Bidder F says Waive	6	0
1	4	130	A, C, D and E submit Action: Yes; Bidders F says Waive and Bidder B says No	5	1
1	Bidder B exits Auction, must leave Auction Location within 12 hours				
1	Final	140	A, C, D and E submit Action: Yes; Bidder F says Waive	5	0
2	1	150	A and C submit Action Yes; Bidder E says Waive and F and D say No	3	2
2	A, C and E enter the Grant Stage paying a Final Price 140				

In Example 3 the Ascending Bid Phase ends with three Active Bidders. The Last Round is Round 3 Auction Day 1. The Final Price is USD\$120m.

Example 3

Auction Day	Round	Announced Price USD\$ millions	in Actions	Number of Bidders at end of Round	
				Active	Inactive
1	1	100	All 6 Bidders submit Action: Yes	6	0
1	2	110	All 6 Bidders submit Action: Yes	6	0
1	3	120	5 Bidders submit Action: Yes; Bidder B says Waive	6	0
1	4	130	C and D submit Action: Yes; Bidders B , E and F say No and Bidder A says Waive	3	3
1	A, C and D enter Grant Stage paying Final Price 120				

In Example 4 the Ascending Bid Phase ends with two (2) Active Bidders. Bidder F enters the Grant Stage at the end of the Ascending Bid Phase. Bidders A, B, D and E enter the Sealed Bid Phase. The Last Round is Round 3 Auction Day 1. The Final Price is no more than \$142,171,500

Example 4

Auction Day	Round	Announced Price in USD\$ millions	Actions	Number of Bidders at end of Round	
				Active	Inactive
1	1	100	All 6 Bidders submit Action: Yes	6	0
1	2	110	All 6 Bidders submit Action: Yes	6	0
1	3	120	All 6 Bidders submit Action: Yes	6	0
1	4	130	E and F Bidders submit Action: Yes; Bidders A, B, C and D say Waive	6	0
1	Final	140	E and F Bidders submit Action: Yes; Bidders A, B and D say Waive, Bidder C says No	5	1
1	Bidder C exits Auction, must leave Auction Location within 12 hours				
2	1	150	F submits Action Yes; Bidders A, B, D and E say Waive	5	0
2	2	160	F submits Action Yes; Bidders A, B, and D say No; Bidder E says Waive	2	3
2	F enters the Grant Stage; A, B, D and E enter Sealed Bid Phase as Eligible Bidders and must submit Bid Values at least as high as 120 and no more than 160				
2	Sealed Bid Phase				
2	Eligible Bidder A enters Bid Value 131,345,870				
2	Eligible Bidder B enters Bid Value 142,171,500				
2	Eligible Bidder D enters Bid Value 130,990,980				
2	Eligible Bidder E enters Bid Value 153,962,430				
2	B, E and F enter Grant Stage paying USD\$142,171,500				

Example 5 is an unusual and unlikely outcome where the Ascending Bid Phase ends with zero (0) Active Bidders. All the Bidders proceed into the Sealed Bid Phase and are asked to submit Bid Values no more than USD\$110m and no less than USD\$100m.

Example 5

Auction Day	Round	Announced Price in USD\$ millions	Actions	Number of Bidders at end of Round	
				Active	Inactive
1	1	100	All 6 Bidders submit Action: Waive	6	0
1	2	110	All 6 Bidders say: No	0	6
	A, B, C, D, E and F enter Sealed Bid Phase as Eligible Bidders and must submit Bid Values at least as high as 100 and no more than 110				
1	Sealed Bid Phase				
1	Eligible Bidder A enters Bid Value 104,639,360 Eligible Bidder B enters Bid Value 110,000,000 Eligible Bidder C enters Bid Value 101,999,990 Eligible Bidder D enters Bid Value 107,999,990 Eligible Bidder E enters Bid Value 110,000,000 Eligible Bidder F enters Bid Value 103,457,880				
1	B, D and E enter Grant Stage paying USD\$107,999,990				

In Example 6 the Ascending Bid Phase ends with 2 Active Bidders.

Example 6

Auction Day	Round	Announced Price in USD\$ millions	Actions	Number of Bidders at end of Round	
				Active	Inactive
1	1	100	All 6 Bidders submit Action: Yes	6	0
1	2	110	D and F say Yes: A, B,C and E say No	2	4
1	D and F enter Grant Stage				
	A, B, C and E enter Sealed Bid Phase as Eligible Bidders and must submit Bid Values at least as high as 100 and no more than 110				
2	Sealed Bid Phase				
2	Eligible Bidder A enters Bid Value 102,512,000 Eligible Bidder B enters Bid Value 105,000,000 Eligible Bidder C enters Bid Value 101,000,000 Eligible Bidder E enters Bid Value 107,000,000				
2	D, E and F enter Grant Stage paying USD\$107,000,000				

In Example 7 the Ascending Bid Phase ends with two (2) Active Bidders. Four Bidders enter the Sealed Bid Phase as Eligible Bidders. In the Sealed Bid Phase two Bidders become Tied Eligible Bidders (TEBs). The TEBs enter the Random Selection Phase.

Example 7

Auction Day	Round	Announced Price USD\$ millions	in Actions	Number of Bidders at end of Round	
				Active	Inactive
1	1	100	All 6 Bidders submit Action: Yes	6	0
1	2	110	Bidders E and F say Yes: Bidders A, B and C and D say No	2	4
1	E and F enter Grant Stage				
	A, B, C and D enter Sealed Bid Phase as Eligible Bidders and must submit Bid Values at least as high as 100 and no more than 110				
1	Sealed Bid Phase				
1	Eligible Bidder A enters Bid Value 110,000,000 Eligible Bidder B enters Bid Value 110,000,000 Eligible Bidder C enters Bid Value 105,000,000				
	A and B enter the Random Selection Phase as Tied Eligible Bidders. The Auction Control Team instructs TEB B to select a Random Number first.				
1	Random Selection Phase				
1	A has Random Number 69.543822 B has Random Number 1989.008768 The Coin lands on Heads B enters the Grant Stage				
1	B, E and F enter Grant Stage paying USD\$110,000,000				

4.7.6.1 Auction Location

The Auction Location will be an address within the city of Abuja. The Commission will announce the Auction Location at least two Business Days prior to the Auction Date.

4.7.6.2 Approved Room

On each Auction Day during the Auction Stage each Bid Team participating in the Auction will occupy an Approved Room at the Auction Location selected by the Commission. An Approved Room will have toilet and bathroom facilities.

4.7.6.3 Auction Day

An Auction Day will be from 9 a.m. through to 30 minutes following the issue of the Final Round Confirmation Notice. A typical Auction Day may last between 9 a.m. and 8 p.m., with two hours allowed for lunch.

4.7.6.4 Auction Day

Each Bidder will receive in a sealed envelope from the Auction Control Team a set of Passwords at the beginning of each Auction Day.

4.7.7 Restart of the Auction

In extreme circumstances the Commission may exclude one or more Bidders from the Auction. If he considers that the conduct of such Bidders (or their exclusion from the Auction) would be likely to affect materially the identity of the Bidders who would be granted DMLs, or the Final Price at which the DMLs would be granted, he may decide either to continue or to re-start the Auction.

However, the Commission may refuse to re-admit to the Auction any Bidder which had withdrawn from the Auction, if such Bidder has contravened the Activity Rules - the rules on ownership, confidentiality and accuracy of information, restrictive practices and non-collusion, even if that contravention has occurred after its withdrawal.

4.7.8 Mock Auction

Bidders will be provided with an opportunity to practise the auction procedures in a Mock Auction shortly before the Auction Date. Those Bidders qualifying to enter the Auction stage **must** participate in the Mock Auction, failure to do so may result in the Bidder being excluded from the Auction stage.

4.7.9 Conduct of the Auction

During the Auction, all communications between the Commission and/or the Auction Control Team and a Bidder in relation to the Auction process must be made by one of the Authorised

Persons notified to the Commission as having authority to act on behalf of the Bidder during the Auction. During the Auction, Bidders may notify the Commission of a change in the identity of one or more of the Authorised Persons.

In any Communication thereafter between the Commission and an Authorised Person, the Commission may request and check a Password to confirm the identity of the Authorised Person.

The Commission may communicate with Bidders by any means.

In communicating with Bidders by telephone, the Commission may record any conversation.

4.7.10 Announcement of Successful Bidders

Following the Auction, the Commission will notify each Successful Bidder of the DML which it has been provisionally awarded, the price at which the relevant DML will be awarded, and the identity of all other successful Bidders.

4.7.11 Payment methodology

Successful Bidders must pay the Licence Fee by paying the full amount within 14 Business Days of grant of the DML. Failure to pay the full amount within 14 Business Days of grant of the DML will result in the forfeiture of the Bidder's Deposit and forfeiture of the Bidder's licence. Other penalties may apply as well.

4.7.12 Forfeiture

Any Bidder subject to forfeiture would not be allowed to enter any government licensing process for a minimum period of 5 years following the Auction Date.

5 APPLICATION INSTRUCTIONS

Applications must be submitted to the Commission in hard copy (3 copies) between 9am and 3pm Nigerian local time on 21 December 2000 at the following address:

Nigerian Communications Commission
Plot 19, Aguata Close
Near CBN H/Quarters, Garki II
P.M.B.326 FCT
Abuja
NIGERIA

It is strongly advised that applicants deliver their Application in a secure manner and legal representatives accompany the delivery of the Application Form. Applicants should note that, at its sole discretion, the Commission may designate another time and/or place at which Applications should be submitted. However, this power will only be used in exceptional circumstances. The alternative location will be publicised on the Commission website.

Applications should be marked:

“Digital Mobile Licence Auction
For the attention of:
Executive Vice Chairman/Chief Executive: Ernest C. A. Ndukwe”

Applications should contain:

- Completed Application Form and all supporting information;
- Bidder Compliance Certificate.

By midnight on 21 December 2000 Applicants must have transferred the Initial Deposit amount (US\$20million) so that it is received in cleared funds in an account with Chase Manhattan Bank. This is part of pre-qualification. In the event that the Bidder is successful in the Auction the Deposit will be offset against payments for the 2G licence.

5 APPLICATION INSTRUCTIONS

The Account to which bidders must send USD funds is:

To: The Chase Manhattan Bank, New York
SWIFT: CHASUS33
For Account of: The Chase Manhattan Bank, London
Account Number: 001-0-962009
For Further Credit: NCC Flow Account
Account Number: 24069501

The payment should be marked with a unique identifier consisting of the registered name of the Bidder prefaced by 'NCC'.

The funds for each bidder will be transferred into sub-accounts specific to each bidder. The funds will earn interest. The interest will be calculated using the Chase overnight LIBOR rate minus 50 base points. The Chase overnight LIBOR rate is defined as being the rate at which overnight deposits are offered by the Chase Manhattan Bank, London, to prime banks in the London Inter-bank market at or about 11am (London time) on each day. Interest is calculated on the outstanding balance on a daily basis and credited to the account on a monthly basis. Interest earned on deposits will be used to pay the Escrow Agent's fees on a pro-rata basis prior to the bidder earning interest for himself.

When the auction is completed, the deposits of the successful bidders will be transferred to the Central Bank of Nigeria and at the same time, deposits from unsuccessful bidders will be returned. Any penalties incurred by the bidders during the auction will be deducted from the deposits before they are released. Penalties will be deducted on the day that they are incurred and interest will cease on the penalty amount.

Application Form

Auction of Digital Mobile Licences

5.1 Instructions to Candidates on Application Form

Instructions on the information required in the Application Form and the form of its presentation are set out below. Terms used in the Application Form and these instructions shall take the meanings given to them in this Information Memorandum.

Details of the Applicant

- 5.1.1** Provide the name of the applicant (“the Bidder”).
- 5.1.2** Provide contact address, telephone and fax number.
- 5.1.3** Provide the names and job title of each of the Authorised Officers who have signed the Bidder Compliance Certificate. Also provide telephone, fax and e-mail (if available) contact details.
- 5.1.4** Provide the legal form of the applicant (e.g. company limited by shares).
- 5.1.5** Provide the address of the Registered Office of the applicant (together with telephone and fax numbers), or note that it is the same as that disclosed at 5.1.2.
- 5.1.6** Provide the name and job title of each of the Directors of the applicant.
- 5.1.7** Provide details of the form of the Bidder’s share capital (class of shares, number and value of shares in each class of shares).
- 5.1.8** Provide details of the ownership of each class of share disclosed.
- 5.1.9** If the class of shares is listed on a Recognised Stock Exchange, provide details of all Participants in that class of shares. If the class of shares is not listed, provide a list of all the holders of that class of shares.
- 5.1.10** If a consortium has formed the Bidder for the purposes of bidding in the Auction, provide details of each member of the consortium’s financial investments in and commitments to the Bidder.
- 5.1.11** Provide the name and role of all the Bidder’s Insiders.

1.1 Name of Bidder: _____

1.2 Contact Details:
Address _____

Telephone No. _____
Facsimile No. _____

1.3 Authorised Officers:

Name: _____
Title: _____
Telephone No. _____
Facsimile No. _____
E-mail. _____

Name: _____
Title: _____
Telephone No. _____
Facsimile No. _____
E-mail. _____

1.4 Legal form of Bidder:
Registered No. _____

1.5 Registered Office:
(if different from address above) _____

Telephone No. _____
Facsimile No. _____

This page will not be disclosed to other Bidders

Directors of the Bidder

1.6 Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

Name & Title

If additional space is required, insert duplicate sheets, numbered 2a, 2b etc.

This page will not be disclosed to other Bidders

1.7 Capital Structure of the Bidder

If additional space is required, insert duplicate sheets numbered 3a, 3b etc.

1.8 Telecommunications Experience

Do you currently hold an operational mobile telecommunications licence?	Yes/No
If applicable, briefly describe the telecommunications services you currently provide.	
To how many subscribers do you provide telecommunications services?	
If applicable, name the main vendors from whom you purchase radio equipment.	Names:
Please provide contact details for such vendors.	Contact details:

1.9 Insiders

Name of Insider

Role of Insider

If additional space is required, insert duplicate sheets numbered 2a, 2b etc.

This page will not be published to other Bidders

5 APPLICATION INSTRUCTIONS

5.1.12 Provide a copy of the Memorandum and Articles of Association of the Bidder.

5.1.13 Provide a copy of the most recent Annual Report and Accounts of the Bidder.

5.1.14 Provide a copy of the most recent Annual Report and Accounts of all ultimate parent companies.

5.2 BIDDER COMPLIANCE CERTIFICATE

Part A

The Bidder certifies and undertakes that:

- (i) The Authorised Officers of the Bidder have read and understood the relevant legislation and the Information Memorandum.
- (ii) The Bidder is legally capable of bidding in the Auction and has in place all necessary consents, permissions and board approvals for this purpose, save those which, by virtue of legal or regulatory process, are not obtainable until after the results of the Auction are known and the Bidder further understands that it will bear the risk of failure to obtain such consents, permissions and approvals that are not obtainable until after the results of the Auction are known.
- (iii) The Bidder understands and will be legally capable of satisfying his obligations under the terms and conditions of the Licence granted pursuant to the Auction and the terms of any Licence granted as a consequence of winning a Digital Mobile Licence in the Auction.
- (iv) The factual information provided in, or in support of, the Application is, to the best of the Bidder's knowledge and belief, true, accurate and complete in all material respects and that any opinion expressed is honestly held.
- (v) The Bidder will comply and ensure, to the best of his ability, that all of his Insiders will comply with the provisions of the Information Memorandum.
- (vi) The Bidder will not collude or otherwise manipulate or attempt to manipulate the outcome of the Auction with any other Bidder in respect of any other Bidder, and shall not from the time of submission of this Application disclose or obtain or seek to obtain any Confidential Information in relation to any other Bidder.
- (vii) The Bidder will not have in place any arrangements or understanding with any other Bidder to collude or otherwise manipulate or attempt to manipulate the outcome of the Auction.
- (viii) The Bidder will not have entered into, and will not seek to enter into, any exclusive agreements in contemplation of the Auction which might restrict the ability of any other Bidder to build and operate a network efficiently or which might restrict their means of determining a business case.

Part B

The Bidder certifies and undertakes that, save as disclosed in this certificate:

- (i) The Bidder in the Application is not the subject, and none of its Directors, officers or representatives are the subject, of criminal investigations or proceedings in Nigeria or abroad which might reasonably be expected to affect adversely their business or materially affect the Bidder's ability to bid in the Auction or to satisfy the terms of any Licence awarded pursuant to the Auction, and that there is no reason to believe that such investigations or proceedings might occur during the Auction.
- (ii) The Bidder in the Application has not had any telecommunications or radio-communications licence, consent, authority, permission, concession agreement, or other such document or allocation of radio spectrum **outside of Nigeria** removed or revoked owing to default or breach by the Bidder of the terms of that licence consent, authority, permission, concession agreement, or other such document or allocation of radio spectrum **outside of Nigeria**.
- (iii) The Bidder identified in the Application is not a party to any civil litigation or proceedings which may be expected to have a material adverse impact on the Bidder's ability to bid in the Auction or to satisfy the terms of any Licence awarded pursuant to the Auction.

Signed: -

[Authorised Officer]

[Authorised Officer]

6 CONTACTS AND FURTHER INFORMATION

6.1 CONTACTS FOR FURTHER ENQUIRIES

Any further enquiries relating to the Memorandum and the Auction process should be addressed in writing and sent by post or fax directly to the Commission. These should be addressed to:

Ernest C. A. Ndukwe
Executive Vice Chairman/Chief Executive
Nigerian Communications Commission
Plot 19, Aguata Close
Near CBN H/Quarters, Garki II
P.M.B.326 FCT
Abuja
NIGERIA

Fax: +234 (0) 9-2344593

All correspondence should be marked, ‘Digital Mobile Auction’

6.2 FURTHER INFORMATION

Following the issue of the Memorandum, the Commission may publish further information and any questions received along with the answers provided. The Commission however, reserves the right not to publish a particular question and answer, in whole or in part. The identity of those posing questions will not be attributed to the published version without the questioner’s permission. The Commission will publish all additional information via its website (www.ncc.gov.ng). Further copies of the Memorandum may be downloaded from this site.

APPENDIX 1

GLOSSARY OF TERMS (applicable mainly to the Auction)

Action	The process by which a Bidder indicates whether or not he is willing to pay the Announced Price for a DML (Actions are Yes, No or Waive)
Active Bidder Bid Form	The form on which each Bidder will state which Action it will take in a specified Round
Active Bidders	Active Bidders are defined in accordance with Section 4.7.2.1
Activity Rules	The rules that govern the activities of Bidders and members of their respective Candidate Groups during the Auction
Announced Price	The price for a DML relevant to each Round
Applicants	Nigerian Limited Liability Companies submitting an Application Form to participate in the Auction
Application	Materials required as specified in Chapter 5
Application Date	The date that Applications are required to be submitted
Application Form	Form to be completed by Applicants
Approved Room	Room used by Bid Team to submit responses to the Auction Control Team during the Auction Stage
Ascending Bid Phase	That part of the Auction stage where Active Bidders must submit responses to the Auction Control Team
Attendance Time	The time at which Bidders must be present at the Auction Location on Auction Day 1
Auction Control Team	The advisors appointed by the Commission, see section 4.4.4
Auction Date	Date when Auction Stage commences
Auction Day	Day on which Bidders submit responses to the Auction Control Team
Auction Rules	Rules governing the conduct of the Auction, as set out in the Information Memorandum.
Auction Stage	The period from the Auction Date through to the date the Grant Stage starts
Authorised Officers	Directors, or the company secretary, of the Bidder
Authorised Persons	Persons whom the Bidder has provided with authority to participate, either jointly or severally, in any way in the Auction on behalf of the Bidder
Bid Form	The form provided to a Bidder in the Ascending Bid Phase by the Auction Control Team
Bid Team	A Qualified Bidder's Bid Team will comprise no more than four Authorised Persons, of whom ONE should be Authorised Officer
Bid Value	A Bidder's Bid Value is the maximum amount a Bidder would be willing to pay for a DML
Bidder	Refers to the body corporate which submits an application and to which a DML would be awarded following success in the Auction
Bidder Participation Notice	Refers to the form provided to each Qualified Bidder as defined in section 4.6.1
Bidder Relationship	As defined in the Information Memorandum section 4.4.1
Business Day	Is a day between Monday and Friday inclusive that is not a holiday in Nigeria
Case One Sealed Bid Notice	A form provided to each Qualified Bidder in the event only four (4) Qualified Bidders receive a Bidder Participation Notice
Case Two Sealed Bid Notice	A form provided to each Qualified Bidder in the event the Ascending Bid Phase ends with fewer than three (3) Active Bidders
Commission	The Nigerian Communications Commission (NCC)
Communication Device	Any electrical device used for the purposes of one or two-way voice and/or data Communication
Confidential Information	Any unpublished information (i.e. not publicly available) which, if known to other Bidders, would affect the price that the other Bidders would be willing to pay for a DML in the auction. Such information would include (but not necessarily be limited to) the Bidder's business case, the Bidder's auction strategy and the highest price it is willing to bid for a DML
Deposit	The amount required in an account to be specified shortly, see section 4.5.2
Deposit Date	Date by which deposit funds are required to have cleared into a Nominated Account
Detailed Rules	The rules to be issued in the event the Auction Stage enters Sealed Bid Phase Case One
DML	Digital Mobile Licence
Eligible Bidders	Bidders who progress into the Sealed Bid Phase Case Two

End Round	The End Round is the Round where at the end of the Round the number of Active Bidders in the Ascending Bid Phase is no greater than three (3)
Final Price	Is the price that each Successful Bidder must pay for a DML
Final Round	That Round after which no further Rounds will occur on the same Auction Day during the Ascending Bid Phase. The Final Round on an Auction Day terminates the Ascending Bid Phase on that Auction Day
Finishing Time	Time at which a Round ends
Geopolitical Zones	As defined in the Licence
Inactive	If a Bidder chooses No, at the end of the Round the Bidder is defined as Inactive
Increment	The amount by which the Announced Price increases between Rounds
Independent Observer	An approved official appointed by the Auction Control Team
Indicative Timetable	Timetable which has not been confirmed but is approximate and is stated for illustrative purposes only. The Indicative Timetable is subject to alteration
Information Memorandum	The document which contains information relating to the Auction
Insiders	Any party to whom Confidential Information in relation to a Bidder is disclosed, if not already a member of the Candidate Group in relation to that Bidder, is deemed to be an "Insider" in relation to that Bidder
Last Round	Is the Round defined as in 4.7.2.2.1
Law Firm	The Firms that have been appointed by the Commission to provide legal advice with regard to the Auction
Licence Fee	The amount of money that Successful Bidders pay for a DML
National Carrier	A telecommunications operator carrying national telecommunications traffic
No	Meaning a Bidder confirms he is not willing to pay the Announced Price for a DML
Password	Is a list of numbers on the Bidder Participation Notice
Payment Day	The Day on which a Successful Bidder is required to have cleared funds in payment for the DML
Pre-Qualification Stage	The Stage after the Application Stage and before the Auction Stage
Previous Round	Round preceding the current Round
Qualified Bidder Notice	Notice setting out the identity of all other Qualified Bidders and the composition of their Candidate Groups
Qualified Bidders	Bidders who are admitted into the Auction Stage
Radio Equipment	The base transceiver stations or repeater stations forming part of the network
Random Number	Number generated via a computer programme approved by the Auction Control Team
Random Number Generator	Process which generates Random Numbers
Random Selection Phase	That part of the Auction Stage after the Sealed Bid Phase if the Sealed Bid Phase yields tied bidders
Random Selection Phase Notice	The form sent by the Auction Control Team to the Eligible Bidders if the Sealed Bid Phase yields tied Bidders
Recorded	The writing on a Form by the Auction Control Team to record the Bidder's Action or Bidder's Bid Value
Reserve Price	100 million US dollars
Round	That part of the Auction Day in which a Bidder chooses an Action
Sealed Bid Notice	Eligible Bidders will be notified by the Commission in a Sealed Bid Notice about the names of the other Eligible Bidders. The Sealed Bid Notice will also inform the Eligible Bidders the start time of the Sealed Bid Phase
Sealed Bid Form	The form sent by the Auction Control Team to the Eligible Bidders
Sealed Bid Phase	If the Ascending Bid Phase ends with three (3) or fewer Active Bidders, the Auction Stage enters the Sealed Bid Phase, see section 4.7.3
Start Time	Time at which a Round begins
Successful Bidders	Successful Bidders are those Bidders who progress from the Auction Stage into the Grant Stage
Tied Eligible Bidder Form	The form sent by the Auction Control Team to the Tied Eligible Bidders
Tied Eligible Bidders	Eligible Bidders who submit identical Bid Values and where the number of Successful Bidders lies below three (3)
Waive	Meaning a Bidder is not sure that he is prepared to pay the Announced Price for a DML
Yes	Meaning a Bidder confirms that he is willing to pay at least the Announced Price for a DML

APPENDIX 2

DIGITAL MOBILE LICENCE