



REPORT OF THE PUBLIC INQUIRY ON THE DRAFT GUIDELINES ON ADVERTISEMENTS AND PROMOTIONS (AS AMENDED)

1.0 INTRODUCTION

The Nigerian Communications Commission (the Commission) pursuant to its powers under Section 70 of the Nigerian Communications Act 2003 (the Act), developed the Draft Guidelines on Advertisements and Promotions.

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

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

1. MTN Nigeria Communications Plc.
2. Smile Communications Nigeria Limited

As required by Section 58 of the Act, a Public Inquiry on the Draft Guidelines was scheduled for August 10, 2022 and a Notice of the Public Inquiry was published in the Guardian and Daily Trust Newspapers on Friday, July 8, 2022.

2.0 THE PUBLIC INQUIRY

The Public Inquiry held both physically and virtually as scheduled. It commenced at 11:18am and was chaired by the Executive Commissioner, Technical Services (EC-TS), Engr. Ubale Ahmed Maska. Attendees at the public inquiry included Staff of the Commission, representatives of telecommunications companies and other interested stakeholders.

The EC-TS welcomed everyone present, noting that the event was key to the rule-making process of the Commission. He urged everyone to apply themselves maximally to the event for the benefit of the industry.

3.0 GENERAL OVERVIEW OF THE DRAFT GUIDELINES ON ADVERTISEMENTS AND PROMOTIONS

Ms Helen Obi (Head, Telecoms Laws and Regulations Unit, Legal and Regulatory Services Department) gave an overview of the Draft Guidelines on Advertisements

and Promotions (as amended). She noted that the extant Guidelines was developed in 2011 and in line with continuous developments and innovations by service providers, the Commission deemed it fit to review same.

The Guidelines on Advertisements and Promotions (as amended) sets minimum requirements and standards for promotional advertisements of products and services, ensuring ethical marketing and promotional standards by licensees. It ensures that there is fair competition among licensees and consumers are adequately protected from invasive and unethical marketing practices.

4.0 REVIEW OF COMMENTS RECEIVED BEFORE THE PUBLIC INQUIRY

Mr Moses Iyi (Assistant Director, Consumer Affairs Bureau) made a presentation on the comments received from stakeholders before the Public Inquiry and the Commission's responses thereto.

1. Comments Received from Smile Communications Nigeria Limited

1.1. Comment - Application for Promotion – Section 4

Smile opined that this provision does not present the reality of timelines for issuing promotion approvals. It therefore requested the Commission to review the provision by inputting a favourable but realistic timeline for processing and granting approvals. Smile also suggested that a provision should be included to the effect that if the approvals are not conveyed within a certain timeline, the promotion would be deemed approved.

Response

The Commission shall cause the approval or otherwise to be communicated to the licensee within 30 days of receiving the application.

1.2. Comment – Schedule 1 – Application Fees

Smile noted that the increase of the Promo and Advert fees by 471.43 % connotes an arbitrary increase which will significantly impact on Tier 2 operators who are already saddled with issues emanating from predatory pricing and margin squeeze from the Tier 1 operators. It recommended that the Commission should review downwards, the Application fees for Sales Promotions, Renewal and Lottery for Mobile Network Operators considerably, to enable sustainability and productivity amongst players in the industry.

Response

The review of the fees was done taking into consideration the parameters used in determining the application fees as at 2007 with respect to the current situation; inflation rate and traffic/frequency of requests.

These comments are noted and will be considered.

2. Comments Received from MTN Nigeria Communications Plc.

2.1. Comment – Definition of Terms

“Sales Promotion” means an incentive, at no cost to the customer, designed to stimulate quicker and/or greater purchase of a communications product/service or the quicker and/or greater performance of a Revenue Generating Event.

“Advertisement” means any message communicating a Sales Promotion, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence consumers’ their choice, opinion or behaviour.

Response

Comments are noted and will be considered.

2.2. Comment - Schedule 1

MTN stated amongst other things that from the proposed increase, the Commission intends that an application for the approval of a 3-month new Sales Promotion (proposed to cost N1,000,000) will cost twice as much as a 5-year Value Added Service (VAS) license for delivery of content services using short code. Further to this, MTN proposed a downward review of same.

MTN noted that the proposed fees as set out in the table for new sales promotions consist of a combination of “Promo Fee” and “Advert fee”. It requested clarification as to why licensees are required to pay an “Advert Fee”, submitting that compliance with the Advertising Code could be ensured without the imposition of an “Advert Fee” on operators as this financial obligation is already borne in the form of Advert Vetting Fees payable to the Advertising Practitioners Council of Nigeria (APCON).

Response

Comments are noted and will be considered.

2.3. Comment - Timelines for Approval of Promotions (Paragraph 4(iv))

Incorporation of a deeming approval

MTN suggested the inclusion of a deeming provision in the proposed amended Guidelines to cater for instances where an approval does not come through within 7 days or such other realistic timeframe.

Institution of an automated process for promo approvals

MTN suggested the inclusion of an automated application filing and approval system to cut off the delays that have been occasioned by the present manual processes.

Response

Comments are noted and will be considered

5.0 REVIEW OF COMMENTS RECEIVED AT THE PUBLIC INQUIRY

1. Adegbolahan Thomas (Airtel Networks Limited)

i. **Paragraph 4(iv):** Airtel noted that the Commission had not been adhering to the timeline of 7 days and it would appreciate if approvals could be gotten within the specified time.

ii. Application Fees

Airtel is concerned about the steep rise in the proposed fees and recommends it should be left at the current price of N250,000 in view of the current economic realities. Airtel further noted that the increment would be an additional financial burden on the licensees and should be postponed for now, considering the current cost of energy, diesel and inflation.

iii. Processing of Promos – 3 months to renew promos.

Airtel suggested an amendment in the application for renewal process to the effect that licensees should be able to notify the Commission instead of applying for renewals, subject to paying the existing application fees as proposed and forwarding the current Quality of Service documents, in order to reduce the processing time.

Airtel further suggested automation of the process and if approvals are not gotten within 7 days, they will be deemed approved.

Response

Comments are noted and would be considered.

2. Ikenna Ikoku (Emerging Markets Telecommunications Services Limited)

i. The Commission should write letters to operators subsequently in order to receive more comments prior to the Public Inquiry.

ii. EMTS is concerned about the astronomical increase in fees. Operators pay fees for adverts to APCON and for lotteries to the National Lottery Commission. Also, Annual Operating Levy is already paid to the Commission, therefore other fees form a duplication of charges. EMTS suggested that the Commission should charge a “processing fee” instead to avoid multiple taxation.

Response

The Commission has duly noted these comments.

6.0 REVIEW OF COMMENTS RECEIVED AFTER THE PUBLIC INQUIRY

1. Emerging Markets Telecommunications Services (EMTS)

1.1 Comment

Paragraph 3 - EMTS requested that the Commission clarify if the proposed action in the provision is expected to be carried out after approval has been secured, as it may seem like a repetition of the process that has already been carried out. EMTS also sought to know if a feedback is not received within '7 working days' and feedback is not received from the Commission, licensees can proceed with their deemed approval. Finally, EMTS requested that the Commission include the definition of 'Publication' in the document.

Response

The Commission notes the comments and will consider same in the further review of the Guidelines.

1.2 Comment

Paragraph 3.c.i - EMTS sought to clarify if 'Social Media' falls under the category of 'Visual Media'. EMTS also requested that the Commission provide more clarity on the provision.

Response

The Commission notes the comments and will consider same in the further review of the Guidelines.

1.3 Comment

Paragraph 3(e) (i) EMTS recommended that the proposed instruction in Paragraph 3 is excluded in the final draft as there are many unexpected and unpredictable factors, beyond the control of service providers, that could affect end-users experience. Some of these include Device Type, Spectrum, utilization e.t.c.

Response

The Commission notes the comments and will consider same in the further review of the Guidelines.

1.4 Comment

Paragraph 4(iv) - EMTS recommends that a more realistic feedback duration is communicated based on the existing state of affairs where a manual process is employed. EMTS also sought to know if after the referenced feedback is not received, licensees can proceed with a deemed approval.

Response

The Commission notes the comments and will consider same in the further review of the Guidelines.

1.5 **Comment**

Schedule 1- Application Fees- EMTS finds some of the terms to be overlapping and would appreciate if the Commission can provide definitions for “Sales Promotion”, “Promotion Fee”, “Advert Fee” and “Lottery Fee” to aid clarity and alignment.

Response

The Commission notes the comments and will consider same in the further review of the Guidelines.

1.6 **Comment**

EMTS enjoined the Commission to reconsider the proposed increase to sustain the telecommunications industry as one of the leading contributors to the Gross Domestic Product (GDP) in Nigeria. EMTS also requested that the Commission provide a clearer description of the table and in particular, ‘Nature of applications’ a breakdown of the ‘Duration of promotions’ and ‘Amounts in Naira’ as they remain unclear.

Response

The Commission notes the comments and will consider same in the further review of the Guidelines.

1.7 **Comment**

EMTS stated that advertising fees are paid to the Advertising Practitioner’s Council of Nigeria (APCON) and lottery fees are paid to the National lottery Regulatory Commission (NLRC) the proposed request for payments for same heads will be tantamount to duplication of levies.

Response

The Commission notes the comments and will consider same in the further review of the Guidelines.

7.0 GENERAL COMMENTS

Mr Ayanbanji Ojo (Deputy Director, Consumer Affairs Bureau) thanked everyone for coming and noted that the session was very informative. He stated that all the issues raised will be considered and consolidated to benefit the Telecommunications Industry.

The Public Inquiry ended at 1:53pm.

Dated this 10th day of August, 2022

Professor Umar Garba Danbatta, *FNSE, FRAES, FAEng, FNIEEE*
Executive Vice-Chairman/CEO
NIGERIAN COMMUNICATIONS COMMISSION