REPORT OF THE PUBLIC INQUIRY ON THE GUIDELINES ON CORPORATE GOVERNANCE

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 Corporate Governance for the Industry.

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 Firm of Jackson, Etti &Edu, Airtel Networks Limited and other stakeholders.

As required by Section 58 of the Act, a Public Inquiry on the Draft Guidelines was scheduled for July 26, 2023 and a Notice of the Public Inquiry was published in the Guardian and Daily Trust Newspapers on Friday, June 30, 2023.

2.0 THE PUBLIC INQUIRY

The Public Inquiry held both physically and virtually as scheduled. It commenced at 11:00am and was chaired by the Executive Commissioner, Technical Services (EC-TS), Engr. Ubale Ahmed Maska. Attendees at the Public inquiry included Executive Commissioner Stakeholder Management (EC-SM) Barr. Adeleke Morounfolu Adewolu, Staff of the Commission, representatives of Telecommunications Companies, the Press and other interested stakeholders.

Pankan Eze (*Assistant Director, Commission Secretariat*) gave an overview of the amendments made in the Draft Guidelines on Corporate Governance. Quasim

Odunmbaku (*Assistant Director, EC(SM) Office*) made a presentation on the comments received prior to the Public Inquiry.

A. GENERAL OVERVIEW OF THE DRAFT GUIDELINES ON CORPORATE GOVERNANCE

The Corporate Governance Guidelines is specifically modeled for Licensees of the Commission in the Communications industry, its objectives are primarily to; *(a) To facilitate the pursuit of good corporate governance objectives that are in the interest of licensees, shareholders and other stakeholders, while bringing about positive improvement in the corporate governance practices of the industry. (b) To ensure the highest industry transparency standard, due process, data integrity, disclosure requirements, accountability, and ethics are maintained without impeding enterprise or innovations.* This is in line with the Nigerian Code of Corporate Governance 2018 (NCCG 2018), and the Companies and Allied Matters Act 2020 and any other relevant piece of legislation.

The Telecoms industry is a vast industry constantly evolving. The aim as mentioned above is to ensure that all players in the industry are protected through the application of transparency and accountability processes that are of an acceptable standard that benefit all and lead to the development of the Communications Industry.

B. REVIEW OF COMMENTS RECEIVED BEFORE THE PUBLIC INQUIRY

1.0 Jackson Etti & Edu

1.1 Comment

Sec. 7 (2), Sections 8(3) (4) & (5) of the draft guidelines which are in tandem with the provisions of Clause 11.1.5 of NCCG 2018, provides for the establishment of three (3) Board committees and its composition which excluded the Chairman and CEO from being members. Given the above, they opined that setting the minimum number of Directors at 5 members may affect the composition of these Committees, where a company elects to have only 5 Directors. This is because, with 5 Directors, only 3 Directors will be eligible for membership of the Board committee.

The Firm advised that the minimum number of Directors should be increased to seven (7). Thus, it should read – "Membership of the Board shall not be less than seven (7) specified under these Guidelines. The members of the Board of Directors of a licensee shall be appointed by its shareholders".

Response
The composition for the Board and Board Committees differs. Provisions in the Guidelines states the minimum requirements. Therefore, the Licensee may choose to have seven (7) members in its Board or more than three (3) members in each Committee.

1.2 Comment
Section 20 - **Independent Directors (INED):** The draft Guidelines is silent on the criteria for meeting the independence of the Non-Executive Directors.

The criteria for measuring independence should be clearly stated. This may be in addition to the criteria already provided in Principle 7 of the NCCG 2018. In the alternative, specific reference should be made to the conditions stipulated in Principle 7.2 of NCCG 2018, to incorporate same.

Response
It has already been stated in the Scope of the Guidelines (Section 4(4)) that 'All Licensees are required to apply the principles of the NCCG 2018 as the minimum corporate governance benchmarks in the conduct of their operations…'

1.3 Comment
Section 22- **Tenure and Re-election of Directors:** Specific tenure for Independent Director(s) should be indicated in the draft Guidelines. This however cannot be a blanket period of 10 years as provided for in Section 22 for all directors. They advised that the tenure of Independent Directors should align with the provisions of Principle 12.10 of NCCG 2018.

Response
The provision in the Guidelines is applicable to all Directors (including INEDs and NEDS)

1.4 Comment
Section 31 (7) Given the importance of the Audit Committee, the minimum number of meetings in a year should be a minimum of four in line with Principle 11.4.5 of NCCG 2018

On the number of meetings of the Audit Committee. Principle 11.4.5 of NCCG 2018 should be the minimum requirement to enable the Committee to discharge its functions effectively. In line with 11.4.5 of NCCG 2018, it should read - ***The Committee should meet at least once every quarter.***

Response
These comments are noted and the Commission will take it into consideration.

2.0 KPMG

2.1 Comment

Section 7(2) Considering the provisions of section 7.3 and 8.5, the minimum Board size of five (5) appears not feasible. A more realistic minimum Board size should be eight (8) members made up of a Chairman, two (2) Executive Directors, two (2) Non-Executive Directors and three (3) INEDs.

Response
The Guidelines has only stated the minimum Board Size of 5. Boards of Licensees can exceed 5 in number.

2.2 Comment

Section 7(3) Considering the composition of Committees defined in Sections 8.9.a, 8.10.a and 8.11.a which stipulate an all-Non-Executive Director Board Audit and Risk Management Committee and subsequently requires Independent Directors to chair the committees, there is a need to reconstruct this provision to make it clear that an Independent Director is first identified as a Non-Executive. Consequently, they propose an alternative construction of the provision as follows: ***Membership of the Board of a Licensee shall be as follows: a. Executive Director: Minimum of two (2) Executive Directors, one of which shall be the Managing Director b. Non-Executive Directors: Made up of a Chairman; Non-executive Directors at the minimum equating the number of Executive Directors and Independent Directors who shall be a third of the Board.***

Response
These comments are noted and the Commission will take it into consideration.

2.3 Comment

Section 8(4) The inclusion of an invitation for the Board Chairman's attendance at committee meetings could potentially compromise his objectivity and independence during Board-level deliberations as he/she already possesses prior information on matters discussed within the committee. They recommended that the Chairman be precluded from attending Committee meetings.

Response
These comments are noted and the Commission will take it into consideration.

2.4 Comment

Section 13 (2) International Best Practices described the role of the Board as supervisory. Implementation of a strategic plan should be the responsibility of Management and not the Board.

Response

The Board has a role and responsibility to oversee the initial stages of strategic execution in line with the licensee's strategic objectives but should not overstep management responsibilities. Therefore, specific roles must be clearly spelt out in the Board Charter.

2.5 Comment

Section (22) - Tenure and Re-election of Directors. They recommended the inclusion of clauses in this section to address the need for a cool off period prior to the transition of the following:

- CEO or Executive Directors into the Chairman or Non-Executive Director roles within the ten year tenure limit.
- A member of the senior management team into Non-Executive Director roles.

This is to prevent the transitioned management staff or Executive from having an overbearing influence on his/her successor.

Response

These comments are noted and the Commission will take into consideration.

2.6 Comment

Section 29 (7) To enhance clarity and establish a clear point of contact for petitions, they recommended that the Chairman or Chief Executive directs such petitions to the Chairman of the Governance, Remuneration and Nomination Committee, who would hold the responsibility for addressing whistleblowing reports. In addition, they recommend that the Board remit to the Commission, quarterly, a summary of whistleblowing cases received and addressed by the Chairman of the Governance, Remuneration and Nomination Committee.

Response

Section 29(8) recommends that an Ethics Committee and Disciplinary Committee be set up to review reported cases of whistle blowing and initiate appropriate action. However, the Governance Committee could be assigned the responsibility for addressing whistleblowing reports.

2.7 Comment

Section 29 (8) This should be limited to whistleblowing involving Senior Management of the licensee while cases involving Board members be directed to the Chairman of the Governance, Remuneration and Nomination Committee.

Response

These comments are noted and the Commission will take into consideration.

2.8 Comment

Section 32 (4) The strategic importance and sensitivity of the role of the Head of Internal Audit of the role calls for an increase in the required years of experience. They suggested an adjustment to the minimum required years of experience, allowing for a more suitable and qualified candidate to fulfill the position effectively. They suggested a minimum of 7 years post qualification experience of which at least 5 years must have been in audit or finance or compliance function and 2 years in top/senior management positions.

Response

These comments are noted and the Commission will take into consideration.

2.9 Comment

Section (39) – meaning of "Chairman" To align with leading practice, they recommended revising the definition of the Board Chairman to recognize it as a Non-Executive Director and not necessarily an Independent Director.

Response

These comments are noted and the Commission will include the term 'Non-Executive Director in the definition

2.10 Comment

Section (4) 4 In line with the baseline principles of NCCG that the Guidelines is designed to comply with, they recommended adopting "apply and explain" principle as documented in the NCCG in order to avoid confusion.

Response

The Commission will ensure alignment with the NCCG 2018 – "apply and explain" is the default.

2.11 Comment

Section (8) To align with the provisions of the NCCG, they suggested revising the practice of holding committee meetings twice a year and adhering to the NCCG's recommendation of quarterly meetings for the Audit Committee and Risk Management Committee. NB: The provision for Governance Committee to meet twice a year is in line with the NCCG.

Response

It is noted that both provisions prescribe a minimum number of meetings. But the Commission will review the suggestion in finalizing the Guidelines.

2.12 Comment

Section. 31 (7) In line with the baseline adoption of the principles in the NCCG, (per NCCG 11.2.5) the responsibility of ensuring that the Board and its Committees are adequately composed should be delegated to the Governance Committee.

Response

The Board Chairman also has the oversight responsibility to ensure that the Governance Committee has performed its duties in an effective manner.

2.13 Comment

Section 16.3.c In line with the baseline adoption of the principles in the NCCG, (per NCCG 11.2.5) the responsibility of ensuring that the Board and its Committees are adequately composed should be delegated to the Governance Committee

Response

The Board Chairman also has the oversight responsibility to ensure that the Governance Committee has performed its duties in an effective manner.

2.14 Comment

Section 20 (1) Considering the fact that many Nigerians are subscribers to the licenses, it may be difficult to find a qualified Director that is absolutely free of any relationship with some licensees. Consequently, they suggested the adoption of the definition of an Independent Non-Executive Director in the NCCG.

Response
It has already been stated in the Scope of the Guidelines (Section 4(4)) that 'All Licensees are required to apply the principles of the NCCG 2018 as the minimum corporate governance benchmarks in the conduct of their operations…'

2.15 Comment
Section 31 (6) Recognizing the importance of upholding the responsibilities of shareholders, in line with the NCCG and CAMA 2020, they recommended changing the responsibility for the appointment of external auditors to the shareholders rather than the Board.

Response
The Commission notes this comment and will take it into consideration in finalizing the Guidelines.

2.16 Comment
Across the document: Reference to Nomination Committee, Remuneration Committee, Governance Committee: To ensure consistency, they suggest references to the Nomination, Remuneration and Governance committees individually be updated to the full name of the Committee, that is, the "Governance, Remuneration and Nomination Committee"

Response
These comments are accepted and the Commission will take into consideration.

2.17 Comment
Section 7 (5) The underlying objective of both sentences advocates for the separation of the positions of the Board Chair and MD/CEO. They suggested deleting one of the sentences as they both convey the same message effectively.

Response
These comments are accepted and the Commission will take into consideration.

2.18 Comment
Section 11 (4) The Company recommended that the provision be split into two separate statements, with one addressing workforce remuneration and the other focusing on Board reward.

Response
These comments are not accepted. The provision is quite clear and need not be separated.

2.19 Comment

Section 14 (2) The clause could be made clearer by specifying whether it pertains to the review of the content of the Code of Ethics and Business Conduct policy or the attestation to its content by stakeholders.

Response

These comments are not accepted. Section 14 (1) clarifies that it is the contents of the Code of Ethics and Business Conduct that is being refereed to.

2.20 Comment

Section 14 (4) For consistency, reference to the Code of Ethics and Business Conduct should be consistently used in the document.

Response

These comments are accepted and the Commission will take into consideration.

2.21 Comment

Section 14 (5) The company advised rewording the sentence as follows: The Board shall ensure that the licensee is law-abiding, driven by a culture of compliance and ethics

Response

These comments are noted and will be taken into consideration

2.22 Comment

Section 26 (1, 3, 4 &5) The sections highlighted are repeated in sections 15.1, 15.5, 15.6, and 15.7 in the Guidelines.

Response

These comments are noted and will be taken into consideration

2.23 Comment

Section 28 (2) a, The company advised the deletion of section 28.2.a, as it does not connote an organizational goal of a licensee

Response

These comments are not accepted.
It spells out the goals and guidelines for an effective internal control system in the Licensee.

2.24 Comment

Section 28 (2) g (responsibility to seek professional advice) seeks to address a distinct best practice from the preamble, and as such we suggest it is presented as a standalone section preferably below section 28.1.

Response

These comments are noted and will be taken into consideration

2.25 Comment

Section 32 (1) They proposed an insertion into the paragraph to read as: The Board shall establish a dedicated Internal Audit function to strengthen the system of internal controls and internal assurance model.

Response

These comments are accepted and will be taken into consideration

2.26 Comment

Section 32 (4-7) Sections 32.4 to 32.7 appears to be subsections of 32.3 and should therefore be presented as such. That is, 32.3.a to 32.3.d.

Response

These comments are noted and will be taken into consideration.

3.0 ATC Nigerian Wireless Infrastructure Limited (ATC Nigeria)

3.1 Comment

Section 4 (Scope) The Guidelines is subject to a "Comply or Explain" approach which suggests that licensees are expected to comply or provide an explanation where they are not compliant. The Guidelines however also states that its provisions shall be mandatory for all individual licensees with appropriate sanctions provided for non-compliance. The "Comply or Explain approach suggests an opportunity for non-compliance which conflicts with the mandatory tone of the Guidelines. ATC Nigeria recommends the "Apply and Explain" approach be adopted to ensure consistency with the tone of the Guidelines. The "Apply and Explain" approach is also the approach adopted by the NCCG 2018

Response

The Commission's approach is consistent with the NCCG. The Guidelines will however be further reviewed for clarity.

3.2 Comment

Section 14 (Corporate Reputation) Repatriation of funds ensures that foreign investors successfully reap the dividend of their investment (particularly when the licensee has mainly foreign investors). Waiting for the approval of the NCC before funds are repatriated will lead to investor dissatisfaction and affect the smooth operation of the company. They respectfully suggest that the approval of the NCC be obtained where the repatriation involves a significant amount that might jeopardize the company's operations. They suggest that the repatriation threshold that would require the approval of NCC be fixed at 80%.

Response

These comments are noted. The Commission is currently reviewing capital and other ratios for its licensees and this will be taken into account in the further review of this provision.

3.3 Comment

Section 22(4) (Tenure and Re-election of Directors) This conflicts with the provision of the NCCG 2018. There is no provision in the Guidelines that suggested which will suffice in such cases. This creates room for confusion and misinterpretation; ATC Nigeria respectfully recommends the inclusion of a statement to clarify this.

Response

It has already been stated in the Scope of the Guidelines (Section 4(4)) that 'All Licensees are required to apply the principles of the NCCG 2018 as the minimum corporate governance benchmarks in the conduct of their operations…'

4.0 IHS (Nigeria) Limited

4.1 Comment

Part 1 (Introduction and background) – A case of multiple regulations. They request the Commission's intervention to negotiate a limited/ minimal application of the NCCG, in order to ensure that its licensees focus on compliance with the NCC code which is industry specific. This will not only remove the confusion in complying with two similar prescriptions but will enable licensees focus on the major business of providing telecommunications services.

Response

The Corporate Governance Guidelines is sector specific and applies to all Licensees in the Communications sector. Licensees are encouraged to adopt/apply the principles of the Guidelines. It is clearly stated in the NCCG that the implementation of the NCCG will be monitored through the sectoral Guidelines.

4.2 Comment

Section 7(7) Board Size, Composition and Structure. This is a restrictive provision and will discourage the setting up of telecom businesses. Prescriptions like this should not be made to apply to private companies which in many cases are established by family members.

The FRCN issued the NCCG in 2018 which is applicable to all sectors of the economy and which replaces all existing sectorial Codes of Corporate Governance in Nigeria. However, given the peculiarity of the Capital Markets, the Securities and Exchange Commission (SEC) also issued additional recommended practices, largely obtained from the 2011 SEC Code of Corporate Governance for Public Companies in Nigeria, as Guidelines. The reasoning behind this is that these Guidelines would add to the standards of transparency, accountability, and good corporate governance of listed Companies**.**

This provision in Section 7 (7) of the NCC Code is not in the NCCG, the Code which the Commission has relied on in drafting this NCC Code. It appears that the Commission may have borrowed them from a provision in the Security and Exchange Commission Code of Corporate Governance ("SEC Code") that is intended for publicly listed Companies. See Sections 7.1 & 7.2 of the SEC Code and Guideline 2, which refer to this scenario as "family and interlocking relationships and states as follows: "To safeguard the independence of the Board, not more than two members of the same family shall sit on the Board of a public Company at the same time".

They strongly advocate for the removal of this section as it will be counter-productive to the objectives of making the code.

Response

These comments are not accepted.

The purpose of the Guidelines is to entrench best practice, regardless of where they originate. Having not more than two members of the same family in the Board of the licensee will discourage conflict of interest issues.

4.3 Comment

Section 14 (15) Corporate Reputation Given the capital-intensive nature of the telecommunications industry and the enormous capital outlay required to invest in critical infrastructure, requiring the prior written approval of the Commission to obtain financing hampers the ease of doing business as it introduces a bottleneck to the financing process.

International lenders are commercial sophisticated institutions that have a regime for due diligence they conduct for lending decisions. Part of this exercise is a credit risk management assessment and takes into consideration the nature of the business of the borrower. Requiring regulatory approvals will create a bottleneck, bureaucracy and ultimately slow down business and adversely impact growth.

Response

The Commission is currently reviewing capital and other ratios for its licensees and this will be taken into account in the further review of this provision.

4.4 Comment

Section 14 (16) **Corporate Reputation – Funds Repatriation.** This provision has far-reaching implications and will only create bottlenecks and discourage investments, both local and foreign. Given that foreign shareholders and bondholders are entitled to receive dividends and interest respectively depending on the capital structure of the entities, the inability to timely meet interest repayments portends a negative connotation for the country especially as lenders would be reluctant to extend further credit to local borrowers and this eventually adversely impacts sovereign credit ratings. Requiring prior written approval of the Commission to repatriate funds is unduly restrictive and at variance with the policy position of the current government administration which has expressed the desire to attract foreign investments.

The Commission's position seems to contravene the **NIPC Act S.24**. on investment guarantees, transfer of capital, profits, and dividends, which empowers investors to repatriate funds.

They strongly object to this provision and requests that the provision be expunged from the code.

Response

The Commission is currently reviewing capital and other ratios for its licensees and this will be taken into account in the further review of this provision.

4.5 Comment

Section 21 (2) Multiple Directorships: This provision seems to suggest that the Commission intends that if a Director sits on the Board of an MNO, that Director can only sit on the Board of only one more licensee in another segment e.g. Internet Service Provider if they have common ownership.

This kind of limitation should be discouraged completely as it will stifle the sharing of Directors' expertise across various categories of licensees in the sector and in that regard slow down the maturity of the industry.

They respectfully object to this provision and request that it should be deleted.

Response

These comments are not accepted. The application of the principle will also discourage conflict of interest issues from arising in the Licensee's operations.

4.6 Comment

Section 22 (2-4) Tenure & Re-Election of Directors. The Companies and Allied Matters Act (CAMA) 2020 clearly provides for the appointment, removal, age limit and resignation of Directors. However, it does not prescribe a tenure limit. The NCCG, Sectoral Codes, and the respective Memorandum and Articles of Association and Board Charter provide guidance in this regard. Principle 7.2.9 of the NCCG recommends that the tenure of the Independent Non-Executive Directors (INEDs) should be limited to three terms of three years to enable periodic refreshing of the Board. The NCCG however leaves the issue of tenure limit for Executive and Non-Executive Directors to the discretion of the Board, depending on the peculiarities of the Company.

While there may be some merits in tenure limits for directors, the demerits far outweigh the merits, as follows: The cost of recruiting new directors is a major demerit, the process of identifying and appointing suitable replacements, and the onboarding process could be quite cumbersome. Beyond the cost, recruiting a director with the right fit can be time-consuming. A reasonable length of service on the board would confer on the Directors a deeper understanding of the company's business which will position them to contribute more effectively to the discussions and the opportunity to set out long-term strategic goals. Typically, new Directors require at least three years to acquire sufficient company-specific knowledge.

These undue restrictions on the ability of directors to run companies that in certain cases they have created and which they have successfully managed

constitutes a taking of sorts and is also antithetical to commercial inspiration and corporate growth.

IHS opine that this provision should be deleted from the code.

Response
The provision of term limits is not unique to the draft Guidelines. The restriction is now standard in several sectoral Codes as noted by IHS, and the Commission is minded to sustain this in the overall interest of the telecoms industry.

Regarding 22(4) NCC considers the five years as appropriate.

5.0 Kenna Partners

5.1 Comment

Section 9 - Board Appointment Process. Kenna Partners observed that unlike the 2016 Guidelines, the Draft Guidelines did not provide a template with the minimum requirements of the items to be contained in the compliance reports. The Firm humbly submits that a template or list of items to be contained in the compliance report be included to ensure that companies do not fall below the minimum standard of compliance.

Response
These comments are noted and will be taken into consideration. However, it is noted that a Reporting Form is annexed to the Guidelines which provide details expected in compliance reports.

5.2 Comment

Section 3(1) The Draft Guidelines is silent on the definition of "related party transactions". A proposed definition of a related party transaction is any transaction, deal or arrangement made between two licensees who are joined by a pre-existing business relationship or common interest. It also includes a transaction between parties within the same group, and parties with a link of direct or indirect control, including control over the board of directors of a licensee"

Response
These comments are noted and will be taken into consideration.

5.3 Comment

Section 3(2) - Inclusion of a Clear Provision on Cross Directorship.

The Draft Guidelines is silent on Cross-Directorship which they believe is an important issue that could undermine the independence of Directors on their respective Boards.

Kenna Partners recommends that Non-Executive Directors (NEDs) (particularly Independent Non-Executive Directors) should not be in a Cross-Directorship relationship with Executive Directors (EDs). This is because NEDs are usually in a position to make decisions that directly affect EDs, and where such Cross Directorship is not curtailed, this may affect the independence and objectivity of the respective Boards in the administration of the Company

The clause on Cross Directorship should be drafted thus; Section.3.2.4. - ***Interpretation section: "Cross-directorships" for the purposes of these Guidelines, refers to where two or more Directors of a Company serve on the same Board of another Company***. Meaning, the Executive Director in Company A is an (Independent) Non-Executive Director in Company B, and the Independent Director in Company A is an Executive Director in Company B.

Cross-Directorship is prohibited to uphold the Independence of Directors. This provision applies to all Directorship positions held prior to the commencement of these Guidelines

Response

These comments are noted and will be taken into consideration.

5.4 Comment

Section 3.3 - Limitation of the Tenure of Auditors. The Guidelines is silent on the limitation of the tenure of Auditors.

Section 3.3.2. Accordingly, Kenna Partners recommended that the Guidelines should adopt Section 5.2.12 of the CBN's Guidelines on Corporate Governance that provides that the tenure of auditors shall be for a maximum period of ten (10) cumulative years after which the audit firm shall not be reappointed in the establishment until a cooling-off after a period of another ten (10) years.

Response

These comments are noted and will be taken into consideration. .

6.0 Airtel Networks Limited

6.1 Comment

Section 5 (3) Sanctions for Non-Compliance. Airtel recommended that the Commission should apply other measures/penalties, such as denial of regulatory services, to compel a recalcitrant licensee to comply with the Code, instead of resorting to suspension and revocation of a license, which could have ripple effect on the industry. Revocation of license is a punitive measure which is too high a punishment.

Response

This is noted and the provision will be reviewed in accordance with the Enforcement Processes (etc) Regulations, 2019.

6.2 Comment

Board Committees: Section 8 (3) Airtel recommends the modification of this section by reducing the Board Committees to two, namely: a) Audit and Risk Management Committee; and b) Governance, Remuneration and Nomination Committee

Besides, there is mention of a Risk Committee, a Nominations Committee, a Governance Committee, and an Audit Committee as all mandatory committees. The Guideline needs to clearly outline the mandatory committees and the optional committees. The provisions as presently drafted is confusing and needs to be simplified.

Response

These comments are noted and will be taken into consideration.

6.3 Comment

Corporate Reputation- Section 14(15) Whilst Airtel subscribes to the institution of codes and ethics to ensure good corporate governance and in turn good reputation for licensees and the industry at large, it is recommended that the highlighted Guidelines be deleted due to the following:

•**Section 14(15)** – This could be misconstrued as micro-management of licensees which could constitute another layer of bureaucracy affecting the chances of an operator obtaining credit facility for the sustenance of its operations.

•**Section 14(16)** - This is in contravention of Section 15(4) of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act Chapter F34, 1995

which guarantees unrestrictive transferability of returns from Foreign Direct Investment. It is also at variance with the Federal Government's policy guaranteeing 100% repatriation of profit from investments in the country. This pre-approval requirement from the Regulator to repatriate more than 30% of net profit could discourage Foreign Direct Investment (FDI) to the industry.

Response
The Commission is currently reviewing capital and other ratios for its licensees and this will be taken into account in the further review of this provision.

6.4 Comment
Duty to Submit Compliance Report- Section 37(4)
Since the Board Chairman and Secretary are required to sign the Compliance Report, it is not necessary for the Board to certify the integrity of the Report prior to submission to the Commission. Airtel opined that the Commission should therefore delete this section of the Guidelines.

Response
These comments are noted and will be taken into consideration.

6.5 Comment
Governance Committee- Section 30 The duties of the Governance Committee outlined in Section 30 do not include any function relating to Nomination and Remuneration. Yet, the guideline had stated the Committee to be Governance, Nomination & Remuneration. Airtel recommends that this section should be expanded to include duties relating to Nomination & Remuneration**.**

Response
These comments are noted and will be taken into consideration.

6.6 Comment
Company Secretary. Section 6(1) (i) which mentions the appointment of the Company Secretary is repeated in **Section 23(1)**. Since **Section 23** is dedicated to the Company Secretary, the earlier Section 6(1) (i) should be deleted as it is superfluous.

Response
These comments are noted and will be taken into consideration.

7.0 GSMA

7.1 Comment

PART X. GSMA recommended that this section of the draft Guidelines be deleted in favour of maintaining any required reporting to what is already in Section 14(10) of the draft guidelines as well as existing reports already provided to the Commission by Licensees.

Response

These comments are not accepted. The Commission expects licensees to comply with all applicable report requirements.

8.0 MTN Nigeria

8.1 Comments

Section 4 The NCCG is based on apply and explain. Clarity on the "comply and explain" philosophy as adopted by the Commission will be needed as the NCCG principles are based on apply and explain.

Response

These comments are noted and will be taken into consideration.

8.2 Comments

Section 5 Sanctions for Non-Compliance. The inclusion of this provision is particularly onerous given that these are guidelines to be standards which organizations are to implement to best manage their operations.

The provision varies from Section 45 of the Nigerian Communications Act 2003.

MTN recommends that the Commission adopts a light touch approach towards implementing a compliance framework for corporate governance in the telecommunications sector.

Another alternative the Commission should adopt is to incentivize adoption of good Corporate Governance practices by implementing a performance-based rating that awards telecommunications operators who adhere with the prescriptive standard and where they are unable to, they must explain why and give reasonable time to remedy the breach under the oversight of the Commission.

Specifically:

MTN recommends that the Commission jettison this requirement or in the alternative adopt less stiff penalties;

- **Section 5(2**) The Commission needs to set specific timelines in this regard.
- **Section 5(3)** There needs to be an alignment of S.5 (2) and (3) for clarity and eliminate ambiguity.
- **Section 5(3)** The suspension of the non-compliant Licensee should follow laid down procedure for suspension of License

Response
These comments are noted and will be taken into consideration.

8.3 Comments
Section 8 Board Committees Section 8(6) the provisions of NCCG 2018 (S.11.1.5) only stipulates that each Committee should be composed of at least three members without the restriction regarding Committee membership.

It is recommended, that the Commission should revise the provision to reflect the provisions of the NCCG 2018 and jettison the limitation of only two committees.

Response
These comments are noted and will be taken into consideration.

8.4 Comments
Section 11 Remuneration. The Commission should provide clarity on the following;

- Whether there will be an actual request for remuneration review or
- Merely a summary of the collective amount paid as remuneration
- Does this anticipate that each director's remuneration will be reported separately.

In obtaining the Commission's clarification it is also recommended that the Commission should consider the security implication of reporting the remuneration of individual directors and the fact that the report will be published for listed companies.

Response
These comments are noted and will be taken into consideration.

8.5 Comments

Section 14 Corporate Reputation. Provision 14 (15) is onerous, given that the core service of telecommunications operators remains the provision of communication services.

MTN recommends:

- The Commission jettisoning this insertion or
- Settling a loan threshold in collaboration with telecommunications industry as an approved loan to equity ratio and state that there is none yet to be standardized or issued for the telecommunications sector given the capital-intensive nature of the industry
- That whenever loans exceed agreed thresholds, the same must be notified to the Commission without recourse to approval

Furthermore;

1. The understanding of provisions 14 (16), it is recommended that the Commission considers expunging this requirement in its entirety or in the alternative adopt a light touch approach towards operational matters which form the responsibility of the Board. Should the Commission require to retain oversight in this regard, then this requirement should be subject to notification to the Commission only without recourse for approval.
2. MTN recommends that the Commission jettison the requirement to conduct an annual review of the Code of ethics. The frequency of reviews concerning operational matters rests solely on the Board which has stipulated duties and responsibilities.
3. The change of sustainability and Corporate Social Responsibility report to 'Sustainability and ESG Report' is recommended considering that the overall objective of this insertion is to monitor the ESG goals of Licensees. The NGX requires ESG reporting requirements by September of the succeeding year and we urge the Commission to adopt the timeline.
4. The usage of renewable energy sources is laudable, this is an operational issue which should be left to the organizations to consider and implement as necessary. Consider expunging this section.

5. With respect to licenses settling interconnect debts, the insertion should be redrafted as "*the Board shall ensure that the licensee promptly settles all debts owed to the creditor networks as well as debts owed other operators in the industry*".
6. The following is also recommended:
    - **Section14 (2)** it is recommended that 'review' be submitted with 'attest'.
    - **Section 14 (10)** if the report is intended to cover the financial year end, sit should align with similar timelines that already exist for submission of Sustainability reports i.e. maximum 9 months after financial year end.
    - **Section 14 (15)** the Commission is required to clarify the objective of requiring licensees to seek approval for loans outside the loan equity ratio. The ratio is approved by the board and it should be so guided, if so, this would mean that licensees would also be expected to report to the NCC whenever the Board approves the gearing policy.

Response
These comments are noted and will be taken into consideration.

8.6 Comments
Section 20 Independent Directors. Please amend the title of the section to read "Independent Non-Executive Director (INED)".

Response
These comments are noted and will be taken into consideration.

8.7 Comments
Section 21 Multiple Directorships. Though the Commissions clarification on whether this applies to related companies regulated by the NCC will be appreciated, it is recommended that the number of companies be retained at 3 in the extant code.

Response
These comments are noted and will be taken into consideration.

8.8 Comments

Section 22 Tenure Re-election of Directors. It is recommended that the Commission retains the provisions as stated in the extant 2016 Code and invite the Commission to take note that the retirement of Directors by rotation may not apply eg. If directors are appointed for a 5 year tenure they might be due to retire by rotation during the period.

Section 22 (3) Clarify whether this refers to serving directors or future appointees. The Commission should adopt the introduction of a transition period in the guidelines to ensure that appropriate successors are on-boarded.

Section 22 (7) The removal of the bi-annual requirement is recommended as most Boards have continuous development polices and annual continuing education plans that specify the minimum and nature of development required. The Commission should remove the frequency limitation.

Response

These comments are noted and will be taken into consideration.

8.9 Comments

Section 25 Shareholders and Stakeholders. Section 25 (7) of CAMA. The Business Facilitation Act, 2023 has amended the provision of Section 20 CAMA and provides that a company may hold its General Meeting electronically provided that such meetings are conducted in accordance with articles of the company. The commission should revise the proposed insertion in line with external instruments.

Response

These comments are noted and will be taken into consideration.

8.10 Comments

Section 28 Internal Controls. Section. 28 (2) (g) The Boards role is to ensure the phrase in line with Board approved procedure should be included at the end of the sentence.

Response

These comments are noted and will be taken into consideration.

8.11 Comments

Section 29 Whistle blowing policy and mechanisms.

Section 29(5) The Commission's clarification is needed regarding the applicability of the rewards envisaged in this provision and mechanisms policy.

Section 29(6) The Board's role is to ensure that whistleblowers who do so in good faith are protected. The Board has a concurrent obligation to ensure that the whistleblowing is not done in a manner that amounts to vendetta or witch hunt.

Section 29 (7). Should not be limited to Chairman and CEO. All Directors have a fiduciary duty to the company and should raise concerns through the appropriate reporting channels.

Response

These comments are noted and will be taken into consideration.

8.12 Comments

Section 31 (1) It is recommended that this should read, 'Statutory Audit Committee'.

Section 31 (3) It is recommended that the Chairman's attendance of Audit Committee meetings be limited to where his attendance is required on a certain matter.

Response

These comments are noted and will be taken into consideration.

8.13 Comments

Section 37 Compliance Report. Our review of the Guidelines provides that the Commission expects telecommunications operators to provide the following reports to it during the year:

- Annual Compliance report to be submitted on January with an attachment of the external consultant's evaluation report.
- Midyear report to be submitted on July 3/5.
- Sustainability and Corporate Social Responsibility Report to the Commission at the end of every financial year which shall detail the environment, Social and governance goals of the licensee and the steps being taken to achieve them at the end of every financial year.

It is recommended that the Commission maintains the annual reporting requirement and streamlines all reports to feature in one singular report.

MTN recommends that the Commission review the reporting requirement to 'one report' submitted annually that encompasses all reporting requirements. It is also recommended that the Commission's clarity suffice for evidence of 'certification of integrity'.

Response
These comments are noted and will be taken into consideration.

8.14 Comments
Section 39 Interpretation. Definition of Code should be corrected to read 'Nigerian Code of Corporate Governance, 2018'.

Definition of Chairman should be amended to read, 'a Non-Executive Director and Chairs the Board'.

Response
These comments are noted and will be taken into consideration.

C. REVIEW OF COMMENTS RECEIVED AT THE PUBLIC INQUIRY

1. Stakeholder

1.1 Comment
On the issue of the number of members of the same family being on the same Board, more clarity is needed on whether this rule applies to the nuclear and/or the extended family.

Response
The Commission noted the comment.

2. IHS

2.1 Comment
The Telecom Sector is at best when it is driven by investments, the limit on the repatriation of funds will discourage investors from investing in the Nigerian Telecom Sector. Lastly, a minimum application of the NCCG should be employed in the Telecoms Sector. Obligations being placed on

the companies should not be too burdensome to the extent that it would hinder expansion.

Response
The Commission noted the comment.

3. MTN Nigeria Communications Plc

3.1 Comment

MTN sought for clarity on the relationship between the existing Code and the New Code, specifically concerning the effectiveness of the old code and the gaps the new rules intend to cover that the old rule did not.

Response
The Commission noted the comment.

4. ECSM

4.1 Response

The Commission acts according to the sectoral rule accorded to it as it concerns the Code. Rather than disincentivize investors the Commission seeks to boost investment through the promotion of an investor-friendly environment and a seamless process. The current stance of the Commission is in consonance with that of the current Government on the "ease of doing business" to attract investors by creating a seamless process. However, he assured investors that their comments were duly noted and would be duly considered.

5. ECTS

5.1 Response

The EC(TS) in line with the position of the ECSM further reassured investors that the Commission is committed to creating an investor friendly climate that would not only be attractive to investors but will also develop a glitch free process of doing business in accordance with the Governments "ease of doing business" goal.

D GENERAL COMMENTS

Ms. Franklin Felix (Manager, Public Affairs Department) thanked everyone for coming and noted that the session was very informative. She stated that all the issues raised will be considered and consolidated to benefit the Telecommunications Industry.

The Public Inquiry ended at 2:00pm.

Dated this 26th day of July, 2023

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