

Guidelines on Procedure for Granting Approval to Disconnect Telecommunications Operators

Nigerian Communications Commission

Part I: General

1. Introduction

(1) The Nigerian Communications Commission (the Commission) has been given powers under the Nigerian Communications Act 2003 (the Act) to, inter-alia

- (a) Grant approvals for applications made under any circumstance to disconnect or discontinue interconnection with a licensee
- (b) Make and publish guidelines on any matter for the due administration of provisions of the Act.

(2) These Guidelines are developed to ensure that the procedure for granting approval by the Commission of the disconnection or discontinuance of interconnection to a licensee is founded on a predetermined framework to engender transparency, certainty and fairness.

(3) The Commission believes that tariffs do not in whole represent the revenue accruable to an operator. Consequently, an operator shall upon receipt of such tariffs ensure that it deducts and sets aside the interconnection fees payable to its interconnect partners, and effect payment thereof in accordance with the terms of duly executed interconnection agreements.

2. Guiding Principles

(1) The Commission shall not consider any disconnection request except:

- (a) There is a subsisting interconnect agreement between both parties duly filed with the Commission
- (b) Both parties directly or through an interconnect clearing house have billing systems that can capture and produce Call Detail Records (CDRs) or an operator has opted to rely on the billing system of the interconnecting party
- (c) Where an operator does not have an accurate billing system, such an operator will be bound by the Call Detail Record of its interconnected partner.

(2) The Commission shall in granting approval for the disconnection of an operator be guided by the need to ensure that the interest of consumers is protected, and to this end:

- (a) The Commission would at all times only allow the disconnection of out-bound calls from a debtor operator's network
- (b) Disconnection, where it is approved in the first instance, would be effected by a gradual reduction in the number of interconnection circuits available to a debtor operator.

(2) Other relevant issues to guide the decision of the Commission shall include the public interest in observing the rule of law and the need to entrench good corporate governance practices among operators.

3. Request for Approval to Disconnect

(1) Every operator (hereinafter referred to as "Applicant") has a right to apply to the Commission for approval to disconnect an interconnected operator (hereinafter referred to as "Respondent") for any of the following reasons. Where:

- (a) There is a failure or refusal to settle interconnection indebtedness;
- (b) An interconnection agreement has been terminated in accordance with the terms thereof;
- (c) There is a fundamental breach of interconnection agreement;
- (d) The respondent is engaged in acts contrary to the terms of its license as may be determined by the NCC.
- (e) For any other reasons established under the Act or any subsidiary legislation made by the Commission.

(2) Applications for approval to disconnect an operator on the grounds of failure or refusal to settle interconnect indebtedness should at all times contain information on the following issues

- (a) Amount of indebtedness
- (b) Efforts made at recovery
- (c) Evidence of reconciliation of accounts
- (d) Proof of submission to the Commission of the interconnection agreement between the parties

(3) The information to be provided to the Commission under sub-paragraph (2) (a – d) above would however not be required where the request for disconnection is made for reasons other than failure or refusal to settle interconnect indebtedness.

(4) In every request for approval to disconnect made under Paragraph 3 (1) (a – e) above, the Commission shall within three (3) days of receipt of the request, forward the request to the respondent requiring such operator's comments and/or reasons why approval should not be granted for the disconnection.

(5) For record purposes a copy of the letter from the Commission to the operator to be disconnected shall also be communicated to the requesting operator.

(6) The comments and/or reasons which the Commission shall take into consideration in determining whether or not approval should be granted shall be forwarded to the Commission not later than seven (7) days from the date of receipt of the letter from the Commission.

(7) Failure of the respondent to make a written response to the request for disconnection in line with paragraph 6, shall be taken as an indication that it has no response and the Commission may take a decision based on the submissions of the requesting operator.

(8) The Commission shall within three (3) days of receipt any response from the respondent forward such response to the applicant for comments which comments should be submitted to the Commission not later than seven (7) days from the date of receipt of the letter from the Commission.

(9) Without prejudice to provision of Article 3, 4, 5, 6, & 7 the Commission may at any time opt to invite the parties to a hearing meeting on the application.

4. Additional Information from the Requesting Operator

(1) Notwithstanding the specific provisions of Paragraph 3 hereof, nothing in these guidelines shall preclude the Commission from requesting for any additional information which it may require in considering an application for consent to disconnect an operator.

5. Conditions for the Grant of Approval to Disconnect for Indebtedness

(1) In considering a request for approval to disconnect an operator for interconnection indebtedness, the Commission would as a condition precedent determine whether the applicant had prior to the request for approval to disconnect exchanged Call Detail Records (CDRs) with the respondent on

demand and whether such CDRs had been reconciled and the outstanding amount agreed by both operators.

- (2) The duration of the indebtedness must not be less than ninety (90) days
- (3) In event that the respondent has had a proven record of not meeting debt obligation the duration allowed for indebtedness may be reduced to 45 days.
- (4) In addition, the decision of the Commission on a request for approval shall be guided by the following considerations:
 - (a) The total amount of indebtedness relative to the annual turn-over of the respondent.
 - (b) Previous payment record of the respondent
 - (c) The antecedents of the respondent vis-à-vis payment of interconnection indebtedness to its interconnecting parties.
 - (d) The size of the network of the respondent as reflected by the volume of traffic being generated.
- (5) For purposes connected with the determination of the total amount of indebtedness owed by parties, where an operator fails to exchange reliable CDRs after fifteen (15) days of the demand thereof, the CDRs of the other interconnecting party shall be deemed as the proper and correct records of indebtedness of the parties.
- (6) The decision of the Commission in sub-paragraph (4) above deeming the CDRs of one interconnecting party as the correct record of indebtedness between two parties shall be communicated to the parties.

Part II: Decisions of the Commission

6. Time for Taking Decisions

- (1) Without prejudice to the provisions of Paragraph 7 and 8 of these Guidelines and except for reason of cogent supervening circumstances (which shall be duly communicated to parties), a decision by the Commission either granting or refusing a request for approval to disconnect shall be taken within fifteen (15) days of the receipt of comments or hearing required under Paragraph 3(9) hereof.

(2) The decision of the Commission shall be duly communicated to the concerned parties.

7. Execution of Undertaking

(1) Where a determination is made that a debt is due upon the effluxion of the ninety (90) days time period, the Commission shall invite the respondent to a meeting.

(2) Where at such a meeting a respondent shows demonstrable efforts by the payment of at least 50% of the indebtedness, the respondent would be required to sign an undertaking on terms acceptable to the requesting operator.

(3) Refusal to execute an undertaking or non-compliance with the terms of an undertaking will result in the grant of approval to disconnect the respondent.

8. Pre-Disconnection Notice

(1) If the indebtedness or a part thereof remains unpaid for a period not exceeding fifteen (15) days after the date agreed for payment in the undertaking/agreement, the Commission shall publish a notice to the subscribers of the debtor operator informing them that the operator is unable to pay its indebtedness and is likely to be disconnected from the network of the applicant.

(2) The Pre-Disconnection Notice to subscribers required under the subparagraph (1) hereof shall also be issued in circumstances where no undertaking/agreement is executed and where a respondent is to be disconnected for reasons other than non-settlement of interconnection indebtedness.

(3) Upon the issuance of such notification, the Commission shall at its discretion allow a grace period not exceeding twenty - one (21) days within which desiring subscribers would be at liberty to make arrangements to migrate from the operator's network to another network.

9. Notice to Parties

(1) The Commission shall not publish any notice to subscribers pursuant to paragraph 8 above, unless prior notice of the approval to disconnect has been given to both the applicant and the respondent to be disconnected.

(2) In every case where notice is given to a debtor operator, such notice shall include a directive to settle any indebtedness within seven (7) days from the date

of receipt of the letter failing which notice of the disconnection shall be published to subscribers of the debtor operator.

10. Partial Disconnection

(1) Where a determination is made on the merits that a request for approval to disconnect should be granted, the Commission hereby reserves the right to authorize an applicant to partially disconnect the respondent on terms to be decided by the Commission. For purpose of these Guidelines, Partial Disconnection shall be limited to the disconnection of only outbound calls from the network of the respondent

11. Disconnection

(1) Where the discretionary power to approve partial disconnection is not exercised, the Commission shall grant approval for disconnection upon due consideration of the application for approval to disconnect, response comments by the respondent and any further representation made to the Commission.

(2) In any event where approval for partial disconnection is granted, if the Commission is not satisfied with the remedial efforts made by the respondent subsequent to the approval, the Commission may subject to Paragraph 2 (1) above, grant approval for total disconnection of the respondent.

12. Definition

(1) In these Guidelines, unless the context otherwise requires, all terms shall have the same meaning as under the Nigerian Communications Act 2003.

(2) For specific purposes of these Guidelines;

“Disconnection” means not only the mere absence of physical connection between operators previously interconnected, but also the reduction of bandwidth in both direction; parity bit marking to deny access or flow; allowing only uni-directional flow as against bi-directional flow and the general restriction of traffic however called.

“Applicant” Means an operator bringing an application for disconnection

“Respondent” Means an operator against whom an application for disconnection is made.

“Application” Means the documentation of a request for approval for disconnection.