

**NIGERIAN COMMUNICATIONS ACT  
NO.19 OF 2003**

**ANNUAL OPERATING LEVY  
REGULATIONS, 2012**

## **ARRANGEMENT OF REGULATIONS**

### **REGULATIONS**

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**NIGERIAN COMMUNICATIONS ACT**  
**(No. 19 of 2003)**

**ANNUAL OPERATING LEVY REGULATIONS, 2012**

( ) Commencement

In exercise of the powers conferred upon it by Section 70 of the Nigerian Communications Act 2003 and all other enabling powers in that behalf, the Commission hereby makes the following Regulations:

**Chapter I – Scope and Introductory Provisions**

1. –(1) With effect from the Commencement Date hereof, these Regulations shall apply for the administration by the Commission of Annual Operating Levy regime, subject in all respects to the provisions of the Act.

Scope,  
Application and  
Licence  
Conditions

(2) Pursuant to these Regulations and the Act and except as otherwise stipulated hereafter, Annual Operating Levy shall be payable by all holders of Individual Licences issued by the Commission from time to time. Provided however that the Commission may at any time, upon due and prior publication, expand the scope of application to include Class Licensees upon such terms and subject to such conditions as the Commission shall specify.

(3) These Regulations shall complement the Act and the Licences issued by the Commission and shall serve to clarify any ambiguity or uncertainty in the provisions of the Licences in respect of Annual Operating Levy and ancillary levies provided that where the provisions of these Regulations conflict with the conditions of any Licence, the provisions of these Regulations shall prevail and subsist to the extent of the conflict and/or inconsistency.

2. The primary objective of these Regulations is to create and provide a regulatory framework for the effective and efficient administration by the Commission of the Annual Operating Levy regime and all matters related thereto and for that purpose and without detracting from the generality of

Objectives

the foregoing, specifically to –

- (a) Stipulate the mode and methods of assessment of Annual Operating Levy and the payment modes thereof;
- (b) Specify guiding standards and principles for the administration by the Commission of the Annual Operating Levies regime; and
- (c) Where necessary, stipulate penalties for non-compliance with the provisions of these Regulations in addition, or in the alternative to any other penalties that may be contained in the Act or in any other subsidiary legislation pursuant to the Act.

## **Chapter II – Assessments and Payments for Annual Operating Levy**

3. –(1) Subject to and upon the terms of these Regulations,

- (a) Every Licensee that is a Network Operator shall pay to the Commission an Annual Operating Levy assessed at 2.5% (two and a half percent) of the Licensee’s Net Revenue for the relevant period being its Gross Revenue less its Interconnect Costs for the said period; and
- (b) Every Licensee that is a Non-Network Operator shall pay annually to the Commission an Annual Operating Levy assessed and calculated in the manner specified in Schedule 1 hereto.

(2) Where a Licensee defaults in the commencement of its commercial services as specified in its Licence, the Commission shall, without prejudice to any sanctions therefor as may be provided in the Act, Licence and/or Regulations, demand the payment of an Annual Operating Levy from the Licensee calculated from the Commercial Launch Date as stipulated in its Licence till whenever the Licensee actually commences the provision of its commercial services, payable annually and assessed each year at 10% (ten per cent) of the Licensee’s Licence fees.

Annual Operating  
Levies and  
Assessment Rates

(3) The Commission may, from time to time, review, change and/or modify the assessment rates of the Annual Operating Levy stipulated in Sub-Regulations (1) and (2) and Schedule 1 hereof provided that such review shall be in conformity to the provisions of the Act and Licences and shall be published by the Commission prior to the commencement date of the revised rate(s).

4. -(1) The Annual Operating Levy payable by

Annual Operating  
Levy Payment  
Timelines

(a) Licensees listed in Part A of Schedule 3 to these Regulations shall be paid by such Licensees

(i) in respect of the first year of the Licence tenure, not later than ninety (90) days after the end of the said first year of the Licence; and

(ii) after the first year of the Licence tenure, quarterly in arrears and not later than thirty (30) days after the end of each calendar quarter;

(b) Licensees listed in Part B of Schedule 3 to these Regulations shall be paid by such Licensees annually within thirty (30) days of the respective Licensee's submission of its annual audited accounts to the Commission pursuant to Regulation 7 hereof and such payments shall be based on the self-assessment procedures stipulated in Regulation 5 hereof; and

(c) Licensees who are subject to the provisions of Regulation 3(2) of these Regulations shall make payment of the assessed Annual Operating Levy within thirty (30) days from the date of the invoice from the Commission therefor provided that the invoice shall be issued annually by the Commission at or soon after each anniversary date of the Licence.

(2) Subject to the further provisions of these Regulations, the

assessment of the Annual Operating Levy payable

- (a) By the Licensees listed in Part A in Schedule 3 to these Regulations
    - (i) in respect of the first year of the Licence shall be based on the audited financial statement of the Licensee, where available and where not available, on the management accounts of the Licensee for the relevant period; and
    - (ii) quarterly after the first year of the Licence tenure shall be based on the Licensee's quarterly management accounts for the relevant quarter;
  - (b) by the Licensees listed in Part B of Schedule 3 to these Regulations shall be based on the audited financial statements of the Licensees; and
  - (c) by the Network Operators pursuant to Regulation 3(2) of these Regulations shall be based on ten percent (10%) of the Licence Fee paid by the Licensee to the Commission upon the issuance of its Licence; and this fee shall be payable annually for as long as the Licensee remains non-operational.
- (3) Without prejudice to the preceding provisions of this Regulation, the Commission may from time to time specify and publish such additional accounting records, details and documentation on which basis the Annual Operating Levy may be assessed by Licensees and adherence to such publications shall be binding upon and mandatory by the Licensees with effect from such date as the Commission may specify in the publication.
  - (4) Without prejudice to the above provisions, any subsequent category of new licensing undertaking issued by the Commission to a Licensee, which is not listed in Schedule 3 to these Regulations shall require such new Licensee to pay Annual Operating levy in

accordance with the provisions of Regulations 4(1)(a) and 4(2)(a) except otherwise stated in the conditions of its Licence.

5. -(1) Based on the Licensee's financial records and documentation that are stipulated in Regulation 4 hereof, eligible Licensees that are subject to Regulation 3(1) of these Regulations shall self-assess the Annual Operating Levy payable by each of them using the standard self-assessment documentation that is contained in Schedule 2 hereof as may be modified and published by the Commission from time to time.

Annual Operating  
Levy Self-  
assessment by  
Licensees

(2) Based on the self-assessments specified in Sub-Regulation (1) hereof but subject in all respects to the provisions of Regulation 9 of these Regulations, eligible Licensees shall pay their Annual Operating Levies within the timelines stipulated in Regulation 4(1) hereof.

(3) The Annual Operating Levy self-assessment and payment documentation of each eligible Licensee for each payment period, made up of but not limited to the accounting records and documentation, the standard self-assessment documentation and the evidence of payment, shall all be compiled and forwarded to the Commission by the Licensee not later than 7 (seven) days after each payment date.

### **Chapter III – Accounting Returns And Standards**

7. -(1) Without derogating from specific relevant Licence Conditions, The Licensee must maintain accounting records of its business. The accounting records must be with such detail and in such format that the:

Maintenance of  
Accounting  
Records by  
Licensees

- (a) activities of each of its licensed undertakings generally and the revenue generated therefrom are separately identifiable and attributable in its books; and

- (b) activities of its licensed undertakings generally and the revenue generated therefrom are separately identifiable and attributable in its book and distinguishable from the revenue generated from or related to any other business or other activities that the Licensee may be engaged in; and
- (c) deductions made in compliance with sanctions imposed on it by the Commission are expressly stated in full detail and separately identifiable.

(2) The Licensee’s accounting records must be sufficiently explicit and detailed to explain, identify and relate each transaction therein contained to each of the Licensee’s licensed undertakings.

8. –(1) Every Licensee must within 180 (one hundred and eighty) days from its Financial Year end submit, annually, to the Commission its audited accounts for the elapsed Financial Year including in such submissions, all such financial records and documentation as the Commission may specify from time to time and which shall assist the Commission to understand and appreciate the business and operations of the Licensee in the terms of Regulation 4 hereof.

Submission of  
Financial  
Statements to  
Commission by  
Licensees

(2) In particular and without derogating from the generality of subparagraph (1) hereof, each Licensee’s audited accounts must contain the Licensee’s accounting policies as well as detailed breakdown of the Licensee’s cost of sales and revenue in sufficient detail as the Commission may from time to time specify.

9. The audited Financial Statements of the Licensees shall conform to the SAS.25 accounting standards or such other accounting standards as may from time to time be prescribed and published by the Commission for the communications industry.

Accounting  
Standards for  
Communications  
Industry

10. –(1) Upon the receipt of the audited or unaudited Financial Statement of any Licensee, as applicable,

- (a) the Commission may exercise any of its powers under Chapter V of

Verification of  
Financial  
Statements,  
review by the  
Commission of  
Licensees’  
Annual



the Act for the purposes of verifying the accuracy of the Financial Statements and/or obtaining clarifications or additional information in regard thereto; and

Operating Levies' self-assessments, request for Additional Information, etc.

(b) in the case of audited Financial Statements, the Commission shall match and compare the information and details contained therein with the Licensee's unaudited Management Accounts for the relevant period in order to determine the accuracy of the Annual Operating Levy assessments paid by the Licensee for the said period.

(2) Pursuant to Sub-Regulation (1) hereof, where the audited Financial Statement of a Licensee shows, in the judgment of the Commission, that the Licensee had underpaid its Annual Operating Levy for the period covered by the said Financial Statement, the Commission shall

(a) communicate in writing the fact of the incorrect assessment to the Licensee detailing in such communication the specific errors contained or inherent in the Licensee's self-assessment(s); and

(b) accompany the written communication in sub-paragraph (a) hereof with an invoice to the Licensee indicating the accurate assessment of the Annual Operating Levy payable by the Licensee for the period covered by the Licensee's audited account or such other relevant period and the outstanding amount that is due and payable by the Licensee in respect of such period.

(3) Pursuant to Sub-Regulation (2) hereof, the Licensee shall pay such re-assessed Annual Operating Levy as the Commission shall specify within and not later than thirty (30) days from the date of the written communication specified in the said sub-paragraph (3) hereof.

#### **Chapter IV – Sanctions and Penalties**

11. –(1) Save for the further provisions hereafter, non-compliance with the requirements of these Regulations including but not limited to delays

Sanctions and Penalties

in payments, non-submission of required information to the Commission and/or submission of false or misleading information to the Commission shall attract the sanctions and penalties specified in the Act and Regulations, notably the Enforcement Regulations.

(2) The failure by a Licensee to submit its audited Financial Statements to the Commission within the period specified in these Regulations shall attract a general administrative fine of N3,000,000.00 and a further daily fine of N300,000.00 payable for as long as the contravention persists and calculated from the date following the due date for the submission of the audited Financial Statements.

(3) The failure by a Licensee to pay its Annual Operating Levy as at when due shall attract a general administrative fine of N5,000,000.00 in addition to the daily fines stipulated in Regulation 12 and Schedule 2(B) of the Enforcement Regulations.

(4) The general provisions of the Act and Enforcement Regulations shall apply in all respects for the enforcement of the sanctions and penalties pursuant to these Regulations.

#### **Chapter IV – Definitions and Short Title**

12. –(1) In these Regulations –

Definitions

“**Act**” means Nigerian Communications Act, 2003.

“**Annual Operating Levy**” means the levy that is payable by eligible Licensees pursuant to this Regulations and the Licences.

“**Commercial Launch Date**” means the deadline specified in a Licence for the commencement of commercial services provision by the Licensee.

“**Enforcement Regulations**” means the Nigerian Communications (Enforcement Processes etc.) Regulations 2005 issued and published by the Commission.

**“Financial Statement”** means and includes (a) Disclosure of Accounting Policies; (b) Balance Sheet; (c) Profit and Loss Accounts; (d) Statement of Cash Flow; (e) Historical Financial Summary, (f) Directors’ Report; (g) Notes to the accounts; which must include the breakdown of Turnover and Cost of Sales; and (h) such other documents and materials as the Commission may specify and publish from time to time and/or is contained in the Licences.

**“Gross Revenue”** means the Licensee’s total amount of sales recorded during the relevant period.

**“Interconnect Cost”** means the costs incurred, payment made (or invoices payable) by the Licensee for the settlement of interconnection obligations to interconnecting partners during the relevant period.

**“Licence”** means any Licence that has been granted by the Commission pursuant to the Act and includes subsisting Licences that were granted by the Commission prior to the commencement date of the Act.

**“Licensee”** is as defined in the Act and includes Network Operators and Non-Network Operators.

**“Net Revenue”** means the Licensee’s Gross Revenue less its Interconnect Cost for the relevant period.

**“Network Operator”** means any Licensee who owns and operates a communications network including in particular Network Facilities Provider and Network Services Provider as defined in the Act.

**“Non-Network Operator”** means any Licensee who is a value added service provider and relies on the Network Operators to provide its value added services

**“Regulations”** means any Regulations or Guidelines that have been published by the Commission pursuant to the Act.

(2) Unless otherwise defined in these Regulations, the terms and Short Title expressions used in these Regulations shall have the same meanings and intendments as defined in the Act.

12. These Regulations may be cited as the Annual Operating Levy Regulations, 2012.

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**SCHEDULE 1**

**NON-NETWORK OPERATORS  
ANNUAL OPERATING LEVIES**

Every Non-Network Operator shall pay Annual Operating Levy annually to the Commission based on their Annual Gross Revenue as indicated in the following graduated or cascaded Table:

<b>No.</b>	<b>Licensee's Gross Revenue</b>	<b>Annual Operating Levy Payable by Licensee (Naira)</b>
1.	Below ₦10 million	No charge
2.	₦10 million to ₦49.99 million	₦0.1 million
3.	₦50 million to ₦249.99 million	₦0.5 million
4.	₦250 million to ₦499.99 million	₦2 million
5.	₦500 million to ₦749.99 million	₦5 million
6.	₦750 million to ₦999.99 million	₦7.5 million
7.	₦1 billion and above	₦10 million

**SCHEDULE 2**

**ANNUAL LEVY SELF-ASSESSMENT FORM**

- 1. **Category of Licence**
- 2. **Name of Company:**
- 3. **Address:**
- 4. **Year of Assessment:**
- 5. **Year-End:**
- 6. **Basis of Assessment:**

(a) Audited Account  (b) Management Account  (c) other Financial Projections

**7. Computation of Annual Operating Levy (AOL)**

<b>Year</b> <b>₦</b>	<b>Gross Revenue</b> <b>₦</b>	<b>Interconnect Cost</b> <b>₦</b>	<b>Net Revenue</b> <b>₦</b>	<b>2.5% Payable</b> <b>₦</b>
<b>Total</b>				

Signature \_\_\_\_\_  
Name of Representative:  
Date:

Signature \_\_\_\_\_  
Name of Officer:  
For: Nigerian Communications Commission  
Date:

### **SCHEDULE 3**

#### **PART A QUARTERLY PAYMENT OF ANNUAL OPERATING LEVY**

##### **NO. LICENCE**

1. National Carrier Licence
2. Unified Access Service Licence

#### **PART B ANNUAL PAYMENT OF ANNUAL OPERATING LEVY**

##### **NO. LICENCE**

1. Infrastructure Sharing and Collocation Services Licence
2. Digital Mobile Licence
3. Electronic Directory Information Services Licence
4. Fixed Wireless Access Licence
5. International Gateway Licence
6. Internet Exchange Licence
7. Metropolitan (Fibre) Network Licence
8. Global Mobile Personal Communicating System (GMPCS)
9. Interconnect Exchange Operator Licence
10. International Data Access Gateway Licence
11. International Gateway Licence
12. National Long Distance Licence
13. Prepaid Card Calling Services Licence
14. Public Mobile Communications Licence (Trunk Radio Services)
15. Public Mobile Communications Licence (Vehicular Tracking Services)
16. Installation of Terminal or Other Equipment
17. Sales and Installation of Terminal Equipment (Major & Satellite)
18. International Submarine Cable Infrastructure and Cable Landing Station Licence
19. Value Added Service Licence
20. Internet Service Provision Licence
21. Private Network Links Licence (LEO)
22. Private Network Links (Regional/National)
23. Private Network Links Employing Satellite(VSAT)