



## **REPORT OF THE PUBLIC INQUIRY ON THE FREQUENCY PRICING REGULATIONS (AS AMENDED)**

### **1.0. INTRODUCTION**

The Nigerian Communications Commission (the Commission) pursuant to its powers under Section 72 of the Nigerian Communications Act 2003 (the Act) commenced the process of reviewing the Frequency Spectrum (Fees and Pricing, etc) Regulations (Draft Regulations)

Based on the Commission's policy of participatory rule-making, the Draft Regulations 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. Airtel Networks Limited
2. MTN Nigeria Communications Limited
3. IHS Nigeria Limited
4. Smile Communications Limited
5. VDT Communications Limited
6. Huawei Limited

As required by Section 58 of the Act, a Public Inquiry on the Draft Regulations was scheduled for July 29, 2021 and a Notice of the Public Inquiry was published in Punch Newspapers and People's Daily Newspapers on Monday July 19, 2021.

### **2.0. THE PUBLIC INQUIRY**

The Public Inquiry held virtually as scheduled, commencing at 11:00am and was chaired by the Executive Vice Chairman, Professor Umar Garba Danbatta ***FNSE, FRAES, FAEng, FNIEEE***. The Chairman of the Commission's Board of Commissioners, Professor Adeolu Akande, also attended the Inquiry alongside Engr. Ubale Ahmed Maska, (the EC-TS), Mr Adeleke Adewolu, (the EC-SM), Alhaji Abdulazeez Salman, a Board Commissioner and Chairman of the Board Committee on Licensing. The Virtual Public Inquiry was attended by about One Hundred and Twenty (120) participants, including Staff of the Commission, and

representatives of telecommunications companies, as well as other interested stakeholders.

The Director Legal and Regulatory Services of the Commission, Ms. Josephine Amuwa, welcomed participants to the forum. In her opening address, she explained that the Inquiry is part of the rule-making process adopted by the Commission to ensure wide consultations in the development of frameworks for the telecommunications industry. She further stated that the Regulations being reviewed is vital to ensuring a fair and competitive market and also has an impact on balancing the fluid communications market in Nigeria.

The Executive Vice Chairman, Professor Umar Garba Danbatta outlined the importance of the Draft Regulations in maintaining a sustainable market structure through fair pricing of spectrum. The EVC also related the review to the current drive of the Commission, in conjunction with the Federal Government, to deploy ubiquitous and innovative services, through optimal utilisation of frequency spectrum. Subsequently, the EVC enjoined all participants to make their contributions freely and raise issues that will assist the Commission in developing and issuing a regulatory instrument that will continually contribute to the development of the industry and sustain its positive contributions to the Nation's economy.

The Assistant Director, Legal and Regulatory Services, Mrs. June Nezianya, gave an overview of the Draft Regulations, while Engr. Atiku Lawal, Assistant Director, Spectrum Administration presented the Commission's responses on the comments received from stakeholders prior to the Public Inquiry.

## **A. GENERAL OVERVIEW OF THE FREQUENCY SPECTRUM (FEES AND PRICING, ETC.) REGULATIONS**

The Frequency Spectrum (Fees and Pricing, etc.) Regulations is a vehicle that enables the Commission meets its sole and exclusive mandate in Section 121 of the Act by assigning this scarce national resource in an equitable manner. The purport of the review is to further ensure that frequency spectrum are assigned and managed in a way that ensures fair pricing and efficient deployment of attendant services.

## **B. REVIEW OF COMMENTS RECEIVED BEFORE THE PUBLIC INQUIRY**

### **Airtel Networks Limited**

#### **1.1. Comment**

Airtel noted that the Commission inadvertently omitted the eligibility criteria qualifying a licensee for instalment payments. Airtel requested the Commission to specify the eligibility criteria for transparency and proper guidance of the industry.

#### **Response**

Eligibility criteria is any existing Operator (Mobile/Fixed) with market share of less than 7.5% of the total number of subscribers in the voice market.

**1.2. Comment**

Airtel requested that the proposed modification to Regulation 10(2) of the Regulations should align with the provisions of the National Broadband Plan (2020-2025) (NNBP) wherein it was recommended that the payments of spectrum fees should be spread across the lifetime of the licence to ensure network roll out is not adversely impacted.

**Response**

The provision of the NNBP under reference presumes and proposes the payment plan for new entrants/new Licensees. However, the Commission will continue to determine the payment plan as applicable. Therefore, Airtel's recommendation is not acceptable.

**1.3. Comment**

Airtel noted that the Second and Third Schedules of the Regulations seeks to increase frequency fees by 400% without due consideration to the adverse impact such action would have on the industry. Airtel requested the Commission to retain the subsisting regime to support expedited deployment of 4G/5G technologies for the continued growth and development of a more robust digital economy.

**Response**

The pricing formula was set out in 2004 and the present calculation was based on Consumer Price Index.

**1.4. Comment**

The Commission, in line with Section PS-9 of the NNBP, was requested to enforce the "use it or lose it" regime to ensure optimal use of this finite national resource for the continued growth and development of the industry.

**Response**

The Commission already has a policy on 'use it, trade it or lose it'.

**1.5. Comment**

The Commission was requested to define band factor for all available bands in the Regulations for regulatory certainty.

**Response**

Comments are noted and will be considered.

**1.6. Comment**

Airtel recommended that in accordance with subsisting industry practice, the Regulations should be reviewed every four years, as opposed to the proposed annual

review. This will ensure regulatory certainty and support forecasting/planning by licensees.

### **Response**

The Commission plans to review the regulatory document annually and as appropriate to reflect the subsisting Consumer Price Index (CPI) which either lower, maintain or increase the market value of spectrum.

### **1.7. Comment**

The Commission is requested to specify eligibility criteria which will qualify small scale WLL operators to the reduction in spectrum fee, as was done in the Determination of Mobile (Voice) Termination Rate dated 1<sup>st</sup> June, 2018.

### **Response**

Eligibility criteria is any existing Operator (Mobile/Fixed) with market share of less than 7.5% of the total number of subscribers in the voice market.

## **1. MTN Nigeria Communications Plc.**

### **2.1 Comment**

MTN requires more clarity as to the amendments in Regulations 7 and 8 of the Regulations. The numbering of the sections omits Regulation 8. It also crosses out a provision on “administrative spectrum”, thus we are unsure as to the Commission’s intent in these sections as there is some inconsistency of previous section

### **Response**

#### **Section 8 not omitted**

*Notwithstanding the provisions of regulation 7 of these Regulations, the Commission may, from time to time—*

*(a) determine the duration, terms and conditions of any frequency spectrum licence under these Regulations;*

### **2.2 Comment**

Regulation 10 of the Draft Regulations should be reviewed as it is discriminatory against larger operators and will lead to an imbalance in competition. MTN recommended that asymmetric regulations should remain in realm of services regulations and should not be extended to resources required for the provision of telecommunications services as it creates unequal access to resources. Alternatively, MTN recommended that the Commission extends this to all licensees.

### **Response**

The section only helps to incentivize smaller Operators and the Commission does not believe that it will create any imbalance in competition. It is also open to all licensees with market share not more than 7.5%.

### **2.3 Comment**

In order to avert any ambiguity in the interpretation of Section 10(3), MTN opined that the Commission will need to specify clearly the process for renewal of access spectrum acquired through auction process.

### **Response**

The process for sale of each Frequency Spectrum specifies the terms and conditions relating to the Spectrum and the Commission intends to abide by this position.

### **2.4 Comment**

MTN is of the view that the addition of the phrase “*and other factors that may be determined by the Commission*” in Regulation 14(3) is discretionary and will lead to regulatory uncertainty. There is a need for regulatory certainty in this section to guide business and investment planning. Thus, MTN recommended that the Commission outline the factors clearly in the Regulations.

### **Response**

Comments noted.

### **2.5 Comment**

MTN opined that the suggested formula in Schedule 2 will result in the application of excessive prohibitive fees for spectrum which goes contrary to the policy direction of the NNBP. As such, MTN recommended that the Commission reviews the means of calculating CPI. MTN is of the opinion that calculation of CPI should be as follows:

$$Ul = (\text{Current year CPI} \times Bp)$$

MTN also opined that the Commission should define a process for administrative assignment which has been included as one of the objectives of the Regulations.

### **Response**

Comments are noted and will be considered. The Commission further notes that  $Yt = 1$  in the formula is insignificant in the actual outcome of the calculation.

## **2. VDT Communications Limited**

### **3.1 Comment**

Under Regulation 10(2), the clause “a licensee with not more than 7.5% of the revenue” is not clear because a percentage is a relative function of a base figure/amount which was not stated in the draft Regulations. Therefore, the clause

“a licensee with not more than 7.5% of the revenue” should be based on the revenue on gross profit threshold to distinguish the operators that Regulations 10(1) and 10(2) apply to.

### **Response**

The correct provision which is “*a licensee with not more than 7.5% of the market share,*” is clear enough.

### **3.2. Comment**

VDT observed that the unit price per MHz for each licensing region were increased by 400% and opined that there was no clear basis to arrive at the unit price per MHz. The Second Schedule to the Regulations should be reviewed to consider and reflect the market value which should be directly proportional to frequency spectrum size.

### **Response**

The Commission utilizes the Consumer Price Index (CPI) to derive the Spectrum Fees.

## **3. Smile Communications Nigeria Limited**

### **4.1. Comment**

Smile opined that Regulation 8 (a) should not stand alone, that it does not flow seamlessly from the reviewed Regulations. The reviewed Regulations should read – *Notwithstanding the provisions of Regulation 7 of these Regulations, the Commission may, from time to time, determine the duration, terms and conditions of any frequency spectrum licence under these Regulations*’.

Subsection (b) requires clarity as it does not flow from the construct in Regulation 7 or 8 of the Regulations.

Smile requested for clarity in this regard.

### **Response**

It was a typographical error, the correct provision is as follows:

*Notwithstanding the provisions of regulation 7 of these Regulations, the Commission may, from time to time—*

*(a) determine the duration, terms and conditions of any frequency spectrum licence under these Regulations;*

### **4.2 Comment**

Smile drew the Commission’s attention to Section PS-6 of the NNBP where it was stated that the payment of spectrum fees should be spread across the lifetime of the licence to ensure network roll out is not adversely impacted. Further to this, Smile

recommended that the Commission aligns with the tenets of the NNBP in the overall interest of the industry. Particularly as this would help operators a great deal in managing CAPEX and cost of sales and will guarantee investment in continued improvement of network infrastructure.

**Response**

The Section of the NNBP under reference presumes and proposes the payment plan for New entrants/New Licensees. However, the Commission will continue to determine the payment plan as applicable. Therefore, Smile's recommendation is not acceptable.

**4.3 Comment**

Smile noted that the Commission wishes to increase frequency fees by 303.34% without due consideration on the adverse impact it will have on Smaller Tier 2 operators (Smile inclusive) commitment to drive network rollout in specific unserved and underserved locations.

**Response**

The Commission utilizes a pricing regime that is based on the Consumer Price Index (CPI) to derive the Spectrum fees.

**4.4 Comment**

Smile requested that the Commission defines band factors for all available bands in the Regulations to ensure regulatory certainty.

**Response**

The Commission notes the comment on band factors for further review of the Spectrum Frequency (fees and pricing etc.) Regulations.

**4.5 Comment**

Smile recommended a five-year tenured review of the table in Part B of the Regulations as opposed to the proposed annual review. Smile opined that this will aid regulatory certainty and support sound business forecasting/planning.

**Response**

The Commission plans to review the regulatory document annually and as appropriate to reflect the subsisting Consumer Price Index (CPI) which either lowers, maintains or increases the market value of spectrum.

**4.6 Comment**

Smile recommended that the formula in the Third Schedule should be removed in the interest of ensuring affordable and ubiquitous 4G LTE coverage across the country. The current position for computing spectrum renewals in this regard should be maintained.

**Response**

The Commission does not accept the comment as the formula in the Regulations was well considered before adoption.

#### **4. Facebook**

##### **5.1. Comment**

Facebook suggested that the Commission consider the following, as it develops and implements its frequency spectrum trial licences:

- i. Technology testing and service trials involving members of the public should be permitted under a frequency spectrum trial licence.
- ii. Trial licence applications and processes should be simple and predictable, impose only a minimal set of necessary conditions for such testing and trialing, and be processed in a swift manner.
- iii. Trial licences should be for a duration of at least 12 months.
- iv. Licence fees for trials should be minimal and associated with administrative processing costs.
- v. The NCC should issue frequency spectrum licences for trials in bands under review for new frameworks and licensing, such as the 60 GHz band.

##### **Response**

The Commission is implementing a 3-month tenure for all form of trials and we believe it suffices to test any technology on a Non-commercial basis.

#### **5. Huawei**

##### **6.1 Comment**

Huawei noted that it seems unclear from the Regulations whether spectrum sold in an auction will carry a "frequency spectrum fee" according to these Regulations, in addition to the payment arising from the auction.

##### **Response**

All Spectrum slated for Auction shall be conducted in line with the Information Memorandum. However, the renewal fees of such Spectrum shall be determined by the content of these Regulations.

##### **6.2 Comment**

Regulation 12 provides that every operator that has spectrum assigned shall submit a usage report. Huawei requests that the Commission should clarify what must be included in this usage report.

##### **Response**

The template of the usage report is always included in the Spectrum Licence documents.

##### **6.3 Comment**



Regulation 14 (2) states that *"The price of a frequency spectrum shall be directly proportional to the size of the frequency spectrum assigned"*. Huawei noted that this may result in mmWave assignments being extremely expensive, in particular in the E-band. However, a review of the calculation of the fee for fixed links at the end of the schedule indicate that the BW is not a factor in the formula.

### **Response**

The band factor takes care of the concerns expressed here. The details of the licensing process for the E-band is in the **Licensing Framework for the Use of 70/80GHz Band**.

### **6.4 Comment**

Huawei stated that it is unclear if the spectrum fee is payable per annum or once in the duration of the licence. Huawei also noted that the unit price formula for the regional licences includes a factor,  $Y_t$ , which is the tenure of the licence so it would seem that the fee, as calculated with the formula, is payable once. It also appears that it is captured twice,  $Y_t$  and  $K_2$ . This does not make sense and penalises licences with longer durations.

### **Response**

The Commission hereby notes that  $Y_t = 1$  in the formula and therefore it is insignificant.

### **6.5 Comment**

Huawei stated hypothetically that for a 15 year C-band licence of 100 MHz in Lagos, the fee would be  $Fee = U_l \times B \times K_1 \times K_2$ , where  $U_l = B_p \times Y_t = 12.100.200$  Naira  $\times 15$  years = 181.503.000 Naira, and thus  $Fee = 181.503.000$  Naira  $\times 100$  MHz  $\times 1 \times 10,4 = 188.763.120.000$  Naira, which is approximately USD460M. Huawei added that this is high, in particular if the operator must also pay the outcome of the auction.

### **Response**

The Commission proposes to licence the Spectrum in the C-band through an Auction Process. Therefore, the Spectrum Fee as hypothetically expressed in above comment is not applicable.

### **6.6 Comment**

For fixed link licences, Huawei noted that the E-band does not appear in the Regulations.

### **Response**

Please refer to the **Licensing Framework for the Use of 70/80GHz Band** accessible in the Commission's website.

## **C. REVIEW OF COMMENTS RECEIVED AT THE PUBLIC INQUIRY**

### **1. GSMA**

#### **1.1 Comment**

GSMA recommended that the proposed amendments to the Pricing Formula in Schedule Two and Schedule Three be revised to bring the Frequency Spectrum (Fees and Pricing, Etc.) Regulations in line with Nigeria's policy objectives as enshrined in section PS-6 of the NNBP. The amendments do not lower the cost of Last-mile and backhaul spectrum, and do not factor in elements that will encourage rollout in specific unserved/underserved areas. This will also have an impact on the other affordability-related targets in the NNBP as it will increase the cost of providing broadband services and, as a consequence, adoption and penetration of broadband services in Nigeria will be adversely impacted.

#### **Response**

The Comment is noted.

## **D. GENERAL COMMENTS**

Dr. Mohammed Suleh-Yusuf, Senior Manager, Telecoms Laws and Regulations Unit thanked everyone for coming and stated that all comments submitted by stakeholders will be considered by the Commission before the draft regulatory instrument is finalised.

The Public Inquiry ended at about 1:25pm.

**Dated this 29<sup>th</sup> day of July 2021**

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