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Disconnection of Telecommunications Network in Nigeria: Balancing the Interest of the Service Provider and Consumers

Introduction

On Monday 8th of January 2024, the Nigerian Communications Commission (the "**Commission**") released a memo signed by its director of Public Affairs, Mr. Reuben Mouka, titled "Pre-Disconnection Notice".[1] The notice informs all subscribers of Globacom that the Commission has approved the partial disconnection of Globacom network from MTN.

The effect of this approval is that the subscribers of Globacom will no longer be able to make phone calls to MTN. Globacom subscribers will, however, be able to receive calls from MTN subscribers.

Interconnection of Telecommunication Networks

The interconnectivity of telecommunications networks makes it possible for subscribers of one network to connect to the subscribers of another network. This interconnectivity is facilitated by Section 96 of the Nigerian Communications Act 2003 which requires network service or facilities service providers to interconnect their communications network with another telecommunication service provider network upon request.

[1] Adeyemi Adepetun, 'MTN gets NCC's nod to disconnect Globacom from network' The Guardian https://guardian.ng/news/mtn-gets-nccs-nod-to-disconnect-globacom-from-network/ accessed January 9 2024.

The parties are required to enter into an Interconnectivity Agreement (the "**Agreement**") and register same with the Commission within 30 days of executing the Agreement.[2] The Commission may make recommendations to the parties where the Agreement is in the opinion of the Commission contrary to the Nigerian Communications Act 2003 or any other subsidiary legislation.

Disconnection of Telecommunications Networks

There are instances where a service or facility provider is permitted by law to discontinue the interconnection with the prior written approval of the Commission.[3]

The Guidelines on Procedures for Granting Approval to Disconnect Telecommunications Operators 2012 (the "Guidelines") sets out these instances as well as procedures for the disconnection of interconnection. The instances where a disconnection can be sought are listed under Paragraph 9 of the Guidelines. They include:

[2] Section 96 Nigerian Communications Act 2003
[3] Section 100 Nigerian Communications Act 2003.

a) The failure of the respondent to settle its interconnection debt after it has become due (as in the Globacom-MTN case).
b) The termination of an interconnection agreement following the terms of the interconnection agreement.
c) Where there is a fundamental breach of the Agreement.
d) Engagement of the service provider in an act contrary to its license with regard to interconnection.
e) Any other reason stated by the Commission or as stipulated in any subsidiary legislation.

Procedure Before Disconnection

Before the grant of the approval for disconnection, the service or facility provider must prove that it has exhausted all other applicable remedial options contained in the Agreement.[4] Upon the failure of these remedial options and the application to the Commission, the Commission is required to forward the same to the respondent within 3 (three) working days of receipt. It shall require the respondent within 5 (five) working days to state the reasons why the disconnection approval should not be granted.[5]

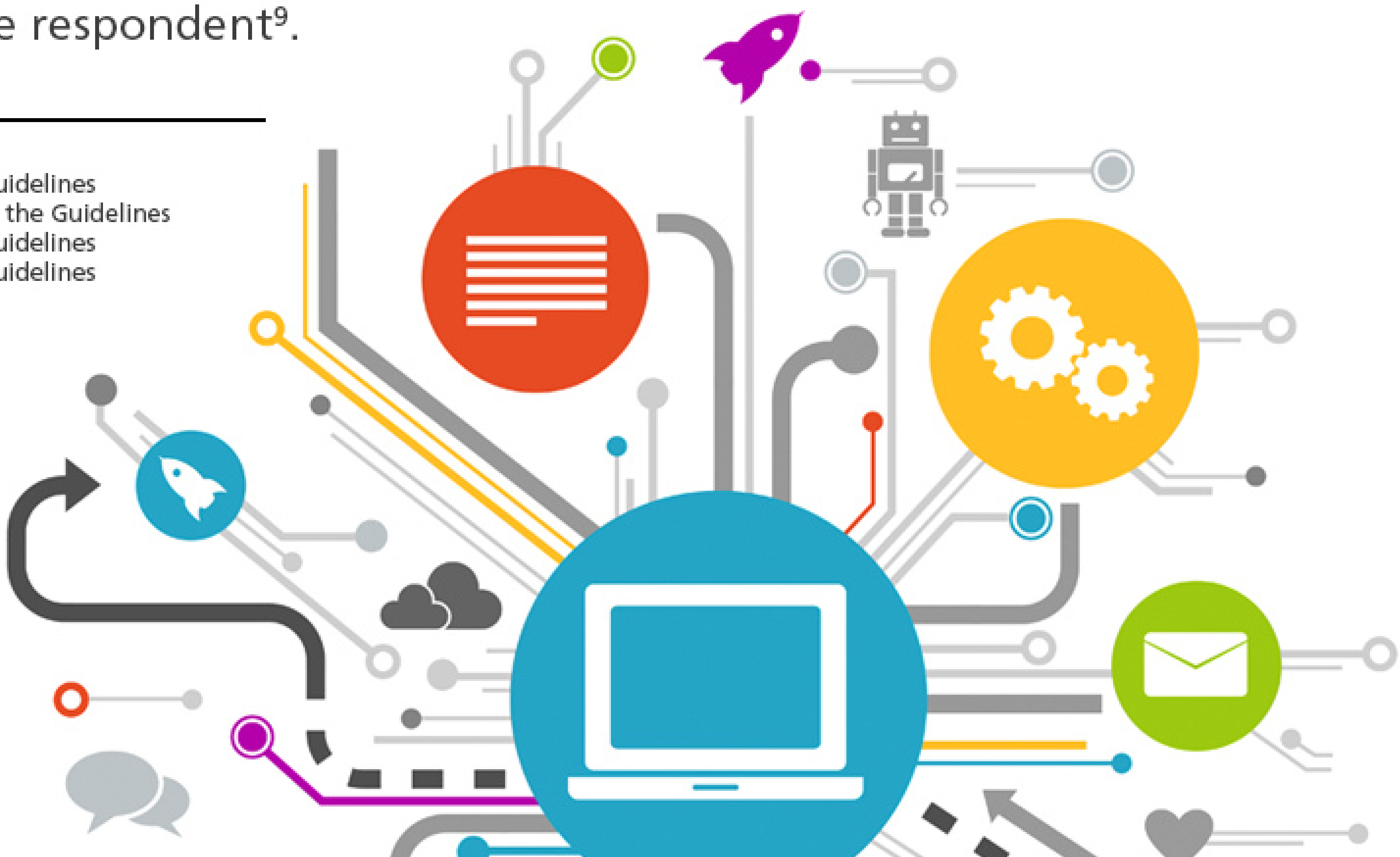
[4] Paragraph 2 (1) (c) of the Guidelines.
[5] Paragraph 3(4) of the Guidelines

The failure of the respondent may be deemed as having no defense and as such the Commission will base its decision on the applicant's submission.[6] If the respondent responds, the Commission shall consider its defense.

The Commission, in determining whether or not to approve must ensure that;

a) The applicant has paid in full the Commission's regulatory fees
b) The applicant exchanged Call Data Records (CDR) with the respondent leading to the charges.
c) The collated outstanding amount of the CDR is agreed upon by both operators.
d) The debt must have been outstanding for sixty calendar days.[7]
e) All payment invoices and documents such as payment records of the applicant and respondent, antecedents of the respondents, and payment of interconnection indebtedness to the interconnecting party must be duly considered by the commission.[8]

Upon the consideration of the application, if the Commission is satisfied to grant the application, it reserves the right to authorize the applicant to partially disconnect the respondent[9].



[6] Paragraph 3(6) of the Guidelines
[7] Paragraph 5(1) & 6(1) of the Guidelines
[8] Paragraph 5(4) of the Guidelines
[9] Paragraph 9(1) of the Guidelines

Only Outbound Calls Are Affected

According to the Guideline, the Commission shall only allow the disconnection of outbound calls from the respondent's network. Inbound calls will always be permitted. It is important to note that where there is a disconnection under the provisions of the Act and Guideline, reconnection can only occur upon the payment of all outstanding debts and the execution of a new Agreement by the two operators.[10]

Conclusion

Interconnectivity of mobile networks is essential for communications between Nigerians. Nigerians rely on telecommunications for their day-to-day business. However, the laws balance the interest of the public with the interest of the service or facility providers to ensure that the facility or service provider recovers its debts and that the public is always connected. The balance of the law between the service providers and the consumers applies in the narrow area where the Commission may only approve the disconnection of outbound calls, allowing inbound calls to continue to ensure that the public is connected.

[10] Paragraph 13(3) of the Guidelines