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**CONSUMER PROTECTION IN THE REGULATION OF
TELECOMMUNICATIONS SERVICES IN NIGERIA: NOT YET
“UHURU” FOR CONSUMERS***

Abstract

Following the opening up of the telecommunications sector of the Nigerian economy in 2002, telecommunications services became widely available in the country with the number of active telephone lines presently trying to equal the population of the country. Government has put in place a regulatory framework for the telecommunications industry. One of the purposes of regulation in this area is to ensure quality services in the interest of consumers. This article appraises the regulation of the telecommunications industry in Nigeria to ascertain the level of protection enjoyed by consumers. The finding is that a fairly adequate regulatory framework has been provided for the protection of the consumers of telecommunications services in the country but the level of enforcement and lack of awareness by consumers of their rights under the regulation greatly impede their full enjoyment of the protection.

Keywords: *Consumer Protection, Consumer Rights, Telecommunications Services in Nigeria, Rights of Consumers of Telecommunications Services*

1. INTRODUCTION

Statistics released recently by the International Telecommunications Union (ITU), shows that as at 2013 there were almost as many mobile-cellular subscriptions as people in the world. At the same time, mobile-cellular penetration rate stood at ninety-six percent

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globally with estimated 6.8 billion subscriptions.¹ Consumers International (CI) therefore notes that:

Mobile services have transformed from just being telephones that enable us to talk and text, to mini-computers giving us access to information and services that are crucial to livelihoods and health. They are not just convenient, but increasingly important tools that help to empower citizens and consumers. Having access to mobile connectivity is a necessity and has gone beyond being a frivolous activity.²

With fewer than half a million connected telephone lines prior to its deregulation in 2002 to over 129 million active lines and a teledensity of 92.42 as at April 2014,³ Nigeria’s telecommunications industry is reckoned as the fastest growing in Africa. However, with the rapid growth of the industry and the consequent expansion of its consumer base, consumer dissatisfaction has become rife.⁴ Consumer complaints against telecommunications services providers in Nigeria include poor quality service, wrong billing, unsolicited telemarketing and exploitative automated services.⁵

Nigeria’s telecommunications sector is regulated essentially by the Nigerian Communications Act 2003⁶ (NCA 2003) and subsidiary

¹ International Telecommunications Union (2014) “The World in 2013: ICT Facts and Figures”<http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2013-e.pdf>, last accessed 10 June 2014.

² Consumers International (2014) “World Consumer Rights Day: Saturday, 15 March 2014 – Fix Our Phone Rights” <http://www.consumersinternational.org/media/1428663/wcrd-2014-fix-our-phone-rights-briefing-final.pdf>, last accessed 10 June 2014.

³ Nigerian Communications Commission (NCC), “Subscriber Statistics” <http://ncc.gov.ng>, last accessed 14 July 2014.

⁴ B. Uzor and A. Chiejina “Quality of Service: Posers for Nigeria’s Telecom Industry”<http://businessdayonline.com/2013/05/quality-of-service-posers-for-nigerias-telecom-industry/#.U8QQcPs4C8A>, last accessed 14 July 2014.

⁵ See Consumer Protection Council (CPC) “A Compendium of the Rights of Telecoms Subscribers in Nigeria”<http://cpc.gov.ng/wp-content/uploads/2013/06/A-Compendium-of-the-Rights-of-Telecom-Subscribers-in-Nigeria.pdf>, last accessed on 15 June 2014; K. A. Apori, and M. E. Ibanga, “Regulatory Agencies in the Telecommunications Sector and the Protection of the Nigerian Consumer” *The Calabar Law Journal*, Vols. 8 – 10 (2004 - 2006) p. 162.

⁶ Act No. 19, 2003.

legislation made under it. The Consumer Protection Council Act,⁷ is also relevant, in so far as it provides for the protection of consumers of goods and services. However, the discussion of the regulation of the industry in this article is limited to the NCA 2003 and its subsidiary legislation. This article appraises the protection of consumers under the NCA 2003 and its subsidiary legislation. It examines the relevant statutory provisions and assesses their enforcement to determine whether or not consumers of telecommunications services in Nigeria enjoy adequate protection under the law. The significance lies in the fact that Nigeria is the most populous country and a leading economy in Africa and the state of her laws can influence the laws of other countries on the continent.

2. REGULATION OF TELECOMMUNICATIONS SERVICES UNDER THE NCA 2003

The primary object of the Act is to create and provide a regulatory framework for the Nigerian communications industry and all matters related thereto.⁸ The Act defines communications broadly to mean any communication, whether between persons and persons, things and things, or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms.⁹ Similarly, telecommunication is defined as “any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, visual or other electro-magnetic systems”.¹⁰ One of the specific aims of the Act is to protect the rights and interest of service providers and consumers.¹¹

⁷ Cap. C32, Laws of the Federation of Nigeria (LFN) 2004. Other statutes may be relevant for ancillary purposes only such as incorporation of telecommunications outfit under the Companies and Allied Matters Act, Cap. C20, LFN 2004; and enforcement of national and state environmental standards under the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, No. 25, 2007, and do not relate to the relationship between the consumer and the telecommunications services providers.

⁸ Section 1.

⁹ Section 157.

¹⁰ *Ibid.*

¹¹ Section 1,

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The Act establishes the Nigerian Communications Commission (the Commission or NCC) charged with the responsibility of regulating the telecommunications industry in Nigeria.¹² Virtually all the functions of the Commission as listed in section 4 of the Act are relevant to consumer protection, and include the protection and promotion of the interests of consumers against unfair practices including matters relating to tariffs and charges for and the availability and quality of communications services, equipment and facilities. The Commission is also to ensure that licensed operators comply with licence terms and conditions and “operate the most efficient and accurate billing system”.¹³ It is also charged with the responsibility of developing and monitoring of performance standards and indices relating to the quality of communications services and facilities supplied to consumers in Nigeria having regard to the best international performance indicators and to handle disputes between operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration.

The Commission is conferred with extensive powers with which to carry out its regulatory functions. It has the powers to issue, suspend or revoke licences for communications operations and provision of communications services or facilities;¹⁴ issue directions regarding the compliance or non-compliance of any licence conditions or provisions of the Act or its subsidiary legislation and impose fines for non-compliance with such directions.¹⁵ Under section 70 of the Act the Commission is empowered to make and publish regulations for any matter for which the Act makes express provision and for such other matters as are necessary for giving full effect to the provisions of the Act and for their due administration. In the exercise of this power, the Commission has made and published several regulations and guidelines, many of which are relevant to

¹² Section 3.

¹³ Section 4(1)(c).

¹⁴ Section 37(1) and 45(1)

¹⁵ Section 54.

consumer protection and will be discussed hereunder. Section 106 of the Act empowers the Commission *inter alia* to designate a body to be a *Consumer Forum* and to prepare a consumer code. The Consumer Code prepared by the forum shall be subject to the prior approval of and ratification by the Commission. The Commission may require licensees to prepare individual consumer code for their respective customers and such consumer code shall also be subject to the prior approval of and ratification by the Commission. A consumer code prepared by the consumer forum, the Commission or a licensee shall include, among other things, model procedures for:

- Reasonably meeting consumer requirements;
- the provision of information to customers regarding services, rates and performance;
- the advertising or representation of services;
- customer charging, billing, collection and credit practices
- any other matter which, in the opinion of the Commission, may be of concern to consumers.

Pursuant to this, the Commission has made and published the Consumer Code of Practice Regulations 2007 (CCPR 2007), the specific objectives of which are to confirm and clarify the procedures to be followed by licensees in preparing their consumer codes of practice, and to determine and describe the required contents and features of any consumer code prepared by, or otherwise applicable to, licensees.¹⁶ A General Consumer Code of Practice (the Code) is annexed as a schedule to the Regulations. The provisions of the Code serve as minimum requirements for any individual consumer code to be prepared by a licensee. Pending any such approval, all licensees are bound by the Code.¹⁷ The Code makes detailed provisions for the rights and obligations of consumers. The Commission oversees compliance with the Code and any other applicable consumer codes. The penalty for the breach of an applicable consumer code is the imposition of administrative fines.

¹⁶ Regulation 2.

¹⁷ Regulation 3(3).

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The extensive rule-making and enforcement powers conferred on the Commission has been criticized by Otubu¹⁸ as amounting to the legislature abdicating its law-making responsibility and a violation of the doctrine of separation of powers. The criticism is anchored on two points. First, that there is no mechanism put in the enabling statute for the legislature to check the regulations made by the Commission. Second, that the powers conferred on the Commission to make regulations and guidelines; determine whether they have been breached and punish for the breach tantamount to the Commission acting as the law giver and the judge in its own cause which infringes on the doctrine of separation of powers.¹⁹ With respect, this criticism is unwarranted for three reasons. Firstly, to accuse the legislature of abdicating its responsibility is to totally ignore the legal basis for, and the utility of delegated legislation in administrative law. The power for subsidiary law-making derives ultimately from the power of the legislature which has been “donated” (not surrendered) by the legislature. Such power must be exercised in accordance with the enabling statute and only for the purpose(s) for which it was donated and will be declared *ultra vires* if exercised otherwise.²⁰ Secondly, both the legislature and judiciary have powers to review the exercise of the powers of delegated legislation, and if it is established that the power has been put to the wrong use, it can be revoked by a simple act of the legislature amending the parent statute while the judiciary will not hesitate to nullify any act which constitutes a wrongful exercise of the power.²¹ Thirdly, such powers are necessary and hence common features of statutes establishing regulatory/administrative agencies, to enable them perform optimally. Furthermore, such agencies usually have in their employment technocrats and other experts who are better

¹⁸ A. K. Otubu “The Regulator and the Regulated: An Examination of the Legal Framework for Telecommunication in Nigeria,” *Acta Universitatis Danubius Communicatio*, Vol. 7, No. 2 (2013) pp. 152 – 167.

¹⁹ *Ibid.*, p. 158.

²⁰ *Morton v. Union Steamship Co. of New Zealand* (1952) 83 CLR 402; *Evans v. State of New South Wales* (2008) 168 FCR 576.

²¹ *Minister for Primary Industries and Energy v. Austral Fisheries Pty Ltd.* (1993) 40 FCR 381.

equipped to formulate necessary technical details than do legislators.

3. THE CONSUMER UNDER THE NCA

A review of the literature on the subject of consumer protection reveals that the term *consumer* is not free from conceptual controversy as there seems to be no consensus among writers and legal draftsmen on the precise meaning of the term. Generally, however, the term refers to a prospective or purchaser as well as the ultimate users of goods and services.²²

The NCA 2003 uses the term *consumer* and *subscriber* interchangeably to mean “any person who subscribes to and uses a communication service.”²³ This has been criticized on the ground that it confines the meaning of a consumer to a contractual relationship rather than adopting the more preferred broad meaning of the term which does not limit it to where there is a contractual relationship but covers purchasers and end users of products and services.²⁴ Perhaps, restricting the meaning of consumer to a subscriber-user of telecommunications service under the Act appears to be purposive and an attempt has been made to justify this on policy reason associated with security concerns in the country.²⁵ There is yet no judicial interpretation of this provision of the Act, and since this article centres on the provisions of the Act and its

²² See for example, the Nigerian Consumer Protection Council Act, chap. C25, LFN 2004, section 32; the Indian Consumer Protection Act, section 2(1); B. W. Harvey and D. L. Parry, *Law of Consumer Protection and Fair Trading*, 3rd ed. (London: Butterworths, 1980) p. 7; F. N. Monye, *Law of Consumer Protection*, (Ibadan: Spectrum Law Publishers, 2003) p. 17. See the cases of *Donoghue v. Stevenson* [1932] AC 562; *Peter Symmons and Co. V. Cook* (1981) 131 N.L.J. 758 and *R & B Customs Brokers v United Dominion Trusts Ltd* [1988] 1 W.L.R. 321; [1988] 1 All E.R. 847.

²³ Section 157.

²⁴ See for example, F. O. Ukwueze, “Legal Remedies for Consumers of Telecommunications Services in Nigeria,” *The Nigerian Juridical Review*, Vol. 10, (2012) p. 148.

²⁵ See C. B. Opat, “Rethinking Remedies for Dissatisfied Nigerian Consumers of Telecommunications Services” <http://ssrn.com/abstract=2346820>, last accessed 10 March 2014.

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subsidiary legislation, the terms consumer and subscriber are used interchangeably as in the Act.²⁶

The Act also uses the term *licensee* which “means a person who either holds an individual license or undertakes activities which are subject to a class license granted” under the Act.²⁷ *Person*” includes a corporate body or partnership”.²⁸ A licensee under the Act is an individual, a corporate body or a partnership that has been granted a license either alone or together with others to operate telecommunications service in the country. Similarly, a *network service provider* means a person who provides network services which means a “service for carrying communications by means of guided or unguided electromagnetic radiation.”²⁹ Thus, the terms licensee, service provider or operator are used interchangeably in this article to refer to an entity that provides the consumer with telecommunications services.

4. RIGHTS OF CONSUMERS OF TELECOMMUNICATIONS SERVICES IN NIGERIA

From the four basic rights of the consumer³⁰ outlined by President J. F Kennedy in 1962³¹ and the principles contained in the United Nations Guidelines for Consumer Protection (UNGCP)³² adopted by the United Nations General Assembly in 1985 (and expanded in

²⁶ It should, however, be cautioned that restricting meaning of consumer to contracting parties outside the purview of the Act, will exclude from the meaning of the term, the ultimate user of goods and services, such as the plaintiff in the celebrated case of *Donoghue v. Stevenson*, above note 22, who has been described as ‘the law’s best known consumer’. See P. Cartwright, *Consumer Protection and the Criminal Law: Law, Theory and Policy in the UK* (Cambridge: Cambridge University Press, 2001) p. 3.

²⁷ Section 157.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ These are the right to safety; right to choice; right to information; and right to be heard.

³¹ See J. Kennedy, *Special Message to the Congress on Protecting the Consumer Interest, 15 March, 1962*, available online at <http://www.jfklibrary.org/Asset-Viewer/Archives/IFKPOF-037-028.aspx>, last visited on 17 February 2014.

³² Resolution 39/248 of 9 April, 1985 (expanded in 1999).

1999), certain legitimate rights of the consumer, have been recognized, which governments globally are required to guarantee and protect in legislation and policies. These include the rights to satisfaction of basic needs, safety, choice, information, consumer education, redress, representation and healthy and sustainable environment.³³ The jurisprudential rationale for protecting the consumer by means of law lies in the adjustment of the acknowledged imbalance in the relationship between the supplier of goods and services and the consumer, resulting in the vulnerability of the consumer to exploitation by supplier of goods and services.³⁴ In line with this, one of the stated primary objects of the NCA 2003 is to “protect the rights and interest of service providers and consumers within Nigeria.”³⁵ The rights of consumers of telecommunications service in Nigeria as can be garnered from the relevant provisions of the Act as well as the regulations and guidelines made under it include:

- right to information
- right to quality services
- right to fair charges and accurate billing
- right to privacy and protection of personal information
- right to redress
- right to consumer education.

4.1 Right to Information

One of the basic rights of consumers is the right to information. Consumers are entitled to certain basic information relating to the product or service that they want to purchase. Such information includes the composition and price of the product or service as well

³³ See Consumer International, “Consumer Rights” at <http://www.consumersinternational.org/who-we-are/consumer-rights/>, last visited on 15 March 2014.

³⁴ B. B. Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy* (Abuja: Reckon Books Ltd., 2005) p. 29; F. N. Monye, *The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes*. 59th Inaugural Lecture, University of Nigeria, 26 May, 2011 (Nsukka: University of Nigeria Ceremonials Committee, 2011) p. 6.

³⁵ Section 1(g).

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as the identity of the producer or supplier. The justification for this is that it is only when a consumer is in possession of the relevant information relating to a product or a service that he or she can make an informed choice to purchase or use the product or service. The Code makes elaborate provisions for information disclosure to consumers.

Paragraph 6(1) of the Code provides that licensees shall provide consumers with information on their services that is complete, accurate, and up-to-date and in simple, clear language. Licensees are urged to *endeavour* to respond in a timely manner to consumers’ requests for information on their services.³⁶ Information on prices and conditions for all services offered by a particular licensee shall be provided free of charge in print or electronic format at all retail outlets where the licensee’s services are sold (including on each licensee’s web site) and on the front section of any subscriber directories published by the licensee. Any change in tariff rates shall be approved by the Commission and prior notice of such a change shall be given to subscribers to be affected to by the change in a manner that will enable them comment on the charge to the Commission.³⁷

Licensees are mandated to make available to the consumer, *on request*, a copy of the contract or agreement for the provision of services, and such contracts shall be written in plain and clear language.³⁸ The contract for provision of service itself is required to contain among others, information on the commencement date and period of the contract, charges, as well as terms and conditions for disconnection, reconnection, interruption, withdrawal or discontinuation of the service.³⁹

The Code also mandates service providers, prior to the contract, to provide the subscriber with information relating to pricing, billing and charges as well as contractual warranties and maintenance services relating to products (if any) supplied for use in connection

³⁶ Italics mine.

³⁷ Paragraph 6(2).

³⁸ Paragraph 7. Italics mine.

³⁹ Paragraph 10.

with the service. They are also required to provide the consumer with information regarding any compensation, refund or other arrangements, which may apply if contracted quality service levels are not met, along with the procedures and methods for resolving disputes in respect of the service contract; free access to operator assistance at all times, and on request, free directory of all subscribers on the same network within the consumer's local area.⁴⁰

In relation to the description of the services, the Code provides that before entering into a contract for any service, consumers shall be provided a complete description of the service in clear and plain language, avoiding unnecessary technical terms. Where other services are required in order to effectively utilize the service, the consumer shall be sufficiently informed of such requirements or service dependencies. The licensee is also required to provide information on the service quality levels offered, the waiting time for initial connection and any service areas and coverage maps, if applicable. Where services are packaged with one or more other services or products, the licensee shall provide to the consumer the description and cost of each component and be fully responsible for the effective performance of the entire package including service support, maintenance, complaints handling, dispute resolution and other administrative requirements. Where services are subject to upgrade or migration options, consumers shall be provided with clear and complete information regarding the upgrade or migration terms, including any changes in service performance and any duly approved fees or charges resulting from the upgrade or migration.⁴¹

These provisions are laudable; however, the use of the term *endeavour to* in paragraph 6(2) of the Code is not strong enough to impose a mandatory obligation on service providers to take the required action. Furthermore, limiting the obligation of the service provider to make available to the consumer a copy of the contract for the provision of service under paragraph 7 of the Code to where a consumer has made a request is not fitting in a statute intended to protect the consumer in a country such as Nigeria with very high rate of illiteracy. In practice, the statutory requirement for

⁴⁰ Paragraphs 9 - 14.

⁴¹ Paragraph 8(1) - (5).

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information is observed more in breach, especially in relation to pre-paid mobile phone and Internet subscription. The process for subscribing to these services begins with prospective subscriber obtaining a service provider’s Subscriber Identification Module (SIM) pack alone, in the case of mobile phone, or Internet modem and a SIM pack in the case of computer-based mobile Internet services. Next, the subscriber registers the SIM which presently cannot be used until it is registered.⁴² To register the line, the subscriber does not necessarily have to open the SIM pack which usually comes sealed, so long as he or she has information as to the Personal Identification Number (PIN) of the line which may be contained in the receipt issued to him or her on purchase and sometimes on the cover of the pack. It is only after the line has been registered that the consumer can use the SIM card to access the particular subscriber’s network for telephone or Internet service. Most consumers do not bother to unseal the SIM pack until this time.

Generally, the SIM pack contains the SIM card and a leaflet. The subscriber’s PIN which is the phone number and Personal Unlocking Key (PUK) are usually printed on the SIM card carrier. A perusal of the leaflets accompanying the SIM pack of all the service providers currently in the country reveals that they contain mainly instructions on how to activate the line and access services available on the particular network. There is little or no description in the leaflets of the services provided. In fact, they are more like advertising materials than description of the services offered. The consumer is then referred to the website of the service provider for the “terms and conditions” or simply “for more information” and in some cases asked to regularly visit the website for updates on the terms and conditions. In this manner the service providers effectively shifts the obligation to the consumer to chase after the necessary information which by right ought to have been made available freely to him or her.

⁴² The Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations 2011.

4.2 Right to Quality Service

The NCA 2003 provides for consumer protection and quality of services.⁴³ All service providers are required to meet such minimum standards of quality of service as the Commission may from time to time specify and publish.⁴⁴ The Commission has made and published the Quality of Services Regulations 2012 (QSR) the stated objectives of which include to ensure the protection and promotion of the interests of consumers against unfair practices including matters relating to tariffs and charges, the availability and quality of communications services, equipment and facilities; improve and maintain high level service quality, and provide that will help customers make an informed choice of services and service provider.⁴⁵ The QSR stipulates the minimum quality standards for different telecommunications services and the associated measurements, reporting and record keeping tasks of service providers.⁴⁶ The Key Performance Indicators (KPIs) are clearly stated and the Commission is conferred with powers to sanction a service provider where the rate of occurrence of a particular complaint exceeds the maximum number stated in the Regulations.⁴⁷ It is also empowered to direct service providers to compensate subscribers for poor quality of service and to impose fines on offending service providers.

Regrettably, notwithstanding the QSR, poor quality telecommunications services have persisted in the country.⁴⁸ Common examples of the poor quality of telecommunications services in the country include sudden loss of audio in the middle of a call, unsuccessful and high rates of call attempts, long delay and non-delivery of text messages, difficulties or inability to get assistance from operators' customer care or support line, etc. The

⁴³ Sections 104 – 106.

⁴⁴ Section 104(a)

⁴⁵ Regulation 2.

⁴⁶ Regulation 3.

⁴⁷ Regulation 4.

⁴⁸ F. Akanbi, "Telecoms Stimulating Economic Activities in Other Sectors", *Thisday Live*, 3 March 2013: <http://www.thisdaylive.com/articles/telecoms-stimulating-economic-activities-in-other-sectors/141037>, last access on 15 March 2014.

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practice often adopted by the Commission is to impose fines on the operators under the QSR.⁴⁹

The provisions of the QSR and the high level of the KPIs therein are quite commendable. The KPIs are attainable⁵⁰ and will ensure that Nigerian consumers enjoy good quality telecommunications services. The imposition of fines alone leaves much to be desired. Fines are paid into the coffers of the government (via the Commission) thus leaving the consumers who bore the brunt of the poor quality services without any form of compensation. It has been suggested that the proceeds from fines collected by the Commission from defaulting operators should be distributed to consumers on the defaulting networks who are the ones that actually suffered losses from the poor services provided by the operators.⁵¹ The Commission should consider a form of sanction that will both ensure that a defaulting operator is punished and that consumers who maintained active lines with the operator during the period of the breach in question are compensated by the operator. For example, the defaulting operator can be made to pay a fine and also compensate the affected customers with free airtime.

4.3 Right to Fair Charges and Accurate Billing

By paragraph 9 of the Code, before a contract for services is entered into, the licensee shall inform the consumer of the applicable rates or charges and the composition of the charges. Paragraphs 21 – 27 of the Code makes detailed provisions relating to billing, charging, credit and collection practice. Among other things, a licensee shall at all times *endeavour to* ensure that billing is accurate, timely and

⁴⁹ For example, in February 2014, the Commission imposed a total fine of N647.5m against three operators for poor quality of service and failure to meet target KPIs specified by the Commission. See S. Omanufeme “NCC Sanctions MTN, Glo, Airtel N647.5m for Poor Service Quality” *Thisday Live*, 24 February 2014: <http://www.thisdaylive.com/articles/ncc-sanctions-mtn-glo-airtel-n647-5m-for-poor-service-quality/172293>, last accessed on 10 June 2014.

⁵⁰ While other service providers were fined for not meeting the KPIs in February 2014, one was given a clean bill. See Omanufeme, *ibid*.

⁵¹ A. Iwok and B. Koofreh, “An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecoms Services in Nigeria” *Journal of Law, Policy and Globalization*, Vol. 29, 2014, p. 7.

verifiable, and that sufficient information shall be on the bill or otherwise readily available to the consumer for verification of the bill without any charge; that upon a *bona fide* request from a consumer, the licensee shall inform or provide the consumer with timely, accurate and current information about its billing terms and conditions and options relevant to that consumer.

The use of the term *endeavour to* in the relevant provision of the Code is inappropriate. Billing and charging for services must be accurate. Presently, high cost of services is one of the major complaints by consumers of telecommunication services in the country. To merely require service providers to *endeavour to* bill accurately is not enough. They must bill accurately.

To enable consumers ascertain how much they have been charged for each call or text message, the Commission has made it mandatory for service providers to send End of Operation Notification (EON) to pre-paid consumers to show much they have been charged for every operation. The directive which took effect from 1 November 2012 requires that in the case of calls, the consumer should be provided with the following information: call duration, total cost of call and new account balance; while for text messaging and other services such as multi-media transmission and internet access, the consumer should be informed of the cost of the service and new account balance. The directive is being fully complied with by the service providers. This is a welcome improvement over what obtained previously in that it enables a consumer to know how much he or she has been charged for an operation but it does not take care of the issue of high tariffs or charges.

4.4 Right to Privacy and Protection of Personal Information

The Code makes elaborate provisions for privacy, fair use of consumer information and confidentiality. Any licensee that collects information on individual consumers shall adopt and implement a policy regarding the proper collection, use and protection of that information. A licensee may collect and maintain information on individual consumers reasonably required for its business purposes but such information shall be relevant, accurate, fair collected and processed for limited and identified purposes only. Above all, such

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information shall be protected against improper or accidental disclosure and should not be transferred to any party except as may be authorized by the consumer or the Commission, or as otherwise permitted or required by any applicable law or regulation.

Service providers are required to meet generally accepted fair information principles including:

- providing notice as to what individual consumer information they collect, and its use or disclosure; the choices consumers have with regard to the collection, use and, disclosure of that information;
- the access consumers have to that information, including to ensure its accuracy;
- the security measures taken to protect the information; and
- the enforcement and redress mechanisms that are in place to remedy any failure to observe these measures.

The rules apply to individual consumer information whether initially provided verbally or in written form, so long as that information is retained by the service provider in any recorded form.⁵² A licensee is required to ensure that any other licensees or other persons with whom they exchange or otherwise disclose such information have adopted and implemented an appropriate protection of consumer information policy.⁵³ To ensure accuracy of individual consumer information collected and stored by service providers, paragraph 38 of the Code provides that licensees collecting, maintaining, using or disclosing individually identifiable consumer information shall take reasonable steps to ensure that the information is accurate, relevant and current for the purposes for which it is to be used. A consumer is entitled to exercise the right to have his or her directory information suppressed or removed.⁵⁴

Closely related to privacy and protection of personal information is the issue of telemarketing by service providers and other persons and organizations. Paragraphs 17 – 20 of the Code cover advertising

⁵² Paragraphs 35

⁵³ Paragraph 36.

⁵⁴ Paragraph 14 (1) (b).

and unsolicited telemarketing. The Code adopts and mandates licensees to comply with the Nigerian Code of Advertising Practice of the Advertising Practitioners Council of Nigeria (APCON)⁵⁵ as well as any other applicable laws, standards and rules regarding advertising or promotion of telecommunications services set out in the Code. Licensees are prohibited from engaging in unsolicited telemarketing unless certain stipulated conditions are met. These conditions include:

- disclosure of the identity of the provider, or other person on whose behalf it is made, the precise purpose of the communication and the full price of any product or service that is the subject of the communication;
- the person receiving the communication shall have an absolute right to cancel the agreement for purchase, lease or other supply of any product or service within seven (7) days of the communication, by calling a specific telephone number that the licensee shall specifically identify during the communication, without charge, unless the product or service has by that time been supplied to and used by the person receiving the communication.⁵⁶

Licensees are required to conduct telemarketing in accordance with any “call” or “do not call” preferences recorded by the consumer, at the time of entering into a contract for services or after, and in accordance with any other rules or guidelines issued by the Commission or any other competent authority.⁵⁷

These provisions ensure that consumers privacy is respected, their personal information protected and that they are not inundated with telemarketing advertisements and scam messages. Regrettably, in practice, the opposite is the case. Nigerian consumers are daily inundated with telemarketing in the form of unsolicited text messages and voice calls. There is no platform provided by any of the service providers for subscribers to exercise the option whether or not to receive advertisements in the form text messages and calls. This is contrary to the provisions of the Code highlighted above. No

⁵⁵ APCON is the regulatory agency for advertising practice in Nigeria.

⁵⁶ Paragraph 20(1).

⁵⁷ Paragraph 20(2).

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guidelines have been issued on the matter, and the Guidelines on Advertisements and Promotions make no provision in this regard; thus, leaving consumers exposed to the inconvenience of daily barrages of unsolicited advertisements in the form text messages and calls. In many jurisdictions including the US, Australia and the EU there are spam specific regulations which cover text message and voice calls. For example, in the US the Telephone Consumer Protection Act (TCPA) 1991 prohibits telemarketing either by voice call or text message without prior express consent of the recipient.⁵⁸ Negligent violations of the restriction carry a statutory penalty of \$500 per call, while damages for wilful violations are \$1,500 per call or message.⁵⁹

The Commission should act expeditiously to formulate and put in place guidelines to specifically regulate the practice of telemarketing in the country. The suggested guidelines should regulate all aspects of telemarketing by operators and subscribers and stipulate stiff penalty for non-compliance. Meanwhile, there is no doubt that unsolicited telemarketing as conducted presently in the country whereby the subscribers have no platform to elect whether or not to receive marketing calls or messages, constitutes flagrant violations of the General Consumer Code⁶⁰ which renders the operators liable to sanctions under the Nigerian Communications (Enforcement Processes, etc.) Regulations 2005.

4.5 Right to Redress

Compensation of consumers who have suffered damage or loss is the hallmark of consumer protection. The Act makes detailed provisions for consumer access to redress. The Commission is conferred with powers to resolve disputes between persons who are subject to the Act regarding any matter under the Act or its subsidiary

⁵⁸ *Satterfield v. Simon & Schuster*, 569 F.3d 946. Text messages sent to voluntarily provided numbers do not come within the prohibition of the TCPA: *Chestboro v. Best Buy Stores*, 697 F.3d 1230, 1234 (9th Cir. 2012).

⁵⁹ R. Cole. And A. Purcell “Here’s my Number, so text me maybe” *Daily Journal*, 21 April 2014: www.fenwick.com/FenwickDocuments/Here_is_my_number.pdf , last accessed on 14 July 2014.

⁶⁰ Paragraph 20.

legislation.⁶¹ However, an attempt shall first be made by the parties to resolve any dispute between them through negotiation before the involvement of the Commission.⁶² The Commission may publish guidelines setting out the principles and procedures that it may take into account in resolving disputes or a class of disputes. Subject to the objects of the Act and any guidelines issued by the Commission, it may resolve the dispute in such manner including but not limited to ADR processes and upon such terms and conditions as it may deem fit. In carrying out its dispute resolution functions, the Commission is to be guided by the objective of establishing a sustained dispute resolution process that is fair, just, economical and effective and shall not be bound by technicalities, legal forms or rules of evidence and shall at all times act according to the ethics of justice and the merits of each case.⁶³

The Commission is also empowered to use its powers under the Act in the resolution of complaints received from consumers in relation to matters of customer service and consumer protection including but not limited to quality of service or the failure by a licensee to comply with a consumer code. It is required to establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees and may, at its discretion, institute alternative dispute resolution processes for the resolution of the complaints or disputes provided that the licensee's dispute resolution procedures shall first have been exhausted by the consumer before presentation of the complaint to the Commission.⁶⁴ To this end the Commission has made and published the Dispute Resolution Guidelines (DRG) 2004.

The DRG 2004 is principally intended for small claims involving amounts not exceeding One Million Naira (approximately \$6,200). The procedure is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means of resolving consumer-related disputes in the telecommunications sector. Each party may present written statement of its arguments in the dispute together

⁶¹ Section 73.

⁶² Section 74(1).

⁶³ Section 76(1) and (2).

⁶⁴ Section 105(1) and (2).

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with supporting documents and have the opportunity to comment on the argument and evidence of the other party. The arbitrator shall make the decision on documents only without an oral hearing and it is important to include all evidence upon which a party wishes to rely. By applying for arbitration the parties agree to the non-disclosure of the proceedings, award and reasons for the award to any stranger to the proceedings unless it is necessary to do so in order to enforce the award. The procedure is not designed to deal with complicated disputes, which should be dealt with by more formal oral hearing and evidence to ensure their proper resolution. A decision on the applicability of this procedure shall be at the discretion of the Commission. The Commission appoints the arbitrator, and the decision of the arbitrator shall be final and binding on the parties.⁶⁵

The Code also provides for consumer complaints handling. Under the Code it is mandatory for licensees to provide, and from time to time review and update, their consumer complaints handling procedures. Easily understood information about their complaints processes in various media and formats should be made available to consumers, including as may from time to time be specifically directed by the Commission. They are to ensure that consumers can easily identify how a complaint may be lodged, either at a licensee's premises or using identified forms of telecommunications. The information on the complaints handling processes shall contain information to consumers about their rights to complain; how to contact the service provider in order to lodge a complaint and the types of supporting information and documents a complainant needs to furnish when making a complaint. Licensees are required to record all complaints and their outcomes and to categorize and analyze complaints to allow for the identification of recurring problems.⁶⁶

⁶⁵ See DRG 2004 chap 1: Short Form Procedure Applicable for Small Claims Consumer Disputes Arbitration (Explanatory Note): http://ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=61&Itemid=53, last accessed on 31 March 2014.

⁶⁶ Paragraphs 39, 45 – 47.

Licensees are enjoined to make adequate provision to ensure that people with physical disabilities or other special needs are able to access their complaint handling processes, and to provide reasonable assistance where a consumer specifically requests assistance in lodging a complaint.⁶⁷ Written complaints are to be acknowledged by the licensees and non-written complaints shall be taken as acknowledged at the time the complaint was communicated to the licensee. No consumer complaint shall remain unresolved for more than three months and consumers shall be advised of the outcome of their complaint and any resulting decision by the licensee. Where a consumer is not satisfied with a decision on his or her complaint, the licensee shall give the consumer the option of pursuing a suitable escalation process within the licensee's organization. Where a complaint and any resulting escalation process is not resolved to the consumer's satisfaction within 60 days of its initial communication to the licensee, the licensee shall inform the consumer of his right to refer the complaint to the Commission.⁶⁸ Complaint handling processes shall be provided free of charge except in certain specified circumstances where a licensee is authorized to impose a reasonable charge which shall be identified and agreed to by the consumer before being incurred.⁶⁹ Licensees are prohibited from imposing any disconnection or credit management action regarding any service to which a complaint or billing dispute relates while the complaint or dispute is being handled.⁷⁰

These provisions are quite laudable and their implementation will ensure that consumers who have suffered loss of damage from the service providers obtain redress. In practice, however, these provisions are not being fully implemented. While the service providers have complaint handling procedures and consumer complaints desks, these are not known to most consumers.⁷¹

⁶⁷ Paragraph 40.

⁶⁸ Paragraph 41.

⁶⁹ Paragraph 42.

⁷⁰ Paragraph 44.

⁷¹ Consumer Awareness Organisation "Press Briefing on Consumers and Telecommunications Services in Nigeria: Fact Sheet Presented by Professor Felicia Monye, President, Consumer Awareness Organisation on 20 February 2014 at Sunshine Hotels and Guest House, Enugu" available online at <http://www.consumerawareness-ng.org/events/press-briefing-on-consumers-and-telecommunications-services-in-nigeria.html>, last accessed on 31 March 2014.

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Adequate steps are not taken by the service providers to bring these procedures to the knowledge of consumers as required under the Code.

4.6 Right to Consumer Education

Consumer education refers to the process of exposing people to the knowledge about their rights and duties as consumers. Education creates awareness in consumers of their rights and obligations under the law which is very vital in consumer protection. The need for the Nigerian consumers of telecommunications services to be acquainted with their rights under law cannot be over-emphasized. This will empower consumers to insist on their rights and to take action when these rights are violated by service providers. All the provisions of the relevant statutes requiring that consumers be provided with information relating to their rights or entitlements are in effect expressions of the consumers’ right to education. Thus, in any case where such a provision is not implemented, the consumer’s right to education is being violated.

On the level of practical protection of consumers of telecommunication services in Nigeria, a recent study⁷² reveals that despite the existence of an apparently impressive framework, the level of practical protection of consumers appears rather low. Consumers lack requisite knowledge to assert their rights. Factors such as lack of awareness, poverty, lack of funds and fear of litigation inhibit consumers’ enthusiasm to seek redress. As regards the service providers, the study reveals that some obvious gaps are noticeable. Service providers do not observe many laid down procedures for consumer protection, especially in areas relating to resolution of consumer complaints, provision of information and detailed service contract. For instance, all service providers claim to

⁷² *Ibid.* The press briefing was part of the project on “Strengthening Consumer Protection in Three West African Countries for Social and Economic Justice”. The project was conducted in three West African Countries, namely, Ghana, Senegal and Nigeria in conjunction with the Consumers International (CI) Office for Africa, Pretoria, South Africa. The project is sponsored by the Open Society Initiative for West Africa (OSIWA). The Consumer Awareness Organisation (CAO) handled the Nigerian Component of the project.

have customer care centres, consumer complaints centres or consumer friendly centres, but the effectiveness and accessibility of the schemes leaves much to be desired. According to the study, the centres do not comply with the legal requirements in dealing with consumer complaints.⁷³ Service providers in Nigeria are in the habit of accompanying their offers with clauses exempting themselves from all sorts of liability. Some even go to the extent of referring consumers to their websites for terms and conditions. Such terms apart from not being generally binding, erode the confidence of consumers and are counterproductive.⁷⁴ The regulatory agency has been active to a reasonable extent, for example, in issuance of regulations and guidelines. It has also demonstrated reasonable activism in the implementation of its mandate to create awareness through the Telecoms Consumer Parliament, consumer outreach programmes, and occasional interactive fora with consumers. But, according to the study, many consumers are not aware of these programmes.⁷⁵ The study concludes that creation of consumer awareness, is absolutely necessary to empower Nigerian consumers of telecommunication services to assert their rights and compel telecoms service providers to strive to attain excellence.

On their part, the telecommunications operators in Nigeria attribute the negative consumer protection profile to the high cost and hazards of doing business in Nigeria, which hinders appropriate and adequate quality of telecom services.⁷⁶ In particular, they blame poor quality of services on a number of challenges including

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Consumer Awareness Organisation "Second Press Briefing on Consumers and Telecommunications Services in Nigeria: Fact Sheet Presented by Professor Felicia Monye, President, Consumer Awareness Organisation on 10 April 2014 at Consumer Awareness Organisation Office, Enugu, available online at <http://www.consumerawareness-ng.org/events/second-press-briefing-on-consumers-and-telecommunications-services-in-nigeria.html>, last accessed on 31 March 2014.

⁷⁶ See A. Amzat, "How Telecoms First Cheat, Frustrate Subscribers" *The Guardian Mobile*, <http://www.theguardianmobile.com/readNewsItem1.php?nid=38616> accessed 23 December 2014.

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infrastructure, power and security.⁷⁷ The Commission admits that “Telecoms companies [in the country] are working in an environment that is challenging and this is affecting the quality of service...Quality of service would only improve if the environment improves.”⁷⁸ Plausible as the explanation may sound, the Consumer Protection Council (CPC), the agency responsible for the overall protection of consumers’ rights in the country, has expressed dissatisfaction with the reasons offered by telecommunications operators for poor service delivery. It says that the challenges may not have affected the operators as much they want us to believe.⁷⁹ According to the Council,

From the consumer side, we say it is not fair because providers are in business and are making profit, and that profit emanates from the resources that consumer put into that business. As long as they are in business, it means it is profitable; as long as no operator has filed for bankruptcy, it means business is good.

Considering the revenues and profits posted by the telecommunications operators, one finds adequate justification for supporting the CPC position. For example, a recent report shows that yearly, telecommunications operators in Nigeria generate revenues that surpass their returns in other African countries. In 2012 alone, out of a total of \$41 billion generated in Sub-Saharan Africa \$9.3 billion came from Nigeria alone.⁸⁰ In 2013, the leading telecom operator in the country, MTN Nigeria Communications Limited, generated revenue of N775.3 billion.⁸¹ Though similar data for other operators are not available, the growing number of their subscribers is a reliable indicator that their turnovers are also significant.

⁷⁷ Recently, MTN Nigeria Communications Limited, the leading telecom operator in Nigeria, complained that it has been investing approximately \$1.5 billion annually in the last 13 years in order to increase capacity.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

5. CONCLUSION

The legal and regulatory framework for the protection of consumers in the telecommunications sector in Nigeria appears fairly adequate. The Nigerian Communications Act and its subsidiary legislation have made fairly adequate provisions for the protection of consumers of telecommunications services. Regardless of impressive regulatory framework, it is not yet *uhuru*⁸² for consumers of telecommunications services in Nigeria as the level of actual protection they enjoy has remained low. This can be attributed to three reasons: non-compliance by the service providers with existing regulations, loose enforcement of regulations and lack of knowledge by the consumers of their rights under the law. Ignorance on the part of consumers coupled with high rate of poverty seriously inhibits consumers from asserting their rights and seeking redress in appropriate cases. Measures to raise consumer awareness are urgently required to empower consumers to insist on their rights; compel the service providers to comply with the rules. The Commission needs to do a lot more in the area of consumer education. As noted above, presently the Commission organizes public enlightenment programmes in the form of the consumer parliament which holds only in major cities, and occasional town hall meetings in rural communities.⁸³ These are not adequate to provide the much needed enlightenment for the teeming consumers of telecommunication services in the country. Many of these consumers reside in rural areas and may not be aware of such programmes. The Commission should intensify efforts in this regard, and a measure that is considered necessary in this regard is the establishment of offices by the Commission in all the local government areas in the country. These offices should organize periodic enlightenment campaigns in their areas preferably in the languages and dialects

⁸² *Uhuru* is a Swahili word for freedom or independence. During the struggle for political independence in Africa it was associated with freedom or national independence, especially for the people of eastern Africa. See *The Chambers Dictionary*, new edn. (New Delhi: Allied Chambers (India) Ltd., 2004) p. 1799.

⁸³ For example, in the South Eastern part of the country, the Consumer Parliament has been held at Aba (2008) Enugu (2013 and 2014). The Commission in conjunction with the Consumer Awareness Organisation organized a town hall meeting at Agbani, a rural community in Enugu State on 9 December 2009.

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spoken within the local governments. Efforts should also be made to publish a pamphlet or leaflets highlighting the rights of telecommunications services consumers, and translate same into vernaculars. The Commission should ensure greater collaboration and partnership with other federal and state agencies such as the Consumer Protection Council (CPC),⁸⁴ the National Orientation Agency (NOA) and voluntary consumer associations in this regard.

An amendment of certain provisions of the General Consumer Code is required. Provisions that appear to have made discretionary matters which ought to be mandatory on the part of the service providers should be amended. Such matters include provision of description and costs of services on offer prior to the conclusion of the contract, and making available to the consumer a copy of the contract for the provision of services.

⁸⁴ For this, the recent effort by the Consumer Protection Council in compiling and publishing a bill of rights for consumers of telecommunications services in the country is commendable. See the Consumer Protection Council, *A Compendium of the Rights of Telecoms Subscribers*, above at note 5.