



Dispute Resolutions
3rd August 2018



- Ololade Jacob-Obi¹

THE EFFICACY OF CONSUMER PROTECTION LAWS IN THE NIGERIAN TELECOMMUNICATIONS INDUSTRY (PART TWO)

In the first series to this article, the concepts of consumers and consumer protection was explained. The legal regime of the applicable laws in Nigeria on consumer protection was also discussed. In this series, we will further examine a few of the laws regulating the industry on consumer protection and the rights of a telecommunications consumer.

1. NIGERIAN COMMUNICATIONS COMMISSION ACT 2003

The Nigerian Communications Commission (“NCC” or “the Commission”), as the regulator of the telecommunications industry is empowered to ensure the ‘protection and promotion of the interest of consumers against unfair practices including, but not limited to matters relating to tariffs and charges for and the availability and quality of communication services, equipment and facilities’.² It also has the duty to promote ‘fair competition in the industry and protection of communication services and facilities providers from misuse of market power or anti- competitive and unfair practices by other service or facilities provider or equipment suppliers’.³

Section 105 allows the NCC to use its powers to resolve consumer complaints, especially in relation to customer service and protection and Quality of Service (QoS) through its approved procedures or guidelines⁴ for the making, receipt and handling

¹ Associate; Dispute Resolution Department, SPA Ajibade & Co., Lagos.

² Nigerian Communications Commission Act, Section 4(i).

³ Ibid, Section 4(f) and (m).

⁴ An example of one of these guidelines is the Dispute Resolution Guidelines of 2004.

of consumer complaints regarding the activities of the operators, “*provided that the licensee’s dispute resolution procedures shall first be exhausted by the consumer without resolution of the complaint before presentation of the complaint to the commission*”. Thus, this process can only be activated when the service provider’s dispute resolution procedure has been exhausted by the consumer.

The licensees are required to publish their tariff rates to customers but not permitted to impose tariffs/charges as costs for the provision of any service unless approved by the NCC.⁵ The issue however is that although these licensees publish their tariffs, the subscribers are still over-charged and the operators blame it on overrides in their systems. These over-charges are usually not refunded and in a bid to get the refund, the subscribers contact the operator, and run into communication challenges with the call representative. In the end, most customers abandon the complaint out of frustration and are compelled to recharge their phones again, in order to maintain vital contact with loved ones and operate their various businesses.

2. NIGERIAN COMMUNICATIONS COMMISSION QUALITY OF SERVICE REGULATIONS 2012⁶

Under its enabling statute,⁷ the NCC is empowered to make and publish regulations⁸ for the sector. By section 4(1)(b) of the NC Act, the NCC is also enabled to make regulations on the tariffs, fees, charge rates, fines and general Quality of Service (QoS) provided by the telecoms operators. The NCC exercising its powers under section 70 of the NC Act published the QoS regulations which identified minimum QoS standards and associated measurements, reporting and record keeping tasks, pursuant to section 104(a) of the Act.⁹ The aim of this regulation was to identify the service deficiencies, improve in the QoS and to encourage or direct appropriate actions.¹⁰ By section 2, the regulation of 2012 was further enabled, amongst other functions, to:

⁵ Nigerian Communications Commission Act, Section 108(3).

⁶ S.I. No. 3 of 2012.

⁷ The Nigerian Communications Commission Act Cap N9, L.F.N. 2004 and the Nigerian Communications Act No. 19 of 2003.

⁸ The Nigerian Communications Commission Act Cap N9, L.F.N. 2004 , Section 4(1)(o) and section 104(a).

⁹ The Nigerian Communications Commission Quality of Service Regulation 2006, Part 1, para. 1. This regulation has however been revised in 2012.

¹⁰ Ibid, para 2.

- a) *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;*
- b) *improve service quality by identifying service deficiencies and by encouraging, enforcing, effecting or requiring appropriate changes and solutions;*
- c) *maintain service quality, while recognizing environmental and operating conditions;*
- d) *make available information that will help customers make an informed choice of services and service provider;*
- e) *improve the operation and performance of interconnected networks;*
and

The NCC has in recent times, set QoS benchmarks for mobile services to be complied with by mobile operators, as well as Key Performance Indicators (KPIs) for the telecoms operators to adhere to. In the benchmarks quoted by the NCC, the mobile operators are expected to resolve all consumer problems/complaints speedily, and this is currently fixed at an average of 95%.¹¹ However, the question of the frequency of these complaints should be visited. The focus should be on ensuring that customer complaints are less frequent and not in the speedy resolution of these complaints.

3. NIGERIAN COMMUNICATIONS COMMISSION CONSUMER CODE OF PRACTICE REGULATION¹²

This regulation was made specially to clarify the procedures to be followed by licensees in preparing approved consumer codes of practice; and to determine the required contents and features of any consumer code prepared by, or otherwise applicable to Licensees.¹³ A General Consumer Code (“GCC”) is attached to this regulation which applies to all licensees in Nigeria. Nonetheless, the GCC remains a

¹¹ <https://www.ncc.gov.ng/technology/standards/qos#commercial-benchmarks> Accessed: 4th July 2018.

¹² Nigerian Communications Commission Consumer Code of Practice Regulations 2007; S.I. 32. There is however a draft consumer code of practice regulation of 2018, to provide a further definition of the procedures and substantive requirements for developing consumer codes to govern the provision of services by licensed telecoms operators in Nigeria.

¹³ Ibid; Part I; Section 2.

minimum set of requirements and standards for the provision of services and related consumer practices applicable to licensees.¹⁴

The NCC by the regulation established a forum of industry and consumer representatives (the “Consumer Forum”) to assist in ongoing monitoring and review of the GCC to ensure that the code adequately addresses consumer issues.¹⁵ This Consumer Forum has however been ‘replaced’ by the Consumer Outreach Programme organized by the NCC regionally, and specially designed to educate telecoms end-users as well as hear their complaints.

The GCC further sets out the duties of the licensees and consumers. The licensees are obliged to provide consumers with adequate complete and up-to-date information on their services.¹⁶ Licensees must also respond to consumer queries/request for information in a timely manner at no cost to the consumer.

By the provisions of sections 7 and 8 of the GCC, the licensees shall supply, on request, a copy of the contract for the provision of services in clear and plain language, providing information on the QoS levels offered and the billing charges. Licensees are further required by section 13(3) to give advance warning of anticipated service disruptions or planned outages as well as any applicable compensation/remedies.

The consumers however have limited duties under the GCC. Majorly, consumers are prohibited from re-selling any services provided by the operator.¹⁷ misusing public telecoms facilities in furtherance of fraudulent activities¹⁸ and churning.¹⁹ Consumers are however required to grant the licensee or its authorized representatives without charge, access to their premises as reasonably required for the provision of maintenance services.²⁰

¹⁴ Ibid, Part II, Section 5.

¹⁵ Ibid, Part II, Section 4(1).

¹⁶ Nigerian Communications Commission General Consumer Code of Practice Regulations, Part II, Section 6(1).

¹⁷ Ibid; Section 31.

¹⁸ Ibid; Section 32.

¹⁹ Churning is an abusive and competitive act of accumulating payment arrears with a telecoms operator and abandoning the sim or the network and switching to another operator without paying off the outstanding sums.

²⁰ Ibid; Part VI Section 29-30.

4. UTILITIES CHARGES COMMISSION (UCC) ACT

The Utilities Charges Commission (“UCC”) was established by the UCC Act, and charged with a duty to evaluate the trends in the tariffs charged by any of the public utilities²¹ to provide information with which the Federal Government can determine permissible increase in tariffs. The Commission also has a duty to prevent undue exploitation of consumers by the scheduled utilities.²² The UCC Act encourages persons who are aggrieved by any tariff imposed or services by a scheduled utility, to write to the UCC, stating the complaints and the UCC shall investigate the cause and arrive at a settlement.

Although this Act exists, it is uncertain whether or not the UCC is actually functioning. The establishment of the UCC may be a duplication of duties, and powers because the Act sets out the regulatory function of the NCC as it relates to tariffs, regulations and charges.

5. POST AND TELECOMS PROCEEDINGS ACT²³

This Act was promulgated to authorize an investigation officer in the Ministry of Communications to conduct criminal and civil proceedings in matters of posts and telecoms, with the consent of the permanent secretary of the Ministry of Communications.

6. THE RIGHTS OF A TELECOMMUNICATIONS CONSUMER

By the provisions of chapter four of the Nigerian constitution,²⁴ citizens have the right to life, right to the dignity of human person, right to personal liberty, right to private and family life, right to the freedom of thought, conscience and religion,²⁵ amongst others. These rights are also enjoyed by end users of telecoms services.²⁶ It suffices to say therefore, that the platform for the establishment of consumer rights in the Nigerian Telecommunications Industry is partly sourced from the constitution itself.

²¹ Utilities Charges Commission Act Cap. U17, L.F.N. 2004; Section 6(a). Public Utility as at the time the Act was promulgated referred to Nigerian Telecommunications (NITEL).

²² Section 6(d)(ii).

²³ Post and Telecommunications Proceedings Act; Cap P24; Laws of the Federation of Nigeria 2004.

²⁴ The Constitution Of The Federal Republic Of Nigeria Cap C38 L.F.N. 2004.

²⁵ Ibid., Sections 33 – 38.

²⁶ Ariyoosu D.A.; (2011); “Examining The Nigerian Telecommunications Industry: Any Right(S) For Subscribers?”, Human Right Review: An International Human Rights Journal; Vol. 2, No. 2, July 2011.

Many subscribers are ignorant of their rights, some are reluctant to lodge complaints while others find it difficult to lodge complaints or enforce their rights. Therefore, the several complaints in the industry have remained either unattended to, or unresolved as a result of inadequacy of consumer information and education and the presence of a 'never-ending' redress system in Nigeria. Below are a few of the rights of consumers/subscribers in the Nigerian telecommunications industry.

7. RIGHT TO INFORMATION AND CONSUMER EDUCATION

Consumers have the right to receive clear and complete terms and conditions for service agreements and disclosure of prices of goods and services before they are charged for those goods and services. They have a right to protection against fraudulent, misleading and deceitful information, advertisement and labeling.²⁷ They should also be properly educated before paying for the services. The right to be informed extends to upgrade/migration options. Thus, consumers must be provided with clear, accessible and complete information including changes in services performance and any duly approved fees or charges.

Furthermore, the consumer is entitled to information on the quality of service level offerings as well as specific information regarding any compensation, refund, or other arrangements which may apply if contracted service quality levels are not met. With regards to pricing, the consumer is entitled to be informed of the applicable rates of calls, charges and the method of calculation, and frequency of the charge,²⁸ etc.

8. RIGHT TO CHOICE

Consumers should be free to select any telecom service from a list of available providers. This right helps to ensure that consumers are protected against the monopolistic tendencies in the market and helps to ensure ability to choose from varieties rather than being constrained to a single choice.²⁹ The NCC has a duty to ensure that the right to choose is not withheld from the consumer, by promoting fair competition in the industry.

²⁷ Consumer Code of Practice Regulations; Part III, Section 39(1). See also, Ndukwe E.,(2008); *“Consumer Rights In The Telecommunications Industry”* Being A Paper Presented At The Annual Distinguished Lecture Of The Justice Chambers, Faculty of Law, Obafemi Awolowo University, Ile-Ife.

²⁸ Nigerian Communications Act; Section 4(1)(c).

²⁹ Adewale S.A. and Bamise J.B.; *“The Legal Protection Of Consumers Of Telecommunications Services”* Being A Paper Presented To The 2005/2006 Class Of Aviation and Communications, Faculty Of Law, Obafemi Awolowo University, Ile-Ife.

9. RIGHT TO MINIMUM STANDARDS OF QUALITY OF SERVICE

Every telecoms consumer is entitled to a satisfactory level of minimum standards of quality of service.³⁰ Calls must be clear and easy to connect. The consumer should be able to enjoy required application services such as active emergency services, directory assistance services, operator assistance services as well as services for disabled customers.³¹

10. RIGHT TO COMPLAIN AND BE HEARD

Consumers have the right to get fair, inexpensive and quick redress of grievances. They must have knowledge of the complaint process and steps needed to lodge a complaint. They also have the right to consumer-oriented response for complaints as prescribed by the consumer code of practice regulations of 2007.³² The complaint process is clearly stated in the NCC General Consumer Code of Practice and must be acted upon within the prescribed time frame. Non-written complaints are also accepted.³³

Consumers are entitled to be advised on the expected actions and timing for investigating and resolving a complaint, and where the licensee finds the complaint to be vexatious, it shall inform the consumer of such. In no case must the consumer's complaint remain unresolved for more than 3months.³⁴

11. RIGHT TO SAFETY, HEALTH AND A SUITABLE ENVIRONMENT

The consumer has a right to be protected against the marketing of goods that are hazardous to public health. In specific regard to emergency services, the NCC has the responsibility to promote and enhance public safety through the use of particular numbers which shall be designated as the universal safety and emergency assistance number for telephone services generally.³⁵ The need for consumer right to safety is to provide goods and services, the consumption of which will not render or be inimical to the health and social well-being of the consumer. This also includes the

³⁰ Section 104(a) Nigerian Communications Act. In *Nkwocha & 2 Ors V MTN Nigeria & 4 Ors* (2008) LPELR – 8494 (CA) and *Njikonye Esq V MTN Nigeria Communications Ltd* (2008) All FWLR 413 at 1343, the plaintiffs approached the court as a result of poor quality of service.

³¹ Nigerian Communications Act, Section 107(2).

³² Consumer Code of Practice Regulations; Part III, Section 39(3)(a).

³³ Ibid; Part III, Section 41(2).

³⁴ Ibid; Part III, Section 41(3).

³⁵ Ibid, Section 107(3)(a).

environmental protection from radiation in the mobile phones that are used and carried about by these consumers.

All equipment manufacturers, vendors and operators are mandated by the NCC to ensure that their equipment conform to the acceptable international standards set by the NCC through the Standards Organisation of Nigeria (SON), before the equipment are brought into Nigeria.³⁶

There is an obvious conflict³⁷ between the NCC Guidelines on technical specifications for the installation of telecommunications masts and towers, and the National Environmental Standards and Regulations Enforcement Agency (“NESREA”) Regulations as to the minimum setback of telecommunications masts, towers and base stations.

In the final series to this article, we will discuss the issues of redress of consumer complaints, and examine the jurisdiction of the Nigerian courts, under the current laws.

³⁶ <https://www.ncc.gov.ng/technology/standards/type-approval#type-approval-standards-all-equipment>
accessed: 4th July 2018

³⁷ Whilst the NCC Guidelines provide for a minimum of 5 metres setback of any telecommunication mast, tower or base station from any residential premises, the NESREA Regulations provide a minimum of 10 metres. This conflict has created a situation of rivalry between the government agencies with each agency fighting for supremacy. There is an obvious to harmonise the regulations of both agencies.