



REPORT OF THE PUBLIC INQUIRY ON THE DATA PROTECTION (COMMUNICATIONS SERVICES) REGULATIONS, 2023

1.0 INTRODUCTION

The Nigerian Communications Commission (the Commission) pursuant to its powers under Section 70 of the Nigerian Communications Act, 2003 (the Act), developed the Draft Data Protection (Communications Services) 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 MTN Nigeria Communications Plc, GSMA and other stakeholders.

As required by Section 58 of the Act, a Public Inquiry on the Draft Regulations was scheduled for July 26, 2023, and a Notice of the Public Inquiry was published in the Guardian and Daily Trust Newspapers on Friday, June 30, 2023.

2.0 THE PUBLIC INQUIRY

The Public Inquiry held both physically and virtually as scheduled. It commenced at 11:18am and was chaired by the Executive Commissioner, Technical Services (EC-TS), Engr. Ubale Ahmed Maska. Attendees at the Public Inquiry included Staff of the Commission, representatives of telecommunications companies and other interested stakeholders.

The EC-TS welcomed everyone present, noting that the event was key to the rule-making process of the Commission. He urged the participants to apply themselves maximally to the event for the benefit of the industry.

Mrs. Chizua Whyte (*Head, Telecoms Laws and Regulations Unit*) gave an overview of the Draft Regulations on Data Protection. Dr. Mohammed Suleh Yusuf (*Principal Manager, Telecoms Laws and Regulations Unit*) made a presentation on the comments received prior to the Public Inquiry.

A. GENERAL OVERVIEW OF THE DRAFT REGULATIONS ON DATA PROTECTION

The Regulations on Data Protection (Communications Services), (the Regulations) is made up of ten (10) parts of Forty-Seven (47) Sections which provides for a regulatory framework for the protection and privacy of data in the Nigerian Communications sector. It also relates to the processing of communications data and the need for Licensees of the Commission to ensure that certain requirements are complied with in the processing of communications data.

The Regulations provide that the basis for processing such data must be provided for under the Regulations, the Act, Subsidiary Legislations issued by the Commission or other relevant laws enacted by the National Assembly pertaining to Communications Services and that where consent is required before the processing of data, the Licensee must ensure that such consent is specific, informed, unambiguous and given voluntarily.

REVIEW OF COMMENTS RECEIVED BEFORE THE PUBLIC INQUIRY

1.0 MTN Nigeria Communications Plc.

1.1 Comment

MTN opined that Regulation 5 of the draft Regulations restricts the ability of Licensees to process communications data to the following purposes- the management of billing or traffic; customer enquiries; the prevention or detection of fraud; and the marketing of any communications services provided by any licensee.

MTN also averred that the provision is overly restrictive with adverse prospects for Nigeria's fledging economy. They recommend that the Commission should align itself with the overarching and expansive purpose limitation provisions set out in the Nigeria Data Protection Act, 2023. They consider it counter-protective

to the digital economy development objectives of the Federal Government for the restrictive rules to apply to the processing of communications data.

Response

This is a limitation and not a restriction and intended to set out basis for reasonableness in processing data. It is also worth noting that this Regulation aligns with the provisions of Section 25 of the Nigerian Data Protection Act, (NDPA) 2023.

Hence, while noting this comment, the Commission avers that the concerns have already been considered and allayed by the alignment between the NDPA and these Regulations.

1.2 Comment

Regulation 7- Process of Biometrics Information- MTN stated that the provision restricts the processing of Biometrics information for the purpose of unique identification of data subjects and outrightly prohibits cross-jurisdictional transfer of biometrics data.

MTN recommended that there is need for an alignment of provisions between the draft Regulations and the Nigeria Data Protection Act, 2023. In particular, it may be useful for the position of the Act to be adapted in this case given its alignment with best practices.

Response

These comments are noted and will be considered by the Commission.

1.3 Comment

Regulation 9- Data Breach- MTN opined that the requirement of the draft Regulations to notify a data subject of every leak of personal information is onerous. A recommended and more practicable approach is to provide for a materiality threshold as in the GDPR and Data Protection Act, 2023.

MTN further stated that the maintenance of dissimilar data breach notification/process rules would create an overly complex situation for telecom providers and other relevant stakeholders. Hence, it is recommended that only the notification regime currently included in the Nigeria Data Protection Act, 2023 should be retained as it aligns with global best practice.

Response

These comments are noted and will be considered by the Commission.

1.4 Comment

Part IV- Regulations 10-16- Consent – MTN opines that the matters addressed under this provision are not data protection. They, therefore, recommend that the current consent architecture under the DND facility and the Direction on Forceful subscription to VAS and Data Services suffice for the intent of these provisions and should be maintained.

Response

While noting these comments, it is also worth noting that these services utilize personally identifiable data and information of subscribers. In most cases the output services that rely on subscriber's data also rely heavily on these personally identifiable information. Hence this postulation is not accepted by the Commission.

1.5 Comment

Regulations 18-19(Prevention of Calling Line Identification- Incoming & Outgoing Calls) – MTN recommended as follows;

- i. That the currently existing widely available and easy-to-use options on virtually all devices made by OEMs across the Android and IOS software platforms that enable customers to hide their Caller IDs whenever they choose should suffice for the purposes of Regulation 18.
- ii. That the requirement proposed under Regulation 19(2) should be subjected to further scrutiny/impact assessment to determine the benefits of the requirement and the mischief it seeks to address.
- iii. That Regulation 19(2), which is patterned after Directive 2002/58/EC of the European Union be re-drafted to better reflect the intendment of the provision as contained in the referenced EU Directive. They further note that devices by OEMs enable customers to reject calls where the calling line identification of the calling subscriber is withheld at the simple touch of a button. This obviates the need to layer another obligatory requirement for Licensees to implement an already available feature.

Response

The comments are noted and will be considered in the further review of the Regulations.

1.6 Comment

Regulation 34-35- (Cross Border Transfer of Data) -MTN opined that the draft Regulations should adopt a more restrictive approach by requiring a case-by-case prior approval of the Commission even when the recipient country has been

determined to have an adequate protection regime. They respectfully posit that this provision does not accord the best data protection regulatory requirements.

Accordingly, MTN recommends that there is a need for an alignment of provisions between the draft Regulations and the Nigeria Data Protection Act, in particular, they stated that it is useful for the position of the Act to be adapted in this case because of its alignment with best practice.

Response

The comments are noted and will be considered in the further review of the Regulations.

2. GSMA

2.1 Comment

Draft Data Protection (Communications Services) Regulations.

- a. Conduct a Comparative Analysis: Carry out a comprehensive comparative analysis of the Nigeria Data Protection Act 2023, the Nigeria Data Protection Regulations, 2019 and the NCC Data Protection Regulations, 2023. Identify areas of overlap, discrepancies, or conflicting provisions to determine the extent of misalignment.
- b. Identify Key Areas for Harmonization: Based on the comparative analysis, identify key areas that require harmonization across the data protection laws and regulations. This may involve addressing inconsistencies in definitions, obligations, rights of data subjects, enforcement mechanisms, and the roles of relevant authorities.
- c. Establish a Cross-Sector Task Force: Working with NITDA and the Data Protection Commission, form a cross-sector task force comprising representatives from relevant government agencies, regulatory bodies, legal experts, industry stakeholders, and civil society organizations. The task force should be responsible for reviewing the identified areas for harmonization, conducting consultations, and formulating recommendations for alignment.

Response

The comments are noted and will be considered in the further review of the Regulations.

2.2 Comment

Regulation 18 provides that “A Licensee shall ensure, where available, that a subscriber originating a call has, subject to Regulations 20 and 21, a simple and free means to withhold his MSISDN from being visible to the called line”. The

GSMA recommends that Regulation 18 be expunged from the Regulations in favour of the Commission and Mobile operators collaborating on providing information that promotes awareness and education about existing call number privacy options.

Response

The comments are noted and will be considered in the further review of the Regulations.

2.3 Comment

Regulation 19.–(1) provides that “A Licensee shall ensure, where available, that a called subscriber has a simple and free means of preventing the visibility of the MSISDN of the calling subscriber on his line”. The GSMA recommends that Regulation 19 be expunged from the Regulations in favor of the Commission and Mobile operators collaborating on providing information that promotes awareness and education about existing call number privacy options.

Response

The comments are noted and will be considered in the further review of the Regulations.

2.4 Comment

PART IX – SANCTIONS, ENFORCEMENT AND COMPENSATION. The GSMA recommends that this guideline be revised to bring it in line with the stipulations of section 48 of the Nigeria Data Protection Act 2003 as the acts supersedes the draft Regulations.

3. SusPAD Consulting

3.1 Comment

Regulation 4- Processing of Communications Data - It is essential to clearly indicate the relationship between these Regulations and the newly passed Nigerian Data Protection Act 2023. The construction of Regulation 4 (a) is unclear regarding this relationship as it suggests that only laws pertaining to communications services shall apply, which technically excludes the NDPA because it is a law of general application. They suggest this is clarified.

Response

The comments are noted and will be considered in the further review of the Regulations.

3.2 Comment

Regulation 9- Data Breach- The vocabulary of Regulation 9 needs re-evaluation. They suggest replacing the word 'leaked' with 'breached' (Regulation 9 (1) (a)), which is more conventional in cybersecurity. Equally, Regulation 9 (1) (b) should be revised to read, 'there is an occurrence of risk that has a high impact on a Licensee's network infrastructure or service'. Having a clear threshold for such data breach notifications is also important. This threshold is so far lacking.

SusPAD Consulting also opined that it is essential to note that the time a data breach incident happens differs from when it is discovered. As such, it is suggested that Regulation 9 (2) add the following phrases: '*... but not exceeding 72 hours from the time the incident is discovered or the Licensee got notice of it.*'

Response

The comments are noted and will be considered in the further review of the Regulations.

3.3 Comment

Regulations 24-26- SusPAD Consulting opined that construction of Regulations 24 to 26 appears inelegant. They suggested that they should be redrafted as follows: (1) 'No publicly available communication service shall be used for:

- i. automated calling for direct marketing
- ii. unsolicited call
- iii. unsolicited text messages

(2) A subscriber shall not permit his line to be used for any of the above-mentioned purposes.

(3) Sub-regulation (1) shall not apply where a receiver has previously consented.

Response

The comments are noted and will be considered in the further review of the Regulation.

3.4 Comment

Regulation 41 - The provision of Regulation 41 (2) may hinder a data subject's ability to approach the court speedily. They suggested having a separate provision giving a data subject a right to complain to the Commission without making it a condition precedent for approaching the court.

Response

The comments are noted and will be considered in the further review of the Regulations.

4.0 Kenna Partners

4.1 Comment

Regulation 9- Notification of Data breach – Kenna Partners respectfully recommend that a concrete mode of notification and a defined timeline as to what “immediately” means should be laid down in Section 9.1 in order to further prevent secondary damage. This will impose a responsibility on the Licensees to notify the data subjects of the leak within a specified framework and timeline. They recommend that “immediately” in this instance should be defined as “not more than 72 hours after the data leak”.

Response

The comments are noted and will be considered in the further review of the Regulations.

4.2 Comment

Regulation 7(2) Prohibition of international transfer of biometric data – The firm recommend that it is imperative for the Data Regulations to take it a step further by prohibiting data sharing and/ or granting data access to affiliates outside Nigeria. This will provide a more comprehensive protection for data subjects, especially for licensee that have international group companies or affiliates.

Response

The Commission accepts this recommendation and will duly incorporate such form of limitation/restriction in relation to affiliates and offshore partners of Licensees.

4.3 Comment

Regulation 41(2) - Right to Institute Civil Proceedings- The firm recommend the deletion of Regulation 41(2) of the draft Regulations as it seeks to curtail or limit the rights of data subjects to approach the Courts to seek relief which is already guaranteed under Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria.

It was also proposed that alternatively the Commission may be given a certain number of days to review (they recommended 30 days) and should it not reach a decision at the time, the complainant would then have the right to proceed to court.

Response

The comments are noted and will be considered in further review of the Regulations.

4.4 Comment

Regulation 11- Limitation of the use of consent – Kenna Partners recommended that a procedure for data subjects to withdraw their consent and request for an end to processing of its data be provided as already stated in Regulation 3.1(9) of the Nigerian Data Protection Regulations 2019.

Response

The format and process of withdrawal of consent is clearly laid out in Regulation 16 of the Draft Regulations. Hence these comments may refer to the stated provisions.

4.5 Comment

Regulation 7- Prohibition of processing biometrics information – It was recommended that Regulation 7(1) (b) be amended to state as follows: (b) the Data Subject has given consent, having been provided with a real choice and an alternative, where available.

Response

The comments are noted and will be considered in the further review of the Regulations.

B. REVIEW OF COMMENTS RECEIVED AT THE PUBLIC INQUIRY

1. Tech Hive Advisory & Ikigai Innovations Initiative

1.1 Comment

The mention of Regulation 34 with respect to Transfer of Data should be reviewed by the Commission. The Firm also suggested that there should be some sort of collaboration between the Commission and the Nigerian Data Protection Commission (NDPC) with respect to ensuring the improvement of protection of data in Nigeria.

Response

Tech Hive & Ikigai Innovations was requested to forward its comments in writing to the Commission.

1.2 Comment

Use of Consent: Tech Hive & Ikigai suggested the “use of consent” be replaced with “lawful bases”.

Response

The comment is noted and will be considered in the further review of the Regulations.

2.0 ATC Nigeria Infrastructure Wireless Limited

2.1 Comment

ATC stated that the Commission needed to clarify on the real purpose of this draft regulation and whether there were certain gaps in the Nigerian Data Protection Act (NDPA), 2023 that the Commission is trying to fill. The company further suggested that the approach to tackle the conflict/friction between the regulation and the NDPA is to clearly review both legal instruments and see which areas need to be worked on and where the Commission can step in to fill those gaps.

Response

The comments are noted and will be considered in the further review of the Regulations.

3.0 MTN Communications Nigeria Plc

3.1 Comment

Conflict of Laws between the Regulation and the NDPA: MTN noted that there seems to be a conflict between Section 63 of the NDPA and the Regulations on Data Protection. MTN was seeking clarification on what law to rely on regarding the NDPA and the draft Data Protection Regulations.

Response

The comment is noted and will be considered in the further review of the Regulations.

4.0 Templars

4.1 Comment

Clarification on Section 63 of the NDPA: The firm requested for clarification on which law to apply especially when it concerns Section 63 of the NDPA.

The firm further recommended that there should be a synergy or some sort of collaboration between the Commission and the Nigerian Data Protection Commission (NDPC).

Response

The Comment is noted and will be considered in the further review of the Regulations.

5.0 API

Comment

Sanctions: The firm sort clarification on whose clients or customers are meant to pay sanctions to as there seemed to be a conflict of laws between the Data Protection Regulation on sanctions and the Nigerian Data Protection Act, 2023 on sanctions.

Response

The Comment is noted and will be considered in the further review of the Regulations.

6.0 Comment

Federal Advisory

The firm recommended that the Commission review the Interpretation Act in line with conflict between draft Data Protection Regulations and the Nigerian Data Protection Act, 2023 and align itself with any inconsistencies that may occur and maybe occurring at the time of both legal instruments.

C. REVIEW OF COMMENTS RECEIVED AFTER THE PUBLIC INQUIRY

1. Airtel Networks Limited

1.1 Comment

Airtel sort clarification regarding consent storage and the standard of format that consent storage should be stored.

Airtel recommended that Regulation 12 of the draft Data Protection Regulations with respect to consent should enable licensee to always be allowed to collect consent before providing services to a subscriber or subscribers. Airtel further recommended that all things pertaining to both legal instruments should carried out in line with the best practices.

Response

The comments are noted and will be considered in the further review of the Regulations.

1.2 Comment

Regulation 4- Requirements for Processing Communications Data – The Commission is kindly required to provide further guidance on maintaining and documenting consent to ensure compliance and standardization among Licensees. Further, the Commission should provide clear guidelines on what constitutes compatible purposes for further processing. This will assist operators in determining when they can process data beyond the initial purpose and ensure compliance with the Regulations.

Response

These comments are noted and the Commission will provide the clarification in the document.

1.3 Comment

Regulation 7(2) - Transfer of Biometric Information- Airtel request for clarification for instances where a subscriber requests or authorizes the transfer of Biometrics Data to organizations like the Embassies and International Organizations established in Nigeria. These Organizations, though on Nigerian soil, are considered to be outside Nigeria's territorial jurisdiction.

Response

The provisions of Regulations 10 & 11 of the Draft Regulations have set out procedure and parametre for obtaining consent of subscribers.

1.4 Comment

Regulation 8 - Safety of Communications Data – It would be beneficial to specify the communication channels and the content of the notification that Licensees should provide to data subjects in the event of a data breach. Clear guidelines will help Licensees respond promptly and effectively to protect data subjects' interests.

Response

The comments are noted and will be considered in the further review of the Regulations.

1.5 Comment

Regulation 9 (2) - Data Breach- While Licensees are not opposed to notifying the Commission on data breaches, it would be helpful for the NCC to define the threshold for the number of impacted subscribers to qualify such Data Breach for reporting to the Commission. Example 100 subscribers. Notification Timelines to the NCC should equally be specified.

Response

The comments are noted and will be considered in the further review of the Regulations.

1.6 Comment

Regulation 11(5)- Consent of Minor - Considering the provision the Registration of Subscribers Regulation that places the minimum age of a subscriber for telecoms service at 18 years, this provision on the consent of a minor (persons under less than 18 years is not relevant. We therefore recommend that the Commission consider deleting this provision.

Response

While appreciating these comments, the Commission wishes to point out that the Draft Regulations go beyond SIM registration data to include all form of data in the communications sector. Hence, these comments are not accepted.

1.7 Comment

Regulation 18 & 19- Prevention of CLID - This functionality is already an existing feature in mobile phones, which subscribers can activate when required. Consequently, it is recommended that this provision be expunged as it would amount to burdening operators with an obligation and expenditure to build a functionality into the network which already exist on mobile devices.

Response

The comments are noted and will be considered in the further review of the Regulations.

1.8 Comment

Regulation 21- Tracing of Malicious or Nuisance Calls – Airtel recommends that this provision should be modified such that the subscriber directs the request to the NCC, then the NCC thereafter channels the request to the operator. This would serve to streamline all request via a defined process and curb subscriber abuse in barraging operators with frivolous requests.

Response

The comments are noted and will be considered in the further review of the Regulations.

1.9 Comment

Regulation 27- DND Request - This section which provides that a subscriber may request his network service provider to place his number in a Do Not Disturb (DND) database appears to conflict with provisions of the DND directive (September 6, 2017). Specifically, the provision that states that subscribers who contact the MNO requesting for remote subscription to DND service are to be informed that this is not permissible, they should be educated on how to opt into the DNS service via the short code themselves.

Response

The comment is noted and will be considered in the further review of the Regulations.

1.10 Comment

Multiple Regulatory Oversight. Considering that the Nigeria Data Protection Bureau is the Regulator for data protection, it would be helpful for the Commission to clarify the relationship between the Nigeria Data Protection Act and this Regulations. It is respectfully suggested that the Commission and the Bureau enter into an MoU to reduce incidence or regulatory overlaps, conflict and multiple regulations in this area.

Electronic Communication Service. The Commission is kindly requested to define what it means by “electronic communication service” to avoid ambiguity and to create certainty.

Consent Obtained Prior To Regulations. Airtel recommend that the Commission should provide the cut off to processing consent withdrawal in the event of an ongoing processing activity based on a prior request by such subscriber.

Response

The comment is noted and will be considered in the further review of the Regulations.

1.11 Comment

Regulation 12- Consent as a pre-condition – Consent is one of the grounds of data processing, and one of the easiest grounds and methods to demonstrate that the data subject consented to the processing activity. Hence it is common best

practice for most organization to request data subjects to provide their consent before collecting their data for the purpose of granting access to their services. It is therefore recommended that this section of the regulation be deleted.

Response

These comments are not accepted as Regulation 12 seeks to ensure consent is voluntary and optional for a subscriber.

1.13 Comment

Regulation 14 - Notification of Consent Periodically – Airtel is of the opinion that this section be removed because it would be onerous and costly to implement, as each service provider has millions of subscribers with divergent data being processed. In the alternative however, this section may be modified to reflect that content of the notification be standardized and limited to only the data provided by the subscriber upon registration in line with Regulation 30 of the draft Regulations.

Response

These comments are noted and will be taken into consideration by the Commission

2. ATC Networks Limited

2.1 Comment

ATC has noted the objectives for an industry-specific data protection framework, its major concern borders on areas of conflict that may arise between some provisions of the Regulations and the provisions of the recently enacted Nigeria Data Protection Act, 2023 in addition to an increase to the multiplicity of regulations in the industry.

Response

While appreciating the issues raised, it is worth noting that these Draft Regulations has no conflicting provisions with the NDPA. More importantly Section 63 of the NDPA anticipates sectoral regulations and sets out a priority clause in that regard.

2.2 Comment

Regulation 9 (1) - A Licensee is required to immediately notify its data subjects where: We recommend that “immediately” should be replaced with a timeline just like in subsection 2.

Response

The comment is noted and will be considered in the further review of the Regulations.

2.3 Comment

Regulation 14(2) - Such notification shall be carried out in the last quarter of each year and a report of all notifications sent shall also be provided to the Commission by each Licensee on or before 31st December of each year. ATC recommend that reporting all notifications to data subject on a yearly basis will amount to an administrative burden and may be a difficult provision to comply with given that most organizations' data protection mechanisms are probably manual and not automated. The man-hours that will be lost in reporting this yearly will probably outweigh benefits that will be achieved by requirement.

Response

The comment is noted and will be considered in the further review of the Regulations.

2.4 Comment

Regulation 30(3) - In transmitting the requested data, the Licensee shall ensure that the data is in a format that is – (a) structured; (b) commonly used; and (c) machine readable. ATC observed that “machine readable” is not defined; providing a definition will provide clarity in implementation and help avoid ambiguity in interpretation.

Response

The comment is noted and will be considered in the further review of the Regulations.

2.5 Comment

Regulation 30(4) - The Licensee shall comply with a request for data portability without undue delay and at the latest within 30 days of the receipt of the request. We also recommend that “data portability” should be defined.

Response

The comment is noted and will be considered in the further review of the Regulations.

2.6 Comment

Regulation 34(1) - A Licensee shall not transfer data of a Data Subject outside Nigeria unless the data protection regime in the recipient country has been

determined by the Commission as providing sufficient and adequate protection for the data to be transferred. They recommend that the power given in this provision should reside with the national data protection regulator, not an industry specific regulator. There is a similar provision in the Act and a conflict can arise where one regulator says a jurisdiction is adequate and the other says it is not. ATC Nigeria respectfully recommend to either delete this provision or reference the Act here.

Response

The comment is noted and will be considered in the further review of the Regulations.

2.7 Comment

Regulation 40(1) - A person who suffers damage by reason of any contravention of any of the requirements of these Regulations by any other person may institute a civil proceeding in a court of competent jurisdiction, in order to claim compensation from the other person for that damage. ATC noted that there is a potential conflict as to whether the fines under the Regulations are in addition to the ones under the Act as what constitutes an infraction under the Regulation will most likely also be an infraction under the Act. ATC also submit that there will be need to provide clarification in this regard.

Response

The comment is noted and will be considered in the further review of the Regulations.

2.8 Comment

The term “Definitions”. They recommend "Communications Data" is a defined term with caps, yet it is used multiple times in small letters, it is recommended that it should be written all through with caps.

3. TECH HIVE ADVISORY & IKIGAI INNOVATION INITIATIVE

3.1 Comment

Regulation 4(b) - Replace singling out “consent” as a principle with “lawfulness. Consequently, we recommend that “consent” be replaced with “lawfulness”, which broadly recognises and accounts for all other lawful basis.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.2 **Comment**

Regulation 7(1) - Processing of biometrics information. The section should account for other lawful bases for processing biometric data, such as legal obligations. For example, the basis for biometric registration in the industry is the Registration of Telecommunications Subscribers Regulation, which creates the legal obligation for SIM registration. Accounting for legal obligations also recognises and harmonises policies like the Revised National Identity Policy for SIM Card Registration.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.3 **Comment**

Regulation 9(1) - Limitation of data breach to “leak”. We recommend a broader definition of data breach to include incidents such as loss of data, unauthorised disclosure, and unauthorised access.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.4 **Comment**

Regulation 9(2) - Duration for notification of a data breach. The provision prescribes 72 hours for notification of a data breach. However, this is in conflict with the provisions of **Reg. 4.3 of the Internet Code of Practice** issued by the Commission. An effort should be made to harmonise these provisions to avoid conflict and operational uncertainty.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.5 **Comment**

Regulation 30 - Transfer of data (data portability). This provision states that a subscriber can receive a copy of their personal data held by the Licensee under any of the three conditions mentioned in sub-article (2), to wit: consent is the lawful basis for processing; the data relates to those processed by automated means alone; and the data does not include those created by the Licensee from the data subjects data. This provision does not account for processing based on a contractual relationship, which is one of the lawful bases for exercising the right

to data portability under the NDPA. Additionally, it explicitly excludes data developed from the personal data of data subjects. This provision should be reviewed to include data processed based on contractual obligations to bring it in line with the provisions of the principal legislation on data protection. It should also include data developed by the Licensee from data subject's data, provided that piece of data is capable of identifying data subjects.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.6 Comment

Regulation 33 - Transfer of data to a third party. This provision should be reviewed to include third-party assessments, including the execution of an agreement between the licensee and the third-party and an assurance mechanism. There should be obligations on Licensees to ensure that the third party with whom data is shared will protect the data, and the information should be detailed in a data processing agreement and other assurance mechanisms. Information about data sharing should also be disclosed to the data subject. Finally, the provision should include data sharing that may be required based on the completion or performance of a contract. Nonetheless, the provision should ensure Licensees use assurance mechanisms to manage the risks associated with third-party data sharing.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.7 Comment

Regulation 34 - Transfer of data outside Nigeria. The regulations distinguished between the transfer of sensitive personal data and personal data. It outrightly prohibits the transfer of sensitive data outside Nigeria but provides conditions for the transfer of personal data. It provides that personal data shall be transferred outside Nigeria only where the recipient country has been determined by the commission to provide an adequate level of protection. This clause is problematic because it gives the commission the power to make an adequacy decision that may differ from the current list issued by NITDA or any future adequacy determination by the Nigeria Data Protection Commission (NDPC). The provision needs a review to account for the existing international data transfer mechanisms. In addition, the power given to the commission to make adequacy decisions should be expunged to reconcile the potential conflict that

may arise with respect to the power of the NDPC to make adequacy decisions. Finally, by deleting the provision, operators will not be subjected to a dual international transfer mechanism, which may create operational difficulties for Licensees. The Commission should work closely with the NDPC to ease the harmonisation process and clarify the potential confusion that exists under the existing NDPA.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.8 Comment

Regulation 34 (2) - Prior authorisation to transfer personal data. It is recommended that Regulation 34 (1) be taken out to avoid confusion, as the only basis for transfer is when the commission has approved it and not just when the country has an adequate level of protection. Considering the fast pace of international data flow, approval for each purpose and data transfer will create an unnecessary administrative burden on the Licensees and the Commission. For example, in Tunisia, where a similar model has been operationalised, businesses have witnessed unnecessary bottlenecks that make commercial activity difficult.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.9 Comment

Regulation 35 - Exemption from approval to transfer data outside Nigeria. The regulation provides the data transfer mechanisms as the basis for exemption from obtaining approval from the commission to transfer data. This also means that, by implication, the provision intends to rely on other bases to transfer personal data besides the adequacy decision and approval of the commission. The entire provision on international data transfer should be excluded for the same reasons we have stated above. In the alternative, the Commission may propose the need for an impact assessment before data transfer to strengthen existing safeguards under the NDPA instead of creating a dual regime.

Response

The comment is noted and will be considered in the further review of the Regulations.

3.10 **Comment**

Regulation 6, 11(2), 14(1), 16(1), 18, 19, 20, 21, 24(1), 25(1), 26, and 27. Use of gender-neutral term. There are different instances in the regulation where the male pronouns, “him” and “his” are used repeatedly. In line with global best regulatory drafting practices, we recommend using gender-neutral terms in the regulations. An alternative is “they/them/their.”

Response

The comment is noted and will be considered in the further review of the Regulations.

D GENERAL COMMENTS

Ms Franklin Felix (Manager, Public Affairs Department) thanked everyone for coming and noted that the session was very informative. She stated that all the issues raised will be considered and consolidated to benefit the Telecommunications Industry.

The Public Inquiry ended at 2:00pm.

Dated this 26th day of July, 2023

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