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FREQUENCY SPECTRUM (FEES AND PRICING, ETC.) REGULATIONS 2004



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S. I. No. 23 of 2004

**NIGERIAN COMMUNICATIONS ACT
(2003 No. 19)**

FREQUENCY SPECTRUM (FEES AND PRICING, ETC.) REGULATIONS 2004

Commencement : 16th November, 2004

In exercise of the powers conferred on it by section 70 of the Nigerian Communications Act and of all other (powers enabling it in that behalf, the Nigerian Communications Commission, hereby make the following Regulations:

PART I — SCOPE AND OBJECTIVES

1. These Regulations shall cover the determination of all frequency spectrum fees for commercial activities in the telecommunications sector in Nigeria. Scope of the Regulations.

2. The objectives of these Regulations shall be to — Objectives.

(a) establish a transparent, fair, competitive and non-discriminatory pricing structure that include, but not limited to, auctions, beauty contest and other internationally accepted methods of bidding for the acquisition of frequency spectrum ;

(b) standardise frequency spectrum fees and pricing system in order to promote uniformity, consistency and efficiency in spectrum management in Nigeria in conformity with international standards ;

(c) ensure that the prices reflect the market value and are directly proportional to frequency spectrum size ;

(d) promote efficiency and competition in the usage of frequency spectrum ;

(e) facilitate access to frequency spectrum by simplifying and harmonising the electronic magnetic wave spectrum pricing process ; and

(f) to achieve government policy objectives of even development of telecommunications infrastructure across Nigeria and the universal service goals.

3. The Commission shall categorise the licence on frequency spectrum that are capable of being shared by several operatives on a simultaneous basis for which the Commission has power to grant under the Act. Categorisation of frequency spectrum.

PART II—LICENSING AREAS AND TIERS

4. As from the commencement of these Regulations, frequency spectrum pricing shall, in line with international best practices, be determined by empirical formula derived from market conditions and, where appropriate, competitive methods as may be determined by the Commission, from time to time. Determination of frequency spectrum pricing.

5.—(1) Frequency spectrum shall be issued in accordance with the licensing areas corresponding to the States in the Federation or the Federal Capital Territory and categorised into tiers as specified in the First Schedule to these Regulations. Issuance of frequency spectrum according to licensing areas and tiers.

First Schedule. (2) The Commission may, from time to time, review the categorisation of licensing areas into tiers as specified in the First Schedule to these Regulations.

State by State pricing of frequency spectrum. **6.** Every frequency spectrum, other than a microwave frequency, shall be priced on a State by State basis subject to market potentials and economic activities.

PART III—FREQUENCY SPECTRUM LICENCES AND PERMITS

Classification of frequency spectrum licences. **7.—(1)** Frequency spectrum licences shall be classified as—

- (a) short-term permit with a tenure of 4 months ; or
- (b) medium-term permit with a tenure of one year ; or
- (c) long-term licence with a tenure of 5, 10 or 15 years.

(2) For the purposes of paragraphs (a) and (b) of this regulation, any frequency spectrum licence with a tenure of one year and below is classified as a permit.

Terms and conditions of frequency spectrum licence. etc. **8.** Notwithstanding the provisions of regulation 7 of these Regulations, the Commission may, from time to time, determine the duration, terms and conditions of any frequency spectrum licence under these Regulations.

Renewal of licences. **9.—(1)** All frequency spectrum licences shall be subject to renewal upon payment of renewal fees and meeting other terms and conditions as may be determined, from time to time, by the Commission.

(2) Notwithstanding paragraph (1) of this regulation, any medium-term permit, other than those mentioned in regulation 10 of these Regulations, may be renewable with the approval of the Commission.

Assignees of frequency spectrum. **10.—(1)** Any assignee of frequency spectrum or other operator, may elect to pay for frequency spectrum yearly or every five years :

Provided that such frequency spectrum is not assigned through the process of an auction.

(2) Where a frequency spectrum was assigned through an auction process, the parent for the frequency spectrum shall be made in accordance with the rules of such auction.

Fees payable by operators, etc. **11.** The fees payable by any operator shall be determined by a pricing formula as specified in the Second Schedule to these Regulations.

Second Schedule.

Annual report on the use of frequency spectrum. **12.** Every operator who is allocated frequency spectrum shall submit an annual report on the usage of the frequency spectrum allocated or assigned to him.

Validity and revocation of frequency spectrum. **13.—(1)** Every frequency spectrum allocated under these Regulations shall be utilised or used up within a period of one year or such other period of validity as the Commission may, from time to time, specify in the terms and conditions of allocation.

(2) Any frequency spectrum licence not utilised in accordance with paragraph (1) of this regulation may be revoked by the Commission.

(3) Where a frequency spectrum licence is revoked under these Regulations for non-utilisation thereof, the licence fee paid for the allocation shall not be refundable except with the express approval of the Commission.

PART IV—PRICING POLICY

14.—(1) The Commission shall adopt a pricing formula that reflects the economic value of frequency spectrum so as to encourage the efficient usage and stimulate growth.

Pricing formula.

(2) The price of a frequency spectrum shall be directly proportional to the size of the frequency spectrum assigned.

(3) Without prejudice to paragraph (2) of this regulation, the price of frequency spectrum may vary subject to the frequency band ; and the band price shall reflect the level of congestion, market demand and the relative cost of deploying network infrastructures.

15. The fees payable for frequency spectrum shall be sufficient and adequate to encourage the optimal use of the frequency spectrum and to cover the administrative cost of the frequency spectrum management.

Fees payable to be sufficient and adequate.

16.—(1) The fees payable for each category of frequency spectrum shall be as determined by the Commission using the pricing formula specified in the Second Schedule to these Regulations.

Fees to be determined by the Commission. Second Schedule

(2) The price per MHz of frequency spectrum may be determined and published by the Commission every year and such fees may be reviewed, from time to time, by the Commission.

(3) The Commission may, from time to time, review the fees specified in the Second Schedule to these Regulations, and when reviewed, the new unit price and rate shall apply only to—

- (a) new requests for frequency spectrum allocation made after the commencement of the revised fees ;
- (b) renewal of expired licences ; or
- (c) reinstatement of revoked licences.

PART V—MISCELLANEOUS

17. Regulations 11 and 12 of the Wireless Telegraphy Regulations are hereby consequently amended by these Regulations.

Consequential amendment of L.N. 31 of 1961.

18. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Nigerian Communications Act 2003 ;

2003 No. 19.

“Commission” means the Nigerian Communications Commission established under the Act ;

“frequency spectrum” means a wide range of frequencies with different characteristics and applications ;

“Nigeria” means the entire geographical land area, the territorial waters and air limits of Nigeria and any area to which the provisions of the Act applies ;

“operator” means a providers of telecommunication service duly licensed by the Commission and includes but not limited to a licensed carrier ;

“person” includes any individual or natural person, any firm, corporation, partnership, trust, limited liability company, joint venture, government entity or other entity recognised under any law for the time being in force ;

“Radio Regulations” means the publication of the International Telecommunication Union (ITU) that delineates radio frequencies into bands and stipulates the services applicable ;

“telecommunications network infrastructure” includes any form of installation which ensures either the transmission or the transmission and routing of telecommunications signals and the associated exchange of the control and operational information between network termination points.

Citation.

19. These Regulations may be cited as the Frequency Spectrum (Fees and Pricing, Etc.) Regulations 2004.

FIRST SCHEDULE

Regulation 5

LICENSING AREAS

The entire geographical areas of Nigeria as defined in regulation 18 of these Regulations shall be classified into licensing areas as follows, that is—

<i>Tier</i>	<i>States</i>
Tier 1	Lagos
Tier 2'	Delta ; Federal Capital Territory, Abuja ; Kaduna ; Kano ; and Rivers.
Tier 3	Abia ; Anambra ; Edo ; Ogun ; and Oyo.
Tier 4	Akwa Ibom; Bauchi ; Benue ; Borno ; Cross River; Enugu; Imo ; Kogi.; Kwara; Niger; Ondo ; Osun; and Plateau:
Tier 5	Adamawa ; Bayelsa ; Ebonyi ; Ekiti ; -Gombe ; Jigawa ; Katsina ; Kebbi ; Nassarawa ; Sokoto ; Taraba ; Yobe ; and Zamfara.

SECOND SCHEDULE

Regulations 11 and 16(1)

PRICING FORMULA FOR FREQUENCY SPECTRUM FOR LICENSING REGIONS

PART A—PRICING FORMULA OF FREQUENCY SPECTRUM
USING BAND FACTOR AND TENURE

The price of spectrum for a licensing region will be calculated using the following formula, that is—

spectrum fee = (unit price) (B) (K₁) (K₂) per State

WHERE B = assigned bandwidth in MHz or spectrum size in MHz

K₁ = *Band factor*

1 for 3.5GHz.Band
1.6 for 1.8/1.9GHz Band
1.4 for 800/900 MHz Band
1.2 for 2.0 - 2.5 GHz Band
0.8 for 10.5GHz Band

For Bands lower than 800 MHz or higher than 10.5 GHz, the factor, K₁, will be determined as the bands are assigned.

K₂ = *Tenure Duration Factor*

0.3 for 3 months
1 for a 1 year licence
4 for a 5 year licence (standard)
7.2 for a 10 year licence
10.4 for a 15 year licence

Duplex/Simplex For simplex channel, unit price per State will be half of equivalent duplex channel.

PART B—UNIT PRICE PER MHZ FOR EACH LICENSING REGION

<i>Licensing Region</i>	<i>Unit Price per MHz per Annum</i>
<i>Tier 1</i> : Lagos State	₦3,000,000
<i>Tier 2</i> : Delta State ; Federal Capital Territory, Abuja ; Kaduna State ; Kano State; and Rivers State.	₦1,500,000
<i>Tier 3</i> : Abia State ; Anambra State ; Edo State ; Ogun State ; and Oyo State.	₦1,500,000
<i>Tier 4</i> : Akwa Ibom State ; Bauchi State ; Benue State ; Borno State ; Cross River State ; Enugu State ; Imo State ; Kogi State ; Kwara State ; Niger State ; Ondo State ; Osun State ; and Plateau State.	₦600,000
<i>Tier 5</i> : Adamawa State ; Bayelsa State ; Ebonyi State ; Ekiti State ; Gombe State ; Jigawa State ; Katsina State ; Kebbi State ; Nassarawa State ; Sokoto State ; Taraba State ; Yobe State ; and Zamfara State.	₦300,000

PART C—PRICING FORMULA FOR MICROWAVE FREQUENCIES

Price per hop = Unit Price (F1) (F2) (N) per annum

Where unit price = ₦18,000

F1 = *Band Factor*

12	=	1-4 GHz band
1	=	6/7/8 GHz band
0.8	=	13 GHz band
0.7	=	15-18 GHz band
0.5	=	19-25 GHz band

F2 = *Bandwidth Factor*

1	=	3.5 MHz
2	=	7 MHz
4	=	14 MHz
8	=	28 MHz
16	=	56 MHz

N = *Total Number of RF Channels (for N + 1 Systems)*

All microwave frequencies are subject to renewal by 31st December of every year.

In order to harmonise the renewal date for all microwave frequencies, licences which expire before or after the 31st day of December shall be renewed for the remaining period up to 31st December and licence fees payable shall be prorated for the remaining period.

Microwave frequencies are not priced on State basis. Unit price is uniform throughout the Federation and subject to review, from time to time.

MADE at Abuja this 16th day of November, 2004.

ERNEST NDUKWE
Executive Vice-Chairman

EXPLANATORY NOTE

*(This note does not form part of the above Regulations
but is intended to explain its purport)*

The Regulations, among other things, provides for the fees and pricing formula and policy for frequency spectrum allocation and utilisation in Nigeria.