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LEGAL FRAMEWORK FOR THE PROTECTION OF CONSUMERS' RIGHTS AND QUALITY OF SERVICE: NIGERIAN TELECOMMUNICATIONS IN FOCUS*

Abstract

Nigeria is one of the fastest growing telecommunications economies in the world. This has necessitated legal and regulatory frameworks for consumer protection in the telecommunications industry, to meet up with minimum international standards in terms of quality of telecommunications services. Despite the regulatory measures put in place to ensure consumer protection and quality of services, many consumers are still uninformed of their rights and wallowing in ignorance and want of education on legal measures to ventilate their grievances. This piece of work is, therefore, an attempt to examine the legal and regulatory frameworks for consumer protection in the Nigerian telecommunications industry. It considers various rights open to consumers of telecommunications services and the steps to be taken to ventilate their grievances. It further examines the obligations of consumers as a check to unnecessary complaints. This tallies with the notion that where there is a duty, there must be a corresponding obligation. There is a duty on the part of the telecommunications operators and service providers to ensure that consumers' rights are not trampled upon illegally. On the other hand, there are obligations on the part of consumers not to tamper with due process in the production of telecommunications services.

Introduction

The legal and regulatory frameworks for the general consumer protection in Nigeria consist of the extant common law rules on contractual and tortious liability, case law and a plethora of Nigerian legislations that regulate specific sectors of the economy.¹ In Nigerian telecommunications industry also, consumer protection and quality of service are regulated by the common law rules of contract and tortious liability, case law and legislations. Specifically, the Nigerian legislations that regulate consumer protection and quality of service in

* Ariyoosu, Dauda Adeyemi LL.B (Ilorin), LLM (Ife), BL, PGDE, Lecturer, Department of Business Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria. ariyoosu4law@yahoo.com, ariyoosu.da@unilorin.edu.ng, +2348066497298; +2347054794888

1 Okechukwu Agwu Uche, 'Legal and Regulatory Framework for Consumer Protection in Nigeria' (Materials of 30th and 31st workshops, ALPHAJURIS Continuing Legal Education Series 2008) 12.

telecommunications sector include Nigerian Communications Act,² Standards Organisation of Nigeria Act,³ Consumer Protection Council Act,⁴ National Environmental Standards and Regulations Enforcement Agency (Establishment) Act⁵ and a lot of guidelines, regulations and other statutory instruments made thereunder.

Each of the above-mentioned legislations established its respective body or authority saddled with the responsibility of protecting consumers and ensures quality of service.

Thus, the Nigerian Communications Act established the Nigerian Communications Commission,⁶ National Frequency Management Council⁷ and Universal Service Provision Board;⁸ the Standards Organisation of Nigeria Act established the Standards Organisation of Nigeria;⁹ the Consumer Protection Council Act established the consumer Protection Council¹⁰ while the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act established the National Environmental Standards and Regulation Enforcement Agency.¹¹ It appears, therefore, that there are many regulatory bodies for consumer protection, and this has resulted in regulatory overlaps as one of the challenges confronting the implementation of consumer protection in the production of quality telecommunications services. The sector specific regulatory body as far as Nigerian telecommunications industry is concerned is the Nigerian Communications Commission.

To ensure quality of service, all telecommunications service providers are mandated, in respect of their specific services, to meet such minimum standards of quality of service, deal reasonably with consumers and adequately address consumer complaints.¹²

² Cap. N97, LFN 2004.

³ Cap. 59, LFN 2004.

⁴ Cap. C25, LFN 2004.

⁵ Act No.25 of 2007.

⁶ See Section 3 of the Nigerian Communications Act.

⁷ Section 26 of the Nigerian Communications Act.

⁸ Section 115 of the Nigerian Communications Act.

⁹ Section 1 of the Standards Organisation of Nigeria Act.

¹⁰ Section 1 (1) of the Consumer Protection Council Act.

¹¹ Section 1(1) of the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act.

¹² See Section 104 of the Nigerian Communications Act, in pursuant of which the NCC made Quality of Service Regulations 2009 to identify minimum quality of service standard, and associated measurement, reporting and record keeping task.

Consumer Protection is also recognized internationally as many international organizations make provisions, directly or indirectly, for consumer protection from fraudulent and deceptive commercial practice.¹³

Consumer Rights and the Nigerian Telecommunications Industry

Consumer Protection is linked closely with consumer rights. For quality of telecommunications service and consumer protection, the rights of telecommunications consumers must be adequately protected. The Nigerian constitution recognises certain rights of citizens as inalienable.¹⁴ It protects right to life,¹⁵ right to dignity of human person,¹⁶ right to personal liberty¹⁷, rights to freedom of expression and the press,¹⁸ right to freedom of movement,¹⁹ right to fair hearing,²⁰ right to private and family life²¹ and right to freedom of thought conscience and religion,²² among others. All these rights are also enjoyed by consumers of telecommunications services.

It suffices to say therefore that consumer rights in the Nigerian telecommunications industry is partly sourced from the Nigerian constitution itself.²³

Another source of consumer rights is the United Nations (UN) Guidelines on Consumer Protection wherein the UN adopted in its General Assembly Resolution 39/248 on April 9, 1985, eight rights of

¹³ See Organisation for Economic Cooperation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders under which OECD countries recommend that Consumer Protection Enforcement Agencies in member countries, having a common interest in preventing fraudulent and deceptive commercial practice against consumers, co-operate with one another in enforcing their laws against such practices.

¹⁴ See Chapter IV of Constitution of the Federal Republic of Nigeria (CFRN) 1999.

¹⁵ Section 33 of the Constitution of the Federal Republic of Nigeria.

¹⁶ Section 34 of the Constitution of the Federal Republic of Nigeria.

¹⁷ Section 35 of the Constitution of the Federal Republic of Nigeria.

¹⁸ Section 39 of the Constitution of the Federal Republic of Nigeria.

¹⁹ Section 41 of the Constitution of the Federal Republic of Nigeria.

²⁰ Section 36 of the Constitution of the Federal Republic of Nigeria.

²¹ Section 37 of the Constitution of the Federal Republic of Nigeria.

²² Section 38 of the Constitution of the Federal Republic of Nigeria.

²³ Using the word 'partly' does not, however, suggest that Nigerian Constitution is being robbed of its indisputable status as the ground norm since all Laws and Acts and all authorities derive their validity there from and any law that is inconsistent with any of the provision of the Constitution is, by the effect of Section 1(3) of the Constitution, to the extent of its inconsistency, null, void and of no effect whatsoever.

Legal Framework for the Protection of Consumers' Rights and Quality of Service: Nigerian Telecommunications in Focus

consumers as Right to Satisfaction of Basic Needs, Right to Safety, Right to Information, Right to Choice, Right to Representation, Right to Redress, Right to Education and Right to Healthy Environment.²⁴ In addition, the Nigerian Communications Act provides for certain rights and obligations of consumers in telecommunications industry, and pursuant to the powers conferred upon it, the NCC made Consumer Code of Practice Regulations 2007.²⁵

The various rights of consumer in the telecommunications industry shall be discussed *anon*.

Right to Minimum Standards of Quality of Service

Every consumer of telecommunications services is entitled to such minimum standards of quality of service.²⁶ Quality of Service in this sense is a measure of the telephone service provided to a subscriber.²⁷ Call must be clear and easy to hear. It must be loud enough and the longest time a consumer should wait after picking up the phone before receiving dial tone must be adequately determined.

The consumers should be able to enjoy required applications services such as emergency services, directory assistance services, operator assistance service and services for disabled customers.²⁸ As part of the functions of NCC, the NCC shall protect and promote the interests of customers against unfair practices including matters relating to availability and quality of communications services, equipment and facilities.²⁹

Operating companies must provide and list in their directory a 24 hour repair service number. Consumers should have the right to

access vendor's annual quality of service reports.³⁰ Licenses must also comply and cause their agents to comply with the relevant fault repair standards set out in the NCC's quality of service Regulations. Licensees must also endeavour to give advance warning of anticipated service disruptions or planned outages, including details of the disruption or outage, the services and service area affected and any applicable compensation or other remedies³¹

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 for goods and services, and to affirmatively accept all terms and conditions before being charged for services. They have the right to be protected against fraudulent, misleading and deceitful information, advertisement or labeling.³² The protection of the right to be informed and educated about terms and conditions of service enables the consumers to make informed choice according to individual customer's needs and wishes. Their right to education provides them with necessary education on the environmental, social and economic implications of their choices

Consumers of telecommunications services should be properly educated even before paying for the services. The right to be informed extends to upgrade or migration options. Thus, where services are subject to upgrade or migration options, consumers must 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.³³ The General Consumer Code of Practice made under the Consumer Code of Practice Regulations 2007 provides that "Licenses shall provide consumers with information on their services that is complete, accurate, and up-to-date and in simple, clear language"³⁴

²⁴ See Adewale, S.A and Bamise J.B., 'The Legal Protection of Consumers of Telecommunications Services' (Paper presented to 2005/2006 LL.M Class of Aviation and Communications Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria).

²⁵ The specific objections of the Regulations are to confirm and clarify the procedures to be followed by licensees in preparing approved Customer Codes of Practice. See Regulations 2.

²⁶ Section 104 (a) of the Nigerian Communications Act. In *Nkwocha & 2 Ors v. MTN Nigeria Ltd & 4 Ors* (2004) 1 TLR, 1, 4 and *Njikonye Esq. v. MTNNig Communications Ltd* (2008) All FWLR (Pt 413) 1343, the plaintiffs approached the Court as a result of poor quality of service.

²⁷ Harry Newton, *Newton's Telecom Dictionary* (Miller Freeman Inc, USA) 641

²⁸ See Section 107 (2) of the Nigerian Communications Act.

²⁹ See Section 4 (1) (b) of the Nigerian Communications Act.

³⁰ See Engr Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry' (Paper Presented at the Annual Distinguished Lecture of the Justice Chambers, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria, 2008). Engr Earnest Ndukwe was the Executive Vice-Chairman/Chief Executive Officer of Nigerian Communications Commission.

³¹ Code 13 (2) & (3) of the General Consumer Code of Practice.

³² Engr. Earnest C.A. Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

³³ Code 8 (5) of the General Consumer Code of Practice.

³⁴ Ibid Code 6 (1). Note also that the NCC established the Consumer Affairs Bureau (CAB) in September 2001 to inform, educate and protect the consumers of

Licenses shall also endeavour to respond in a timely manner to consumers requests for information on their services and such information shall be provided free of charge and shall include at least the following:

- (a) Current service arrangements, including rates and terms and conditions for all services offered to the public, shall be readily available in print and electronic format (including on each Licensee's Web site) such information shall also be available at all retail outlets where the Licensee's services are sold;
- (b) Services that are subject to price or tariff regulation by the Commission shall be described in services tariff pages published in an accessible form including being made available at designated company offices and on the Licensee's Web site;
- (c) For those Licensee's that publish subscriber directories, the terms of service shall be printed in the front of such directories; and
- (d) Where a Licensee's seeks any change in the tariff rates for services affected consumers shall be notified of the proposed price change in an effective manner that, in particular, lets them comment to the commission on the proposed changes. After approval by the commission, consumers should also be notified of the resulting tariff changes in an effective manner".³⁵

Before entry into any contract for any services, consumers have the right to be provided with a complete description of the services in clear and plain language, avoiding unnecessary technical terms. Where other services are required in order to effectively utilize the service, the consumer must be sufficiently informed of such requirements or service dependencies.³⁶

The consumer is also entitled to be provided with information on the service quality levels offered, the waiting time for initial connection and any service area and coverage maps if applicable. He is also entitled to specific information regarding any compensation, refund or other arrangements which may apply if contracted quality

telecommunications services in Nigeria. The Consumer Protection & Advocacy (CPA) is one of the units of CAB that is charged with the responsibility of responding to Consumer complaints and enquiries. See Consumer Inquiries and Complaints <<http://www.ncc.gov.ng/>> accessed on 30 August 2010.

³⁵ Ibid, Code 6 (2).

³⁶ Ibid, Code 8 (1).

levels are not met.³⁷

As regards pricing information, before a contract for service is entered into the consumer is entitled to be informed of the applicable rates or charges; what the charges include; each part or element of an applicable charge, and the method of its calculation; the frequency of the charge or other circumstances that give rise to the charge and whether the charges to elements thereof are subject to change from time to time, the circumstances of such changes and how the consumer will be informed of such changes.³⁸

Licensees are also required to provide the consumer with specific information regarding any maintenance services offered and before entering into a contract to provide services, the licensee must inform the consumer as to whether there is any contractual warranty relating to products (if any) supplied for use in connection with the service.³⁹

Right to Safety, Healthy and Suitable Environment

The consumer has right to be protected against the marketing of goods that are hazardous to public health.⁴⁰

In specific regard to emergency services, the NCC has the responsibility to promote and enhance public safety through the use of a particular number which shall be designated as the universal safety and emergency assistance number for telephony services generally.⁴¹

The need for consumer right to safety is to provide goods and render services, the consumption of which will not be inimical or hazardous to consumer's health and the social well-being at large.⁴² The crucial question is how an average consumer of telecommunications service known how much unhealthy radiation is being emitted from the hand-phone while making or receiving calls or charging the batteries? Can one assume that a consumer of telecommunications service can know whether tasteless and odourless poisonous and harmful gases or other objects is seeping into his mouth, ear and environment from the

³⁷ Ibid, Code 8 (2) & (3).

³⁸ Ibid, Code 9.

³⁹ Ibid, Code 11 (1) & (2).

⁴⁰ Engr. Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

⁴¹ Section 107 (3) (a) of the Nigerian Communications Act.

⁴² Adewale, S.A and Bamise J.B., 'The Legal Protection of Consumers of Telecommunications Services'.

hand-phone or base stations?⁴³ The licensee is also duty-bound under section 135 (3) (b) of the Nigerian Communications Act to take all reasonable care in connection with installation of network facilities to protect the safety of property.

Right to Choice

Consumers are not expected to be compelled into accepting telecommunications services. They are entitled to choose whichever services they need freely and willingly. This right entails the right to be assured access, wherever possible, to a variety of goods and services at competitive prices with satisfactory quality.⁴⁴ It helps to ensure protect consumers against monopolistic tendency and practice in the market place. It helps to ensure ability and right to choose from varieties rather than a situation of no alternative. This Anti-Trust and Competition legislations are finding a foothold in many economies to protect consumer against price collusion and monopolistic practices.⁴⁵

The regulatory body is to ensure that right to choose is not denied the consumer, by promoting fair competition in the communications industry. The consumer should be able to choose which network is favourable to him and no consumer should be deprived of this right unless in accordance with the Law.

Right to Complaint and be Heard

Consumers of telecommunications services have right to a fair complaint process. They have right to get fair, inexpensive and quick redress of grievances. They must have accessible knowledge of the complaint process and steps needed to lodge a complaint. They have the right to a consumer-oriented response for complaints and as prescribed by the Consumer Codes of Practice and Regulations.⁴⁶ Part VII of the Schedule to the NCC Consumer Code of Practice Regulations 2007 provides for complaints handling. Thus, licensees must provide easily understood information about their complaint processes in various media and formats, and ensure that customers can easily identify how a complaint may be lodged. All customers' complaints are

required to be recorded by licensees, and processed in accordance with identified practices and procedures⁴⁷.

Licensees are also encouraged to make adequate provision to ensure that people with physical disabilities or other special needs are able to access their complaint handling process; including ensuring that customer can be easily represented by their representatives in order to make a complaint. Where consumers specifically request assistance in lodging complaints, service providers are encouraged to provide reasonable assistance.⁴⁸ Complaint handling process is provided free of charge unless where investigation of the complaint requires the retrieval of records more than 12 (twelve) months old, and where the retrieval results in any incremental expense or significant inconvenience to the licensee, and in which case a reasonable charge agreed to by the consumers may be imposed⁴⁹.

The complaint process in the Nigerian Telecommunications industry as it affects consumer protection is clearly stated in the NCC General Consumer Code of Practice. Thus, the consumer will forward a written complaint which shall be acknowledged by the licensee and acted upon within the prescribed time frame as stated in the NCC Quality of Service Regulations.⁵⁰ The licensee can acknowledge and respond to a complaint either verbally or in writing, but should make reasonable efforts to make the initial response in the manner requested by the complainant.

Non-written complaints can also be accepted and taken as acknowledged by the licensee at the time the complaint is made by the consumer.⁵¹

Consumers are entitled to be advised on the expected actions and timing for investigating and resolving the complaint. However, in the event the licensee regards the complaint as frivolous or vexatious, the Consumer shall be informed accordingly and if dissatisfied the Consumer shall have the further recourse. In any event, no Consumer complaint shall remain unresolved for more than three (3) months. Licensees must implement processes to provide Consumers with

⁴³ Ibid.

⁴⁴ Engr. Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

⁴⁵ Adewale, S.A and Bamise J.B., 'The Legal Protection of Consumers of Telecommunications Services'.

⁴⁶ Engr Earnest Ndukwe 'Consumer Rights in the Telecommunications Industry'.

⁴⁷ Code 39 of the General Consumer Code of Practice.

⁴⁸ Ibid, Code 40.

⁴⁹ Ibid, Code 42.

⁵⁰ The current of which is Nigerian Communications Act 2003 Quality of Service Regulations 2009.

⁵¹ Code 41 of the General Consumer Code of Practice.

sufficient information and the means to inquire on the progress of complaints. Such processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent enquiries by Consumers.⁵²

Consumers must also be advised of the outcome of the investigation of their complaint, and any resulting decision by the Licensee. Where a Consumer is not satisfied with a decision reached pursuant to a complaint, the Licensee shall give the Consumer the option of pursuing an identified escalation process by which the decision may be examined by a suitably qualified person in the Licensee's organization. Where the Consumer has already been provided with the benefit of the Licensee's escalation process and where there are no further escalation processes, the Licensee shall inform the Consumer accordingly. In the event that a complaint has not been resolved to the Consumer's satisfaction within sixty (60) days of being communicated to the Licensee, the Licensee must inform the Consumer that he or she may refer the complaint to the NCC. Failure to deal with Consumer complaints, and any related service, are also subject to the requirements of the Quality of Service Regulations, including payment of any specific service credits or rebates established pursuant to those regulations.⁵³

Right to Timely Installation, Restoration and Repair of Services

Consumers have the right to timely installation of new services, and restoration and repair of existing service. It is the duty of the service provider to implement the facilities and processes needed to permit consumers to report faults 24 hours a day and comply with the relevant fault repair standards set out in the NCC's Quality of Service Regulations. In the event of force majeure such as floods and storms damaging or destroying telecommunications facilities, consumers are entitled to have any fault thereby caused to be rectified within a reasonable time.⁵⁴ Where, consumer services are not timely restored, the consumer has a right of action. In *Barrister Mike Nkwocha & 2 Ors v. MTN Nigeria Ltd & 4 ors*⁵⁵ and *Jeph C. Njikonye Esq. v. MTN Nig.*

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid, Code 13.

⁵⁵ (2004) 1 TLR, 1.

Communications Ltd,⁵⁶ the Plaintiffs who were subscribers of GSM Services of the Defendants sued the defendants for dropped/uncompleted calls resulting from network failures.⁵⁷ The observation noted here is that if the Defendants had timely restored their network services, perhaps there might be no need for the Plaintiffs to approach the Court.

Right of Privacy

The Nigerian Constitution guarantees right to private life.⁵⁸ Thus, individual right to privacy cannot be ordinarily trampled upon. Consumers of telecommunications services have right to personal privacy. They have right to protection from unauthorized use of their records and personal information, and to reject intrusive communications and technology.⁵⁹

In developed countries, anti-spam policies have been developed and Task Force on Spam established.⁶⁰ Many countries, particularly in the European Union, have chosen to introduce Anti-Spam legislation within the framework of modification of privacy and data protection laws.⁶¹ Nigeria has absolutely no specific privacy and personal information Laws.⁶² The need to have specific privacy and personal information laws and regulations cannot therefore be over-emphasized.

Although a licensee may collect and maintain information on individual consumers reasonably required for its business purpose, the collection and maintenance of such information must be protected

⁵⁶ (2008) All FWLR (Pt 413) 1343.

⁵⁷ Although in the 2 cases, the issue which court (State High Court or Federal High Court) has jurisdiction to entertain the suits arose respectively in the 2 cases, in the former it was held that the Federal High Court has exclusive jurisdiction to entertain the suit relying on Section 138 of the Nigerian Communications Act, while in the latter case, the Court of Appeal held that the dispute was founded on contract and therefore the State High Court (and not the Federal High Court) possesses the jurisdiction to entertain the case. This is despite the fact that the facts of the 2 cases are not too dissimilar.

⁵⁸ Section 37 of the Constitution of the Federal Republic of Nigeria.

⁵⁹ Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

⁶⁰ See OECD Anti-Spam Regulation published on 15th November 2005 under the responsibility of the Secretary-General of the OECD.

⁶¹ Ibid.

⁶² See Paul Usoro, 'E-commerce in Nigeria: How to move Forward. Legal Framework for the Introduction of E-commerce' <<http://www.paulusoro/Publication/E-commerce.com>> accessed on 24 July 2010.

against improper or accidental disclosure. Similarly, such information must not be transferred to any person except as permitted by any terms and conditions agreed with the customer or as permitted by any applicable law or regulation.⁶³

Also, any telecommunications licensee that collects information on individual consumers must adopt and implement a policy regarding the proper collection, use and protection of that information and ensure that any other licensee or person with whom they exchange or otherwise disclose such information have adopted and implemented an appropriate protection of consumer information policy.⁶⁴

Right to Accurate, clearly worded and Organised Bills

Consumers have the right to be accurately billed for services they subscribed to.⁶⁵ Thus, before a contract for service is entered into, the telecommunications operator is duty-bound to inform the consumer of the applicable rates and charges, what the charges include, elements of the charge and the method of calculation of the charge. The consumer is also entitled to be informed of the frequency of the charge or other circumstances that give rise to the charge and whether the charge or elements of the charge are subject to change from time to time, the circumstances of such change and how the consumer will be informed of such changes.⁶⁶

Code 21 of the Nigerian Communication Act, General Consumer Code of Practice provides for the general principles of consumer billing and charges thus:

A Licensee shall at all times endeavour to-

- (a) ensure that billing is accurate and timely;
- (b) ensure that billing accuracy is verifiable;
- (c) ensure that sufficient information shall be on the bill or otherwise readily available to the consumer for verification of the bill without any charge;
- (d) ensure that upon a bonafide request from a consumer, the license shall inform or provide the consumer with timely, accurate and current

⁶³ Code 35 (g) and (h) General Consumer Code of Practice.

⁶⁴ *Ibid*, Code 36.

⁶⁵ Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

⁶⁶ Code 9, General Consumer Code of Practice.

information about its billing terms and conditions and options relevant to that consumer;

- (e) retain records of a consumer bill and related charges for a minimum period of twelve (12) months; and
- (f) in interpreting the obligations described in this section, references to "billing" or "bill" include the Licenses systems for recording and processing any prepaid transactions, including the debiting of call charges against prepaid card balances.

The consumer is also entitled to have access to itemized details of all charges and licenses must ensure that itemized details contained in the previous bills are available for 12 months or any longer period required by law.

A licensee must not charge consumers for bills or billing related information, except where the customer requests information not required to be provided under the General Consumer Code of Practice⁶⁷ and licensee must inform consumers of any applicable charge resulting from their billing requests and obtain the consent of the consumer before any charge is imposed.⁶⁸

A licensee must also process and issue bills within 30 days of the closure of each billing period, and a bill must include all charges incurred during the billing period. Code 24 of the General Consumer Code of Practice, however, provides for exceptions to the processing and issuance of bills within 30 days of the closure of billing period. The circumstances are where:

- (a) there exists a separate agreement with the customer to the contrary; or
- (b) there is a delay as a result of the inclusion by the Licensee of information from other suppliers or service providers in the bill; or
- (c) there is a delay as a result of a change initiated by the consumer such as where the consumer has requested a different billing frequency or billing period; or
- (d) there is a delay as a result of the suspension of charges that are in dispute; or
- (e) there has occurred a billing system or processing problem in which

⁶⁷ Such as requests for billing details more than 1 (one) year old.

⁶⁸ Code 23, General Consumer Code of Practice.

case the problem shall be rectified and bills issued without undue delay and in accordance with any time periods identified by the commission; or

- (f) billing is delayed by circumstances beyond the reasonable control of the licensee, such as an event of force majeure.

From the content of code 24 above, it would appear that Code 24 is not applicable to prepaid telecommunications services.⁶⁹

Right to Redress and Action on Disputed Charges

There is a need to be proper and effective redress mechanism for violation of consumer rights. The consumer has the right to be charged appropriately for services enjoyed by him and where charges are disputed by consumers, there should be timely redress.

Consumers should have the right to express their grievances and seek redress where products or services are not satisfactory. This in essence would guarantee and increase consumers' confidence in telecommunications system and its social and economic benefits.

Where complaint is being investigated on billing or charges dispute, service providers should not impose any disconnection or credit management action regarding the service to which the complaint relates and consumers must have their complaints addressed in a timely manner without harassment.⁷⁰

In an effort to protect the consumer right of action in telecommunications industry, the NCC is possessed with the power to set up necessary machinery to address consumer disputes. Section 105 of the Nigerian Communications Act provides:

- 105 (1) The commission may use any of its powers under this Act in the Resolution of Complaints received from consumers in relation to matters of customer services and consumer protection including but not limited to quality of service or the failure by licensee to comply with consumer code prepared under this chapter.

- 105 (2) The commission shall establish procedures or guidelines for

⁶⁹ In the United States, Telephone Consumer Protection Act 1991 does not apply to commercial SMS text Messages sent to cellular phones. This is exemplified in *Satterfield v. Simons & Schuster*, No. C 06-2893 CW, 2007 U.S. Dist. LEXIS 46325 (N. D. Cal. June 26, 2007) <<http://browntraysman.typepad.com/technology>> accessed 24 August 2010.

⁷⁰ Code 44, General Consumer Code of Practice.

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 without resolution of the complaint before presentation of the complaint to the commission.⁷¹

In the exercise of the power conferred upon it by Section 70 of the Nigerian Communications Act and all other enabling powers in that behalf, the NCC made Enforcement Regulations⁷² to carry out its monitoring and enforcement duties and all other functions ancillary thereto. The NCC also made Dispute Resolution Guidelines,⁷³ pursuant to the provisions of Sections 4 (1) and 75 (2) of the Nigerian Communications Act. The Dispute Resolution Guidelines provide for Consumer Resolution by Arbitration with Arbitration Rules, Mediation Procedure Rules and Rules for the Arbitration of Interconnection issues and disputes.

Apart from dispute resolution by the consumer and licensees on one hand and intervention of the commission on the other hand through negotiation and arbitration, a consumer can also approach a court of law for redress.

Section 138 of the Nigerian Communications Act provides:

The Federal High Court shall have exclusive jurisdiction over all matters, suits and cases howsoever arising out of or pursuant to or consequent upon this Act or its subsidiary legislation and all references to "Court" or "Judge" in this Act shall be understood and deemed to refer to the Federal High Court or a judge of the said court.

Without a modicum of doubt, the foregoing has shown that consumer redress and action on disputed charges may be ventilated through negotiation between the consumer and service provider; arbitration and mediation on the intervention of the NCC and resolution by a court of law.

However, it appears that all the enforcement procedure and modes cannot be proceeded with simultaneously; the consumer must

⁷¹ See also code 53, of the General consumer code of Practice.

⁷² Nigerian Communications Act, Enforcement Regulations 2004.

⁷³ See Nigerian Communications Commission Dispute Resolution Guidelines 2004.

first exploit the possibility of settling the dispute with the service provider and if this fails, he proceeds to the NCC and ultimately to the court, but not otherwise.

It is humbly submitted that while the above procedural steps are highly commendable, at least to avoid protracted litigation with its attendant prolongation and publicity, where it is reasonable perceived that arbitration and mediation may not save the situation, the consumer should be legally allowed to approach the court, even without negotiation, mediation or arbitration.

The crucial issue of court's jurisdiction to entertain consumer action for redress and disputed charges in telecommunications matters has always been a subject of controversy. The position of our courts appear not be settled; while it is considered legally that in view of Section 138 of the Nigerian Communications Act, the Federal High Court has "exclusive jurisdiction over all matters, suits and cases howsoever arising out of or pursuant to or consequent upon" the Nigerian Communications Act or its subsidiary legislation, it is equally arguable that since issues relating to consumer complaints such as drop calls, poor service delivery, network failure, inability to recharge et cetera⁷⁴ cannot be divorced of the contract between the consumer and the licensee, the issue is more of contract rather than mere matters consequent upon the Nigerian Communications Act.

The unsettled position of the law in this regard has been exhibited in a number of conflicting decisions of our courts of law. Thus, in *Barrister Mike Nkwocha & 2 Ors v. MTN Nigeria Limited & 4 Ors*,⁷⁵ the plaintiffs were consumers of telecommunications services providers by the Defendants. The plaintiffs claim a refund from the defendants for dropped/uncompleted calls resulting from network failures. They approached the Federal High Court for redress and the issue arose whether the Federal High Court has jurisdiction to entertain

⁷⁴ Other types of complaints usually filed by consumers relate to network congestion, service interruption, billing and rate, airtime, bonus related issue, connection complaint, misleading advert, defective equipment disappearance of credit, mast related issue, sending and charging for multiple SMS in place of one, false billing, arbitrary disconnection of service, nonchalant attitude towards genuine complaints, supply and installation of sub-standard equipment and devices, deceptive advertisement, credit depletion, inability to check credit balance, to mention but a few. See Consumer Inquiries and Complaint <<http://www.ncc.gov.ng/>> accessed on 30 August 2010.

⁷⁵ (2004) 1 TLR, 1.

the case which dealt with contractual relations between the parties. Relying on Section 138 of the Nigerian Communications Act, 2003, it was held that the Federal High Court has exclusive jurisdiction.

However, in *Jeph O. Njikonye Esq. v. MTN Nig Communications Ltd*⁷⁶ where a similar issue arose, it was held that since the dispute is founded on contract it is the State High Court that has jurisdiction.

It is submitted that since issue of dropped or uncompleted calls is not unconnected with telecommunications service which apparently is a matter arising and provided for in the Nigerian Communications Act and its subsidiary legislations, the Federal High Court has exclusive jurisdiction to entertain the claims, notwithstanding the fact that it also relates to issue of contract.⁷⁷

Consumers' Obligations

Although the telecommunications operators and service providers have enormous duties and responsibilities in complying with the rules and regulations guiding their operations, the consumer also has some roles to play in ensuring that provisions of necessary services and equipment are not hindered as a result of their acts. To ensure fair play between the duties and responsibilities of the operators and service providers and their relationship with the consumer, the consumer also has some obligations. Thus, consumers are bound by a Licensee's terms of service on return of a signed service agreement, or on clearly accepting the service terms by any form of telecommunications. Consumers are also be deemed to accept a Licensee's service terms on any commencement of use of the service that follows adequate communication by the Licensee of its service terms. Consumers is obliged to grant the Licensee or its authorized representatives, without charge, access to premises, equipment or facilities as reasonably required for any provisioning or maintenance of the services, equipment or facilities. They must not use any equipment or related facilities provided by a Licensee for reasons other than those related to normal service, and must not do anything that interferes with the functioning of such equip mentor facilities,

⁷⁶ (2008) All FWLR (pt 413) 1343.

⁷⁷ This argument seems to be in contradistinction with the position of the Supreme Court in *Onuorah v Kaduna Refineries* (2005) All FWLR (Pt 256) 1356 which posits that the Federal High Court lacks jurisdiction to entertain matters relating to simple contract, but it is humbly submitted that the issue of telecommunications service is not a matter of simple contract but of telecommunications service.

without prior written authorization from the Licensee. Similarly, they must be responsible for any loss of or damage to equipment or facilities that results from actions contrary to their service terms or this General Code.⁷⁸

As part of their obligations, consumers are to refrain from moving equipment owned by the Licensee and connected to a telecommunications network to a location or address other than the location or address where service was installed, without prior written authorization from the Licensee. This restriction however does not apply to any equipment that is accompanied by operating instructions indicating that it may be disconnected and reconnected as part of its normal use. The consumer must not modify or attach any unauthorized device to the Licensee's equipment or facilities without prior written authorization from the Licensee and no equipment or device that interferes in any way with the normal operation of a telecommunications service may be installed by or on behalf of any consumer.⁷⁹

Consumers must not re-sell any service provided by a Licensee except as permitted by the service agreement of the Licensee (and subject to any applicable licensing or authorization by the NCC. Consumers must not misuse public telecommunications services. They are required to settle all valid payment arrears with a Licensee before switching to another service provider.⁸⁰

Conclusion

In this work, the various rights enjoyed by telecommunications consumers have been discussed. So also is are their obligations. The need to protect consumers of telecommunications cannot be over-emphasized. The regulatory authorities need to do more in ensuring that consumer rights are duly protected and put in place more machinery to check the excesses of telecommunications service providers.

Regulatory overlap has been a disturbing phenomenon in legal regime of consumer protection in Nigerian telecommunications industry. There is regulatory overlap in the functions of both the NCC and NESREA in relation to environmental implications in the

78 Code 28-30(1) of the General Consumer Code of Practice.

79 Code 30(2)-(4) of the General Consumer Code of Practice.

80 Code 31-33 of the General Consumer Code of Practice.

installation of the telecommunications masts and towers.⁸¹ NESREA had shutdown base stations of some telecoms operators for failure to abide by environmental regulations of the country, positing that the base stations were too close to residential buildings and posed great dangers to residents and buildings in the vicinity, thus claiming that it has regulatory powers over the installation of telecoms masts and towers.⁸² On its own side, the NCC has maintained that there cannot be telecommunications without having telecom masts because there is no infrastructure in place in Nigeria like other countries that have fibres,⁸³ yet it has been observed that there have been no proven cases of side effect emanating from exposure to base station or building base stations close to residential buildings.⁸⁴ It has been observed that the absence of base stations in a vicinity means that subscribers cannot be connected, and that underscores the need for nearest of the installations for mobile connectivity.⁸⁵

It is humbly submitted that whatever the arguments and regulatory overlap, the codes, rules and regulations guiding the operations within the environment and set-up should be sustainable and environmental friendly. Both NCC and NESREA should work out harmonized laws to ensure that all interests are accommodated for a peaceful roll-on of quality communications services,⁸⁶ without

81 See Dayo Oketola, 'NCC, NESREA to set Regulatory Boundaries' *The Punch* Newspaper (Nigeria 05 July 2010) 36.

82 Ibid. The NESREA had shut down Globacom base station located at OAU Quarters, Maitama, Abuja. It also shut down a base station belonging to Etisalat in Abuja on the ground that no Environmental Impact was acquired by the company before erecting the mast. NESREA also shut down MTN base station in Abuja over environmental breaches at MTN base station located at 27, Ashieklama Street, Jabi and No2, Oyo Street, Area 2, Garki, Abuja. See Emeka Ezekiel, 'FG Shuts MTN Base Stations on Environmental Breaches' *The Punch* Newspaper (Nigeria 24 August 2010) 17.

83 See Aminah Mohammed, 'Nigerian Communications Commission, NESREA Clash Over Regulation of Telecoms' <www.allafrica.com/stories/201007150188.html> accessed on 20 July 2010.

84 See "Experts Re-assure on Safety of Humans near Telecom Base Stations", *IT & Telecom Digest* (Nigeria September 2009) 66. To further allay the fear of the people, stakeholders in the ICT industry had met and concluded that there is no known conclusive scientific evidence at present to indicate that radiation from mobile phones and telecom masts could cause such dangerous disease such as cancer and others infections.

85 Ibid.

86 See Patrick Osadebamwen "Telecoms Revolution and Environmental sustainability" *Summit Newspaper* (Nigeria 21 July 2010) 20.

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necessarily adversely affecting the health of the populace. This can also be done by reaching a compromise and entering into a memorandum of understanding just as the Consumer Protection Counsel and NCC did.⁸⁷ All concerned regulatory bodies should recognize the need for collaboration in the discharge of their functions as they affect consumer protection in the telecommunications sector.

Many consumers of telecommunications services are ignorant of their rights while some others who even know their rights find it difficult to lodge their complaints or enforce their rights. These complaints and rights have remained either unattended to or unresolved as a result of inadequacy of consumer information and education and absence of appropriate avenue to seek redress. It is therefore recommended that the NCC should endeavor to intensify efforts at giving the consumers necessary information and education on their rights as consumers. Also, offices of telecoms operators should be well equipped with trained personnel and regulatory authorities should be cited in all towns and cities throughout the country.

⁸⁷ On 19th day of December 2005 both Consumer Protection Council and Nigerian Communications Commission signed a Memorandum of Understanding to avoid regulatory overlaps and create regulatory certainty for the benefit of all stakeholders in the telecommunications sector. See Memorandum of Understanding between the Consumer Protection Council and Nigerian Communications Commission <http://www.ncc.gov.ng/RegulatorFramework/MOUBETWEENNCCANDCPC.pdf> accessed on 18 August 2010.