



REPORT OF THE MINISTERIAL COMMITTEE

ON

HARMONISATION OF RIGHT OF WAY CHARGES AND IMPLEMENTATION STRATEGIES



FEDERAL MINISTRY OF COMMUNICATIONS



JUNE 2016

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Executive Summary

The Ministry of Communications is concerned with myriad of complaints and appeals for intervention by various Telecommunication service providers in the country on the challenges associated with multiple/exorbitant Right of Way (RoW) charges demanded by some Federal MDAs, State and Local Government Authorities. Considering that multiple charges on RoW constitute the bulk of ICT infrastructure's initial cost which impacts negatively on the rate of infrastructure roll out; the Hon. Minister approved the constitution of a Ministerial Committee comprising the Ministry and its agencies to develop an appropriate document that will articulate the issues and recommend mitigating strategies.

Submissions by the Ministry and its Agencies

The Ministry and its Agencies including NCC, NIGCOMSAT, NITDA, NIPOST and GBB as well as USPF independently articulated the nature and scope of the challenges in Nigeria, benchmarked with global best practices and considered the best strategies to adopt, for a lasting solution of excessive Right of Way charges and develop an enduring implementation strategy. The submissions revealed that there existed different classes of Right of Way with multiple stakeholders in possession of legal instruments to collect charges from interested individuals or corporate entities for their use.

Review of Existing Nigerian laws and Benchmarking with Global Best Practices

The Committee examined all existing laws, acts, legislations, legal and institutional frameworks, guidelines and edicts on Right of Way Charges in Nigeria with a view to identify the inherent challenges. Also, the Committee reviewed the management of RoW by some members of the Organization for Economic Co-operation and Development (OECD/OCDE) countries as well as India to compare and learn from their practices. The reviews revealed that most laws in the country have been in existence for over a decade and required to be reviewed to reflect the current needs for socio-economic development. The review of the management of RoW by OECD/OCDE countries revealed that some countries including Australia, Germany and Singapore

operate a centralized regime for the management of RoW issues. For instance in Australia the power is vested in the Telecommunications Act of 1997. In Germany, Enterprises are legally entitled to use public roads free of charge upon receipt of a permit from the Federal Network Agency in charge of road construction. While in Singapore, the same set of RoW rules apply throughout the country under a central government.

Deliberations/Resolution

The Committee deliberated on the subject and considered the governance structure of Nigeria, the provisions of the Land Use Act Cap 15 LFN 2004, section 28 and 29 and as well as review and incorporate/insert a section in the National Communication Act 2003 and the National ICT policy to address RoW issues as follows:

- i. Establishment of a centralized licensing Agency comprising officials from the MDAs in charge of Road construction in the Federal, State and LGA to design, construct service ducts and manage all RoW issues;
- ii. Recognition of ICT infrastructure as a “Public Utility Infrastructure” with regards to the review/update and amendment of the National Communication Act 2003, the National ICT policy and the Land Use Act;
- iii. Enterprises are to obtain RoW permits from the Centralized Agency regardless of any laws, Acts, legislations, legal and institutional framework, guidelines and edicts on the Right of Way in Nigeria
- iv. The Centralized Agency should plan, design, build and manage a network of service ducts for the deployment of public utility infrastructure.
- v. Enterprises in partnership with MDAs will design, deploy optic fibre acoustic sensors network as part of National Security Network for the protection of the

Critical National Infrastructure such as oil and gas pipelines, rail lines, power lines, roads and Bridges, ICT infrastructure, water pipelines, etc.

Appreciation

The Committee expresses its profound gratitude to the Management for the opportunity granted its members to serve in the Ministerial Committee on Harmonization of RoW charges and Implementation strategies. We hope that the recommendations of this Committee shall be acceptable and capable of resolving all identified issues associated with RoW acquisition in Nigeria to the effect that the nation shall witness accelerated ICT infrastructure roll out for a SMART Nigeria.

The Committee also expresses its appreciation to the Management of the various organizations for their support, as well as the Secretariat for their dedication and invaluable cooperation.

1.0 INTRODUCTION

1.1 Background

The Communications sector has been liberalized since the year 2000 with the development of the ICT infrastructure basically the responsibility of the operators. The National Communication Act (NCA) of 2003 created the USPF to support the provision of Universal Access to the un-served and underserved rural communities. Operators who are charged with the delivery of ICT infrastructure have been unable to fill the gaps due to some challenges including multiple charges levied on the companies before they are granted Right of Way by the Federal MDAs, States, Local Government and rural communities. These charges form the bulk of the initial cost of infrastructure roll out which adversely affects broadband penetration.

As a result, Telecommunication operators have over time made several complaints and requested for the intervention of the Ministry to resolve the problems. To this end, and concerned with the myriad of complaints and the negative effect on infrastructure roll out, the Honourable Minister approved the constitution of a Ministerial Committee comprising the Ministry and its Agencies to develop an appropriate document.

The Committee commenced sitting from 22nd March, 2016 and received submissions on the matter from both the Ministry and its Agencies. The various submissions articulated the scope and nature of the challenge, examined global best practices and suggested mitigating strategies to resolve the problems.

The Committee also examined existing policies, laws, Acts, legislations, legal and Institutional frameworks, guidelines and Edicts relating to Right of Way issues in Nigeria as well as Global best practices by some members of the OECD/OCDE

Countries including Australia, Germany and Singapore. The reviews showed that the Land Use Act of 2004 (Law of Federal Republic of Nigeria) did not include ICT infrastructure as a Public Utility while the Nigerian Communication Act of 2003 (Law of Federal Republic of Nigeria) was weak on the subject. Meanwhile, The OECD/OCDE countries have a central mechanism for management of RoW issues.

After due consideration of all the factors affecting the acquisition of RoW, the Governance structure of Nigeria and the Global best practices; the Committee resolved to recommend the review, update, amendment of existing Laws, Acts etc and introduce a section on RoW to Harmonize the RoW charges and draw up implementation strategies as follows:

- i. Review of all existing legislations, Acts, legal and institutional framework especially the National ICT Policy, NCA 2003 and update same with the insertion of a Section on RoW.
- ii. Presentation of the proposed new section to stakeholders for their buy in.
- iii. Prepare council memo for the FEC to seek council approval.

Details of the Committee's report are articulated under the following sections:

- I. Submissions by the Ministry and its Agencies;
- II. Review of existing Nigerian Laws and Benchmarking with Global best practices;
- III. Deliberations and Resolutions; and
- IV. Recommendations.

2.0 SUBMISSION BY THE MINISTRY AND ITS AGENCIES

The various paper presentations by the Ministry of Communications and its Agencies articulated the Global concept of RoW, issues affecting RoW acquisition in Nigeria, Benchmarking with Global Best practices and recommended mitigating

strategies for harmonization of RoW charges.

2.1 Global Concept of RoW

2.1.1 Definition of RoW and Its Grant

Right of Way is defined as a legal instrument allowing operators to deploy infrastructure on Federal, State or Local roads at a fee. In other words, Right of Way is the privileged usage of streets and other public and private property for particular purposes.

While a RoW grant is an authorization to use a specific piece of public land for certain projects, such as roads, pipelines, power lines, and communication infrastructure etc. which grants the beneficiary the rights and privileges for a specific use of the land for a specific period of time for Short terms; Medium terms; Long terms; and Life terms.

2.1.2 Categories of RoW

- I. **Traditional Rights:** it is an easement granted by the property owner that gives the rights to travel over the land OR the provision by the property owner of reasonable use of the property to others, as long as it is not inconsistent with the use and enjoyment of the land by the owner.
- II. **Private rights:** They are acquired using a variety of conveyances to establish land usage rights such as through fees or an easement.
- III. **Public Rights of Way:** It is managed by public authorities and normally provided for by law and involve public-private partnerships e.g. case of utility corridor for project or strip of land; Private access to public rights of way for Installation of Telecommunication infrastructure etc after the payment of Compensation grant to the original owner of the parcel of land acquired for the public rights of way which may be over and above administrative costs.

2.1.3 Types of RoW

These include but not limited to the following:

- Rights of Way established by long use
- Rights of Way created by a Document

2.1.4 Public Infrastructure Associated with RoW in Nigeria

Public infrastructures involved with RoW issues in Nigeria include the following;

- Road and highway network infrastructure including bridges, culverts, side walk etc;
- Electricity infrastructure including the power transmission lines, power sub stations, street lights;
- Gas/oil pipelines including the storage and distribution terminals as well as distribution network;
- Water infrastructure including the system of pipes used in the collection and distribution of drinking water, sewage collection and disposal of water, drainage system;
- Telecommunication Infrastructure e.g. Optic Fibre network, Base Station Towers (BTS) etc;
- Airways;
- Rail lines; and
- Water ways etc

2.2 Issues Affecting Right of Way Acquisition in Nigeria

Right of Way acquisition involves the three tiers of Government as stipulated by the provisions of the land use act of 2004. However, States Governments and Local Government Areas derive their powers from the Land Use Act and are independently legislating on laws and edicts guiding Right of Way acquisition within their areas of jurisdiction. Similarly, some MDAs also derived their power from the Land Use Act 2004 and developed their act and guideline for Right of

Way acquisition by other Enterprises.

2.2.1 Challenges of RoW Acquisition in Nigeria

Some of the Challenges affecting RoW acquisition in Nigeria were identified as listed hereunder;

- Statutory owners of RoW considers the charges levied interested entities for permits as source of revenue and reviews the rates regularly;
- Reluctance of incumbent operators to share service duct or demand high usage fees or may have insufficient space within existing duct capable of hosting both their own new fibre networks and those of new entrants;
- Repeated requests by different telecommunications operators for the excavation along the same route.
- Prolonged/delay in processing procedures
- Community Issues
- Inadequate RoW Delineation
- There is no encompassing legislation that clearly defines the scope, infrastructure specification and ownership, centralized levy collection mechanism in the build and management of Right of Way infrastructure.
- Inadequate RoW infrastructure
- Hidden rules and charges
- Poor maintenance and security of service duct.
- Multiple Regulations and multiple charges

2.2.2 RoW charges in Nigeria

The RoW charges vary from one authorizing entity to another within the Federal Government, State Government and Local Government Areas as well as unauthorized charges/levies by communities as x-rayed below;

- Federal Government-Ministry of works: RoW Fee- N145 per linear meter with Maintenance fee: N20 linear meter annually.

- FCT: N450 per meter;
- Lagos State: N500 per meter on normal ways and N5,000 per meter on bridges;
- Abia State: exorbitant RoW charges (for example, Abia State demanded N200,000 per Base Station from MTN between 2001-2013)
- Imo State: exorbitant RoW charges (For instance, Imo State demanded N2,600,000 for supervision of installation of 13km RoW for civil work in addition to RoW charges) ;
- Kwara State: N4,800 per meter.

3.0 Review of existing Laws of Nigeria and Benchmarking with Global Best Practices

3.1 Review of existing laws

The Land Use Act Cap L5 LFN 2004 section 28 stipulates that it shall be lawful for the Governor to revoke a Right of Occupancy for overriding public interest. Some other laws, Acts, legislations etc. derived their powers from this section of the land use Act and instituted the granting of RoW permits to other interested entities at a fee.

The National Communication Act 2003 however does not have such provision but rather provided that operators should negotiate with statutory owners of RoW for permits. This scenario is partly responsible for the multiple charges for acquisition of RoW permit for deploying Telecommunication infrastructure.

3.2 Benchmarking with global best practices

The Committee reviewed the management of RoW by some members of the Organization for Economic Co-operation and Development (OECD/OCDE) countries including Australia, Germany and Singapore etc. The review revealed that some countries including Australia, Germany and Singapore, operate a centralized regime for the management of RoW issues. For instance in Australia the power is vested in the Telecommunications Act of 1997. In Germany,

Enterprises are legally entitled to use public roads free of charge upon receipt of a permit from the Federal Network Agency in charge of road construction. While in Singapore, the same set of RoW rules applied throughout the country under a central government.

4.0 Deliberations and Resolutions

4.1 Deliberations

The Committee deliberated extensively on the submissions received from the Ministry and its Agencies; the provisions of the Land Use Act and all other legislations, Acts, Guidelines, Edicts etc that relate with RoW issues in Nigeria; as well as compared the management of RoW issues in Nigeria with Global best practices of some OECD Countries and analyzed the entire scenario. At the end, it was observed that;

- The three tier Governance structure (Federal, State and Local Government) impact on multiple charges for RoW;
- Section 44 of the 1999 Constitution of the Federal Republic of Nigeria infers that jurisdiction over immovable or moveable property lies with Courts of law or tribunal or body located in that part of Nigeria.
- Section 28(iv) of the Land Use Act stipulates that the Governor of a State shall revoke a Right of Occupancy (R of O) in the event of issue of a notice by/or on behalf of the Head of State if such a notice declares such land to be required by the Government for public purposes.
- The various acts, legislations, institution and legal framework, etc of MDAs with the exception of the NCA 2003 & ICT Policy derived their power from the provisions of the land use Act and empowered themselves to grant permits for RoW.
- Some OECD countries have a centralized body that is charged with the mandate to issue permit for RoW and manage all issues relating to RoW.

4.2 Resolutions

After due consideration, the Committee resolved to adopt the establishment of a centralized Agency comprising officials from the MDAs in charge of road construction in the Federal, States and Local Government Areas to manage all issues relating to RoW. As such, members favored the review, update and amendment of the National ICT Policy and the National Communication Act 2003 to incorporate/insert a section on RoW to harmonize the charges and draw up the implementation strategy. The new Section shall contain the following;

- i. Establishment of a centralized Agency comprising officials from the MDAs in charge of road construction in the Federal, States and Local Government Areas to design, construct service ducts and manage all RoW issues;
- ii. Recognition of ICT infrastructure as a “Public Utility Infrastructure” with regards to the review/update and amendment of the Nigerian Communication Act, the National ICT policy and the Land Use Act;
- iii. Enterprises are to obtain RoW permits from the Centralized Agency regardless of any laws, Acts, legislations, legal and institutional framework, guidelines, affecting the Right of Way in Nigeria
- iv. The Centralized Agency should design, build and manage a network of service ducts for the deployment of public utility infrastructure.
- v. Enterprises in partnership with Government Agencies will design, deploy optic fibre acoustic sensor network as part of National Security Network for the protection of the Critical National Infrastructure such as oil and gas pipelines, rail lines, power lines, roads and Bridges, ICT infrastructure, water pipelines, etc.

5.0 Recommendations

5.1 From the foregoing, the Committee recommends as follows;

- (i) Review of all existing legislations, Acts, institutional & regulatory framework especially the National ICT Policy and NCA 2003 and update same with the insertion/incorporation of a Section on RoW as follows;
 - a) Establishment of a centralized Agency comprising officials from the MDAs in charge of road construction in the Federal, States and Local Government Areas to design, construct service ducts and manage all RoW issues;
 - b) Recognition of ICT infrastructure as a “Public Utility Infrastructure” with regards to the review/update and amendment of the National Communication Act, the National ICT policy and the Land Use Act;
 - c) Enterprises are to obtain RoW permits from the Centralized Agency regardless of any laws, Acts, legislations, legal and institutional framework, guidelines, affecting the Right of Way in Nigeria;
 - d) The Centralized Agency shall design, build and manage a network of service ducts for the deployment of public utility infrastructure;
 - e) Enterprises in partnership with Government Agencies will design, deploy optic fibre acoustic sensor network as part of National Security Network for the protection of the Critical National Infrastructure such as oil and gas pipelines, rail lines, power lines, roads and Bridges, ICT infrastructure, water pipelines, etc.

- (ii) Presentation of the proposed new section to stakeholders for their buy in.
- (iii) Prepare and forward a memorandum to the Federal Executive Council (FEC) to seek council's approval for the amendment of the relevant laws and implementation of item 5.1 (i) (a – e) above.








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