

RECENT DEVELOPMENTS IN NIGERIAN TELECOMMUNICATIONS LAW AND POLICY.

The Nigerian government has renewed its efforts toward development of the Nigerian telecommunications sector in line with international standards. A cornerstone of the new policy is the realization of Government's of stated aim of making telecommunications services affordable to the millennium and utilizing state of the art telecommunications equipment for optimum reliability and efficiency.

Against this background, in 1992 Government commenced the privatization of certain activities, over which the Nigerian Telecommunications Plc. ("NITEL") hitherto held a monopoly. Through promulgation of the **Nigerian Communications Commission Decree No. 75 of 1992**, Government established the **Nigerian Communications Commission ("NCC")** and charged it with the function of regulating operations in the telecommunications industry. The Decree also privatized the following telecommunications operations:

- Installation of terminals and related equipment;
- Provision and operation of
 - Public pay-phones;
 - Private network links, employing cable, radio communication and satellite, within Nigeria;
 - Public mobile communication links;
 - Community telephony;
 - Value-added networks (including e-mail, voice-mail, Internet services, paging etc.);
 - Repair and maintenance of telecommunications facilities; and
 - Cabling services

NITEL expectedly retained its monopoly over the Public Switched Telephone Network (PSTN) and Basic National Voice Telephony (BNVT) systems, thereby remaining the sole national carrier and operator of Nigeria's international gateway. However, a few licenses were granted to provide operators for international carriage purposes, using satellite technology. These licenses are however in danger of being revoked following the Minister's indication that the licenses were improperly issued. Potential investors in any of the privatized operations need to secure an appropriate NCC license. Only Nigerian registered corporations are eligible to apply for and hold NCC licenses.

To be eligible for a license, an applicant must be a corporation incorporated under Nigerian law. A Nigerian corporation can be registered in three (3) weeks or less under the Nigerian Companies and Allied Matters Act, Cap 69, Laws of the Federation of Nigeria, 1990. The incorporation application, which is to be made on the structure of the company, its shareholders and directors. Each Nigerian company must have at least two shareholders and two directors. In the case of foreign equity involvement, a further application to Government agency known as the Nigerian Investment Promotion Commission for registration is also required. Work permits for expatriate works in Nigerian companies can be relatively easily obtained.

The holder of an NCC license to engage in a telecommunications operations must co-operate with NITEL and the **National Frequency Board** for the purpose of achieving inter-connectivity with NITEL's existing public phone network, Satellite channel and frequency allocation.

Although, a licensee is nominally given a right to inter-connection, this right is subject to reaching an agreement with NITEL as to terms and conditions of such inter-connection. Where a licensee is unable to agree with NITEL upon agreement terms, the NCC is empowered to act as an arbitral panel for the purpose of resolving such dispute.

Recently, the **Public Enterprises (privatization and Commercialisation) Decree No. 28, 1999**, was promulgated. The Decree included NITEL among the list of companies to be partially privatized. Under the Decree, the post-privatization structure of NITEL (which is currently wholly-owned by Government) will be as follows:

- Maximum strategic investor participation – 40%
- Maximum Federal Government participation – 40%
- Participation by Nigerian individual – 20%

In pursuit of Government's efforts to ensure a vibrant telecommunications sector, a workshop on the "National Policy on Telecommunication for the Next Millennium" was recently held in Abuja, Nigeria. Following the recommendation of the participants at the workshop a new National Policy on Telecommunications was formulated. Under the new policy, NITEL is to be subjected to the full control of the Nigerian Communications Commission thereby placing the company on the same regulatory pedestal with other private operators.

Highlights of the new policy include the following:

- i) Appointment of 4 (four) GSM operators for an initial period of 5 years;

- Appointment of another National Carrier to compete with NITEL in the provision of PSTN and BNVT services (with a possibility of appointing a third carrier based on economic viability);
- Prescription of a US\$100 million (One Hundred Million United States Dollars) license fee for GSM licenses;
- Establishment of a National Frequency Management Board to plan, co-ordinate and monitor the allocation of the national radio frequency.

The policy envisages the provision of 2 million fixed lines and 1.2 million mobile lines within 24 months of its operation with a view surpassing the ITU standard of 1:100 minimum teledensity. Accordingly, the policy set specific targets to be achieved by any company, which may be granted a license to provide GSM services.

Out of the 4 (four) GSM operators approved by the new policy two of the licenses are to be issued to NITEL and M – TEL both of which are wholly owned by the Federal Government of Nigeria. The remaining two licenses are to be issued to companies who emerge successful after a competitive and transparent bidding process.

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