



# SPECTRUM TRADING GUIDELINES

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# **NIGERIAN COMMUNICATIONS ACT, 2003**

## **SPECTRUM TRADING GUIDELINES, 2018**

### **1. INTRODUCTION**

- 1.1. These Guidelines are made pursuant to Sections 4 (j) and 121 (1) of the Nigerian Communications Act 2003 (the Act) which empower the Commission to manage, administer and regulate the use of Spectrum for the communications sector.
- 1.2. In furtherance of Paragraph 1.1 above, the Commission at all times deploys its resources to facilitate the optimal use of Spectrum as well as to provide an enabling environment for the growth and development of the telecommunications industry for the benefit of all stakeholders.
- 1.3. These Guidelines are therefore published to enhance the deployment of telecommunications services across the country and to further liberalise the spectrum management policy of the Commission towards:
  - i. Efficient and flexible transfer of Spectrum to users who value it most
  - ii. Lessening the barriers to market entry by allowing flexible access to Spectrum.
  - iii. Deepening competition.
  - iv. Promoting innovation by enabling entrepreneurs to acquire Spectrum and offer new services.

### **2. OBJECTIVE**

The objective of these Guidelines is to promote certainty and transparency in the processes of the Commission by outlining the detailed procedure and conditions for Spectrum Trading in the Nigerian communications sector.

### **3. SCOPE**

- 3.1 These Guidelines cover various transactions through which Spectrum can be traded on the Secondary Market. The Spectrum transactions envisaged under these Guidelines are:
  - i. Spectrum Transfer
  - ii. Spectrum Leasing
  - iii. Spectrum Sharing

#### **4. ELIGIBILITY CRITERIA**

- 4.1 Spectrum Trading will only be allowed between Licensees that comply with the criteria stated in these Guidelines.
- 4.2 Spectrum Trading will be permitted in either the entire Licensed Area or a part/parts thereof. Subject to the type of trade, the rights and obligations attaching to the Seller before Spectrum is traded will apply to the Buyer(s) in varying proportions after the Spectrum trade.
- 4.3 The tenure of a Spectrum Licence will not be altered by reason of a trade in that Spectrum.
- 4.4 A Licensee will be eligible to trade and participate in the Secondary Market for any eligible Spectrum Licence if the following criteria are met:
  - i. The Buyer is a Licensee of the Commission. Where an intending Buyer does not have the requisite individual operating Licence that permits the deployment of access Spectrum, it will be required to obtain one before it can acquire the Spectrum.
  - ii. The Board of Directors of the Seller and Buyer have passed resolutions consenting to the transaction. These resolutions shall be submitted to the Commission together with an application for Spectrum Trading.
  - iii. The Seller has held the Spectrum for a minimum of 2 (two) years.
  - iv. Where applicable, the Seller must have achieved at least 25% of the Roll-Out Obligation specified in the Spectrum Licence.
  - v. Any Spectrum Licence that is to be traded must still have a validity period of at least one year before the expiration of its tenure. Based on the above, Spectrum Licences that have a one year tenure are not eligible for trading.
  - vi. Both the Seller and Buyer must be in good regulatory and financial standing with the Commission.
- 4.5 A Licensee will not be allowed to trade Spectrum in respect of which a notice of forfeiture has been issued by the Commission.
- 4.6 A Licensee will also not be allowed to trade in Spectrum if it is established that the Licensee has breached the terms and conditions of the Licence.

## **5. REQUIREMENTS FOR SPECTRUM TRADING**

- 5.1 For purposes of these Guidelines, the Commission will only consider applications for trading of access Spectrum Licences.
- 5.2 The application to trade in such Spectrum Licences shall be made in accordance with the provisions of Part IV of the Nigerian Communications Commission Competition Practices Regulations 2007.
- 5.3 The Seller and Buyer are required to submit written undertakings that they are in compliance with the provisions of the Act, these Guidelines and their respective Licence conditions.
- 5.4 Where an application is for Spectrum Transfer, the Seller shall disclose its rights and liabilities to the Buyer and the Commission, and ensure that such rights and liabilities are transferred to the Buyer based on the procedure prescribed under the law. The Commission will approve such transfer of Spectrum only if it is satisfied that its interest has also been protected and arrangements have been made for the settlement of liabilities.
- 5.5 If, in the considered opinion of the Commission, a transaction will negatively impact on competition and other regulatory considerations, the Commission may at its discretion conduct a Public or Private Inquiry in respect of an application for Spectrum Trading.
- 5.6 No Spectrum shall be traded without the parties having obtained the prior, written approval of the Commission.
- 5.7 A Spectrum Licence cannot be leased in whole (quantum of Spectrum holding and Licensed Area). However, a Seller can lease a part of its Spectrum holding in the entire Licensed Area or a whole of the Spectrum holding in a part of the Licensed Area.
- 5.8 The Commission reserves the right to deviate from these Guidelines if it determines that it would be appropriate to do so in the specific circumstances of any particular case.

## **6. PROCEDURE FOR SPECTRUM TRADING**

- 6.1 The procedure for Spectrum Trading shall include the following:  
A prospective applicant will be required to obtain a *Trade Application Form (TAF)* on payment of the requisite fee.
- i. The duly completed TAF will be submitted to the Commission together with the draft Spectrum Trading Agreement/Memorandum of Understanding (MoU) between the trading parties.
  - ii. A *TAP* submitted to the Commission will be duly evaluated and the decision of the Commission will be conveyed to the Applicant within 30 (thirty) days of submitting a complete *TAP* to the Commission. Provided howsoever that the Commission may extend the timeline for communicating its decision by a period not exceeding a further 15 (fifteen) days.
  - iii. Where an application is approved, the Commission shall specify such conditions as it deems necessary to give effect to the transaction including the payment of fees and the filing of the duly executed Spectrum Trading Agreement/MOD. However, where an application is not approved, the Commission shall convey to the Applicant the reason for its refusal to grant approval.

## **7. FEES**

- 7.1 Applicants that have been granted approval to trade in Spectrum will be required to pay the following fees as may be applicable:
- i. Administrative fee of 1% of the Gross Proceeds.
  - ii. For trading of Spectrum acquired through administrative process, the Seller shall in addition, pay to the Commission 60% of the Net Proceeds of the transaction. However, where the spectrum was acquired before December 31, 2017 the Seller shall pay to the Commission 40% of the Net Proceeds.
- 7.2 At any time after a transaction has been approved, and based on information obtained subsequent to the approval, the Commission shall be entitled to recover from a Buyer and/or a Seller, any fee that was not paid on a transaction on account of non-disclosure of Gross Proceeds and/or Net Proceeds.

## **8. RENEWAL OF TRADED SPECTRUM**

- 8.1 Where a traded Spectrum Licence expires, the Licence shall be renewed subject to the Licensee complying with the conditions of the Licence and such other terms and conditions as may be determined by the Commission in accordance with the provisions of the Act
- 8.2 Upon expiration of a Spectrum Lease/Sharing Agreement, a Seller shall be obligated to renew the Agreement subject to a Buyer submitting a request for renewal and meeting the terms and conditions of the Agreement as filed with the Commission. Any dispute between the Seller and Buyer regarding the renewal or non-renewal of a Spectrum Lease/Sharing Agreement which cannot be resolved by the parties shall be referred to the Commission for resolution.

## **9. WITHDRAWAL OF SPECTRUM TRADING APPROVALS**

- 9.1 If it is established at any time after the grant of approval that any of the Licensees, contrary to an undertaking submitted pursuant to Paragraph 5.3, is not in compliance with these Guidelines and/ or its Licence conditions at the time of approval, the Commission shall have the right to take appropriate action which may include among other things, the withdrawal of the approval.
- 9.2 The Commission reserves the right to cancel any approved Spectrum trade and/or impose further sanctions if it discovers any misrepresentation or collusion between a Buyer and Seller that would negatively impact on competition and market structure.

## **10. EFFECT OF SPECTRUM TRADING ON ROLL-OUT OBLIGATIONS**

- 10.1 Where a Buyer is acquiring the entire Spectrum holding of a Seller in a Spectrum Licence, it shall be required to fulfil the stipulated Roll-Out Obligations within the unexpired tenure of the Licence.
- 10.2 In the event that a Buyer is acquiring only a part of the Spectrum holding of a Seller in a Spectrum Licence, both the Buyer and the Seller will have Spectrum holding in that Licence after the trade. In such a scenario, each of them will be responsible for the Roll-Out Obligations in their respective parts of the Licensed Area. Accordingly, there shall be a restructuring of the Roll-Out Obligations prescribed for Seller in the original Licence, and an appropriate portion of the Roll Out Obligations will be prescribed for the Buyer by the Commission.

- 10.3 If a Buyer is leasing or sharing the Spectrum holding of a Seller in a Spectrum Licence, the Seller will be responsible for the Roll-Out Obligations in the Licence. There will be no change in the Roll-Out Obligations prescribed for the Seller, even if it is holding a lesser part of the Spectrum in that Licence after the trade.
- 10.4 If a Buyer has met some or all of its Roll-Out Obligations through its prior Spectrum holding in that band, this shall be taken into account and the Buyer will not be required to repeat the required testing for Roll-Out Obligations it has already met.

## **11. MISCELLANEOUS**

- 11.1 A Buyer will be allowed to use the Spectrum acquired through trading to deploy any technology.
- 11.2 In trading, the users of the Spectrum shall ensure that the Spectrum is used without causing harmful interference to either themselves or other users. In the event of any harmful interference, the affected parties will be required to take steps to resolve the interference. However, where the parties are unable to resolve, the matter should be referred to the Commission.

## **12. REVIEW/MODIFICATION**

The Commission reserves the right to review/vary and modify these Guidelines from time to time as it may deem fit.

## **13. EFFECTIVE DATE**

These Guidelines are published pursuant to Section 70 (2) of the Act this 12th day of April 2018.



## 14. INTERPRETATION

- i. Buyer**  
The Licensee that is desirous of acquiring an interest in the Spectrum Licence that is tradable and for which there is an intention to trade.
- ii. Gross Proceeds**  
The Current Market Value (MV) of any Tradable Spectrum.
- iii. Licensed Area**  
The jurisdiction to be serviced as specified in a Spectrum Licence.
- iv. Licensee**  
A person holding a Licence to provide communications services in Nigeria.
- v. Net Proceeds**  
The difference between the Current Market Value (MV) of the Tradable Spectrum and its Initial Administrative Cost (AC) minus verified Transaction Cost (TC)  $\{MV - (AC + TC)\}$ .
- vi. Roll-Out Obligation**  
The stipulated Licence implementation deployments expected from a Licensee within specific timelines as stated in the Licence or any other document issued by the Commission.
- vii. Secondary Market**  
The market for any tradable Spectrum between Licensees.
- viii. Seller**  
The Licensee that is the holder of Spectrum Licence that is tradable and for which there is an intention to trade.
- ix. Spectrum Leasing**  
A Spectrum Trading transaction in which a Licensee sublets a portion of its licensed Spectrum in time, geography or quantum to another Licensee following a commercial agreement approved by the Commission.
- x. Spectrum Sharing**  
A Spectrum Trading transaction in which a Licensee jointly uses its Spectrum holding right in a Spectrum Licence with another Licensee following a commercial agreement approved by the Commission. The original Licensee retains the Roll-Out Obligation.

**xi. Spectrum Trading**

A spectrum management transaction which covers any or all of: Spectrum Transfer, Spectrum Leasing and Spectrum Sharing, in which a Seller trades all or some of its Spectrum Licence (rights and obligation) to a Buyer, following a commercial transaction approved by the Commission.

**xii. Spectrum Transfer**

A Spectrum Trading transaction in which a Licensee reassigns a portion or a whole of its Licence holding on a Spectrum Licence in time, geography or quantum to another Licensee following a commercial agreement approved by the Commission.

**xiii. Transaction Cost**

The cost of administering the trading process. For purposes of these Guidelines, the Transaction Cost shall only be limited to cost verified by the Commission as reasonably incurred by the Seller in retaining its legal and economic advisers for the transaction PROVIDED that such cost shall be capped at 5% of the difference between the Current Market Value (MV) of the Tradable Spectrum and its Initial Administrative Cost (AC).