



Association of Licensed Telecommunications Operators of Nigeria

## INDUSTRY POSITION ON THE PROPOSED ALTERNATIVE EIA PROCESS

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**MAY, 2016**

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## 1. Executive Summary

Environmental Impact Assessment (EIA) is globally recognized as one of the key instruments for ensuring sustainable development. EIA ensures advance consideration of and proactive planning for health, safety, environmental and socio-economic issues associated with a project and ensures there is a balance between development and the environment.

EIA for telecom projects in Nigeria is mandatory and required to be site specific. Telecom infrastructure, specifically Base Transceiver Stations require rapid roll-out; unfortunately the process and timeline associated with the current EIA process do not support operator's roll out objectives. In view of the identified challenges and the on-going review of existing EIA Act of 1992; Emerging Markets Telecommunication Services Ltd. 'Etisalat', identified an opportunity to improve the EIA process for telecom projects and put forward an 'Alternative EIA Process' for Telecoms Infrastructure Projects for consideration by the NCC & Federal Min of Environment.

The proposed Alternative EIA Process was developed to fully align with the Draft EIA Act put together by the FMEnv. The proposal is based on the following:

1. Review of experiences under the existing EIA Act
2. Review of current EIA Approval Process
3. Review of EIA process in other jurisdictions
4. Understanding of potential E&S footprints of Telecom Infrastructure Projects

## 2. Acknowledgement

We wish to thank the Commission for the inclusive approach adopted in reviewing the proposal made by Etisalat Nigeria by ensuring the participation of all stakeholders, and by your letter dated 28<sup>th</sup> April, 2016, welcoming input into the proposal prior to confirming the projected position as the industry position on the above subject.

## 3. Adoption of Recommendation

We support the recommendations made by Etisalat in their presentation on the alternative EIA Process, which encapsulates industry engagement and agreement arising from the EIA workshop held by the Federal Ministry of Environment last year.

We believe that the adoption of these recommendations will bring about considerable respite from the inordinate delay and cost constraints associated with our current EIA process. It will also ensure that EIA studies are properly aligned with international industry standards especially in the areas of timeline, process and costs, thus, obviating the penalties arising therefrom for roll out of sites without necessary Federal Ministry of Environment (FMEnv) approvals.

Furthermore, the provision for the advance submission of a 5-year roll out plan by operators will allow sites billed for roll out to be granted permits within the shortest possible time (not beyond a year) unlike what obtains under the current EIA option which allows for a limited number of sites. It will also allow for flexibility in modification should there be any need for it.

## 4. Recap of the Proposed Alternative EIA Process

The Alternative EIA Process was developed based on the following factors:

1. The Nigerian telecommunication sector is rapidly expanding with a unique requirement for the rapid roll-out of Nodal equipment (e.g. BTS sites);
2. The proliferous and dispersed nature of Nodal systems: there are over 50,000 BTS sites in existence in Nigeria and several thousand would still be constructed in future. These sites are widely dispersed all over the country;
3. EIA studies conducted for thousands of BTS sites in the past 15 years have shown that EHS footprints of the Nodal systems are consistent and well-known;
4. Federal Ministry of Environment has already established the need to introduce best practice environmental management tools into the Nigerian EIA Process;
5. The on-going review of the EIA Act No. 86 of 1992 has specifically identified Strategic Environmental Assessment (SEA) as one of such tools;
6. SEA provides a platform for timely and cost efficient approval of telecom installations.

### 4.1. Components of the Alternative EIA Process

- I. The Strategic Environmental Assessment (SEA) Process
- II. FMEnv. SEA Permitting Process

III. FMEnv. Environmental Management Plan (EMP) Permitting Process

**4.2. Key Roles under the SEA Process**

**a) Nigerian Communication's Commission (NCC)**

- Prepare 5-year Infrastructure Development Template (IDT)
- Request for 5-year plan using the template
- Consolidates & Submit 5-year industry plan to FMEnv

**b) Telecommunication Operators**

- submit a 5-year plan in line with IDT format to NCC

**c) FMEnv**

- Review consolidated plan/proposal
- Conduct SEA
- Issue 5 year SEA Approval
- Develop required regulations

We recommend that the SEA should be considered as an alternative to EIA and be accepted as the final document of approval in place of EIA. The proposed framework will be flexible enough to allow for modifications of the 5-year plans as may become necessary.

The existing FMEnv Telecoms Sector Guidelines will have to be revised to align with the proposed framework. Working with the Ministry of Justice, it is recommended that the FMEnv develops two (2) special Regulations for the implementation of SEA process i.e.

- The Nigerian Strategic Environmental Assessment (SEA) Regulation (S.I. 17); and
- The Telecommunications Sector Environmental Assessment and Management Regulation (S.I. 18).

### 4.3. Project Schedule

SN	Activity	Proposed Timeline
1	Adoption of Proposal by ALTON	May 2016
2	Adoption of Proposal by NCC	June 2016
3	Joint presentation of Proposal by NCC and Alton to FMEnv as the industry position	June 2016
4	Communication of FMEnv Position/Adoption of Proposal by the Ministry	July 2016
5	Signing of Updated Memorandum of Understanding (NCC, FMEnv, NESREA, MoCT)	July 2016
6	FMEnv to Issue recommended regulations	TBD
7	Implementation of Process by the Ministry	TBD

## 5. Additional Recommendations

### 5.1. Exemption of Zero Impact Sites from EIA/SEA

Low or zero impact facilities are those which, because of their size and location, are considered to have a low visual impact and be less likely to raise significant planning, heritage or environmental concerns. Examples of low or zero impact facilities are small radio communications dish and antennae.

The Australian *Telecommunications (Low-impact Facilities) Determination 1997*, made under sub clause 6 (3) of Schedule 3 of the Australian Telecommunications Act 1997, identifies certain equipment as low impact when mounted on existing structures such as buildings, poles or towers. It also classifies an extension of up to five meters on an existing tower as low impact, provided the tower has not previously been extended.

As in the Australian example, a low-impact facility is immune from some state and territory laws, including town planning and environmental laws. It is advocated that the Federal Government lays down a framework for the determination of what constitutes zero/low impact telecommunication sites and infrastructure in Nigeria and in that regard exempt them from the EIA/SEA process. Examples of possible low/zero impact infrastructure in the Nigerian context, would be masts on water stanchions, aesthetically designed masts, masts on high rise buildings etc.

### *5.2. Pre- SEA regime: Early Issuance of Provisional Approvals*

In addition to the proposals made in EMTS' presentation, it is recommended that for speedy deployment of telecommunications infrastructure in the unserved and underserved communities, the FMEnv should in the interim, before the SEA process kicks off, consider granting early issuance of provisional approvals to operators for sites requiring environmental assessment on the following grounds:

- The proponent has registered the project with FMEnv and initial environmental evaluation concluded
- It is established that a proponent has commissioned accredited Consultant(s) and the Consultant(s) have commenced the study.

The interim approval will also apply in the first round of SEA implementation with respect to sites planned for deployment in the year of registration. We expect the process to be completed with maximum of one year in which case the SEA approval will apply to sites to be rolled out subsequently.

EIA approval to be reduced to one season study or alternatively Temporary (Provisional) Approval be issued to Operators (which was recently canceled) whilst study is being conducted for the second season to allow it achieve expansion as well as support the Federal Government's Broadband Policy Plan 2013-2018. The current EIA Process should be reduced into a Guideline, Regulations or MOU and properly enforced to guarantee business predictability, confidence in FMEnv EIA process.

The Impact Mitigation Monitoring (IMM) should also be made to replace the Mandatory Audit currently conducted by NESREA. The powers and responsibilities of NESREA and the EA Department need to be streamlined to avoid conflicts as regards enforcement (such as the provision of a database that is accessible to NESREA to verify approvals issued to Operators before site lock-out).

### *5.3. Memorandum of Understanding (MOU)*

We propose that the Strategic EIA framework constitutes the substance and import of the Memorandum of Understanding (MOU) between the Nigerian Communications Commission (NCC), Ministry of Communications Technology (MoCT), Federal Ministry of Environment (FMEnv) and the National Environmental Standards and Regulations Enforcement Agency (NESREA) reflecting a further improvement to the existing process and serving as a complete replacement for the terms that currently exist.

The MOU will serve as an interim policy document that will guide the transition from the current process into the recommended SEA process. The MOU will form the bedrock of any further regulations/statutory instruments on the subject until the requisite EIA Amendment Bill is passed into law.

#### *5.4. Legislative Backing for Proposed SEA Process vis a vis The EIA (Amendment) Bill 2016*

“A Bill for an Act to amend the Environmental Impact Assessment Act Cap E12, LFRN, 2004 (the Act), to strengthen the process of approvals and decision making on project inclusive and for related matters”, has been introduced by the National Assembly.

Whilst the purpose of the Bill is laudable, as a review of the EIA Act is long overdue, it is expedient at this time to carry out a more extensive review of the Act, beyond what is currently proposed in the 2016 Bill. Any review to the EIA Act must take cognizance of industry engagement and agreement arising from the EIA workshop held by the Federal Ministry of Environment in June 2015.

Following a well-attended stakeholder session held with FMEnv last year, a robust review was done and this birthed a Draft EIA Act which was intended to replace the EIA Act of 1992. A number of changes to the current Act were recommended; of particular importance to the proposed alternative to EIA is Section 56 which provides for SEA. The success of the alternate EIA procedure sought by operators rests largely on the incorporation of the recommendations of the stakeholders in the Bill before the National Assembly and the adoption of the Draft Act as the new EIA Act.

An efficient approach will be to progress discussions from that point rather than initiate fresh discussion/review of the EIA Act. The FME with the support of the Association and NCC therefore need to engage the NASS to adopt the Draft EIA Act of 2015 as replacement to the subject Bill.

## **6. Summary of Recommendations**

- Adopt the proposal on SEA as an alternative to the existing EIA process
- Exemption of Zero Impact Sites from EIA/SEA
- Pre- SEA regime: Early Issuance of Provisional Approvals
- Update the current MOU as recommended; the MOU will serve as an interim policy document that will guide the transition from the current process until the EIA Amendment Bill is passed into law.
- Replace EIA Bill with Draft EIA Act agreed at stakeholder sessions of 2015

## 7. Conclusion

We particularly welcome the provisions of section 58 (now section 56) of the revised EIA Act as this will significantly enhance the attainment of the Broadband goals of Government by ensuring a consolidated approach for the whole industry. We believe that for the Telecoms industry, the process to be eventually adopted must be clear and made more succinct to eliminate any uncertainty nor additional burdens to project proponents. Any review of the EIA Act should make the process more efficient and not cumbersome.

We thank you for your continued support in driving an efficient system thereby enhancing the telecommunication industry as a whole.

Yours faithfully,

**For: Association of Licensed Telecommunications Operators of Nigeria (ALTON)**

A handwritten signature in black ink, appearing to read "Gbenga Adebayo".

**Engr. Gbenga Adebayo**  
**Chairman**

A handwritten signature in black ink, appearing to read "Kazeem Oladepo".

**Kazeem Oladepo**  
**Executive Secretary**