

# A BILL

## FOR

AN ACT TO PROVIDE FOR THE INSTITUTING OF THE TELECOMMUNICATIONS SERVICES TAX AND FOR RELATED MATTERS, 2016.

*Sponsored by Hon. Saheed Akinade-Fijabi*

[ ] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 1.-(1) There is hereby established a tax to be known as the  
2 Communication Service Tax.

Establishment of  
the Communication  
Service Tax

3 (2) As from the Commencement of this Act, there shall be imposed,  
4 charged, payable and collected a monthly Communication Service Tax  
5 which shall be assessed, collected and administered in accordance with the  
6 provision of this Bill.

7 2.-(1) There shall be imposed, charged and collected by this Bill a  
8 tax to be known as Communication Service Tax to be levied on charges  
9 payable by a user of an Electronic Communication Service other than  
10 private Electronic Communication Services.

Imposition of  
Communications  
Services Act

11 (2) The tax shall be levied on Electronic Communication Services  
12 supplied by Service Providers.

13 (3) For the purpose of this section, the supply of any form of  
14 recharges shall be considered as a charge for usage of Electronic  
15 Communication Service.

16 (4) The Tax shall be levied on the following Electronic  
17 Communication Services:

18 (a) Voice Calls;

19 (b) SMS;

20 (c) MMS;

	1	(d) Data usage both from Telecommunication Services Providers and
	2	Internet Service Providers;
	3	(e) Pay per View TV Stations, etc.
Persons liable to pay the tax	4	3.-(1) The tax shall be paid together with the Electronic
	5	Communication Service charge payable to the service provider by the user of
	6	the service.
	7	(2) The tax is due and payable on any supply of Electronic
	8	Communication Service within the time period specified under subsection (5)
	9	of section 6 whether or not the person making the supply is permitted or
	10	authorized to under the Bill provide Electronic Communication Services.
Rate of the Tax	11	4. The rate of the tax is 7% of the charge for the use of the
	12	communication service.
Collection of the Tax and payment into the Federation Account	13	5.-(1) The Federal Inland Revenue Service (FIRS) established under
	14	section 1 of the Federal Inland Revenue Service (Establishment) Act, 2007
	15	shall be responsible for collection and remittance of tax to the Federation
	16	Account. The Federal Government is therefore responsible for the
	17	administration and management of the funds accruing from the tax. The FIRS
	18	shall therefore collect the tax and any interest and penalty paid under this Bill.
	19	(2) The FIRS shall pay the tax collected together with any interest and
	20	penalty into the Federation Account.
Submission of Tax return and time for payment of the Tax	21	6.-(1) All service providers shall file a tax return to account for the tax.
	22	(2) The tax return shall be in a form prescribed by the FIRS and shall
	23	state the amount of tax payable for the period and any related matters that may
	24	be required.
	25	(3) The FIRS may require persons to submit to the FIRS. In addition
	26	to the tax under Sub-Section (1), a further tax return in a prescribed form.
	27	(4) The request by the FIRS for a further tax return may be made to a
	28	person:
	29	(a) on that person's own behalf; or
	30	(b) as an agent of trustee of another person.

1 (5) The return and the tax due to the accounting period to which the  
2 tax return relates shall be submitted and paid to the FIRS not later than the  
3 last working day of the month immediately after the month to which the tax  
4 return and payment relates.

5 (6) On application in writing by a service provider, the FIRS may  
6 extend the period within which the tax return may be submitted and payment  
7 made, where good cause is shown by the applicant also in writing.

8 (7) The extension shall be communicated to the applicant in  
9 writing and shall state the state by which the tax return shall be submitted  
10 and the tax for the period paid.

11 (8) A service provider who without justification fails to submit to  
12 the FIRS the tax return by the date is liable to a pecuniary penalty of  
13 N100,000.00 and a further penalty of N20,000.00 for each day the return is  
14 not submitted.

15 7.-(1) Subject to section 6 (6) a service provider who fails to pay the  
16 tax by the due date shall pay monthly interest on the tax due at a rate of One  
17 hundred and Fifty per cent of the average of the prevailing commercial  
18 Banks lending rate as published by the Central Bank of Nigeria.

Payment of  
interest and  
outstanding Tax

19 (2) For the purpose of subsection (1) any part of one month shall be  
20 deemed to be one month.

21 (3) Subject to section 6 (6) where the interest payable under  
22 subsection (1) is not paid within one month after the due date, interest shall  
23 be paid on the unpaid interest at the same rate and in the same manner on the  
24 unpaid tax.

25 8.-(1) A tax, penalty of any interest due under this Bill which  
26 remain unpaid after the due date may be recovered by the FIRS as a debt.

Recovery of Tax,  
Interest or Penalty  
due

27 (2) An amount shown as the tax on a bill or invoice for Electronic  
28 Communication Service usage is recoverable as tax from the person who  
29 issues the bill or invoice whether or not-

1 (a) Tax is chargeable on the Electronic Communication Service  
2 Usage; or

3 (b) The person who issues the bill or invoice is a person authorized to  
4 provide Electronic Communication Service under the Bill.

5 (3) Where a body either corporate or unincorporated which is liable  
6 for the payment of the tax, of any penalty or interest that arises under the Bill,  
7 defaults in payment, in whole or in part after written demand, the directors,  
8 partners and the person in control of the body are jointly and severally liable to  
9 pay the sum due.

10 (4) Where tax penalty or interest is payable and due under this Bill the  
11 FIRS may apply to the Court for an order that compels an individual or  
12 business-

13 (a) from whom money is due or is accruing to the person required to  
14 apply the, interest or penalty, or

15 (b) who holds money for or on account of the person required to pay  
16 the tax interest or penalty to pay to the FIRS that money or so much of it as  
17 sufficient to discharge the tax interest or penalty payable and due.

Distrain for  
liability

18 9.-(1) Where tax, penalty or interest due under this Bill remains  
19 unpaid after the time by which this Bill required it to be paid, the FIRS may  
20 apply to the court by motion on notice to the person from whom the payment is  
21 due for an order to levy distress-

22 (a) on the goods chattels and effects of that person; and

23 (b) on-

24 (i) the assets, property, building, factory, machinery, plant, tools,  
25 means of transport, accessories and all equipment used for the provision of  
26 communication service, by that person;

27 (ii) the commodity or items found in the premises or land owned by, in  
28 use or in possession of that person on behalf of or in trust for that person.

29 (2) The distress order issued in subsection (1) shall be executed on the  
30 assets of the person specified in the order and the FIRS shall take possession of



1 the property specified (1) exclusion of all liabilities.

2 (3) In furtherance of the levy of distress, a person authorized in  
3 writing by the FIRS may execute the order of distress on the goods and  
4 assets specified under subsection (1) and where necessary, may break open  
5 any building or place in the daytime for the purpose.

6 (4) The authorized person may seek the assistance of a police  
7 officer shall assist in the execution of the order of distress.

8 (5) The property distrained shall be kept for Fourteen days at the  
9 cost of the owner and if the amount due in respect of the tax interest or  
10 penalties, cost and charges for and incidental to the distress are not paid, the  
11 property distrained may be sold on the orders of the court.

12 (6) Where distrained property is sold, there shall be paid out the  
13 proceed of the sale:

14 (a) The cost of charges of-

15 (i) the distress;

16 (ii) maintenance of the distress; and

17 (iii) the sale; and

18 (b) the amount due in respect of the tax, interest and penalties and  
19 any residue that remains after these payments shall be paid to the owner of  
20 the property but payment to the owner is subject to the prior interest of the  
21 FIRS which has precedence over the other interests

22 (7) Where property seized in the execution of the distress warrant is  
23 under mortgage, bill of sale, charged by way of security for debt, or is in any  
24 way encumbered, the interest of the FIRS has precedence over all the  
25 interests.

26 10. Where tax, penalty or interest is due under the Bill from a  
27 person who is subject to liquidation or bankruptcy proceedings, the  
28 liquidation, receiver or other persons responsible for winding up the affair of  
29 the debtor shall not distribute the assets until full payment has been made of  
30 the Tax penalty or interest due under this Bill.

Recovery in  
respect of perso  
under liquidatio

Records, related  
matters, offences  
and penalties

1                   **11. Sections of the Value Added Tax act apply to the management of**  
2                   **the Tax with the necessary modification.**

Objections and  
Appeals

3                   **12. Sections of the Value Added Tax Act apply in matters of**  
4                   **objectives and appeals related to tax**

Evidence in  
proceedings

5                   **13.-(1) A certificate issued by the FIRS that-**  
6                   **(a) a tax returns required by this Bill has not been submitted or has not**  
7                   **been returned as required by the AC has not been submitted on the specified**  
8                   **date; or**  
9                   **(b) tax shown as due in any tax return or assessment made under this**  
10                   **Bill has not been paid, is sufficient evidence in civil or criminal proceedings of**  
11                   **that fact unless the contrary is proved.**

12                   **(2) A photocopy of a document furnished to the FIRS or an officer**  
13                   **NCC under the requirement of this Act and certified by the FIRS is admissible**  
14                   **as evidence in civil or criminal proceedings to the same extent as the original**

15                   **(3) A statement or other information contained in a document**  
16                   **produced by a computer is admissible as evidence in civil or criminal**  
17                   **proceedings if it is certified as correct by the FIRS unless the contrary is**  
18                   **proved.**

Jurisdiction

19                   **14. The Federal High Court shall have jurisdiction to try offenders**  
20                   **under this Bill.**

Directive and  
Powers of the  
Minister and  
the FIRS

21                   **15.-(1) The Minister and the FIRS may make policy directives that the**  
22                   **FIRS considers necessary for the effective implementation of this Bill.**

23                   **(2) Subject to the Provisions of this Bill the FIRS may in writing give**  
24                   **administrative directive that the FIRS considers necessary to the**  
25                   **implementation of this Bill.**

26                   **(3) The Minister and the FIRS may request any person in writing to**  
27                   **provide security that the FIRS considers adequate for the protection of the**  
28                   **revenue.**

29                   **(4) The Minister and the FIRS in collaboration with the Ministry of**  
30                   **Communication and the Nigeria Communication Commission shall—**

1           (a) appoint an agent who will establish both electronic and  
2 physical monitoring mechanisms to monitor, analyse, verify, save all  
3 necessary data and information, both electronic and physical (Soft copies  
4 and hard copies from the electronic and physical platforms of all the  
5 communication service providers for the purpose of accurate computation  
6 of taxes due the government);

7           (b) ensure at all times that the FIRS, the ministry of  
8 communication, NCC and the agents appointed to monitor the  
9 communication service provider are given unfettered physical and  
10 electronic access to the network nodes of the service provider network at an  
11 equivalent point in the network where the network provides billing systems  
12 are connected;

13           (c) ensure that the monitoring agent appointed by the government  
14 links their electronic systems, devices, software's, hardware's to the  
15 electronic system devices, software, hardware, etc. of the communication  
16 service providers at the point in their network systems where the billing  
17 systems are connected for real time and accurate analysis and data collection  
18 for correct computing of actual tax due the government;

19           (d) ensures that the agent appointed by the government to monitor  
20 the service providers uses a common platform for the purpose of monitoring  
21 revenues under this Bill as well as revenues accruing from levies.

22           (5) A service provider who refuses to provide access to its relevant  
23 network for Government or its appointed agent as specified in subsection (4)  
24 (b) and (c) commits an offence and is liable to pay a penalty of five per cent  
25 of the annual gross revenue of the last admitted financial statement of the  
26 service, provider after the first thirty days and if the situation persists after  
27 ninety days, the NCC may revoke the operating licence of that service  
28 provider.

29           (6) The Monitoring mechanisms referred to in subsection (4) (a)  
30 shall not be operated or attached in such locations or points in the service

1 providers network where it will be capable to actively passively record,  
2 monitor, or tap into the content of any incoming or outgoing electronic  
3 communication traffic, including voice, video or data existing discreetly or on  
4 a converged platform whether local or international.

5 (7) A service provider who has an objection to a request for the  
6 introduction of an equipment or software to the physical node of its network as  
7 provided under subsection (4) (b) and (c) shall within seven days of receipt of  
8 the request, report same in writing stating reasons for the objection to the report  
9 to the FIRS, Ministry of communication, NCC and the government appointed  
10 agent, if after 14 days settlement period from the date of the report made by the  
11 service provider, the arising issues are not amicably resolved by the joint  
12 meeting of the FIRS, ministry of communication, Nee, the government  
13 appointed agent and the service provider, the service' provider shall within  
14 seven days of the expiration of the approved 14 days settlement period i.e. 21  
15 days from the date of receipt of the request apply to the High court for a  
16 determination of the objective stating reasons for the objection, to the request.  
17 If the High court upholds the request for the introduction of an equipment to the  
18 physical node of the service providers network.

19 (8) The service providers will be deemed as having refused to provide  
20 access to its network for government or its appointed agent as specified in  
21 subsection (4) (b) and (c), and has therefore committed an offence and is liable  
22 to pay a penalty of five percent of the annual gross revenue of the last audited  
23 financial statement of the service provider after the first 30 days and if the  
24 penalty is not paid after ninety days the NCC may revoke the operating licence  
25 of that service provider.

Regulations

26 16. The Minister and the FIRS may by legislative instrument make  
27 regulations for the purpose of giving effect to the provisions of this Bill and  
28 may in particular make regulations to prescribe-

- 29 (a) the form of the tax return and;  
30 (b) the records to be kept in respect of the tax.



1                   17. In this Bill-

2           "Accounting period" means one calendar month;

3           "Charge of electronic communication service usage" means-

4                   (a) the amount chargeable by a service provider for electronic

5                   communication service usage other than the amount for Value Added Tax,

6                   National Health Insurance Levy;

7                   (b) when the charge for electronic communication service usage is

8                   for money consideration, the open market value excluding the Value Added

9                   tax and the National Health Insurance Levy;

10                  (c) where the charge for electronic communication service usage is

11                  partly for money consideration, the open market value excluding the value

12                  added tax and the National Health Insurance Levy;

13                  (d) in the case of promotion, protocol, personal use, bonus, gift and

14                  similar supplies. The charge shall be the open market value excluding VAT

15                  and National Health Insurance;

16           "electronic communication services" includes a service providing

17           electronic communication, a close user group service, a private electronic

18           communication service, a radio communication service, and a value added

19           service";

20           "Service provider" means a person permitted or authorised under the NCC

21           to provide electronic Communication services";

22           "Closed user group service" means electronic Communications Service,

23           used by a closed user group, operated without interconnection to a public

24           electronic communications network enabling electronic communications to

25           persons other than the members of that group";

26           "Federal Inland Revenue Service (FIRS)" means chairman of FIRS or any

27           officer, staff, persons, personnel of the FIRS designated or appointed by the

28           FIRS and acting for or un behalf of the FIRS;

29           "Federal Ministry of Communication" means the minister of

30           communication or any officers, staff or personnel of the Federal Ministry of

Interpretation

- 1 Communication or person(s) designated or appointed by the Federal Ministry  
2 of communication and acting for or on behalf of the Ministry of  
3 communication;
- 4 "The Nigerian Communication Commission (NCC)" means the Director  
5 General of NCC or any officer, staff or personnel of the NCC or personnel  
6 designated or approved by NCC and acting for or on behalf of the NCC;
- 7 "Agent appointed by Government, Organization or company appointed by the  
8 government to establish a monitoring mechanism and monitor the  
9 communication service providers for the purpose of computing taxes due the  
10 government under this Bill";
- 11 "Court" means the District, Circuit or High Court;
- 12 "Prescribed" means by regulations made under this Bill;
- 13 "Service" Means Communication Service;
- 14 "Tax return" means the records kept and required to be submitted to the FIRS to  
15 account for the Communication Service Tax imposed under Section 1 of this  
16 Bill;
- 17 "Electronic Communication" means any communication through the use of  
18 Wire, radios, optical or electromagnetic transmission emissions or receiving  
19 system or any part of these and includes interconnection;
- 20 "electronic connection Network" means any wire, radio, optical or  
21 electromagnetic transmission emission or receiving system, or any part of  
22 these, used for the provision of electronic communication services; and
- 23 "Interconnection" means the linking of public electronic communications  
24 network and services to allow the users or one public electronic  
25 communications service to communicate with users of another public  
26 electronic communication service";
- 27 "Open market value" means the value of a supply of electronic Communication  
28 service determined under paragraph (a) of the interpretation of "charge payable  
29 for electronic communications service usage" if the supplier, user or any other  
30 person concerned in the transaction were completely independent of each other

1 and did not in any way influence the transaction";  
2 "private electronic Communication service" means electronic  
3 communication service used with one enterprise or anybody corporate with  
4 which it is affiliated, to satisfy its internal needs and operated without  
5 interconnection to a public electronic 'communication' to persons other than  
6 within the enterprise or the body corporate; and  
7 "Recharge" includes any plan scheme or form by which users receive  
8 additional electronic communication services from service providers;  
9 "Supply" means any means by which a user receives electronic  
10 communication services from a service provider";  
11 "User" means a customer or a subscriber of electronic communication  
12 network or service or broadcasting service and includes a customer that is an  
13 operator or provider of electronic communications network or service; and  
14 "Value added tax" includes a service that combines applications provided to  
15 users with telecommunications but does not include any public electronic  
16 communication services.

17 **18.** This Bill may be cited as the Telecommunication Services Tax Short Title  
18 Bill, 2016.

#### EXPLANATORY MEMORANDUM

The Bill seeks to provide for the Instituting of a Telecommunications Services Tax and other matters Related Thereto with a view to Making Provisions, Enhancing, Generating and Regulating the Revenue generating of the base of Telecommunications Sector for the Nation, to meet contemporary realities and International best practices.