

A BILL

FOR

AN ACT TO PROVIDE FOR THE COMMUNICATION SERVICE TAX AS A VERITABLE TOOL FOR ECONOMIC DIVERSIFICATION AND FOR RELATED MATTERS

Sponsored by Senator Mohammed Ali Ndume

[] Commencement

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

1 1.-(1)There shall be" imposed, charged payable and collected a
2 monthly Communication Service Tax to be levied on charges payable by a
3 user of an Electronic Communication Service other than private Electronic
4 Communication Services.

Imposition of
Communication
Service Tax

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

7 (3) For the purpose of this clause, the supply of any form of
8 recharges shall be considered as a charge for usage of Electronic
9 Communication Service.

10 (4) The Tax shall be levied on the following Electronic
11 Communication Services:

- 12 (a)Voice Calls;
- 13 (b)SMS;
- 14 (c)MMS;
- 15 (d) Data usage both from Telecommunication Services Providers
16 and Internet Service Providers;
- 17 (e) Pay per View TV Stations, etc.

18 2.-(1) The tax shall be paid together with the Electronic
19 Communication Service charge payable to the service provider by the
20 consumer of the service.

Persons Liable
to pay the Tax

1 (2) The tax is due and payable on any supply of Electronic
2 Communication Service within the time period specified under sub-clause (5)
3 of whether or not the person making the supply is permitted or authorized
4 provide Electronic Communication Services.

Rate of the Tax

5 3. The rate of the tax is 9% of the charge for the use of the
6 communication service.

Collection of
the tax and
payment into the
Federation Account

7 4.-(1) The Federal Inland Revenue Service (FIRS) established under
8 section 1 of the Federal Inland Revenue Service (Establishment) Act, 2007
9 shall be responsible for collection and remittance of tax, any interest and
10 penalty paid under this Bill.

11 (2) The FIRS shall pay the tax collected together with any interest and
12 penalty into the Federation Account.

Submission of
tax return and
time for payment
of the tax

13 5.-(1) All service providers shall file a tax return to account for the tax.

14 (2) The tax return shall be in a form prescribed by the FIRS and shall
15 state the amount of tax payable for the period and any related matters that may
16 be required.

17 (3) The return and the tax due to the accounting period to which the
18 tax return relates shall be submitted and paid to the FIRS not later than the last
19 working day of the month immediately after the month to which the tax return
20 and payment relates.

21 (4) The FIRS may extend the period within which the tax return may
22 be submitted and payment made on application in writing by a service
23 provider, where good cause is shown by the applicant.

24 (5) The extension shall be communicated to the applicant in writing
25 and shall state the circumstances under which the tax return shall be submitted
26 for the particular period.

27 (6) A service provider who without justification fails to submit to the
28 FIRS the tax return by the date is liable to a pecuniary penalty of N50,000.00
29 and a further penalty of N10,000.00 for each day the return is not submitted.

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

Payment of
Interest and
Outstanding tax

5 (2) For the purpose of sub-clause of this clause (1) any part of one
6 month shall be deemed to be one month.

7 (3) Subject to clause 6 (6) where the interest payable under sub-
8 clause (1) is not paid within one month after the due date, interest shall be
9 paid on the unpaid interest at the same rate and in the same manner on the
10 unpaid tax.

11 7.-(1) A tax or penalty of any interest due under this Bill which
12 remain unpaid after the due date may be recovered by the FIRS as a debt.

Recovery of tax,
interest or penalty
due

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

16 (a) Tax is chargeable on the Electronic Communication Service
17 Usage; or

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

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

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

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

30 (b) who holds money for or on account of the person required to

Distrain for
Liability

1 pay the tax interest or penalty to pay to the FIRS that money or so much of it as
2 sufficient to discharge the tax interest or penalty payable and due.

3 8.-(1) Where tax, penalty or interest due under this Bill remains
4 unpaid after the time by which this Bill required it to be paid, the FIRS may
5 apply to the court by motion on notice to the person from whom the payment is
6 due for an order to levy distress-

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

8 (b) on-

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

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

14 (2) The distress order issued in sub-clause (1) shall be executed on the
15 assets of the person specified in the order and the FIRS shall take possession of
16 the property so specified in sub-clause (1) to the exclusion of all liabilities.

17 (3) In furtherance of the levy of distress, a person authorized in
18 writing by the FIRS may execute the order of distress on the goods and assets
19 specified under sub-clause (1) and where necessary, may break open any
20 building or place in the daytime for the purpose.

21 (4) The authorized person may seek the assistance of a police officer
22 in the execution of the order of distress.

23 (5) The property distained shall be kept for Fourteen days at the cost
24 of the owner and if the amounts due in respect of the tax interest or penalties,
25 cost and charges for and incidental to the distress are not paid, the property
26 distained may be sold on the orders of the court.

27 (6) Where distained property is sold, there shall be paid out the
28 proceed of the sale-

29 (a) The cost of charges of-

30 (i) The distress,

1 (ii) Maintenance of the distress,
 2 (iii) the sale; and
 3 (b) The amount due in respect of the tax, interest and penalties and
 4 any residue that remains after these payments shall be paid to the owner of
 5 the property but payment to the owner is subject to the prior interest of the
 6 FIRS which has precedence over the other interests.

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

11 9. Where tax, penalty or interest is due under the Act from a person
 12 who is subject to liquidation or bankruptcy proceedings, the liquidation,
 13 receiver or other persons responsible for winding up the affair of the debtor
 14 shall not distribute the assets until full payment has been made of the Tax,
 15 penalty or interest due under this Bill.

Recovery in
 respect of person
 under liquidation

16 10. The relevant sections of the Value Added Tax Act shall apply to
 17 the management of this Tax with necessary modification.

Records, related
 matters offences
 and penalties

18 11. The relevant sections of the Value Added Tax Act shall apply in
 19 matters of objections and appeals related to this tax.

Objections and
 Appeals

20 12.-(1) A certificate issued by the FIRS that-

Evidence in
 Proceedings

21 (a) a tax returns required under this Bill has not been submitted or
 22 has not been returned as required by the NCC on the specified date; or

23 (b) Tax shown as due in any tax return or assessment made under
 24 this Bill has not been paid, is sufficient evidence in civil or criminal
 25 proceedings of that fact unless the contrary is proved.

26 (2) A photocopy of a document furnished to the FIRS or an officer
 27 of NCC under the requirement of this Bill and certified by the FIRS is
 28 admissible as evidence in civil or criminal proceedings to the same extent as
 29 the original.

30 (3) A statement or other information contained in a document

1 produced by a computer is admissible as evidence in civil or criminal
2 proceedings if it is certified as correct by the FIRS unless the contrary is
3 proved.

Jurisdiction

4 13. The Federal High Court shall have jurisdiction to try offenders
5 under this Bill.

Directive and
powers of the
Minister and the
FIRS

6 14.-(1) The Minister and the FIRS may make policy and
7 administrative directives considered necessary for the effective
8 implementation of this Bill.

9 (2) The Minister and the FIRS may request any person in writing to
10 provide security that the FIRS considers adequate for the protection of the
11 revenue.

12 (3) The Minister and the FIRS in collaboration with the Ministry of
13 Communication and the Nigeria Communication Commission shall-

14 (a) appoint an agent who will establish both electronic and physical
15 monitoring mechanisms to monitor, analyze, verify, save all necessary data and
16 information, both electronic and physical (Soft copies and hard copies from the
17 electronic and physical platforms of all the communication service providers
18 for the purpose of accurate computation of taxes due to the government);

19 (b) ensure at all times that the FIRS, the ministry of communication,
20 NCC and the agents appointed to monitor the communication service providers
21 are given unfettered physical and electronic access to the network nodes of the
22 service provider network at an equivalent point in the network where the
23 network provides billing systems are connected;

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

30 (d) ensures that the agent appointed by the government to monitor the

1 service providers uses a common platform for the purpose of monitoring
2 revenues under this Bill as well as revenues accruing from levies.

3 (4) A service provider who refuses to provide access to its relevant
4 network for Government or its appointed agent as specified in sub-clause (4)

5 (b) and (c) commits an offence and is liable to pay a penalty of five
6 per cent of the annual gross revenue of the last admitted financial statement
7 of the service, provider after the first thirty days and if the situation persists
8 after ninety days, the Nee may revoke the operating licence of that service
9 provider.

10 (5) The Monitoring mechanisms referred to in sub- clause (4) (a)
11 shall not be operated or attached in such locations or points in the service
12 providers network where it will be capable to actively or passively record,
13 monitor, or tap into the content of any incoming or outgoing electronic
14 communication traffic, including voice, video or data existing discreetly or
15 on a converged platform whether local or international.

16 (6) A service provider who has an objection to a request for the
17 introduction of an equipment or software to the physical node of its network
18 as provided under sub-clause (4) (b) and (c) shall within seven days of
19 receipt of the request, report same in writing stating reasons for the objection
20 to the report to the FIRS Ministry of communication, Nee and the
21 government appointed agent, if after 14 days settlement period from the date
22 of the report made by the service provider, the arising issues are not
23 amicably resolved by the joint meeting of the FIRS, ministry of
24 communication, Nee, the government appointed agent and the service
25 provider, the service' provider shall within seven days of the expiration of
26 the approved 14 days settlement period i.e. 21 days from the date of receipt
27 of the request apply to the High court for a determination of the objective
28 stating reasons for the objection, to the request. if the High court upholds the
29 request for the introduction of an equipment to the physical node of the
30 service providers network.

1 (7) The service providers will be deemed as having refused to provide
2 access to its network for government or its appointed agent as specified in sub-
3 clause (4) (b) and (c), and has therefore committed an offence and is liable to
4 pay a penalty of five percent of the annual gross revenue of the last audited
5 financial statement of the service provider after the first 30 days and if the
6 penalty is not paid after ninety days the Nee may revoke the operating license
7 of that service provider.

Regulations

8 **15.** The Minister and the FIRS may by legislative instrument make
9 regulations for the purpose of giving effect to the provisions of this Bill and
10 may in particular make regulations to prescribe-

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

Interpretation

13 **16.** In this Bill unless the context otherwise requires:

14 "Accounting period" means one calendar month;

15 "Charge of electronic communication service usage" means:

16 (a) the amount chargeable by a service provider for electronic
17 communication service usage other than the amount for Value Added Tax,
18 National Health Insurance Levy;

19 (b) when the charge for electronic communication service usage is for
20 money consideration, the open market value excluding the Value Added tax
21 and the National Health Insurance Levy;

22 (c) where the charge for electronic communication service usage is
23 partly for money consideration, the open market value excluding the value
24 added tax and the National Health Insurance Levy;

25 (d) in the case of promotion, protocol, personal use, bonus, gift and
26 similar supplies. The charge shall be the open market value excluding VAT and
27 National Health Insurance;

28 "electronic communication services" includes a service providing electronic
29 communication, a close user group service, a private electronic

- 1 communication service, a radio communication service, and a value added
2 service":
- 3 "Service provider" means a person permitted or authorized under the
4 Electronic Communication Act 2008 (Act 775) and Electronic
5 Communications Regulations, 2011 (L 1, 1991) to provide electronic
6 Communication services":
- 7 "Closed user group service" means electronic Communications Service,
8 used by a closed user group, operated without interconnection to a public
9 electronic communications network enabling electronic communications to
10 persons other than the members of that group";
- 11 "Federal Inland Revenue Service (FIRS)" means chairman of FIRS or any
12 officer, staff, persons, personnel of the FIRS designated or appointed by the
13 FIRS and acting for or on behalf of the FIRS;
- 14 "Federal Ministry of Communication" means the minister of
15 communication or any officers, staff or personnel of the Federal Ministry of
16 Communication or person(s) designated or appointed by the Federal
17 Ministry of communication and acting for or on behalf of the Ministry of
18 communication;
- 19 "The Nigerian Communication Commission (NCC)" means the Director
20 General of NCC or any officer, staff or personnel of the NCC or personnel
21 designated or approved by NCC and acting for or on behalf of the NCC;
- 22 "Agent appointed by Government" means organization or company
23 appointed by the government to establish a monitoring mechanism and
24 monitor the communication service providers for the purpose of computing
25 taxes due the government under this Bill;
- 26 "Court" means the District, Circuit or High Court;
- 27 "Prescribed" means by regulations made under this Bill;
- 28 "Service" Means Communication Service:
- 29 "Tax return" means the records kept and required to be submitted to the FIRS

- 1 to account for the Communication Service Tax imposed under clause 1 of this
2 Bill;
- 3 "Electronic Communication" means any communication through the use of
4 Wire, radios, optical or electromagnetic transmission emissions or receiving
5 system or any part of these and includes interconnection;
- 6 "electronic connection Network" means any wire, radio, optical or
7 electromagnetic transmission emission or receiving system, or any part of
8 these, used for the provision of electronic communication services; and
- 9 "Interconnection" means the linking of public electronic communications
10 network and services to allow the users or one public electronic
11 communications service to communicate with users of another public
12 electronic communication service;
- 13 "Open market value" means the value of a supply of electronic Communication
14 service determined under paragraph (a) of the interpretation of "charge payable
15 for electronic communications service usage" if the supplier, user or any other
16 person concerned in the transaction were completely independent of each other
17 and did not in any way influence the transaction";
- 18 "private electronic Communication service" means electronic communication
19 service used with one enterprise or anybody corporate with which it is
20 affiliated, to satisfy its internal needs and operated without interconnection to a
21 public electronic 'communication' to persons other than within the enterprise or
22 the body corporate; and
- 23 "Recharge" includes any plan scheme or form by which users receive
24 additional electronic communication services from service providers;
- 25 "Supply" means any means by which a user receives electronic communication
26 services from a service provider";
- 27 "User" means a customer or a subscriber of electronic communication network
28 or service or broadcasting service and includes a customer that is an operator or
29 provider of electronic communications network or service; and
- 30 "Value added tax" means a form of consumption tax that is placed on a product
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1 or services whenever value is added at a stage of production and at final sale.

2 **18.** This Bill may be cited as the Communication Service Tax Bill, Citation

3 2015.

EXPLANATORY MEMORANDUM

This bill seeks to provide for communication service Tax as veritable tool
for diversification of the Nigerian economy and for related matters.