

NATIONAL COMMUNICATIONS AUTHORITY



PUBLIC CONSULTATION ON GUIDELINES ON PROCEDURE FOR GRANTING APPROVAL TO DISCONNECT TELECOMMUNICATIONS SERVICE OPERATORS

June 2023

INVITATION FOR COMMENTS ON GUIDELINES ON PROCEDURE FOR GRANTING APPROVAL TO DISCONNECT TELECOMMUNICATIONS SERVICE OPERATORS

1. The NATIONAL COMMUNICATIONS AUTHORITY (NCA) intends to issue Guidelines on the Procedure for Granting Approval to Disconnect Telecommunications Service Operators pursuant to its mandate under Section 3(r) of the National Communications Authority Act, 2008, Act 769.
2. Section 6 (m) of the Electronic Communications Act, 2008, Act 775 prohibits a service provider from impairing or terminating the electronic communications service provided to a user during a dispute without the written approval of the Authority. These guidelines provides a framework for the granting of approval to a service provider to terminate service to a user during a dispute.
3. The public consultation begins with immediate effect and shall expire on 3rd August, 2023.
4. All responses/comments should be electronically transmitted as e-mail attachments, in Microsoft Word format to smp@nca.org.gh.
5. All respondents are requested to complete a response cover sheet (see Page iii).
6. It would be helpful if your responses could include comments on the sections of the document you agree/disagree with.
7. In furtherance of transparency and openness, the Authority shall consider all responses as non-confidential.
8. Subsequent to the completion of the Public Consultation, the Authority shall proceed to publish the Guidelines on the Procedure for Granting Approval to Disconnect Telecommunications Service Operators.

Issued by the Director General

June 2023

**COVER SHEET FOR RESPONSE TO NCA PUBLIC CONSULTATION ON
GUIDELINES ON PROCEDURE FOR GRANTING APPROVAL TO DISCONNECT
TELECOMMUNICATIONS SERVICE OPERATORS**

BASIC DETAILS

Name of respondent:

Representing (self or organisation/s):

Address:

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on NCA’s website, and I authorise NCA to make use of the information in this response to meet its legal requirements. If I have sent my response by e-mail, NCA can disregard any standard e-mail text about not disclosing e-mail contents and attachments.

Name :

Signed (if hard copy)

FORMAT FOR COMMENTING ON THE DOCUMENT

Chapter/Part Number	Section Number	Heading	Comment	Suggestion / Proposed Amendment



**GUIDELINES ON PROCEDURE FOR GRANTING APPROVAL
TO DISCONNECT TELECOMMUNICATIONS SERVICE OPERATORS**

Issued day of.....2023

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NATIONAL COMMUNICATIONS AUTHORITY (NCA) GUIDELINES ON PROCEDURE FOR GRANTING APPROVAL TO DISCONNECT TELECOMMUNICATIONS SERVICE OPERATORS

Part I: General

1. Introduction

- (1) The National Communications Authority Act, 2008, Act 769 establishes the National Communications Authority as the central body to license and regulate communications activities and services in Ghana; and to provide for related purposes. In furtherance of its mandate, the Authority is empowered by section 3(r) of Act 769 to issue guidelines and standards from time to time.
- (2) Such guidelines are intended, among other things, to ensure fair competition amongst its Licensees, Authorisation holders, Operators of communications networks and Service Providers of public communications services, whilst protecting the interests of consumers or users of communications networks or communications services, and in particular, their freedom of choice, and right to quality of service and value for money.
- (3) Furthermore, the Authority acknowledges that in their dealings with each other, Licensees, Authorisation holders, and Service Providers may enter into arrangements, which impose financial obligations with far reaching consequences on their business prospects and the industry as a whole.
- (4) Whilst such obligations may be contractual and private to the parties, disputes arising from non-performance, willful defaults or non-payment of liabilities due and owing could impact their financial sustainability, the quality of service and customer experience, and erode investor confidence in the telecommunications industry.
- (5) Whereas the parties are free to explore various dispute resolution mechanisms, including reference to arbitration by the Dispute Resolution Committee of the Authority, section 6 (m) of the Electronic Communications Act, 2008, Act 775 prohibits a Service Provider from impairing or terminating the electronic communications service provided to a user during a dispute, without the written approval of the Authority.

- (6) These Guidelines are developed to ensure that the procedure for granting approval by the Authority for the impairment, termination or disconnection of a user is founded on a predetermined framework to engender transparency, certainty and fairness.

2. Interpretation

- (1) In these Guidelines, unless the context otherwise requires, all terms shall have the same meaning as under all relevant legislations of the National Communications Authority (NCA).

- (2) For specific purposes of these Guidelines;

“Act” means the National Communications Act, 2008, Act 769.

“Applicant” means the Licensee which initiates an application for Disconnection.

“Application” means the documentation of a request for approval for disconnection.

“Authority” means the National Communications Authority.

“Disconnection” means not only the mere absence of physical connection between operators previously connected, but also the reduction or cessation of the scope of service in both directions; partial or complete denial of access or flow; allowing only uni-directional flow as against bi-directional flow and the general restriction of traffic however called.

“Licensee” means a person who holds a Licence or Authorisation under the Act.

“Previous record” means documents with the Authority filed after each default establishing that a Respondent has failed to meet its financial obligations three times in a twelve (12) month period.

“Undertaking” means a signed commitment by a Respondent to settle its financial obligations by a definite date and according to a specified schedule.

“User” means an operator or provider of electronic communications network or service;

“Respondent” means a Licensee against whom an application for Disconnection is made.

3. Guiding Principles

(1) The Authority shall not consider any Disconnection request unless:

- (a) There is a subsisting agreement specifying the obligations between the Applicant and Respondent, a copy of which must be duly filed with the Authority upon submission of the Application;
- (b) The Applicant has, prior to the notification to the Authority of an intended Disconnection, notified the Respondent of the default of their agreement and the parties have been unable to resolve the dispute between themselves. Parties must have fully exhausted all the options contained in their agreements for resolving the dispute in question.

(2) The Authority shall in granting approval for the Disconnection of a Respondent be guided by the need to ensure that the interest of subscribers of the affected network is protected.

(3) Other relevant issues to guide the decision of the Authority shall include the public interest in observing the sanctity of contracts, the rule of law, and the need to entrench good corporate governance practices among operators, and the sustainability of the industry in the long term.

4. Scope of Application

These guidelines cover unpaid liabilities in respect of contractual obligations between telecommunication service providers who are licensees of the Authority. They do not cover liabilities arising from defaults on statutory payments.

5. Request for Approval to Disconnect

(1) Every Applicant has a right to apply to the Authority for approval to Disconnect a Respondent where:

- (a) The Respondent fails to settle its indebtedness after it becomes due; or
- (b) An agreement has been terminated in accordance with the terms thereof; or
- (c) There is a fundamental breach of the agreement; or
- (d) The respondent is engaged in acts contrary to the terms of its Licence obligations; or
- (e) For any other reasons established under the Act or any subsidiary legislation made by the Authority.

- (2) Applications for approval to Disconnect an operator on the grounds of failure or refusal to settle indebtedness should at all times be made on NCA Disconnection Form 1, completed in triplicate and forwarded under a covering letter to the Authority. A copy of the NCA Disconnection Form 1 shall be served on the Respondent by the Applicant.
- (3) The information to be provided to the Authority under paragraph (2) above would however not be required where the request for Disconnection is made for reasons other than failure or refusal to settle indebtedness.
- (4) In every request for approval to disconnect made under Paragraph 4 (1) above, the Authority shall within three (3) working days of receipt of the request, forward the request to the Respondent requiring a response within five (5) working days giving reasons against the approval of a Disconnection.
- (5) The Respondent's reply shall be forwarded under a cover letter to the Authority together with a duly completed NCA Disconnection Form 2, completed in triplicate.
- (6) Failure of the Respondent to make a written response to the request for Disconnection in line with Paragraph 4(5), shall be taken as an indication that it has no response and the Authority may proceed take a decision solely on the submissions of the Applicant.
- (7) A Respondent may upon request, and at the discretion of the Authority be granted an extension period of no longer than three (3) days within which to make its written response.

6. Additional Information from the Applicant

- (1) Notwithstanding the specific provisions of Paragraph 4 above, nothing in these Guidelines shall preclude the Authority from requesting for any additional information which it may require in considering an application for consent to disconnect a User/Licensee.

7. Conditions for the Grant of Approval to Disconnect for Indebtedness

- (1) In considering a request for approval for Disconnection of a Licensee, the Authority may take into account the following:
 - (a) That the Applicant has paid all its regulatory fees to the Authority;

- (b) That the Applicant had prior to the request for approval for Disconnection provided all outstanding invoices to the Respondent and such invoices were overdue in the agreement with the Respondent; and
 - (c) If any invoices are disputed, a clear basis shall be provided by the Respondent in accordance with the agreement with the Applicant and the Authority shall facilitate a meeting by the parties to reconcile any outstanding amount within five (5) days of the Respondent's response disputing any amount. If the amounts are disputed, the Authority shall consider the undisputed amounts only in the Disconnection approval. For purposes of clarity, lack of funds or adverse economic conditions is not a basis for disputing fees.
- (2) The debt must have been outstanding for sixty (60) calendar days inclusive of the period agreed between the parties in their agreement.
 - (3) In the event that the Respondent has a previous record of not meeting debt obligations, the duration allowed for indebtedness may be reduced to forty-five (45) calendar days inclusive of the period agreed by the parties in their agreement.
 - (4) In addition, the decision of the Authority on a request for approval shall be guided by the following considerations:
 - (a) Previous payment record of the Respondent with the Applicant;
 - (b) The antecedents of the Respondent vis-à-vis payment obligations to other service providers.

Part II: Decisions of the Authority

8. Preliminaries and Time for Taking Decisions

- (1) Without prejudice to provisions of these Guidelines, the Authority may at any time before rendering its decision on the request for approval for Disconnection, invite the parties to a hearing meeting on the application.
- (2) Where at such a meeting a Respondent shows demonstrable efforts by the payment of at least 50% of the indebtedness, the Respondent would be required to execute a Director's Guarantee to be bound by the terms agreed between the parties for payment of the outstanding obligation.

- (3) Refusal to execute an Undertaking or non-compliance with the terms of such Undertaking shall result in the grant of approval for Disconnection of the Respondent.
- (4) The decision by the Authority either granting or refusing a request for approval for Disconnection shall be taken and communicated to the parties within ten (10) working days of the receipt of all requested comments or conclusion of hearing as required under Paragraph 7(1) hereof.
- (5) In the event that the Authority is unable to give its decision within the timeframe stated in Paragraph 7(3), the reasons shall be communicated to both parties.

9. Pre-Disconnection Notice

- (1) If the indebtedness or a part thereof remains unpaid by the date agreed for payment in the Respondent's Undertaking, and the Applicant is unwilling to extend the payment period, the Applicant shall notify the Authority of its intention to disconnect service supply to the Respondent.
- (2) The notice shall specify the exact date and time, and the services likely to be affected by the disconnection.
- (3) Where the Authority grants the Applicant approval to proceed, the Authority shall cause the Respondent to immediately publish a notice to its subscribers informing them of the service disruption and consequent remedial measures.
- (4) The Authority shall subsequently issue a Pre-Disconnection Notice on its website, as well as the electronic and print media reasons for the service disruption and the options for redress available to subscribers.
- (5) Upon the issuance of such notification, the Authority shall at its discretion allow a grace period of not more than ten (10) working days within which subscribers would be at liberty to make arrangements to migrate or port from the Respondent's network to another network or trigger alternatives for payment refunds.

10. Notice to Parties

- (1) The Authority shall not publish any notice pursuant to paragraph 9 above, unless prior notice of the approval for Disconnection is served on both the Applicant and the Respondent to be disconnected.

- (2) In every case where pre-disconnection notice is given to a Respondent, such notice shall include a directive to settle any indebtedness within seven (7) working days from the date of receipt thereof, failing which notice of the Disconnection shall be published to subscribers of the Respondent.

11. Partial Disconnection

- (1) Where a determination is made on the merits that a request for approval for Disconnection should be granted, the Authority reserves the right to authorise an Applicant to partially disconnect the Respondent on terms to be decided by the Authority, where partial disconnection is possible; until a final Disconnection order is issued.

12. Other Remedial Steps for Non-Payment of Debts

- (1) In any event where approval for partial Disconnection is granted, if the Authority is not satisfied with the remedial efforts made by the Respondent subsequent to the approval, the Authority may take any or all of the underlisted steps:
 - (a) Direct the migration of customers to another service provider, or payment of compensation or refund for pre-paid services;
 - (b) Decline any request for regulatory services or assistance and upon such terms and conditions the Authority may specify;
 - (c) Publish names of licensees with a history of indebtedness on its website and in the electronic and print media; or
 - (d) Withhold renewal of the Respondent's licence.
- (2) Without prejudice to any other provisions in these Guidelines, the Authority may take any or all of the remedial steps in Paragraph 12 in relation to any Respondent with a record of not meeting debt obligation(s).

13. Conditions for Reconnection

- (1) Where a disconnection has been granted either in accordance with paragraph 11 or 12, the Respondent shall not be permitted to reconnect to the Applicant indirectly through any other licensee unless it has liquidated all of its outstanding debts to the

Applicant.

- (2) In order for a reconnection to be made to the Applicant, the Respondent shall be required to provide a Bank Guarantee from a reputable bank to the Applicant to ensure prompt payment of the outstanding debt.

14. Registration of Payment Plan Agreements

- (1) Where Licensees mutually negotiate and agree upon terms for payment of outstanding debts without the intervention of the Authority, the payment terms must be executed as a contract and registered as a deed with Stamp Duty paid. Such agreement shall be deemed by the Authority as binding and enforceable within the provisions of these Guidelines.

15. Miscellaneous

(1) Use of Bank Guarantees/Security Deposits

For revenue assurance and promptness of payments, Licensees may demand Bank Guarantees and/or Security Deposits for the provision of telecommunication services to counterparties.

SCHEDULE

**NCA DISCONNECTION FORM 1
APPLICATION FOR APPROVAL TO DISCONNECT TELECOMS OPERATORS FOR REASON
OF INDEBTEDNESS**

1. APPLICANT'S INFORMATION

- A. Name:
- B. Address:
- C. Licence Category

2. RESPONDENT'S INFORMATION

- A. Name:
- B. Address:
- C. Licence Category

3. DEBT PROFILE/ INFORMATION

- A. Amount Outstanding:
- B. Due Date for payment of Debt:
- C. Has a previous application for disconnection been made in respect of the Respondent?
(*If Yes insert details)

.....
.....

PARTICULARS OF CLAIM AMOUNT

- D. Date of last payment demand?
- E. Is Reconciliation Complete?
- F. Amount Undisputed:
- G. Amount Disputed:
- H. Reason(s) for Disputed Amount:.....

.....
.....

**4. DETAILS OF COMPLIANCE WITH DISPUTE RESOLUTION MECHANISM
CONTAINED IN AGREEMENT**

.....
.....

NAME SIGNATURE DESIGNATION DATE

**Forms are to be completed in triplicate. Original copy to NCA; Duplicate copy to Respondent; Triplicate copy for Applicant's records.*

NCA DISCONNECTION FORM 2

RESPONSE TO APPLICATION FOR APPROVAL TO DISCONNECT TELECOMS OPERATORS FOR REASON OF INDEBTEDNESS

1. RESPONDENT'S INFORMATION

- A. **Name:**
- B. **Address:**
- C. **Licence Category**

2. APPLICANT'S INFORMATION

- A. **Name:**
- B. **Address:**
- C. **Licence Category**

3. RECONCILIATIONS:

- A. **Is Reconciliation Complete?**
- B. **Amount owed:**
- C. **Amount Undisputed:**
- D. **Amount disputed:**
- E. **Particulars of Disputed Amount:**.....
.....
- F. **Payment Proposal for Amount Undisputed:**.....
(Attach extra sheet, if necessary)

4. DETAILS OF COMPLIANCE WITH DISPUTE RESOLUTION MECHANISM CONTAINED IN PARTIES' AGREEMENT

.....
.....

5. COUNTERCLAIM (IF ANY):.....
.....

NAME SIGNATURE DESIGNATION DATE

**Forms are to be completed in triplicate. Original copy to NCA; Duplicate copy to Applicant; Triplicate copy for Respondent's records.*