EVALUATION REPORT ON
MTN UGANDA LTD
LICENSE PERFORMANCE FROM 1998 TO 2018
MARCH 2018

This Report provides a summary of MTN Uganda Ltd's Regulatory Compliance Review
For the period 1998 – March 2018
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1.0 EXECUTIVE SUMMARY

1.1 On April 15, 1998, the Government of Uganda, acting through the Minister of Works, Transport and Communications, and the Uganda Communications Commission, granted a National Telecommunication Operators (NTO) license to MTN Uganda Limited (MTN). The license was for a period of 20 years, commencing from the effective date of the license.

1.2 The license authorised MTN to provide, in general, telecommunication services and in particular, Basic Telecommunication Services, throughout Uganda. The License has obligations for MTN to fulfill as milestones, at specific times throughout the license period.

1.3 The effective date of the licence was declared by the Minister as October 20, 1998. This was after MTN had:

- Paid the bid amount of USD 5.8 Million and the initial fee of USD 200,000
- Delivered Letters of Credit in respect to operations during the exclusivity period.
- Received frequency assignments.
- Made representations and UCC ascertained accuracy.
- Submitted all corporate documents.
- Submitted the Consortium Agreements.
- Submitted the originals of the documents.

1.4 Under the NTO license agreement, there are obligations that had dates of fulfilment pegged to the fifth anniversary of the Effective Date, which was October 20, 2003. In line with this, in 2005 UCC carried out an evaluation of MTN’s performance and assessed the level of fulfilment of those obligations. It was observed that by the end of the first five years, MTN had duly complied with the financial and legal obligations, and covered most of the technical obligations. UCC has continued to monitor MTN’s performance over the years.

1.5 MTN’s Licence is due to expire in October 2018, and in accordance with the provisions of the NTO license, on October 3, 2017, MTN formally submitted its application for a single term renewal of the license for another ten (10) years.

1.6 The Commission has been monitoring the operations of MTN over the past years, and has carried out an assessment of the extent to
which MTN has fulfilled its obligations under the License agreement and the law for the entire duration of the license.

1.7 This evaluation will enable the Commission to consider the application for renewal of license, and if a decision is made to renew the license, the terms and conditions under which the new license will be granted.

1.8 The evaluation focused on three broad categories of obligations; the financial, Legal and technical obligations.

1.9 The evaluation and preliminary findings have been presented to MTN for the opportunity to respond to the said findings.

1.10 The evaluation reveals that MTN has largely been compliant. However, there are areas of noncompliance with financial, legal, and technical obligations.

Godfrey Mutabazi
Executive Director
ASSESSMENT MTN's OBLIGATIONS UNDER THE NTO LICENSE FOR THE PERIOD OCTOBER 20, 1998 TO FEBRUARY 2018

2.0 BACKGROUND

2.1 MTN Uganda Limited was licensed on April 15, 1998. The National Telecommunications Operators (NTO) license was to be valid for a period of 20 calendar years commencing on the effective date (Article 3.1).

2.2 The NTO license became effective on October 21, 1998 after the Minister confirmed that MTN complied with all the requisite pre-conditions, including payment of the bid amount and the initial fees, delivery of the necessary Letters of Credit and assignment of the necessary frequencies.

2.3 Under the NTO, MTN is licensed to establish, install, operate, maintain, exploit, and use within, into and from the Republic of Uganda, a Telecommunications system and to render Telecommunications services. The license defines the telecommunication services under Article 2.1 as major license services and Minor License services. The license agreement gave MTN a status of a Public Operator as per section 43 of the now repealed Uganda Communications Act (1997).

2.4 Considering that, MTN's license expires on October 20, 2018, and in line with the provisions of Article 3 of the License agreement, on October 3, 2017 MTN applied for renewal of its license for another 10 years.

2.5 Article 3 of the license agreement requires the Commission to publish in the Gazette and at least one other domestic newspaper of general circulation, a public notice informing the public of MTN's application for renewal of its license. Clause 3.3(b) of the License agreement further provides that upon receipt of the application for renewal, the Commission shall prepare an Evaluation Report stating if and to what extent MTN has, during the preceding license period;

(i) Complied with its obligations under the license
(ii) Complied with the regulations and orders adopted by the Commission from time to time; and
(iii) Generally provided the licensed services and conducted its business in accordance with the laws of Uganda.
2.6 Under Article 3.3(a) of the license agreement, the Commission is required to issue the evaluation report within ninety (90) workings days from the date of receipt of the application for renewal.

2.7 In compliance with the license agreement, the Commission caused the publication of a public notice in the gazette of Friday, October 27, 2017 and the New Vision of Monday October 30, 2017. The purpose of the public notice was to inform the public of MTN’s application for renewal and to invite members of the public to make comments or raise objections to the application.

2.8 Due to the amount of work involved in the evaluation process, the Commission extended the timelines for the completion of the evaluation report. In a notice, published dated February 12, 2018, in the New Vision the period for the issuance of an evaluation report was extended and the public hearing rescheduled to March 26, 2018.

2.9 It is in compliance with the above procedure that the Commission hereby issues this Evaluation report.
3.0 EVALUATION PROCESS

3.1 PURPOSE OF THE EVALUATION

The purpose of the evaluation was to;

(i) Establish the extent to which MTN has generally complied with NTO license throughout the term of the expiring license.

(ii) Determine the extent to which MTN has utilised the resources assigned to it, including Number Resources, and Spectrum optimisation.

(iii) Determine the extent to which MTN has, over the 20 years period, complied with the Regulations, directives, standards and other orders issued or adopted by the Commission.

(iv) Evaluate the extent to which MTN’s operations are in accordance with the Uganda Communications Act 2013 and other laws of Uganda.

(v) Evaluate sufficiency of the network assets to provide services in view of the customer experience.

The findings in this report shall guide the Commission, MTN and the public on the key matters to be considered during the public hearing and form the basis for the Commission’s decision with respect to MTN’s application for renewal.
4.0 METHODOLOGY

4.1 The Commission adopted among others the following methodology in evaluating MTN's operations:-

a) Review of the National Telecommunications Operator (NTO) license obligations.

b) Review of file records like the quarterly reports submitted by MTN over the years, resource (numbers and spectrum) authorisation and usage reports, equipment authorisations, quality of service reports, coverage reports etc.

c) Held meetings with MTN's technical team.

d) Reviewed the submissions made by MTN on technical operations and analysis of selected transaction data provided.

e) Visit to MTN's establishments including switching centres and the Network Operations Centre (NCC).

f) Verified the provision of emergency communication services, related measures and provisions;

g) Verified access to customer care centres and services;

h) Carried out field inspections of selected MTN sites to verify and establish location and equipment inventory of stations in selected areas in the country.

i) Carried out independent Quality of Service monitoring.

4.2 The assessment of MTN's performance has been guided by the following factors;

a) The terms and conditions of the license, under which MTN Uganda Ltd has been operating since 1998.

b) The laws and Regulations that have been in force in Uganda throughout the license term.

c) The orders and Directives, the Commission has issued over the years to MTN Uganda Ltd and other sector players.

d) The various continuous compliance evaluation reports which the Commission has been issuing regarding MTN's overall operational and technical compliance levels.
5.0 STRUCTURE OF THE REPORT

5.1 The Report provides an extensive summary of how MTN has complied with legal and licensing obligations over the 20 years. In this regard, the Commission has considered and assessed MTN's compliance with the following broad categories of obligations:

a) MARKET PERFORMANCE

This section provides a high level overview of MTN’s market performance over the 20 year course of its license.

b) FINANCIAL OBLIGATIONS

This section provides an overview of MTN’s compliance in respect of its financial obligations under the license. These include the obligation to pay the Bid fee and the Initial license fee, Accounting and Record keeping and Reporting requirements, Delivery of letters of credit during the Exclusivity period, payment of the Annual license fees, Payment of the Gross Annual Revenue, Payment for Resources, including spectrum and numbering range, and payment of any fines imposed during the license period.

c) CONSUMER, COMPETITION AND OTHER REGULATORY OBLIGATIONS

These include the establishment of a Master Service Agreement, Conclusion of interconnect agreements with other operators, compliance with all sectoral and national laws and regulations, compliance with the Commission Directives and orders.

d) TECHNICAL PERFORMANCE AND OBLIGATIONS

These which include the provision of Telecommunication services, Provision of Leased Lines and Circuit services, Interruption of services, Routine maintenance of services, Emergency services, Subscriber Line expansion, Public payphone Requirements, Service Quality Requirements, Subscriber Assistance Requirements, Assistance for Disabled Persons, among others.

5.2 Hence, the Commission has, in the body of this report and the attendant annexes, reported its findings on each of the aforesaid obligations.
6.0 FINDINGS ON ALL PARAMETERS

6.1 MARKET PERFORMANCE

6.1.1 MTN Uganda has to a large extent provided uninterrupted telecommunications services over the 20 year course of its National Telecommunications Operator license.

6.1.2 The MTN service portfolio has over the license term grown from basic voice and leased line services in 1999 to a host of retail and enterprise services including mobile and fixed data, mobile financial services as well as Value Added Services (VAS) in a number of ancillary sectors.

6.1.3 As at 31st December 2017, MTN Uganda has recorded growth in its subscriber base with 239,047 fixed lines and 11,578,207 Mobile subscriptions. This client base is serviced by a national radio network of more than 1,637 Base Stations and a fibre network that spans 4500 kilometres, and a national mobile money agency network of 77,144 among others.

6.1.4 In terms of Financial Performance, MTN revenues have grown to more than UGX 1.3 Trillion and has been recognised as one of the top tax payers in Uganda.

6.1.5 MTN Uganda has engaged in a number of Corporate Social Responsibility (CSR) drives to address a range of societal challenges. MTN has undertaken CSR initiatives in education, Health, Water and Sanitation, ICT innovation among others.

6.2 FINANCIAL OBLIGATIONS

The evaluation has revealed that whereas MTN has substantially complied with most financial obligations, it failed to comply with some key obligations as highlighted below;

6.2.1 Financial obligations that MTN Complied with

(a) Payment of the Levy on the Gross Annual Revenue. Right from the start of its operations in 1998, MTN has paid the assessed levy in accordance with Article 5.1 of the License.

(b) MTN paid both the initial Bid fee and the Initial license fee in accordance with Article 5.1 of the License Agreement.

(c) MTN maintains accounting records in accordance with Generally Acceptable Accounting Principles in accordance with Article 7.15 of the License Agreement.
(d) MTN duly delivered the required letter of Credit in accordance with Article 20 of the License Agreement.

6.2.2 Financial obligations which MTN did not comply with

The evaluation has revealed that MTN has not complied in respect of the following:

1) Non-Payment of assessed Spectrum fees

Whereas Article 5.3 of the License Agreement requires MTN to fully pay to the Commission for the use of any assigned radio spectrum, the evaluation has revealed that MTN has not paid the following invoices for some of the resources it was assigned as represented in the table below;

<table>
<thead>
<tr>
<th>Invoice Date</th>
<th>Invoice No.</th>
<th>Particulars</th>
<th>Amount in UGX</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-06-01</td>
<td>1086</td>
<td>Additional microwaves May2001/2</td>
<td>10,296,000</td>
</tr>
<tr>
<td>01-11-06</td>
<td>6837</td>
<td>Balance on GSM1800/900 Nov 06/07</td>
<td>17,683,938</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Outstanding balance</strong></td>
<td><strong>27,979,938</strong></td>
</tr>
</tbody>
</table>

In response to the preliminary Report, MTN submitted that the referenced invoice had been contested at the time, and that they had made payment towards the subject invoices.

MTN further argued that at that time, all operators objected to the UCC calculation of spectrum fees and in a letter dated 26th September 2006, outlined the details of their objection. MTN argued that since the Commission did not respond to that letter, MTN assumed that the Commission had dropped the subject invoices.

The Commission, however, maintains that;

- Spectrum fees are set by the Commission in accordance with the law and the applicable Regulations.
- The invoice 6837 was neither reversed nor was a new one raised in replacement.
- The same rates were applied to all other operators and the other operators dully paid.
MTN made a partial payment based on old rates and the amount outstanding has remained unpaid.

A balance of UGX 17, 683,938/= on GSM 1800/900 for November 06/07 remains outstanding and payable.

The evidence submitted by MTN in support of payment of invoice 1086 was reviewed and does not relate to this invoice.

The invoice 1086 remains unpaid, with a balance of UGX 10, 296,000 /= on additional micro waves for May 2001/2 remains outstanding and payable.

2) Non Payment of Authorization fees.

The evaluation has revealed that MTN was invoiced for use of short codes but it has to date not paid the requisite fees. This is contrary to Article 5.3 of the License agreement.

The outstanding invoices are presented in the table below:

<table>
<thead>
<tr>
<th>Invoice Date</th>
<th>Invoice Number.</th>
<th>Particulars</th>
<th>Original Amount in USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>02-08-17</td>
<td>PSIN014218</td>
<td>Application fees Short code 169</td>
<td>295</td>
</tr>
<tr>
<td>24-11-17</td>
<td>PSIN014722</td>
<td>Annual fees Short code 175</td>
<td>3,540</td>
</tr>
</tbody>
</table>

Whilst MTN has objected to the application and annual fees for short code 169, noting that owing to a change in commercial considerations MTN, did not pursue the subject short code. Under the Commission’s accounting rules and guidelines, invoices for applications are due and payable on submission of the application irrespective of the outcome. As such, the application fees for short codes 169 are due and payable, and MTN should settle the subject invoice with any accumulated interest.

In respect of annual license fees for short code 175, MTN did utilise the short code, the invoice therefore remains outstanding and payable with any accumulated interest.

6.3 CONSUMER, COMPETITION, AND OTHER REGULATORY OBLIGATIONS

6.3.1 INTERCONNECTION

6.3.1.1 Interconnect obligations
Article 9.1 of MTN’s NTO license imposes upon MTN an obligation to provide interconnection services to other licensees. This obligation is further emphasized in Regulation 5 of the Telecommunications (Interconnection) Regulations, SI 25 of 2005.

The same Regulations define Interconnection as “the physical and logical linking of telecommunications networks, used by the same or a different operator, in order to allow the users of one operator to communicate with users of the same operator or to access services provided by another operator”.

A number of obligations are further spelt out within the Interconnection Regulations and the Uganda Communications Act 2013. Some of the obligations are highlighted below;

(a) Interconnection Negotiation timelines— Article 9.3 of the license agreement required MTN to conclude interconnect agreements within 6 months, and this was later modified by Regulation 12 of the Telecommunications (Interconnection) Regulations 2005, which by necessary legal implication modified that timeline to not later than three (3) months after an interconnect provider receives a request for interconnection.

(b) MTN has an obligation to file with the Commission a Reference Interconnection Offer and make the same publicly available to other third parties in accordance with Regulation 11 of the Interconnection Regulations, 2005.

(c) Filing of Interconnection Agreements for Commission Review and Approval in accordance with section 58 of the Uganda Communications Act 2013.

(d) MTN is under obligation to negotiate interconnection agreements in good faith as per Regulation 9 of the Telecommunications (Interconnections) Regulations 2005.

6.3.2 FINDINGS ON MTN’S INTERCONNECTION OBLIGATIONS

In respect of MTN’s obligation to interconnect with interconnection seekers, the evaluation has revealed that MTN has concluded interconnect agreement with a number of licensees/operators over the course of its license.

Agreements concluded to date include: UTL, Airtel, Suretelcom, Simbanet, Afrimax, Africel/Orange and Smile Communications among others.

The evaluation has, however, revealed the following material concerns in light of the aforesaid interconnect obligations:
1. Failure to meet statutory timelines in the negotiation of interconnection agreements.

MTN has repeatedly failed to meet the statutory timelines for negotiation and conclusion of interconnection agreements with interconnect seekers, as demonstrated in the following cases:

(a) One Solutions Ltd

One Solutions Ltd, a licensed Public Infrastructure and Services Provider requested MTN for interconnection on 7th December 2012. MTN responded to this request in a letter dated 28th May 2013, well outside the 90 day statutory requirement.

In response to the preliminary evaluation, MTN submitted that it was not in position to conclude an interconnect agreement with One Solutions Ltd because it could not offer SIP-based interconnect at the time of request. MTN further submitted that One Solutions Ltd was later offered SS7/C7 interconnect in May 2015, more than two years after the date of request.

The Commission notes MTN’s response to the Preliminary evaluation, but finds material variation between MTN’s account and the documentary evidence available.

(b) MTN – Simbanet Interconnection

MTN failed to conclude interconnection with Simbanet for more than two years after the initial request in May 2015. This matter was only resolved upon the Commission’s intervention following the Commission’s intervention in a letter dated 24th October 2016.

(c) Roke Telecom.

In the Preliminary evaluation, the Commission found that MTN is yet to conclude a fixed line interconnect agreement with Roke Telecom, more than 5 years after the initial request was made in a meeting of 3rd December 2012.
In its submission to the preliminary evaluation, MTN confirmed that it had rejected a direct interconnection based on Roke's non-performance in an earlier partnership. MTN has also argued that it has a right to mitigate its own debt risk with new entrants.

MTN further argued that it has since offered Roke Telecom an indirect interconnect route through Simbanet in December 2017.

While MTN made a number of submissions to justify the delay (technology incompatibility and risk mitigations), the unilateral decisions to delay the conclusion of these negotiations was contrary to MTN’s license and legal obligations to refer the matter to the Commission.

The Commission therefore finds that MTN’s submissions do not absolve MTN of its duty to conclude the interconnection agreement within the statutory timelines.

Failure to file Interconnect Agreements/offers with the Commission

6.3. 3 FILING OF INTERCONNECT AGREEMENTS.

The licensee failed to submit to the Commission its interconnection agreement with Sure Telecom in disregard of section 58(2) of the Uganda Communications Act 2013.

MTN’s submission in this regard has been that the obligation is not exclusive to them. The Commission finds that the dual responsibility does not absolve MTN of its duty to file the agreement in line with section 58(2) of the Uganda Communications Act 2013.

6.3.4 FILING OF REFERENCE INTERCONNECTION OFFER

Whilst Regulation 11 of the Interconnection Regulations 2005 imposes upon MTN explicit obligations to file with the Commission a Reference Interconnection Offer as well as make the same offer publicly accessible to third parties, the same has not been filed with the Commission.

Such absence of a publically accessible Reference Interconnection Offer potentially leads to discriminatory treatment between interconnect seekers.
The Commission finds that MTN’s failure to file interconnect offers for approval is in contravention of the law and related regulations and poses significant risk of competition abuses in the market.

6.3.5 OBLIGATIONS TO NEGOTIATE IN GOOD FAITH

Regulation 9 of Interconnection Regulations 2005 imposes upon MTN the duty to negotiate in good faith with interconnection seekers. The same regulation further provides guidance on the principles of good faith and acts that breach this obligation.

The Commission finds that during its license period, MTN failed in its duty to negotiate with the following interconnect seekers;

(a) One Solution Ltd.

The evaluation revealed that while MTN communicated a lack of capacity to interconnect with One Solutions Ltd vide letter dated 28th May 2013, there is no evidence that the subsequent capacity improvements which were communicated to the Commission in a letter dated 30th June 2014 were communicated to the interconnection seeker.

The failure by MTN to communicate capacity enhancement to interconnect seekers is a contravention of its obligations to provide necessary information in accordance with its obligation under Regulation 9(6) of the Interconnection Regulations.

Further, it was brought to the Commission’s attention that MTN demanded from One solution vide an email dated 24th February 2014, additional clearance from the Commission to interconnect over and above the license which One Solution Ltd already had.

The Commission finds MTN’s conduct a contravention of Regulation 9(6) (g) of the Telecommunications (Interconnection) Regulations SI 25 of 2005.

(b) Sure Telecom

By copy of a letter to the Commission dated 20th February 2014, Sure telecom expressed concerns about delays in installation of an interconnect link between MTN and Sure Telecom. The letter highlighted that the delay was in part occasioned by the
unavailability of MTN Chief Executive Officer (designated authority) to conclude the requisite approvals.

This conduct is contrary to MTN's obligation to designate a representative with authority to conclude interconnect agreements as per Regulation 9(6) (e) of the interconnect regulations.

6.3.6 FAILURE TO REPORT MATERIAL INFORMATION ABOUT THE INTEGRITY OF BILLING PLATFORMS

Between the periods 30 June – 16 Oct 2014 and 17 Oct- 17 Nov 2014 more than 360,000 incidents of erroneous billing were recorded by MTN's data customers.

MTN was under obligation to report this matter to the Commission but did not until the Commission raised the matter of the public outcry and questioned the integrity of MTN's data billing platforms.

While MTN was aware of the circumstances of these incidents, it only admitted that there had indeed been cases of "multiple bundle loading, failed but charged bundle purchases and system logic failures" in a Press Conference by then CEO Brian Gouldie in November 2014.

MTN subsequently made reimbursements of more than Shs 770 Million to affected customers.

It is the Commission's view that the delay in communication of the billing system malfunctions to its client-base and to the Regulator, was negligent and fell short of MTN's duty of care to its clients and obligations under the licence.

Further MTN's failure to report to the Commission these material facts fell short of its obligation to file key network incident reports in line with the Quarterly Operational Reporting obligations.

In response to the Preliminary report, MTN submitted that it was under no obligation to report such incidents to the Regulator, noting that this was merely a system glitch that was allegedly rectified and the customers rewarded even though they had utilised the data.

The Commission finds MTN's response to this matter unsatisfactory.

Moreover, as a licensee, MTN is obliged to file with the Commission a report of key network incidents in fulfilment of its
quarterly reporting obligations. A review of MTN’s 3Q14 and 4Q14 Quarterly Reports confirms that MTN omitted these material incidents, which the Commission considers to have been a material concealment.

6.4 ABUSE OF UP-STREAM RELATIONSHIPS

In 2011, the MTN Group-ATC Joint venture firm ATC Uganda took over the ownership of MTN Uganda’s tower assets. MTN Group, the parent company of MTN Uganda holds 49% stake in ATC.

On the back of MTN’s parent company’s interest in ATC Uganda, MTN Uganda was offered and continues to enjoy very preferential site rental terms from ATC. Key among these include:

- Exchange rate freeze for USD based tenancy fees. ATC’s rate card shows that MTN enjoys an exchange rate of June 2012 shielding it from the forex losses suffered by other similarly positioned ATC cell site tenants.

- Inclusion of DC equipment charges in monthly rental fees while other tenants pay separate DC equipment fees.

While the Commission found that the joint conduct by MTN and ATC leveraging their upstream relations poses distortionary pressures in the cell site market segment, MTN submitted that they are only commercially and legally responsible for themselves and not for other tower access seekers in the market.

In any case, MTN argues that if any discriminatory pricing existed, ATC as a separate legal entity licensed by the Commission should be the right party to respond or address any alleged breach.

The Commission has noted MTN’s response in this regard and shall separately address this matter with ATC.

6.5 COMPLIANCE WITH COST-ORIENTED MOBILE TERMINATION RATE (MTR).

Regulation 8(8) of the Telecommunication (Tariffs & Accounting) Regulations SI. 27 of 2005 requires all licensees to charge cost oriented interconnection rates. This is further emphasised in Regulation 11(4) of the Telecommunications (Interconnection) Regulations SI 25 of 2005.

In accordance with these provisions, in 2012, the Commission issued a Reference Interconnection Rate vide letter dated 29th May 2012, following a full review of the cost of domestic interconnection services.
While all other operators revised their domestic interconnect fees to Shs.112, MTN unilaterally levied and continues to charge interconnect fees of Shs.115 despite failure to show/justify the cost causation for the incremental charges as was required by the Commission in a letter dated 28th June 2012.

In objection to this requirement, MTN argues that the Commission did not at the time have the power to set maximum interconnect rates in 2012. This did not however absolve MTN of its obligation under Regulation 8(8) of the Telecommunications (Tariffs and Accounting) Regulations and Regulation 11(4)(a) of the Interconnection Regulations to file and justify its incremental charges over and above the Commission’s determined Reference Interconnection rate at the time.

This conduct by MTN was in disregard of the Commission directive and its statutory obligation under the aforesaid regulations.

6.6 RELATIONSHIP WITH 3RD PARTY USSD/SMS SEEKERS.

The Commission on its own motion, commissioned a review in a 2017 of the wholesale USSD/SMS Market, which established a number of claims against MTN by 3rd party access seekers (Aggregators and Value Added Service providers- VAS).

These claims included abuses like denial/delays in provision of service, discriminatory trade terms, unfair pricing, unclear vetting criteria, delayed reconciliation of revenues, amongst others. These same claims were further reiterated in a petition dated 20th December 2017 by the Wireless Applications Service Provider’s Association (WASPA) of Uganda.

When these concerns were presented to MTN in the course of this evaluation, MTN maintained that;

i. Anti-competition claims by aggregators and VAS providers are not justified because they are not licensed Telecommunication operators.

ii. The issues raised by VAS Garage and Easy Money are sub judice since there are ongoing court cases on the same matters, and cannot therefore form part of the evaluation report or the public hearing.

iii. That MTN pricing and revenue share model is reasonable as the complainants sell the same services to final consumer at much higher prices.

iv. That VAS prices are exempt from rate regulation in line with Article 8(1) (b) of their NTO license.
The Commission finds that;

A. The substance of most of the issues raised by USSD & 3rd Party SMS providers are related to the ongoing study by the Commission. The Commission shall provide a ruling on the specific complaints at the completion of this ongoing process.

B. Whereas MTN claims that the determination of VAS prices is exempt from rate Regulation in line with Article 8 (1) (b) of its license, it is the Commission’s finding that the services provided by MTN to VAS providers are ancillary to telecommunication services, and the Commission has regulatory control over them in accordance with section 5(1) (b) and (v) of the Uganda Communication Act 2013.

C. In respect of the WASPA- U petition, MTN shall be allowed to provide a response to the issues raised therein during the public hearing.

6.7 MANAGEMENT OF CONSUMER COMPLAINTS.

The Commission has observed that MTN has registered delays in resolving consumer complaints. In the last 2 years MTN has consistently fallen short of the established threshold to resolve 90% of all consumer complaints within 24 hours.

In response to the preliminary report, MTN submitted that it has complied with the consumer complaints handling thresholds as set out in its license.

The Commission notes that on average, MTN has in the last two years only managed to resolve 76.5% of complaints within the stipulated timelines.

The Commission therefore finds that MTN’s complaints resolution rate falls short of the expected threshold as set out in the Quality of service parameters.

6.8 NON-COMPLIANCE WITH THE COMMISSION’S REGULATORY DIRECTIVES

Section 48 of the Uganda Communications Act provides that where, as a result of an investigation, the Commission is satisfied that an operator has breached a license condition or an obligation under the Act, it may direct an operator to remedy the breach or to do any such act as the Commission may specify in the direction.

Under Article 7.1(a), MTN is obligated to ensure compliance with the Uganda Communications Act and all other laws of Uganda.

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Over the years, the Commission has noted that there are instances where MTN has not implemented or complied with the Commission's directives.

This does not only amount to a breach of the license agreement but leads to failure to realise sector objectives.

7.0 NON COMPLIANCE WITH REGULATORY DIRECTIVES.

A. In March 2014, the Commission directed all operators to submit their Trade and Credit vetting requirements for short code providers on their networks by the 12th March 2014, but MTN ignored and/or refused to provide the required details.

In response to this query, MTN argued that it did not have any trade and credit vetting requirements for short code providers, and that therefore this directive did not apply to them.

The Commission finds that MTN's response to this matter is contrary to information before the Commission, since MTN had, in a letter dated 11th February 2013 to Ezee Money Limited, denied service to Ezee Money on account of its alleged failure to meet MTN's credit and trade vetting requirements.

B. MTN continues to send out unsolicited messages without “opt Out” information, contrary to the Commission’s directive under reference UCC/073/01/OCS dated 29th August 2014, as well as T & B/463 dated 3rd October 2014 and 14th November 2014 requiring all operators, including MTN to stop such messages.

In its response, MTN argued that it formally instructed all its content provider to ensure that all messages have an “opt out” message.

The Commission has however found that contrary to MTN’s claim that it fully complied with this directive, MTN only applied this directive to 3rd party content providers, and not MTN’s own unsolicited promotional messages.

Owing to the above non-compliance, the Commission issued a warning letter dated 4th March 2016 and referenced
CA/39/009 wherein MTN was ordered to include all MTN's unsolicited promotional messages on the "opt out" platform.

In spite of the above, between 2016 and 2017, the Commission handled 28 second-level consumer complaints against MTN in regard to unsolicited MTN messages without the "opt out option". These are complaints reported to the Commission after the consumer failing to get redress from the operator.

To date, MTN has still not fully complied with this directive.

C. MTN's non-compliance with the Commission directive Ref CA/39/474, dated 7th March 2016, requiring all operators to submit to the Commission, their Consumer complaints dumps by the 25th day of every month following a quarter.

In response to this, MTN noted that it has endeavoured to comply with this reporting obligation, save for the few instances where submission was outside the requisite submission timelines. The Commission, however, finds that MTN's response was not factual, insofar as the Commission's records reflect.

For instance, dumps for the periods Quarter 1 of 2016, Quarter 1 2017, Quarter 3 2017 and Quarter 4 2017 were submitted outside the agreed submission timelines, in spite of several reminders from the Commission.

Failure to submit consumer dumps within the set timelines poses a risk to the integrity of the data and jeopardizes the Commission's ability to effectively deliver on its consumer protection mandate.

8.0 TECHNICAL PERFORMANCE AND OBLIGATIONS

8.1 The Commission undertook a technical evaluation of MTN's operations in order to assess the extent to which MTN's technical operations reflect the requirements under the respective technical provisions of the licence, laws, Regulations, Guidelines and Standards.
8.2 The evaluation has revealed that MTN has, over the years, complied with the various technical requirements, as discussed hereunder;

(i) Provision of Telecommunication services
The evaluation revealed that MTN has provided the licensed services in Uganda as listed under Article 7.1 of the License agreement in keeping with developments in the market.
The evaluation has shown that MTN has provided a wide range of services including, voice (mobile and fixed), internet access, dedicated links, SMS, MMS and USSD services.
The evaluation also confirmed that MTN network spans over 107 districts in Uganda with a mix of technologies.

Although the licence requires that MTN does not reduce or cease to provide a Protected Telephony Service from start-up throughout the licence term, MTN did reduce provision of one of the Basic Telephony Service, namely Public Pay Telephony Service.

In response to this finding, MTN submitted that their failings on the Public pay phone obligations were occasioned by changes in technology with more people preferring to use Mobile phone technology.

The Commission maintains its findings on this matter. MTN should have engaged the Commission and sought approval before withdrawing the Public payphones across the Country.

MTN did withdraw pay phones across the country after expiry of the exclusivity period and then later resumed rolling them out.

(ii) Provision of Leased lines and Circuit Services
In Article 7.2 of the license agreement, MTN undertook to provide leased and circuit services. During the Exclusivity Period, MTN did respond to applications for provision of leased lines subject to availability of
capacity. MTN has developed these services to a capacity of over 2000 leased lines in Uganda.

(iii) Service Quality Requirements
The Quality of Service provided by MTN during the Exclusivity Period exceeded the targets that were initially specified in the license, which were associated with traditional fixed line telephony service. However, with respect to the Quality of Service standards issued by the Commission in 2007 and which have been applicable since then, the Quality of Service provided by MTN for mobile telephony varied in performance in the subsequent 11 years under the key performance indicators (KPI), with various instances of not realizing the targets specified by the Commission under the respective KPI.

The graph below highlights this variation in the Quality of Service offered by MTN with the acceptable quality being that below the 2% maximum threshold for blocked and dropped call rate.
In response to this, MTN had initially submitted that it had met all of the Quality of Service obligations within the license, but MTN subsequently indicated that it was not possible to have a consistently good quality of service throughout its license period.

The Commission maintains that a good quality service should be offered by MTN at all times across the country in accordance with the specified Quality of Service standards.

(iv) Routine Maintenance of services

Article 7.3 of the license agreement requires MTN to carry out continuous maintenance of its network infrastructure, and to ensure that its customers are duly notified of such maintenance works in order to minimize disruptions and inconvenience to customers.

The evaluation has confirmed that MTN has largely complied with this obligation throughout its license term.

8.3 The evaluation has, however, revealed that MTN’s performance has fallen short in the following areas;

8.3.1 Numbering Plan

Article 9.5(b) of the license agreements requires MTN to comply with the Commission’s regulations concerning the implementation of the national numbering plan. MTN was assigned various numbering resources in accordance with article 9.5.

The utilisation of some of these resources by MTN is highlighted below.

i. Fixed numbers
   Whereas MTN was assigned a total of 100,000,000 numbers associated with the level 3 under the Numbering Plan for fixed service, only 0.32% of these numbers are active.

ii. Special Rates Numbers
    The evaluation has shown that MTN is underutilising the special rates numbers it was assigned as summarised below;

iii. Premium Rate numbers
MTN was assigned 1,000,000 numbers, but it is currently only utilizing 0.02%.

- Free/Toll Phone numbers. Assigned 100,000 numbers, but utilization is at 0.22%
- Local Rate Numbers. Assigned 100,000 numbers. As of January 2018, there is no information provided or evidence of MTN utilization of these numbers
- Single Rate Numbers. Assigned 100,000 numbers. As of January 2018, there is no information provided or evidence of utilization of these numbers.

8.3.2 Short Code

Further to Article 9.5, Article 13.1 also obliges MTN to ensure that it obtains all necessary approvals and authorisation before deploying any communication services.

The evaluation has revealed that MTN has over the years repeatedly utilised some short codes without first obtaining the requisite assignment and authorisation from the Commission. The subject codes include the following:

<table>
<thead>
<tr>
<th>Short code</th>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>142</td>
<td>MTN Network SOS Service</td>
</tr>
<tr>
<td>152</td>
<td>MTN WhoCalled Service</td>
</tr>
<tr>
<td>158</td>
<td>MTN mFaith Service</td>
</tr>
<tr>
<td>160</td>
<td>MTN USSD Menu Browser</td>
</tr>
<tr>
<td>170</td>
<td>MTN CallerTunez</td>
</tr>
<tr>
<td>171</td>
<td>MTN Radio Service</td>
</tr>
<tr>
<td>173</td>
<td>MTN Magic Number Service</td>
</tr>
<tr>
<td>181</td>
<td>MTN Mobile Money Agent Service</td>
</tr>
</tbody>
</table>

MTN response observed that all short codes referred to in the preliminary report were applied for by MTN and are pending a Commission decision.
The Commission maintains that MTN has repeatedly been found to use short codes without prior authorisation from the Commission during the licence term.

8.3.3 Type Approval of Equipment

Article 13.2 of the license agreement requires MTN to obtain all necessary compliance certificates and licenses before selling, installing or otherwise deploying any telecommunication equipment.

Regulation 14 of the Communications (Telecommunications and Radio Communications Equipment Type Approval) Regulations 2005 further obliges every operator to ensure that all the equipment they deploy on their networks is type approved.

The evaluation revealed that MTN has over the years fallen short in compliance with this obligation with respect to having its network equipment type approved by the Commission as well as some of its end user terminals.

MTN responded that UCC approved all MTN network equipment in 2015.

The Commission maintains that MTN did not fulfil the requirements of type approval of its network equipment prior to 2015, and while its network equipment was subsequently approved, MTN has not fulfilled the requirement for type approval of terminal devices.

8.3.4 Unauthorised usage of spectrum

Article 14 of the License agreement allows MTN to apply to the Commission for radio frequency spectrum. The Communication (Radio) Regulations 2005, expressly require every operator to first apply and obtain a frequency assignment from the Commission before any spectrum may be used. The Communications (Radio) Regulations, 2005 also require that a licensee not operate or permit operation of a transmitter for a purpose that is inconsistent with the purpose specified in the appropriate frequency band plan within the Uganda Table of Frequency Allocation.

In 2005, MTN was found to be illegally utilizing spectrum in the 1800MHz band, and subsequently paid a fine of UGX.10, 000,000/= for this infraction.
Furthermore, MTN deployed LTE operations in the 800/850MHZ Band without prior approval of the Commission, contrary to the Commission specified frequency band plan and the respective international recognised standards, posing a risk of interference to other band users. MTN continued to defy the directives of the Commission to migrate their LTE services from the range of frequencies used in the 800 MHz band.

In response to the preliminary findings, MTN acknowledged their noncompliance and pledged to adhere to the Commission’s frequency band plan.

The Commission maintains that MTN must comply with the Commission’s directive to migrate the highlighted frequencies in the 850MHz band plan in accordance with International standards.

8.3.5 Subscriber assistance

Beyond the provisions made by MTN with respect to accessibility of and volume adjusted facilities on payphones, MTN has not made provision for the communication needs of persons with disabilities.

In developing its services, MTN also ceased provision of its directory assistance services.

The Commission maintains that MTN should provide information on the industry facilities adopted in fulfilment of this obligation.
9.0 CONCLUSION

According to section 43(2) of the Uganda Communications Act 2013, in considering an application for renewal of any license, the Commission is required to have regard to the performance of the operator during the duration of the expiring license.

This is further reinforced by Article 3.3(b) of MTN’s license which requires the Commission to prepare an Evaluation Report stating the extent to which the licensee has generally complied with its obligations under the license, the laws, regulations and directives of the Commission, and generally provided the licensed services.

Based on the findings contained herein above, the Commission finds that;

(1) Whereas MTN has to a large extent complied with most of its license and regulatory obligation, there are a number outstanding areas of non-compliance which must be addressed before the Commission progresses the application for renewal of MTN’s license.

(2) MTN has largely provided uninterrupted telecommunication services during the course of its license in accordance with the laws of the Republic of Uganda.

A Copy of this report shall be available to the public, and the content therein shall form the basis for the public hearing scheduled for Monday the 26th of March 2018.

Interested members of the public are invited to make comments on the report by the 24th of March 2018. All comments should be sent in writing to the Executive Director, Uganda Communication Commission, Plot 42-44, Spring Road, Bugolobi, P. o Box 7376, Kampala, Uganda.

Dated this 13th Day of March 2018

For and on behalf of the Uganda Communications Commission

Godfrey Mutabazi
EXECUTIVE DIRECTOR