



ABIA STATE OF NIGERIA

NIGERIAN COMMUNICATIONS ACT 2003

RIGHT OF WAY REGULATIONS

(UNDER SECTIONS 135, 136(4) AND 137(5) NIGERIAN COMMUNICATIONS ACT 2003)

Enactment

In exercise of the powers conferred by **SECTIONS 135, 136(4) AND 137(5) NIGERIAN COMMUNICATIONS ACT 2003** and all other

Powers enabling me in that behalf, I, Dr. Alex Chioma Otti, the Governor of Abia State hereby make the following Regulations:

Citation and date of commencement 1.

PART I - PRELIMINARY

This Regulation may be cited as Abia State Telecommunication and related Infrastructure Right of Way Regulation, and shall be deemed to come into effect on the 1st day of December, 2024.

*Scope and Source 2(1).
of Power to Approve
Right of Way*

The definition of telecommunication and related infrastructure shall include Network Facilities, fibre optics cable, base station, mast etc. A licensee operator under Sections 135 and 136 of the Nigerian Communications Act, 2003-

- (a) May require approvals of the Abia state Government or other relevant authority for installation, placing, Laying or **maintenance** of any network facilities ("Network Facilities"), fibre optic cable, base station, mast etc., on, through, under or across any land and it shall be the responsibility of such licensee to obtain such approvals;
- (b) shall, in installing its Network Facilities, fibre optics cable, base station, mast etc take all reasonable steps to ensure that the Operator causes as little detriment and inconvenience, and does as little damage, as is practicable;
- (c) shall take all reasonable steps to restore the land to a condition that is similar to its condition before the activity began;
- (d) Shall, in connection with the installation of its Network Facilities, take all reasonable steps to -
 - (i) Act in accordance with good engineering practice;
 - (ii) Protect property;
 - (iii) Ensure that the activity interferes as little as practicable with-
 - (aa) the operations of a public utility;

- (bb) public roads and paths;
- (cc) the movement of traffic;
- and (dd) the use of land; and
- (iv) Protect the environment;
- (e) Shall make all reasonable efforts to enter into respective agreements with public utilities that make provision for the manner in which the licensee will engage in activities that include:
 - (i) Broadband and Telecommunication infrastructure,
 - (ii) Fibre Optics cable installation, Base Station, Mast and,
 - (iii) Other related installation of its Network Facilities; and
 - (iv) Likely to affect the operations of the utility.

(2) Section 137(5) of Nigerian Communications Act, 2003 further provides that Nothing in that section shall be construed to apply to Or to give the Nigerian Communications Commission jurisdiction with respect to access to any posts, network facilities or right-of-way where a State Authority, local authority or other authority regulates such matters.

(3) In the application of Section 135 of Nigerian Communications Act, 2003 and in the exercise of its powers over the Rights of Way (herein referred to as ROW) within Abia State, the state Ministry of Works will receive applications or requests for approval for installation, placing, laying or maintenance of any telecommunications network facilities, including fibre optics cable from any licensee operator.

(4) The Ministry of Works in the exercise of its mandate as the Ministry in charge of works, public infrastructure it holds by virtue of this regulation and other relevant laws and regulations for the time being in force (National Environmental Standard and Regulations Enforcement Agency Establishment Act), the Abia State Ministry of Works shall impose an aggregate fees for fibre optic cable deployment in the state which shall not to exceed NGN145 (One hundred and forty five Naira) per linear metre.

No other Ministry, Department or Agency of Abia State Government is entitled to request or charge any fee with regard to the installation, placing, laying or maintenance of fibre optics cable and Network Facilities. The aggregate fees charged by any and all state - level

Agencies for fibre optic cable deployment in the state shall not to exceed NGN145 per linear metre.

*Application for Right
of Way and
Requirements for
the application* 3(1)

PART II – APPLICATION FOR AND GRANT OF RIGHT OF WAY

Application shall be made to Abia State Ministry of Works by the licensee operator for grant of Right of Way for installation, placing, laying or maintenance of any Network Facilities on, through, under or across any public land within Abia State clearly stating the purpose and duration of the occupation.

- (2) The application shall be accompanied by a technical file describing the planned works, particularly-
- (a) The route required, in line with the State's Road Inventory;
 - (b) The plan of the network showing the ways of passing and anchoring the installations;
 - (c) Proper starting and endpoints of the installation;
 - (d) in case of installation on or beside a road, the side of the road on which installation is intended (RHS or LHS);
 - (e) exact length applied for in metres or the surface in m² and, if applicable, the height of the equipment and installation;
 - (f) cross sectional dimension of intended trench excavation;
 - (g) number of ducts to be laid;
 - (h) type and capacity of ducts and cable to be laid.
 - (i) The technical data needed to assess the possibility of sharing existing facilities;
 - (j) detailed layout diagrams for engineering structures and junctions;
 - (k) the general conditions for the organisation of the site and the name and address of the project manager;
 - (l) Excavation and back fill methods;
 - (m) Schematic diagrams showing the above; and
 - (n) A schedule for the execution of the work, indicating the date of commencement and the foreseeable duration of the work.
- (3) In addition to the requirements specified in sub-regulation (2) of this regulation 3, every application shall contain the following information -
- (a) name, designation, physical address telephone number and electronic mail address of the contact person of the Applicant;
 - (b) A copy of the approval where such infrastructure is subject to -
 - (i) Environmental Impact Assessment; and
 - (ii) Abia State Basic Environmental Law 2013;
 - (iii) Town and Country Planning Laws of Abia State,

*Examination of
the Application*

- 4(1) The Abia State Ministry of Works shall examine the Application and shall, within three (3) working days of submission of the Application, confirm whether the Application is complete or whether there is any deficiency in the application.
- (2) Where it considers that there is a deficiency in the application, it shall notify the Applicant in writing or via email, specifying details of the deficiency and or such additional information that it reasonably requires to evaluate the application.

- (3) Where the Application is satisfactory and/or (where the Applicant has made good any deficiency in the application), the Abia State Ministry of Works shall issue the Applicant with an invoice for the payment of all fees relating to the approval within seven (7) working days of the submission.

- (4) The Applicant shall make the invoiced payment within three (3) days of receipt of the invoice.

*Physical Inspections,
or Joint
Measurement*

Where there is any need for physical inspection and/or joint measurements, Abia State Ministry of Works shall inform the Applicant and schedule a date for the inspection.

*Grant of Approval 6(1)
For Right of Way*

Applications for Right of Way shall be granted by the Abia State Ministry of Works within Twenty-One (21) Working Days of the submission of the application, the payment of the relevant fees, and the provision of all other relevant documentation and or information prescribed in this Regulation.

- (2) If the application is not approved after Twenty-One (21) Working Days from the date the application is received, the Abia State Ministry of Works shall provide the licensee operator a written statement identifying the reasons for its failure to approve and identify where applicable which Ministry, Department or Agency is responsible for the refusal.

- (3) Where the Abia State Ministry of Works fails to
- (i) Confirm approval in writing within the stipulated Twenty-One (21) Working Days; and
 - (ii) Provide the licensee operator a written statement identifying the reasons for its failure to approve; and the Applicant shall commence the deployment of the planned infrastructure as if a formal approval had been received.

An approval relating to communications infrastructure may only be

7. *Grounds for denial/refusal of application for right of Way*
- (a) An approval fails to provide the necessary information or to pay the relevant fees as stipulated and/or within the time stipulated in this Regulation;
 - (b) where the grant of the Right of Way will be in contravention of the Dig-Once Policy specified by the State;
 - (c) where the Nigerian Communications Commission notifies the Abia State Ministry of Works of its disapproval of the deployment is not licensed to deploy the grounds that the Applicant does not satisfy such infrastructure or that the deployment does not satisfy its technical specification and/or standards;
 - (d) if the intended installation, placing, laying or maintenance of Network Facilities could affect the integrity of the works and the safety of users shall be deemed incompatible with the use of the public domain; or

If these conditional approvals may be granted.

8.

- (c) if the request can be met under conditions equivalent to those that would result from granting Right of Way by the use of the existing facilities of another occupier of the public domain, if such use does not compromise the use of the facilities by that occupier.

Where the satisfaction of the request of a licensee operator would lead to the use of the whole of the public domain available for the use envisaged and would prevent any additional equivalent use, the Abia State Ministry of Works may make the granting of the Right of Way conditional on the licensee operator carrying out of works, such as installation of additional ducts to allow the subsequent sharing of the facilities with other operators, and the licensee operator publishing the conditions of access to these facilities on its website and may include other channels as deemed appropriate.

Regulation by
Installation of
condition of ducts may
be imposed on the
applicant

9.

Notwithstanding the provisions of the Regulation 4(3), the Abia State Ministry of Works may impose on the licensee operator a requirement to install additional ducts for redundancy to accommodate other licensee operators and avoid multiple excavations and trenching of roads that could compromise the integrity of roads and damage to previously laid cables or other infrastructure.

Fee for the grant of
Right of Way

10(1)

The grant of Right of Way on the public domain gives rise to the payment of fees which may not exceed:

- (a) N145 One Hundred and Forty-Five Naira per linear metre and per artery for laying of ducts and fibre optics cables,
(b) An application fee of N50,000.00 (Fifty Thousand Naira) for base transceiver station (BTS) and street cabinets intended to house the technical installations only
(c) N500,000.00 (Five hundred thousand naira) per site for base transceiver station (BTS) per year,
(d) N360,00 (three hundred naira) per m² occupied on the ground for other installations such as street cabinets intended to house the technical installations for serving subscribers

[2] Artery means in the case of land or subsoil use, a duct containing or not containing cables, or a cable in the ground, in all other cases, all cables pulled between two supports.

As Laid Drawings

11(1)

PART III – OBLIGATIONS OF THE LICENSEE OPERATION ON COMPLETION OF WORKS

An Applicant that has been granted a Right of Way shall provide the Abia State Ministry of Works with a copy of the "As Laid" drawing for each approval to guide the competent authorities in future rehabilitation, expansion and maintenance work on the public domain.

(2)

The As-Laid drawings shall show the following-

- (a) For ducts and cables laid-
(i) Depth of the trenching.

Damage to utility in

12.

The course of trenching

In the course of trenching, if any utility is damaged the applicant will pay 2% of the contract sum and N100,000.00 for each day the damage last after notice have been duly given.

13.

Completion Certificate

On completion of the works, the Applicant shall obtain the appropriate completion certificate from competent authorities and forward a copy to the Abia State Ministry of Works.

Relocation of ducts 14. And cables during Rehabilitation or construction of roads

Relocation of ducts and cables during rehabilitation or construction of roads, if cables are found to obstruct road works, shall be carried out by the Applicant at its own expense.

PART IV – MISCELLANEOUS PROVISIONS

Sanctions for Commencement of work before grant of approval for Right of Way 15(1)

No licensee operator shall commence any work before the Right of Way grant is duly communicated to the licensee operator. If the Right of Way is deemed granted in section 6 (3) of Part II above, then the licensee operator shall communicate the deemed approval to the Abia State Ministry of Works and may commence work upon receipt of acknowledgement of its communication.

Way (2)

(2)

The breach of the provisions of this Regulation where penalty is not stipulated shall be punishable by any of the following:
(a) Fines up to N500,000.00 (Five Hundred Thousand Naira) per day of the breach;
(b) Suspension of Right of Way; or
(c) Termination of Right of Way.

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All contradictory State Regulations on Right of Way are to the extent of their contradiction null and void.

Effect of other contradictory regulations on right of Way

MADE UNDER MY HAND, this 1st Day of November 2024


DR. ALEX CHIGOMA OTTI, OFR
GOVERNOR, ABIA STATE