

Telecommunications law and policy to protect subscribers' of mobile phones in Africa

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Abstract. The mobile telephone alternatively referred to as mobile handset, has immense advantages over the traditional land line telephone in that it enables the user to traverse wherever he desires, and yet able to communicate with others either for purposes of transacting businesses or as a means of effecting social interactions, but notwithstanding the apparent advantages of mobile phones, like every coin having two sides, its use has demerits which as a matter of necessity, calls for regulatory measures to protect the subscribers; unfortunately, this is not the case in most African countries, for example, Nigeria reputed for the highest population in Africa ditto the highest number of mobile telephone subscribers in addition to being the biggest economy in the continent, does not have in place, law and policy specifically aimed at protecting or promoting the interest of its subscribers. The usage of mobile phones has assumed phenomenal increase recently; it is the norm rather than the exception in Africa but with the unfortunate trend of dearth of legal and regulatory measures. This Article deals with the legal and regulatory framework pertaining to mobile phones and examines issues relating to or consequences generated thereof. The paper argues that the extant legal and regulatory framework in Africa is not in the best interest of subscribers,' and calls for a paradigm shift towards taking into cognizance the said interest of subscribers' by governments' with the view to putting in place, legal and regulatory precepts that would be open free and readily available to subscribers of mobile telephones simply because, the manufacturers of mobile phones and telephony companies, wherever they are situate or operate from, need and rely on the profits generated from African countries.

Keywords: Telecommunications law and policy, mobile phone, consumer protection, Africa

1. Introduction

A mobile phone alternatively called cell phone is a portable telephone operated through a cellular radio network.¹ Before the emergence of what is generally known today across the globe as mobile phones, there existed some technological improvements regarding one to one communication across varying distances that were precursors, such as the wireless telephone on trains and automobiles after which hand held radio transceivers and prior to 1973, mobile telephony was limited to phones

¹ Microsoft Encarta Dictionary 2009

installed in cars and other vehicles.² Several telecommunications companies operating in different countries, made the advancement of mobile telephone as seen and used today possible, and notable amongst them are Zugtelefonie A. G. of Germany,³ Oakland Transcontinental Aerial Telephone and Power Company, Bell Labs and AT & T - all of USA and Radioelektronika of Bulgaria amongst many others, too numerous to list. The mobile telephone handset, having made its debut in 1973 when according to records, Martin Cooper, a Motorola researcher and executive, made the first mobile telephone call from handheld subscriber equipment, placing a call to Dr. Joel S. Engel of Bell Labs.⁴ The prototype handheld phone used by Dr. Cooper was reputed to have weighed 1.1 kg and measured 23 cm long, 13 cm deep and 4.45 cm wide, but the mobile handset has gone through successive advancements which have dramatically reduced the size and weight of today's mobile phones, compared with earlier ones, which was a burden to carry around.

2. Subscribers' data of mobile phones in Africa

The African continent is reputed to be the world's second-largest and number two in the ranking of most populous in the world having a population of about 1.1 billion people as of 2013⁵ which is said to account for about fifteen percent of the global human population and which figure, has been respectively confirmed by United Nations Population Fund (UNFPA) and the World Bank. Further, it is on record that there are 54 fully recognized sovereign states or countries, nine territories and two *de facto* independent states with limited or no recognition.⁶

According International Telecommunication Union (ITU), there are 629 Million subscribers' of mobile phones in Africa with 69.3% per 100 people while fixed telephone line subscribers' are 12 Million with 1.3% per 100 people.⁷ A comparison of mobile subscription with fixed telephone line clearly indicates that indeed, Africa has embraced the mobile telephone bug. At this juncture, it is pertinent to categorically

² Informatikzentrum Mobilfunk (IZMF). izmf.de: "The development of digital mobile communications in Germany"

³ See Amos Joel patent 3,663,762

⁴ Martin Cooper, et al., "Radio Telephone System", US Patent number 3,906,166; Filing date: 17 October 1973; Issue date: September 1975; Assignee Motorola

⁵ World Atlas

⁶ *ibid*

⁷ Key Global Telecom Indicators for the World Telecommunication Service Sector in 2014. See also ITU Statistics (<http://www.itu.int/ict/statistics>)

remark that mobile phones have pervaded the length and breadth of the entire continent called Africa.

3. Advantages of telecommunications

Telecommunications is electronic communication; it is the transmission of encoded sound, pictures, or data over significant distances, using radio signals, electrical or optical lines.⁸ The term telecommunications also refers to the use of personal computers to send and receive information through a communications connection, such as a telephone line. We use telecommunications specifically to refer to processes such as, electronic mail, electronic bulletin boards/conferences/list servs, and research databases, file transfers, chatting, games and simulations⁹

The advent of telecommunications has occasioned a paradigm shift in the way trading activities are conducted, it has positively impacted on trade and commerce, same has brought about unprecedented increased volume of trade, *nay*, it has engendered speed of transactions completion, immensely facilitated the ease with which transactions are concluded between trading partners; thus, the erstwhile geographical separation, elsewhere called the death of distance¹⁰ between trading partners is no longer a barrier; telecommunications has bridged the gap thereby creating job opportunities¹¹ and unrivalled multiplier effects,¹² it promotes economic growth,¹³ aids the free flow of information and expression beyond borders,¹⁴ telecommunications is a catalyst to the development of new infrastructures and architectures, drives economic integration and generates revenue *ipso facto* improves GDP,¹⁵ it fosters

⁸ Microsoft Encarta Dictionary 2009

⁹ Barron, A. (1995). Getting Started with Telecommunication. Florida Center for Instructional Technology: Tampa, Florida, USA

¹⁰ OECD 1999. The Economic and Social Impact of Electronic Commerce p. 143

¹¹ Plunkett Research Ltd (2014). See also Pablo L. Chavez: Comments to the Department of Commerce

¹² Hegeland Hugo, 1954, p. 1

¹³ R Lars-Hendrik; L Waverman "Telecommunications Infrastructure & Economic Dev." 909-923

¹⁴ Claude S. " 'Touch Someone': The Telephone Industry Discovers Sociability." Tech. & Culture p.32

¹⁵ Jean Jipguep, Role of Telecommunications in Economic Integration of Africa - ITU 6054. See also Pablo L. Chavez, *ibidem*: The internet industry contributes at least \$300 billion to the U.S. GDP.

technological innovation and competition,¹⁶ in addition to advancing the goals of sustainable development.¹⁷

At this juncture, it is necessary to remark that telecommunications services is not without demerits, amongst other unlawful activities, it has been used to perpetrate child pornographic materials, racism, hate speech, glorification of violence, cyber terrorism, cyber laundering and SMS phishing, spamming, vishing or pharming, robocall, unauthorized text messages and of late, the incidence of cramming, a variant of fraudulent activity whereby small charges are added to the telephone (land and mobile lines) bill by a third party, usually a vendor, without prior consent or knowledge of the subscriber, has assumed astronomical proportion especially in the U.S.A. See respectively *Ellison v. Steve Madden Ltd.*,¹⁸ *FTC v. Inc21.com Corporation*,¹⁹ *FTC v. Nationwide Connections Inc.*,²⁰ *People of the State of Illinois v. ID Lifeguards, Inc.*,²¹ and *State of Minnesota, by its Attorney General, Lori Swanson v. Cheap2Dial Telephone, LLC*²² where the courts consistently held that unauthorized calls and or messages are unlawful and that, fraudulent cramming charges levied and collected by telephony operators, be returned to the concerned subscribers. All said, when the merits and demerits of telecommunications services are juxtaposed, the former by far outweigh the latter and what could be done at all levels of governance, includes but not limited to extensive legislations and strict enforcement of same so as to reap the immense benefits derivable from telecommunications, especially with reference to trade and commerce.

4. Lack of uniform rule

From the foregoing submission regarding the importance of telecommunications hitherto highlighted before now, it is manifestly clear that the telecommunications industry play a major role in the world economy; it is fundamental for growth and development aside from being a springboard for quality human life, a necessary element to maintain a smooth flow of telecommunications in order for mankind to maximize

¹⁶ Lenert, E: "A Communication Theory Perspective on Telecommunications Policy" pp. 3 - 23.

¹⁷ ITU: Telecoms & the environment-The way to sustainable development. Summary of Rio Declaration

¹⁸ No. 2:11-cv-05935 (C.D. Cal.)

¹⁹ 745 F. Supp. 2d 975 (N.D. Ca. 2010)

²⁰ No. 06-80180-CIV-RYYSKAMP/VITUNAC (S.D. Fla. Feb. 13, 2008)

²¹ Final Consent Decree entered in the State of Illinois Circuit Court of the Seventh Judicial Circuit, Sangamon County, Ill. (January 5, 2011).

²² 27-cv-11-457 (4th Judicial. District)

the multiple advantages, is to ensure free flow of information that is fairly priced, safe and economically secured as well as engender a balanced terms of the contract to the parties involved in the global transaction.

Having in the foregoing paragraphs attempted the definition and highlighted the indisputable merits of telecommunications services on trade and commerce, it is expedient to emphasize that though telecommunications is the conduit pipe towards the actualization of trade and commerce ditto social interaction, but like every coin having two sides; the extant state of telecommunications law and policy has its demerits.

With the world increasingly becoming one global village²³ due to an amalgam of factors subsumed within the realm of comparative advantage, free market economy and globalization, and with telecommunications being the principal driver and agent of globalization, there is currently no uniform rule governing telecommunications law and policy in Africa; this development is not a surprise because, the constituent states that make Africa have no independent or separate legislations governing telecommunications law and policy protecting subscribers. It should be emphasized that the practical implication of the lack of uniform rule had inhibited, and continue to do in-calculable damages to fair, safe, free and secured information exchange; this development unfortunately breeds uncertainty.

The said uncertainty is a legal lacuna, for the most part there are no laws, and where they are available, access to same is definitely beyond the reach of the average person, the combination of all the afore-stated prompts avoidable litigations in the Africa continent.

It is on the basis of all the afore stated concerning lack of national legislations and uniform rule for telecommunications law and policy, that this paper intends to canvass for legislations and regulatory regimes so as to bring to the fore, the anomalous state of affairs with its adverse consequences on social interaction as well as trade and commerce, *ipso facto*, fill the knowledge interstitial and proceed to make recommendations which hopefully, would redress the shortcomings of the lack of regulation in African telecommunications law and practice.

²³ A term ascribed to McLuhan who described how the globe has been contracted into a village by electric technology and the instantaneous movement of information from every quarter to every point at the same time. See generally Marshall McLuhan, *The Gutenberg Galaxy: The Making of Typographic Man* (1962) and *Understanding Media* (1964).

5. Governments' monopoly of telecommunications infrastructures, architectures and interference with free flow of information exchange

At this point, it is necessary to categorically remark that the lack of uniform rule for telecommunications law and policy has engendered the germane issue of domination of the telecoms industry by governments,' private giant corporates and multinationals who for the most part, maintain a monopoly of telecommunications infrastructures and architectures; the said monopoly has to a large extent left the public interest unprotected while implementing pro-corporate ideology and regulating the content and delivery of telecommunications termed as "captive audience";²⁴ unfortunately, this development has created a barrier to free flow of information exchange on one hand, and on the other, precipitated a high cost of communications leading to prohibitive cost of doing business and which cost, are ultimately passed to consumers, the said transaction cost is even higher in developing countries, especially in Africa. According to Notice of Inquiry on the Global Free Flow of Information on the Internet²⁵ which cited the Open Net Initiative to the effect that, there are more than forty (40) governments today restricting information online to varying degrees, a tenfold increase from just a decade ago.²⁶ Further, it was asserted that governments' are incorporating surveillance tools into their Internet infrastructure; see specifically with reference to telephone communication interception, the case of *Liberty and others v. The United Kingdom*,²⁷ blocking on-line services in their entirety; imposing new, secretive regulations; and mandating onerous licensing.

Taking into cognizance all the foregoing with respect to restrictions of information, it is worthwhile to emphasize that impediments to free flow of information in whatever form, does the exact opposite to the hitherto highlighted importance of telecommunications; in summary, interference with telecoms services causes trade and commercial disruptions, engenders loss of revenue to parties involved in commercial transactions, truncate employment opportunities, stultifies innovation and advancement of InfoTech. In particular, it has been asserted that

²⁴ Susan Crawford: Captive audience: Journal of Information Policy 3 p. 55

²⁵ Pablo L. Chavez: Comments to the Dept. of Commerce Office of Secretary USA

²⁶ Open Net Initiative, More than half a billion Internet users are being filtered worldwide (2010)

²⁷ Application No. 58243/00 01/07/2008 where the European Human Rights Court inter alia held that that there has been a violation of Article 8 of the Convention which provides that "everyone has the right to respect for his private and family life, his home and his correspondence" See also, *Weber and Saravia v. Germany* (dec.), Application no. 54934/00, 29 June 2006

obstacles to continued Internet innovation, which take many forms, impedes global trade and investment, capital goes where it is welcome, and stays where it can grow,²⁸ limits consumers' access to variety of goods and services which would otherwise have been available if they are aware of the existence of such goods and services; in other words, interference with free flow of information limits advertisements, increases market entry costs or out rightly inhibits same leading to higher costs and generally, increases the prices of goods and services; above all, any undue tampering with telecommunications suppresses information thereby robbing the society of the right to information.²⁹ See respectively the case of *Handyside v. The United Kingdom*³⁰ *Hertel v. Switzerland*³¹ 31 and *Van Niekerk v City Council of Pretoria*³²

6. Germane questions about mobile phones

In order to properly understand with the view to addressing the issue of mobile telephone consumer protection in Africa, some pertinent questions as hereunder stated are posed by this paper:

What is telecommunications law and regulation, what warrants them, what are their nature, source, scope, purpose and complexities; with the world increasingly becoming "one global village" as a result of globalization, and with telecommunications being one of the principal drivers and undisputed agents of globalization, is there a uniform rule governing telecommunications law and policy in Africa? If the answer is in the negative, what measure or efforts are being made, to achieve uniformity with respect to telecommunications law and policy specifically designed to protect subscribers so as aid certainty of the law and lessen the adverse effects of mobile telephony? Does telecommunications law and regulation offer adequate protection to mobile telephone subscribers in terms of health implications with particular reference to carcinogenic hazard of brain cancers medically referred to as *glioma* and *acoustic neuroma* besides the potential to impact on cognitive memory functions; costs associated with owning and usage of mobile phones and are subscribers protected from the litany of calls and messages sent by mobile telephony operators via unsolicited adverts for goods

²⁸ United States Council for International Business: USCIB response to notice of inquiry on global free flow of information on the Internet. See www.ntia.doc.

²⁹ See Universal Declaration of Human Rights 1948 and, in particular, Article 19 and ICCPR, Article 19

³⁰ Series A, No. 24, 1 EHRR 737 (1979)

³¹ Application No. 25181/94, Aug. 25, 1998

³² (1997) 3 SA 839 (T). The court asserted that the right to information aims at subjecting organs of state to a new regime of "openness and fair dealing."

and services, social networking and general information which may not be useful to the subscribers' but who are nonetheless compelled to receive such calls and messages which causes distractions and irritations that are not compensated for by telephone line operators; with increasing sophistication of mobile phones where access to internet connection is habitual than the exception, are subscribers' protected from pornographic materials, racism, hate speech, glorification of violence, cyber terrorism, cyber laundering and smishing or SMS phishing - a method cyber criminals use in exploiting mobile devices, and are mobile telephone subscribers protected when VoIP systems are used to support vishing (telephone-based phishing) schemes in addition to social engineering scams?

What is the meaning of "network failure" and thus this concept in mobile telecommunication constitute obstacle to trade and commerce, ditto social networking of the mobile telephone subscribers, if so, does the said obstacle fetter or inhibits trade between persons, organizations, multinational corporations and nation-states, and if the answer is in the affirmative, what steps or efforts are being made to protect hapless subscribers with regard to mitigating the negative effect of the obstacle to trade and commerce and social networking occasioned by "network failure" which cost, the subscribers are compelled to bear; what is the length of time allowed to initiate telecommunications claims; is there uniformity in the time frame allowed, is the said time length equitable or justified in all circumstances warranting their continued imposition, and have they improved or worsen the economic and socio well-being of subscribers, end-users and stake holders; what are those requisites that frustrate genuine telecommunications claims and do they deny plaintiffs / litigants of their human and constitutional right of access to courts; are there other dispute resolution mechanisms aside from litigation to resolve claims or disagreements in telecommunications transactions; if so, are the said mechanisms equitable and justifiable in all circumstances, and finally, does the time tested doctrine of law: *verba fortius accipiuntur contra proferentem* apply to telecommunication cases?

7. Areas in need of attention for legislation and regulation

For the fact that the telecommunications services in the proportion as witnessed today in Africa is still in the nascent stage, compared with the developed worlds, there are many areas in dearth need of relevant laws and regulation, as such, this section of the paper addresses that issue with the view to bringing to the fore, so as to enable appropriate bodies focus and direct their efforts with the hope of making open the

access to law and improving consumer protection, in the use of mobile phones in Africa.

The first and foremost means of adequately protecting subscribers of mobile telephones in Africa is the enactment of relevant legislations as well as incidental regulatory norms. As noted in the abstract section of this paper to the effect that, Nigeria has the highest population in Africa, ditto the highest number of mobile telephone subscribers but regrettably, that great country have no specific law on consumer protection with particular reference to mobile phones, *ipso facto*, African subscribers are invariably denied of open access to law and consequently, justice, which is their primary fundamental right. The relevant maxim which readily comes to mind is *ubi jus ibi remedium* which means *no wrong without remedy, where there is right, there is remedy*. The foregoing time tested principle of law unfortunately is not applicable to mobile phone cases in Africa because, the necessary legislation is not in place, stated otherwise, if there are perceived wrongs to users of mobile phones either by manufacturers or telephony operators, since the necessary instruments in the form specific legislations and regulatory norms are not in place, there is no way the users' interest or protection can be actualized, for in the words of the erudite judge Lord Denning, in the celebrated case of *UAC V Mc Foy*³³ that “*You cannot place something on nothing and expect it to stand.*” Further, the anomaly of lack of extant legal provisions specifically addressing consumer protection could hardly be remedied because, the principles of common law developed centuries ago, could hardly cope with the new technological developments, multi-faceted and multi-dimensional as well as radical innovations and revolution that is ongoing today, in the mobile telephony industry. The shortcoming of lack of legislation and regulation in most of African countries where mobile phones are in use is also an albatross at the continental level. The African Union, though exist in principle, but the legal instruments which are supposed to unify transactions at the level of the continent are lacking, this unfortunate development has by and large, militated against subscribers of mobile phones from getting adequate protection. In effect, telecommunications law and regulatory signposts which mainly address the issue of protection of subscribers are not in place, this development leaves the hapless subscribers at the mercy of manufacturers and mobile telephone operators.

Having in the foregoing generally highlighted the need for legislation and policy to protect subscribers of mobile phones in Africa, this paper categorically states that specific attention must be focused on health

³³ (1962) AC 152

implications, the pricing of the mobile telephone service, unsolicited advertisements and unauthorized deductions, enforcement of SIM card registration, service disruptions and poor network coverage, data privacy and misuse of confidential information, right of access to the courts, as well as ADR mechanisms. The sub head of areas in need of attention are hereunder discussed.

8. Health implications

One fact which is beyond controversy is that mobile phones use radio frequency which enables it to be used as a medium of communication; the stream of radio frequency believed to be invisible which penetrate the human body, has been touted as a veritable source of cancer, besides the potential to negatively impact on cognitive memory functions which is known to cause confusion and human inability to think clearly.

Although, there is divergence of opinions amongst scientists and researchers as to the real effect or health implications of the use of mobile phones; while one school unrepentantly holds the view that the mere use of mobile phones have no adverse consequences, another view, maintain that the prolonged use of mobile phones is a veritable source of carcinogenic health hazard. The variance in the informed opinions seems to have been laid to rest by the authoritative global body on health issues, that is, the World Health Organization (WHO) when it has announced on May 31, 2011 that cell phones can possibly cause cancer and as a result, have listed cell phones as a “carcinogenic hazard”, in the same category with lead and engine exhaust.³⁴ Further, it is on record that a peer-reviewed study consisting of thirty one scientists from fourteen different countries found evidence for an increase in some brain cancers (glioma and acoustic neuroma) that take a while to develop and the scientists fear that long-term usage of mobile phone could result in more of these types of cancer.³⁵ Despite the numerous advantages of mobile phones, such as, its use as a means of communication either for social interaction which keeps family and friends in contact with the user, or for business purposes thereby aiding small, medium or large businesses to be transacted and concluded at local, national and international levels, besides its utility at times of emergencies; and these days, with smart phones, where internet connection with free calls and messages is the order of the day, mobile phones also have many accessories such as radio, music,

³⁴ <http://edition.cnn.com/2011/HEALTH/05/31/who.cell.phones/index.html>

³⁵ <http://www.who.int/en/> See generally also Liz Armstrong et al. *Cancer: 101 Solutions to a preventable epidemic*, p. 49, (2007), ISBN 9780865715424

video, chat rooms, games, cameras and roaming services. Above all, the portability of mobile phones makes them to be next item to be carried aside from money or credit card wherever Africans traverses nowadays. However, notwithstanding the almost endless advantages attributable to mobile phones, the propensity of its cancer causing demerit needs to be balanced with its merits, and that fundamental issue shall be addressed later, in the paper.

9. Pricing and billing of mobile telephone service

It is a notorious fact that the exchange of goods and services is an important aspect of human life; in this modern time, countries of the world are not equally endowed with human and natural resources, more importantly, the economic principle as espoused by comparative advantage³⁶ on one hand, the free market economy,³⁷ globalization³⁸ and telecommunications on the other, has made trade and commerce at individual, corporate, multinational as well as inter-governmental commercial transactions, an indispensable aspect of human life. It is also a long settled principle of Economics, that, the dual but opposing forces of demand and supply are always at play; and where these two forces crosses one another on the demand-supply curves referred to as equilibrium, dictates the prices charged for goods or services. Unfortunately in Africa, this well settled principle is not applicable to price setting in the mobile telephone markets. This paper argues that price fixing, that is, the artificial setting of prices by governments in connivance with foreign based multinational telephony operators instead of free market operation, is what obtains in most African countries.

In other words, demand based pricing, a pricing policy that sets the price of mobile telephone services according to the perceived amount that subscribers are willing to pay, rather than according to the production cost of the telephone services, is what holds sway; better still, it can be asserted that demand-constrained equilibrium,³⁹ which means, a state of balance obtaining when prices remain at a level above that at which aggregate demand equals aggregate supply, is the applicable current pricing which most subscribers of mobile phones are paying today in Africa. A ready example in justification of unfair pricing and billing of mobile phones subscribers in Africa is that of Nigeria, where

³⁶ Maneschi, Andrea (1998). *Comparative Advantage in International Trade*: Elgar. p. 1

³⁷ Hoffman George p. 538

³⁸ Theodore Levitt: *Globalization of markets* p. 20

³⁹ Microsoft Encarta Dictionary

foreign telephone operators namely MTN and Celtel were in operation as at 2001; when Glo Mobile was licensed in 2002, what MTN and Celtel had repeatedly told Nigerians was impossible, despite incessant subscribers' complaints of exorbitant pricing charged by the duo (MTN and Celtel), miraculously became possible overnight, when the newly licensed Glo Mobile introduced "per second billing" and other innovative packages aimed at reaching low-income segments of the population, thus contributing to lowering of mobile tariffs.⁴⁰

The point being made here is that most African governments have willfully refused to liberalize the telephone market, through the instrumentality of the law, by making the access open, this development largely disallow competition and encourages high prices, leaving the subscribers with no choices than keep patronizing the few telephony operators, whose services are far from good.

10. Unsolicited advertisements and unauthorized deductions

More often times than not, subscribers of mobile phones in Africa are bombarded with advertisements of all sorts, most of which are without the consent of the subscribers. A curious subscriber would wonder about the origin or source of these unsolicited adverts; this paper asserts that they largely arise from the data supplied to mobile phone operators and are used by marketers of goods and services to sell their products to the subscribers, irrespective of whether the subscribers desire the advertised goods and services or not. The use of subscribers' data by marketers has been dubbed profiling the mobile customer by King and Jessen.⁴¹ The authors contended that mobile telephone customers are being tracked and profiled by behavioral advertisers.

The main aim behind the tracking and profiling it was asserted, is to be able to send personalized advertising. Profiling is an automatic data processing technique that consists of applying a 'profile' to an individual, namely in order to take decisions concerning him or her; or for analyzing or predicting personal preferences, behaviors' and attitudes. In a technical sense, profiling is a computerized method involving data mining from data warehouses, which makes it possible, or should make it possible, to place individuals, with a certain degree of probability,

⁴⁰ UNCTAD. Information Economy Report 2007/8 Science & Technology for Development: The new paradigm of ICT UN New York & Geneva 2007 p.11

⁴¹ Nancy J. King and Pernille Wegener Jessen. Computer Law & Security Review 26 (2010) 455-478

and hence with a certain induced error rate, in a particular category in order to take individual decisions relating to them.⁴²

All said; profiling of mobile telephone subscribers raises two key issues of interference with personal data protection, ditto personal autonomy and liberty. It is thus on record that recent studies show consumers are concerned about their privacy and personal data in the context of behavioral advertisements, they desire control over collection and use of personal information about them and they lack knowledge and understanding about data collection practices and policies.⁴³ With reference to unauthorized deductions, this essentially means the removal from the credit outstanding in the subscribers' account without the knowledge or prior consent of the concerned subscribers' for services which they neither use nor order for, this unlawful practice by telephone companies and their accomplices is known as cramming. In *Toni Spillman v. Domino's Pizza LLC and RPM Pizza, LLC*⁴⁴ the facts were that the plaintiffs alleged that the defendants caused the transmission of multiple unsolicited, pre-recorded advertising telephone calls and text messages to their home and cellular telephones over a four-year period without prior consent and in violation of the TCPA. On May 24, 2013, the Court granted final approval of the parties' settlement in the sum of \$9.75 Million payments in the form of cash and merchandise vouchers, to the affected subscribers. In *Re Jiffy Lube International Inc.*,⁴⁵ the complainant contended that the defendant Heartland Automotive Services, Inc., a Jiffy Lube franchisee, and its telemarketing vendor allegedly violated the TCPA with a text-message promotional campaign willfully transmitted to more than two million subscribers' of mobile telephones, without obtaining their consent prior to the text messages. All the moves by the defendants to thwart the complaint were unsuccessful including a motion to compel arbitration. The settlement award valued at \$35 - \$47 Million was given to the subscribers' in addition to an injunctive relief, prohibiting the defendants from sending further commercial text messages without written consent from the recipient. The Court granted final approval of the parties' settlement on February 20, 2013. At this juncture, it is necessary to emphasize that all the fore-going cases were decided on the provision of Section 201(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. 201(b) which forbids placing unauthorized charges

⁴² (CRID), p. 5, (Jan. 2008) (Dinat et al) available at: <http://www.statewatch.org/news/2008/aug/coe-profiling-paper.pfd>

⁴³ Gomez et al. ?Know Privacy Report? UC Berkeley School of Information.p.5 (1/6/2009)

⁴⁴ No 10-cv-349 (M.D. La.)

⁴⁵ No. 3:11-MD-02261 (S.D. Cal.)

for or in connection with telephone service constitutes an unjust and unreasonable practice; stated in other words, if the enabling legislation Telephone Consumer Protection Act (TCPA) were not in place, the telephone company would not have been in violation of any law, and the subscribers would not have had grounds to premise their cases. Stated in other words, there is open access to law in USA and the ultimate end; justice is guaranteed unlike in the Africa continent.

11. Enforcement of SIM card registration

SIM card means Subscriber Identity Module card, which is a smart card that is inserted into a mobile phone whereat the bio data or personal information about the subscriber is stored. The need for enforcement of SIM card registration in Africa has many implications, but the most important of all, is security. When a SIM card is registered, the identity of the card owner can easily be traced need case, the owner has illegally used the registered SIM card in an unlawful manner. Quite a number of mobile telephone executives, experts, authors and researchers⁴⁶ have vehemently argued that SIM card registration is counter-productive and as a result, lessen the overall number of subscribers that would, save the mandatory registration, have acquired mobile phones. This paper differs; it is not persuaded by whatever rationale advanced by protagonists of non-mandatory registration when the issue of security is weighed against a few interests, who could not use mobile phones because of mandatory registration. Put in another way, the enforcement of SIM card registration from a security point of view, goes a long way to protecting subscribers' of mobile phones from threats, harassment, intimidation, hate speech, and lately with smart phones having internet access, to some extent, subscribers are protected from pornographic materials, racism, glorification of violence, cyber terrorism, cyber laundering and SMS phishing, vishing and social engineering scams. It is necessary to quickly add that SIM card registration deter fraudulent practices where mobile money transactions and online sales and purchases are involved. Aside from the fact that SIM card registration protects subscribers' from mobile frauds, another point canvassed in support is that for record purposes, registration is necessary so as to enable the private, as well as public authorities to have access to statistical data on mobile phone subscribers for planning purposes, in

⁴⁶ See generally Nicola Jentzsch: Implications of mandatory registration of mobile phone users in Africa. DIW Berlin German Institute for economic research. Available at <http://www.diw.de/discussionpapers>

addition to the enablement of mobile operators, to have a predictable profile about users in their network.

12. Service disruptions and poor network coverage

Service disruptions in the context of mobile phones usage may be viewed as an unexpected break or termination in the process of communication. There are many variants of service disruptions but the most notable are drop calls, unsuccessful connection after several trials especially at times of urgencies, call diversion to other mobile lines, poor voice clarity during conversation between subscribers, external interferences during communication which prevent subscribers' not to adequately understand the message(s) being conveyed.

The other set of service disruptions in mobile phone communication are unsolicited text messages in the form of general information, social networking and advertisement of goods and services, scam promos, inability of subscribers to send and receive messages, incomplete messages etc. while the other category of service disruptions includes but not limited to the deduction of subscribers' airtime for services not used or ordered for, service or data renewal by telephone carriers without prior consent of subscribers and lack of compensation⁴⁷ for unauthorized deductions and failure to give notice and apology where necessary, to subscribers for technical faults and service equipment maintenance reasons.

Poor network coverage refers to when the communication service is either not available at all or is staggered; though sometimes observed in cities but it is a permanent feature that is experienced mostly in rural areas, where the telephone companies have no masts or other equipment, machinery and accessories that aids easy reception of signals which facilitate service availability and communication on mobile phones.

Majority of telephone carriers invest in urban areas leaving the rural areas unattended because of scattered or sparse number of the rural dwellers; this trend is rather unfortunate for, the urban population of most African metropolises depend solely on agricultural and animal

⁴⁷ In Oman all consumers have the right to be offered the same class and the same terms of services. Operators are required to provide the best possible service and meet the quality of service requirements set out in the license conditions. Should the customer's service be interrupted continuously for more than 24 hours for technical or maintenance reasons, the service provider must waive the monthly subscription charge. If the operator-supplied device becomes defective within the warranty period, operators are obliged to replace or repair it. See ITU: Regulation and consumer protection in a converging environment. March 2013, p.10

products emanating from rural areas, which constitute the majority of most African countries' population.

13. Data privacy and misuse of confidential information

Subscribers' data are personal information given to the telephone carriers in good faith, it contains amongst others, the names, date of birth, schools attended and employment history etc. The use of data in the custody of telephone operators in a way not desired by the subscribers' is a very serious issue bothering on breach of trust and abuse of confidentiality. Subscribers' data are more often than not, given to advertisers of goods and services who use same in the promotion of their businesses. The ideal situation should be that data in possession of telephony companies, must be kept private and confidential and that if need be that any person(s) or organization(s) requests for the data of the subscribers', it is incumbent on the telephone carrier to seek and obtain the consent of such subscribers', regrettably in Africa, this is not the norm. See the European recently decided case of *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others*.⁴⁸

14. Right of access to courts and ADR mechanisms

Open access to law is synonymous with the right of access to court by the citizens, which is an inalienable and a constitutionally guaranteed right of almost the truly sovereign nations in Africa. It is referred to as *locus standi*⁴⁹ in Latin which means the right to bring an action or challenge some decision or generally referred to as the "standing rule." This is a requisite that a litigant must have before he can properly ventilate his disagreement, by bringing up a case in court. The issue of standing to sue is so radical that it forms the basis of any consideration and goes into the roots of any matter before the courts. If a litigant lacks standing, then there is no need to try the case by the court, thus, a defect in standing is fatal, no matter the merits of the case. The issue of *locus standi* is relevant to telecommunications cases because more often than not, the telecoms institution is a government body that is publicly owned. Although the right of access to court is constitutionally endorsed, however, it is not automatic as the litigant must fulfill some criteria, such as, show cause that his legally protected right has been

⁴⁸ (2014) C-293/12 and C-594/12

⁴⁹ Oxford Dictionary of Law 5th Edition p. 296

or about to be infringed, further, there must be causation to the effect that the injury complained of, must be fairly traceable to the act of the defendant and finally, that the injury must be one capable of redress by the court. In the Commonwealth nations, “sufficient interest” test have been used in interpreting *locus standi* while in other jurisdictions, “personal right” test were applied; all said, the application of the standing rule has occasioned miscarriage of justice and truncated many meritorious cases. In effect, the standing rule greatly reduces the number of people eligible to bring action against the government; creates a reliance on the resources, financial and professional, of a few, or even a single person, to bring an action to court. The person with standing has to actually want to bring the action; an alleged breach has to have taken place, meaning that no actions can be brought *preventing* someone’s rights being infringed.⁵⁰ For an exposition of how the standing rule had thwarted meritorious cases in the past, see *Senator Adesanya v. President, Federal Republic of Nigeria and Anor*⁵¹ and *Chief Fawehinmi v. Col. Akilu and another: In Re Oduneye*⁵² It is interesting to note that the standing rule has been appreciably relaxed and today, quite a number variants of standing are now available and extended which includes but not limited to relatives of the aggrieved, namely ‘*surrogate standing*’; to an association where the aggrieved person is a member or is representing a number of claimants, namely ‘*associational standing or class action*’; standing based on a public right or interest namely ‘*public interest standing*’; its most relaxed form, ‘*actio popularis*’ where the public interest is based merely on the fact that the case concerns a constitutional issue. This paper holds the opinion that the relaxation of standing rule is rooted in judicial activism, a development which has reshaped and radically altered the hitherto harsh interpretation of the *locus standi* rule; see in particular, the decision in *Retrofit (PVT) Ltd v Posts and Telecommunications Corporation*⁵³ the facts of which were that the applicant requested the defendant to issue it with a license for the purpose of establishing a mobile cellular telephone service. The respondent refused to grant the license on the ground that the service was one over which it enjoyed a monopoly. The court *inter alia* held that it was axiomatic that for respondent to monopolize telecommunication services in Zimbabwe, and then to furnish a public switched telephone network of notoriously poor worth, available only to a small

⁵⁰ Institute for Human Rights and Development in Africa (IHRDA) Judicial Colloquium on Locus standi in Administrative Justice and Human Rights Enforcement 8th and 9th of October 2001

⁵¹ (1981) 2 NCLR

⁵² (1987) 4 NWLR

⁵³ 1996 (1) SA 847

percentage of the population, manifestly interfered with the constitutional right of every person to impart ideas and information by means of the telephone network. Persons in every walk of life were entitled to a telephone service which affords them a rapid and reliable means of communication. A public monopoly which failed to fulfill that essential role imposed a severe restraint upon the constitutionality protected freedom of expression.⁵⁴ At this juncture, it is necessary to remark that the stumbling block of access to law and ultimately, justice has been substantially whittled down by the serial metamorphosis of the standing rule to what it is today, especially among common law countries in African states; the hitherto construction and interpretation of the rule in a strict manner, has given way to humane perception subsumed in removing the stumbling blocks on the access to law, notwithstanding, access to law and of course, access to courts in African states is still minimal when compared with the developed worlds. With regards to Alternative Dispute Resolution mechanisms, this is almost non-existent in telecommunications service provision in Africa, even where they are; same is fraught with irregularities and ineffectiveness, in essence, this development can be said to have removed further, the open access to law and consequently, justice. Whereas, from the time immemorial, disputes have been known to arise amongst human beings and historically, mediation, conciliation and arbitration were known judicial processes used in revolving same.⁵⁵ By definition, an arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in judicial manner, by a person or persons other than a court of competent jurisdiction.⁵⁶ From the above definition, certain key features are discernable such as, the object of arbitration is to settle differences and hearing is conducted in a manner similar to that of a court. It is necessary to quickly earmark that only justiciable dispute can be referred to an arbitration, i.e. all matters in dispute about any real or personal property⁵⁷ and not dispute arising out of illegal transactions,⁵⁸ in addition, it should be noted that it is trite law that an arbitration is not authorized to settle a criminal charge as this is within the ambit of public law which is settled by a trial in a court of competent jurisdiction⁵⁹ Mediation, conciliation and arbitration alternatively referred to ADR are means

⁵⁴ Available at www.hrcr.org/safrica/expression/retrofit_telecomm.html

⁵⁵ E. Apata (1977): *The Nigerian Arbitration Law* in Focus p. 1

⁵⁶ Halsburys Law of England, 3rd Ed. Vol. 2 p. 2

⁵⁷ *Baker v. Townsend* (1817) 7 Taunt 422 cited in G. Ezejiofor (1977) *Laws of Arbitration*. p. 3

⁵⁸ G. Ezejiofor (1977) *Law of Arbitration in Nigeria* P. 3

⁵⁹ *The Queen v. Blakemore* (1850) 14 Q. B. 544

of settling justiciable issues; the three methods differ in that while an arbitrator is concerned with the imposition of a solution on the disputing parties, a mediator or conciliator does not himself hand down a decision in respect of the dispute. A mediator merely attempts to bring the parties together and encourage them to resolve the dispute themselves. A conciliator, on the other hand, assists the parties to reach a compromise decision by suggesting a solution to them, for consideration among the disputing parties. It is of course better for parties that a dispute does not arise between them in the first place. In the words of Prof Schmihoff, it is a truism to state that arbitration is better than litigation, while conciliation is better than arbitration and the prevention of legal dispute is better than conciliation.⁶⁰ At this juncture, it is pertinent to bring to the fore the advantages of ADR over litigation, the same reason accounts for why the business world, more often than not, prefer arbitration to litigation; arbitration can be quicker than litigation whereas a court action is inflexible for it involves conformity with laid down procedure which cannot be circumvented by the parties; arbitration is less expensive than litigation; parties to court proceedings usually retain counsels who normally charge high fees aside from mandatory filing fees and other incidental costs; arbitration process permits some dispute to be resolved solely on documents without hearing, this process saves time and money; disputing parties can represent themselves in arbitral proceedings, they can alternatively be represented by other persons of their choice, who may, or may not be a lawyer. In contrast, non-lawyers have no right of audience in the courts except they appear as witnesses, legal representation at the court is the exclusive preserve of lawyers only. Arbitration takes care of the convenience of the parties and their witnesses in fixing the date, time and place of hearing, this contrast with court proceedings, where what is paramount is the convenience of the court itself; arbitration allows for the selection of experts into disputes on matters in which they are proficient; arbitration is conciliatory in nature and contrasts with litigation which has the connotation of battle between litigants; the decision of an arbitral tribunal is final and binding on parties. Consequently, an arbitral award is not subject to appeal, and most parties prefer to have final decisions rather than face the prospect of an appellate litigation. Despite all the afore-stated merits of arbitration as a dispute resolution mechanism, it has its drawbacks which includes but not limited to the fact that the arbitral tribunals have limited powers to deal with matters which usually arise during its proceedings. As a private body, it has no coercive powers to compel the appearance of witnesses or production

⁶⁰ The Export Trade 7th Ed. p. 411

of documents before it. It can only achieve this through the assistance of the courts. Moreover, it is not possible to bring multi-party disputes before a one man tribunal or panel. Therefore, an arbitral tribunal, unlike a court of law, cannot, in general, order the consideration of disputes even when it appears desirable or necessary to do so in the interest of justice. The most important demerit of arbitration is that its award can be set aside by the court and when this happens, the parties are back to square one, this definitely prolongs the final resolution of the difference(s), huge costs are incurred as well as precious time which would have been usefully used in other endeavors, is wasted. Again, the award of an arbitral tribunal is not a judicial decision and so cannot be enforced as such. Therefore, if the guilty party fails to implement the award, the successful party has to resort to judicial process in order to compel compliance, and this may take a considerable amount of time and money.

15. Conclusions

This paper concludes by stating that the mobile telephone though has its origin in the developed worlds but the use of same today, has become part and parcel of the African way of life. It has many advantages, the chief being that, it is a principal driver of trade and commerce, hence the economy, and a major tool for social interaction; but the mobile phone has been identified as a potential cancer-causing agent while medical evidence is not disputed that mobile phone radiation, affect the electrical activity in the brain, besides the fact that the surface of mobile phones, is habitat for micro-organisms through which they permeate the human body. Mobile phones could cause irritation and distraction and subscribers are vulnerable to tracking.

This paper observes that in Europe and USA from where mobile phones originates, there are adequate laws and regulations protecting the subscribers, but in Africa where mobile phone subscribers is reputed to be the second largest in the world, there is dearth of laws and regulations, *ipso facto*, the hapless African subscribers' are at the mercy of the mobile phone manufacturers, their governments and foreign telephone carriers.

Elsewhere but in Africa, telecommunications especially the mobile phone market, is highly liberalized; unfortunately, this is not the case in the continent under discussion; governments' in Africa tenaciously monopolize telecommunications infrastructures and architectures with the result that the subscribers' have to pay exorbitant prices for mobile telephone services, compared with their counterparts all over the world;

the same reasoning accounts for why enabling laws and regulations are lacking because, the instrumentality of power and authority rests with the governments' at the expense of the subscribers.

At this juncture, it is pertinent to state that the myriad of challenges or problems experienced by subscribers in Africa is rooted in the lack of necessary legislations and policies, and if the continent is to conform with acceptable practices in other continents, an enabling legal environment must be fashioned out by persons in authority, and the critical areas that needs immediate attention of the proposed legislations and regulations includes, but not limited to frontally addressing through the law, health implications of mobile phones, the pricing and billing of mobile telephone services, unsolicited advertorials and unauthorized deductions of subscribers' credit units, the need for strict enforcement of SIM card registration for all subscribers' as well as taking immediate steps, to addressing the incessant and recurring issue of service disruptions, outages and poor coverage.

16. Recommendations

As elsewhere pointed out in the preceding sections regarding the lack of legislations and regulations in Africa with specific reference to mobile phones, the foremost recommendation which this paper proffer, is that each country in the Africa continent, should as a matter of urgency, put the necessary machinery into motion so as to have in place, laws and regulations specifically enacted on telephone services. This is the foundation stone on which other building blocks rest. It is a long settled principle of law that no man shall be punished for an offence for which is there is no law, this cardinal principle is expressed in Latin as "*Nullum crimen, nulla poena sine praevia lege poenali*" or shortened as "*nulla poena sine lege*." The literal translation of the expression is simply that no crime is deemed committed, and no punishment can be meted, without a violation of penal law as it existed at the time when the alleged offence occurred"

The point being made is that in most of the African countries, there are no laws and regulations which either criminalize or made tortious, several issues pertaining to penal offences committed by telephony companies; in other words, the subscribers' are left without the protection of law, thus, this paper is of the view that the enactment of legislations and regulations is the starting point that would alter the anomalous current state of affair.

With respect to the health implications of mobile phones especially for its cancer causing attribute, this paper strongly recommend

that governments' should roll out with immediate effect, the Mobile Telephone Import Guidelines that specifically make the following suggestions mandatory, for all mobile phones imported into their respective countries:

1. That all mobiles phones should carry warning signals of the inherent dangers of radiation similar to that inscribed on cigarette packs
2. That on "instructions on how to use" manuals in every phone pack, a special leaflet should incorporate the warning about health effects of mobile phones which includes but not limited to:
 - a) Do not keep mobile phone close to yourself because even when they are not in use, they emit radiation
 - b) Men should not keep mobile phones in their pocket trousers' near the groin, as radiation thereof accounts for 30% sperm count reduction⁶¹
 - c) Mobile phones should not be kept close to the body especially the vital organs of the human body such as the heart, liver etc.
 - d) Length of conversation with mobile phones should be limited because, the longer the conversation, the more prone to absorption of radiation by user.⁶²
 - e) Rather than prolonged conversations, users are advised to send messages, and even when texting, mobile phones should be kept as much as possible, away from the body.
 - f) Moving around while talking on mobile phones is not advisable because the phone keeps track of the user and more radiation is emitted as a result, thus, it is better to stay still when in conversation.
 - g) It is advisable to use hands-free devices and wireless headset or better still, put the mobile on speakerphone, all these increases the distance between the user and mobile phone which in effect, reduces radiation
 - h) It is not advisable to use the manufacturer's headset that accompany mobile phones because there is medical evidence, to the effect that the headset intensify the mobile radiation in

⁶¹ See <http://www.dailymail.co.uk/health/article-1392810/Mobile-phones-can-increase-cancer-risk-shock-finding-major-study.html?ito=feeds-newsxml>

⁶² Medical evidence suggests that a two minute call alters the brain's natural electrical activity for up to an hour afterward. See <http://www.dailymail.co.uk/health/article-1392810/Mobile-phones-can-increase-cancer-risk-shock-finding-major-study.html?ito=feeds-newsxml>.

the eardrum, thereby exacerbating the adverse effect of mobile radiation⁶³

- i) It is not advisable to make mobile telephone calls in metal enclosures such as in ATMs, elevators, metal cabin, kiosks, cars etc. because the enclosed metal makes the emitted radiation from the phone to reflect on the mobile phone user, as well as other persons, who may be in the metal enclosure.
- j) Use of mobile phones by children is discouraged because of their tender bodies which absorbs more radiation emissions than adults.⁶⁴ See Natural news⁶⁵ for a comprehensive account of protection against mobile phone emission.

For the subscribers to mitigate the effect of mobile radiation, it is recommended that mobile phones should be kept out of the bedroom and should be turned off when not in use, more importantly, it is better to purchase and use less sophisticated phones because, the more applications or complicated a mobile is, the more the radiation it emits. As a means of self-protection, subscribers are strongly advised to purchase mobile phone protective devices, these comes as adhesive small chips attached to mobile phones which reduces the effect of radiation from mobile phones; further, screen shields that are adhered to the mobile phone earpiece, are recommended as immediate steps to subscribers' who may or not be aware of the potential dangers of mobile phones radiation. This paper is of the view that the high cost of mobile phone services in Africa would be a thing of the past, if the market is liberalized; liberalization would go a long way to lessen the rules of market entry for more telephony operators, by so doing, competition would be encouraged and in turn, this development, would drive down the cost of service as well as improve service quality as competitors would strive to do outdo one another, in an attempt to remain afloat and more importantly, to generate profits.

Further, it is recommended that consumers, that is, the subscribers' representatives should be included in schemes that determine the cost of telephone services in conjunction with governments and telephony companies, in other words, the lack of consultation or inclusion of subscribers' in price determination to date, has engendered a situation

⁶³ See <http://www.edition.cnn.com/2011/health/05/31/who.cell.phones/index.html>

⁶⁴ See <http://www.edition.cnn.com/2011/health/05/31/who.cell.phones/index.html>

⁶⁵ See http://www.naturalnews.com/041765_cell_phones_EMF_radiation_protection.html. See also <http://www.emf-health.com/articles-10tips.htm> and <http://www.cancer.gov/cancertopics/factsheet/risk/cellphones>

where the interest of the subscribers' are not adequately taken into consideration.

It is a plain fact that telephone carriers incur a myriad of unofficial costs in the form of kickbacks and demands by people in authority to offer free services, naturally, these costs are built into prices of mobile telephone services; this paper recommends that the unofficial costs in whatever style or nature that drives up the cost services, should be eschewed and possibly be criminalized and made punishable, this development it is hoped, would enable telephony companies to charge costs that are less than what is obtainable today in Africa.

Aside from the recommendation of liberalization, this paper strongly proffer the removal of roadblocks to the mobile telephone market such as onerous licensing requirements, set-up costs, heavy taxations, deposits requirements and stringent rules as well as cumbersome procedural standards, all of which serve as a barrier to free mobile telephone market.

Finally, the last but not the least in the list of recommendations targeted at bringing down the cost of mobile telephone services, is that African governments' should without further delay, remove the astronomical and patiently unreasonable customs and excise duties levied on telecommunications equipment and accessories at the ports of entry

This paper is of the opinion that sending unsolicited messages in the form of advertisements, ringtones and general information without the consent of the subscribers' constitute crass abuse and incursion into subscribers' privacy, ditto is unauthorized deductions; Africa should take a cue from the provisions of Telephone Consumer Protection Act, Laws of USA and follow suit to address once and for all, this anomaly.

With regards to the enforcement of SIM card registration, this paper is in all fours with steps taken by African governments' to date; it is not persuaded by submissions that such regulations are not in Europe or elsewhere; Africa is not Europe and Europe cannot be Africa; in Europe, even without the mandatory SIM card registration, there exists data bank and sophisticated means of knowing who is who which enables abusers and misuse of mobile phones to be tracked, unlike in Africa where adequate data collection, storage and retrieval is almost a mirage. Having said that, it is hereby recommended that the rules regarding the provision of mandatory identification card should be relaxed, especially in rural areas where the level of literacy is very low, in effect, the use fingerprints and formal identification by traditional rulers, family or clan heads as well as local governments' officials is recommended. In addition to the foregoing, in order not to exclude rural dwellers from the advantages which are concomitant with mobile telephones, it is recommended that telephony operators should issue

identifications cards which said cards, for official purposes, are endorsed by local councils to authenticate them. For the recurring issue of service disruptions, this paper recommends that telephony companies should constantly upgrade their equipment and be more innovative, given the pace of rapid technological advancements in telecommunications infrastructures especially the mobile telephony. Where disruptions are imminent and beyond their control, subscribers' deserve to be adequately notified; it is also necessary for the subscribers' to be compensated for service failure and more importantly, it is pertinent that telephone carriers regularly hold Service Provider-Subscribers' Forum on a regular basis, so as to iron out contentious issues and remedy some of the problems encountered by the subscribers; this development would lessen the tension associated with service failures and create a more conducive partnership, between the stake holders as well as improve the level of quality service, in Africa mobile telephony. The Service Provider-Subscribers' Forum should also be used as a vehicle of creating awareness, education and information as to the rights, privileges and obligations of subscribers', this would actualize the dream of adequate protection for African mobile telephone subscribers' largely because, it is only when subscribers' are fully aware of their rights that they can request for same. Poor network coverage is particularly prevalent in rural areas because the telephone carriers' profit motive would not manifest thereof, it is recommended that governments' should make it mandatory for the telephony companies to invest in rural areas as part of their social responsibility; by and large, the urban population invariably depends on agricultural and dairy products from the rural areas, besides, making it compulsory for the telephone companies to invest in rural areas is akin to bringing development to the door step of the rural people. As elsewhere pointed out before now, data privacy should be enforced and misuse of data and information should be criminalized and made punishable by prison term; this would go a long way to acting as a deterrent to telephone operators, who might be inclined to indulge in such practices. The right of unfettered access to court is an index of a true democracy and rule of law; in an attempt to ensure that African mobile telephone subscribers' are well protected, the stumbling blocks along the road to justice should be freed by further relaxation of the standing rule, drastic reduction in filing fees and lessening of the procedural rules of the courts, also, accelerated hearing is highly recommended and a special section in the commercial courts are suggested to handle telecommunications cases, this is because we are in the information and communication age, all businesses whether profit or non-profit, depends on information and communication. Given the advantages hitherto discussed of ADR over litigation, this paper

recommends that ADR bodies should be set up to specifically handle subscribers' complaints relating to service failures, service disruptions and associated issues, such bodies should comprise of subscribers' representatives who would protect their interest in terms of ensuring that telephony companies, are actually made to render quality services and where necessary, to adequately compensate subscribers'. It is pertinent to point out that open access to law which is a fundamental right has been denied to the African mobile telephone subscribers because the applicable laws are not in place. For the avoidance of doubt and clarity of expression, this paper hereby reiterate that the starting point in mitigating the woes of subscribers' of mobile telephone in Africa is putting in place the necessary laws and regulations, this is the foundation stone on which the other building blocks of protecting the teeming population of African subscribers, would comfortably rest.

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