



FEDERAL MINISTRY OF POWER, WORKS AND HOUSING
OFFICE OF THE HONOURABLE MINISTER

Ref. No. FMP/OPS/06/I

October 31st 2017

His Excellency
Muhammadu Buhari, GCFR
President and Commander-In-Chief
Federal Republic of Nigeria
State House
Abuja



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[Signature]

2/11/2018

RE: CONCESSIONING OF TRANSMISSION COMPANY OF NIGERIA
(TCN) FIBRE OPTIC NETWORK TO ALHERI ENGINEERING
COMPANY LIMITED AND PHASE 3 TELECOM LIMITED

I write to respectfully draw Your Excellency's attention to ongoing efforts by the management of the Transmission Company of Nigeria (TCN) to enforce its termination of two failed Fiber Network Concession Agreements, recover its outstanding concession fees in the sum of US\$ 75,500,000.00 million from the two Concessionaires, and take position of and commercialize its critical fiber optic infrastructure, which are essential for the stability and optimization of the national grid.

2. TCN owns and operates the national grid, which consists of 8,336 km of 330kV transmission lines, 8,071 km of 132kV transmission lines, and 191 330/132/33kV substations that convey electricity nationwide from power stations where the electricity is produced, to distribution companies who receive it for onward delivery to households, businesses and industries across the country. TCN is currently 100% owned by the Federal Government of Nigeria.



3. TCN's transmission lines are built with fiber optic lines which can convey telecommunications signals nationwide. In 2006, National Electric Power Authority (NEPA) entered into two separate Concession Agreements with Phase 3 Telecom Limited and Alheri Engineering Company Limited ("Concessionaires"). The Power Holding Company of Nigeria (PHCN) inherited the Concession Agreements when it was created pursuant to the Electric Power Sector Reform Act of 2005. TCN in turn inherited the Concession Agreements when it was carved out of PHCN pursuant to the unbundling of PHCN.

4. The Concession Agreement provided for the Concessionaires to take over the operation of TCN's fiber optic network (which is part of TCN's electricity transmission lines); build, operate and transfer enhancements of the fiber optic network, over a period of fifteen years; and use the assets to provide telecommunications services to third parties.

5. The Concessionaires were to pay a concession fee of \$40 million each for the use of TCN's assets to service their customers. The concession fee was not just for the right-of-way upon which the transmission lines are constructed, but also for the use of the fiber optic network, which was built by TCN along with the transmission lines. The agreements also provided for shelter fees of 2.5% royalty on gross revenue.

6. Since 2006, Phase 3 and Alheri have paid only \$2 Million and \$3.5 Million concession fees respectively. The Concessionaires have also failed to build most of the enhancements their Concession Agreements required them to build, operate and transfer.



7. All effort by TCN management to ensure the Concessionaires pay their outstanding debts failed, notwithstanding the significant revenue they collect from the customers they service using TCN assets. Their customers include all the Mobile Network Operators in Nigeria, who rely on TCN's fiber optic network, through the Concessionaires, to deliver services to their 139 million subscriber lines nationwide.

8. Effective commercialization of TCN's fiber network would transform TCN's current poor financial position by adding an income stream that does not depend on the current poor payment performance of the distribution companies. Such revenue could have been used to supplement TCN's current unsustainable sources of capital from FGN budget and multilateral lenders to more effectively finance its operations, grid rehabilitation and expansion.

9. In peer transmission networks in India, Brazil, and South Africa, the grid operators derive a significant part of their revenue (in some cases higher than revenue derived from electricity transmission) from the commercialization of their fiber optic network. However, in Nigeria TCN's ability to draw on this important income stream was frustrated by the current failed Concession Agreements. The entire revenue stream has been unfairly appropriated by the Concessionaires without commensurate benefit to TCN as provided for in the Concession Agreements

10. Consequent to the default in payment by the two Concessionaires, TCN management terminated the two contracts. This unavoidable step was in line with Article 25.1.1 (g) of the Concession Agreement. It was taken after several meetings with the Concessionaires failed to resolve the



default. TCN had previously sought the intervention of Infrastructure Concession Regulatory Commission (ICRC) and Nigerian Communication Commission (NCC) on the matter but all to no avail. Phase 3 and Alheri still owe TCN a concession fees of \$36.5 Million and \$38 Million respectively.

11. Following the termination, both Concessionaires were given the opportunity to propose remedies through arbitration. But after initial engagement they failed to make any concrete proposals. Their latest effort to frustrate TCN's legitimate right to recover its critical assets and its outstanding concession fees, has been to institute a frivolous court action against TCN and Ministry of Power, Works and Housing, challenging the termination, in clear violation of recent judicial directives precluding litigation in agreements with arbitration clauses.

12. The Concessionaires have also breached several other clauses of the agreements:

- a) Misrepresentation by the Concessionaires to NCC and their customers that they owned the fiber Optic network, which enabled them to enter into Indefeasible Right of Use (IRU) with some Mobile Network Operators without the consent and knowledge of TCN. The IRU hands over TCN property basically as is, and in TCN management's view amounts to an illegal transfer of Government property;
- b) Non-payment for eleven years, for the use of electricity to run the Concessionaires facilities housed in TCN's substation. The Concessionaires take power from key essential services in the various TCN substations without payment. This has obviously contributed to TCN's transmission and revenue losses over the period; and



- c) Non-adherence to the use of 50% of the network by the Concessionaires as clearly stipulated in the agreements. The Concessionaires had in many places in the network taken more than 80%, which has significantly constrained TCN from optimizing SCADA/EMS/Telecomms, which are critical in the control, and monitoring of transmission network.
13. The Concession Agreements were entered into under circumstances of conflicts of interest. This may explain previous TCN management's failure to protect and enforce the rights of TCN under the Concession Agreements.
14. It has been discovered that:
- a) Phase 3 is owned and managed by Mr. Stanley Jegede. He is married to the daughter of Cornelius Adebayo who was Minister of Communications at the time the company obtained the long distance license (NLFL). This is a conflict of interest;
 - b) Engr. Joseph Makoju, who signed the Concession Agreement on behalf of NEPA (TCN) as the then Managing Director, is now an Executive in Dangote Group, owners of Alheri, and has signed letters on behalf of Alheri related to the Concession Agreement. This is also conflict of interest; and
 - c) Infrastructure Concession Regulatory Commission (ICRC) mediated between TCN and the Concessionaires over non-payment. The former DG, Aminu Diko was, before his appointment at ICRC, an employee of the Dangote Group for several years. This clear case of conflict of interest casts doubts on the integrity of the mediation report.
15. Additionally, there are reports reaching TCN that Phase 3 is in the process of acquiring Alheri. This is evidenced by the fact that Alheri staff are managed and paid by Phase3, and the two companies have elected to be represented by the same counsel in the case they recently filed against TCN and Ministry of Power Works and Housing. TCN has not been formally



notified of any change of ownership of the Concessionaire, as is required under its Concession Agreement.

16. TCN believes the non-disclosure of the above facts constitutes a fundamental breach of the terms of the Concession Agreements and provides additional grounds for termination, beyond the egregious and brazen default in payment.

CONCLUSION

17. Due to the manifest breach of the Fiber Network Concession Agreements by the Concessionaires, and the existence of conflicts of interest as shown in the foregoing paragraphs, I concur with the position of TCN management that the agreements were voidable and that they stand terminated.

18. I humbly and respectfully bring this situation to Your Excellency's attention and seek Your Excellency's directive to relevant Government agencies (DSS, EFCC, Ministry of Justice, Ministry of Communications, NCC, ICRC) to support TCN as it takes deliberate and reasonable steps to recover its outstanding concession fees, and to fully recover these critical assets of Government, without avoidable disruption to the third parties who rely on TCN's fiber optic network. These steps are essential for the stability, optimization and continued expansion of the national grid.

19. Your Excellency, please accept Sir, the renewed assurances of my highest esteem and regards.

Babatunde Raji Fashola (SAN)

Honourable Minister

Cc: ✓ Interim Managing Director
Transmission Company of Nigeria