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NIGERIAN COMMUNICATIONS ACT, 2003
LAWFUL INTERCEPTION OF COMMUNICATIONS
REGULATIONS, 2019



ARRANGEMENT OF REGULATIONS

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S. I. No. 14 of 2019

NIGERIAN COMMUNICATIONS ACT, 2003
LAWFUL INTERCEPTION OF COMMUNICATIONS
REGULATIONS, 2019

[11th Day of January, 2019]

Commence-
ment.

In exercise of the powers conferred by section 70 of the Nigerian Communications Act, 2003 and all other powers enabling it in that regard, the Nigerian Communications Commission hereby makes the following Regulations—

PART I—SCOPE, OBJECTIVES AND APPLICATION
OF THESE REGULATIONS

1. These Regulations seek to provide legal and regulatory framework for lawful interception of Communications, collection and disclosure of intercepted Communications in Nigeria.

Scope of
these
Regulations.

2. The Regulations shall—

Objectives
of these
Regulations.

(a) provide legal and regulatory framework for the lawful interception of communications in Nigeria and give effect to the provisions of sections 146 and 147 of the Act ;

(b) specify the nature and types of communications that can be intercepted ;

(c) prescribe penalties for non-compliance with the Act and these Regulations ;

(d) provide a notification procedure to the Commission of all warrants issued, amended, renewed or cancelled under these Regulations ; and

(e) ensure that the privacy of subscribers' communication as provided for in the Constitution of the Federal Republic of Nigeria is preserved.

3. These Regulations shall be applicable in the Federal Republic of Nigeria.

Application
of these
Regulations

PART II—INTERCEPTION OF COMMUNICATIONS

4. It shall be lawful for any Authorised Agency listed in regulation 12(1) of these Regulations to intercept any Communication or pursuant to any legislation in force, where—

Power to
Lawfully
Intercept
Communica-
tions.

(a) the interception relates to the use of a Communications service provided by a Licensee to persons in Nigeria ; or

(b) the interception relates to the use of a Communications Service provided by a Licensee to a person outside Nigeria,

provided that the Licensee shall not be liable in any civil or criminal proceedings for damages, including punitive damages, loss, cost or expenditure suffered or

to be suffered, either directly or indirectly, for any act or omission done in good faith in the performance of a duty imposed under paragraphs (a) or (b) of this regulation.

Unlawful
Interception
of
Communica-
tions.

5. Except as provided in these Regulations or any other legislations in force, it shall be an offence to intercept any Communication in Nigeria.

Storage of
Intercepted
Communica-
tions.

6.—(1) The Authorised Agency shall store any intercepted Communication retrieved from a licensee for the period of their investigation and shall be destroyed upon completion of such investigation.

(2) Once a piece of intercepted communication is admitted in evidence by a court of competent jurisdiction, all other copies of that intercepted Communication shall be destroyed by the Authorised Agency in whose custody such information resides.

(3) Intercepted Communication shall be kept confidentially by the Authorised Agency and only its content shall be shared for the purpose of investigation and prosecution in criminal proceedings in accordance with these Regulations or may be archived for three years and thereafter be destroyed.

(4) Any non-relevant information obtained by the Authorised Agency in the course of intercepting any communication, shall be destroyed upon extraction of the relevant portion of such communication.

Interception
with a
Warrant.

7.—(1) Subject to these Regulations, a Licensee shall act upon a warrant issued by a Judge authorising or requiring the Licensee to whom it is addressed to comply with the provisions of the warrant, to secure any one or more of the following—

(a) intercept any communication as described in the warrant ;

(b) disclose, in such a manner as may be described in the warrant of such intercepted communication ; or

(c) assist foreign authorities in accordance with an international mutual assistance agreement ;

provided that there is no other lawful means of investigating the matter for which the warrant is required.

(2) Except as provided in these Regulations, a Judge shall not issue a warrant unless—

(a) the warrant is necessary in compliance with paragraph (3) of this regulation ; and

(b) such information can only be obtained by lawfully intercepting such Communication as specified in the warrant.

(3) A warrant is required for intercepting any communication, where it falls within any of the following grounds—

- (a) it is in the interest of the national security as may be directed by the persons listed in regulation 12(1) (a) or (b) of these Regulations ;
- (b) for the purpose of preventing or investigating a crime ;
- (c) for the purpose of protecting and safeguarding the economic well-being of Nigerians ;
- (d) in the interest of public emergency or safety ; or
- (e) giving effect to any international mutual assistance agreements, which Nigeria is a party.

8. The interception of communication of any person shall be lawful where—

Interception without a Warrant.

- (a) one of the parties to the communication has consented to the interception, provided that an incontrovertible proof of such consent is available ;
- (b) it is done by a person who is a party to the communication, and has sufficient reason to believe that there is a threat to human life and safety ; and
- (c) in the ordinary course of business, it is required to record or monitor such communication.

PART III—PROTECTED OR ENCRYPTED COMMUNICATION

9.—(1) Where the communication intercepted is an encrypted or protected communication within the possession of the Licensee, the Licensee shall on request, provide the relevant Authorised Agency with the key, code or access to the protected or encrypted communication.

Power to request the disclosure of Protected or Encrypted Communications.

(2) Where the key or code is in the possession of another person, the Authorised Agency shall request the custodian of the key or code to disclose it to the relevant Authorised Agency.

(3) The Authorised Agency may seek assistance from a foreign authority in accordance with any international mutual assistance agreement where the key or code is in the possession of any person outside its jurisdiction.

(4) This provision shall only be satisfied where the Licensee or person affected by paragraph (2) of this regulation has—

- (a) provided or disclosed the key, code or access to the Protected or encrypted communication to the Authorised Agency ; or
- (b) made a disclosure of any protected or encrypted communication in an intelligible form.

PART IV—INTERCEPTION CAPABILITIES

Duties of Licensees or persons providing assistance.

10.—(1) Every Licensee shall take necessary steps as the Commission may by way of notice direct from time to time, to install interception capabilities that allows or permits interception of communications.

(2) The specifications issued by the Commission under paragraph (1) of this regulation, may include the following—

(a) the technical requirements of any equipment to be installed by the Licensee ;

(b) standards stipulated by the Act, these Regulations or any guidelines as may be issued by the Commission from time to time ; and

(c) safeguards to protect information during transmission or when archived.

(3) The specification and technical requirement of the equipment to be installed by Licensees for the purpose of intercepting communications shall be as provided for by the Commission from time to time.

(4) It shall be the duty of every Licensee to whom a notice is given under paragraph (1) of this regulation to comply with the notice and such duty shall be enforceable in the court of law by civil proceedings initiated by the Commission, seeking for an injunction or for specific performance or any other remedy provided for under the Act, these Regulations or the Enforcement Regulations.

(5) Every Licensee shall comply with the provisions of these Regulations and ensure that its system updates and upgrades do not adversely impact on the implementation of these Regulations, provided that the requirement for compliance will not be demanded in circumstances where a force majeure event has occurred.

Prohibition of Certain Communications Services.

11.—(1) Notwithstanding any other law in force, no Licensee shall provide any Communications Services which does not have the capacity to be monitored and intercepted.

(2) Every Licensee shall within such period as may be specified by the Commission, acquire all necessary facilities and devices to enable the monitoring of communications under these Regulations realisable.

(3) The investment, technical, maintenance and operating costs to enable the Licensee give effect to the provisions of these Regulations shall be borne by the Licensee.

PART V—ADMINISTRATION OF LAWFUL INTERCEPTION
OF COMMUNICATION

12.—(1) Pursuant to the provisions of section 148 (1) (c) of the Act, an application for a warrant under these Regulations shall be made to the Judge by any of the following Agencies—

Application
for a
Warrant.

(a) the Office of the National Security Adviser represented by the National Security Adviser or his designee, who shall not be below the equivalent of an Assistant Commissioner of Police ; and

(b) the State Security Services represented by the Director or his designee, who shall not be below the equivalent of an Assistant Commissioner of Police.

(2) Where a Warrant is required pursuant to any international mutual assistance agreement of which Nigeria is a party, the application for a warrant shall be made through the Attorney-General of the Federation, provided that the applicant shows evidence of authority from the relevant country or jurisdiction.

(3) An application for a warrant shall—

(a) be in writing ;

(b) contain full particulars of all the facts and circumstances alleged by the Authorised Agency in support of the application for the issuance of a Warrant ;

(c) come under any of the grounds mentioned in regulation 7(3) of these Regulations that is relevant for the issuance of a warrant ;

(d) state any other relevant detail as may be necessary for the consideration of the issuance of the warrant ; and

(e) be supported by an affidavit on oath stating that interception of such communication is the only means of obtaining the relevant information for which the Warrant is required.

(4) Notwithstanding the provisions of these Regulations, an Authorised Agency may initiate interception of Communications without a warrant in the event of—

(a) immediate danger of death or serious injury to any person ;

(b) activities that threaten the national security ; or

(c) activities having characteristics of organised crime ;

provided that the Authorised Agency shall apply for a Warrant to the Judge within 48 hours after the interception has occurred or began to occur before issuance of a Warrant for such interception and where the application is not made, or denied within 48 hours, the interception shall terminate immediately and further interception shall be treated as unlawful.

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Issuance and
content of a
Warrant.

13.—(1) The Warrant shall contain—

- (a) the identity, if known, of the subject of interception ;
- (b) the grounds upon which the application is made ;
- (c) a detailed description of the type of Communication sought to be intercepted ;
- (d) the identity of the Authorised Agency making the application to intercept the communication ;
- (e) the duration of the warrant ;
- (f) the name and signature of the authorising Judge ; and
- (g) date of issuance of the Warrant.

(2) The warrant may authorise the Authorised Agency to do all or any of the following—

(a) to enter into any premises, board, any vessel, vehicle or aircraft for the purpose of enforcing the warrant or to install, maintain or remove a monitoring device or to intercept or take possession of any Communication or to install, maintain or remove a device by means of which any Communication can be intercepted for the purpose of these Regulations, provided that the monitoring device shall be the brand approved by the Commission and shall not negatively affect the provision of communications service of the Licensee ;

(b) to take possession of and examine any communication, or as the case may be, listen to or make recording of any communication to which the Warrant relates ;

(c) to return any communication that was taken into possession in terms of paragraph (b) or cause it to be returned to the Licensee or the interception subject where such communication or recording of communication is without prejudice to the maintenance of law and order or other compelling national interest ; and

(d) to request the assistance of any person for the purpose of enforcing the Warrant ;

provided that where a Judge rejects an application for a warrant for interception which has already taken place, any information obtained before the refusal, shall be invalid and not admissible for the purpose of prosecuting any person affected by it.

(3) A Judge may only issue a warrant under the following conditions, where the—

(a) facts alleged in the application are reasonable and persuasive enough to believe that any of the matters mentioned in regulation 7(3) of these Regulations has occurred, is occurring or about to occur ; or

(b) interception of such communication is the only means of obtaining the information required under the warrant.

(4) Any application for the issuance of a warrant shall be heard and issued without the requirement of placing the applicant on notice or any party mentioned in the application for the interception of such communication.

14.—(1) A warrant shall be granted for an initial period of 3 months or such other lesser period as the Judge may determine based on the circumstances of the application and shall cease to have effect at the expiration of the period stipulated in it unless it is renewed.

Duration,
Amendment,
Cancellation
and Renewal
of Warrant.

(2) A warrant may be amended by a Judge at any stage during the validity of such warrant upon an application made by an Authorised Agency to the Judge, stating the reasons for the amendment.

(3) A warrant may be renewed by a Judge at any time before the expiration of the period for which it was issued upon an application made by any of the Authorised Agencies for renewal for a maximum period of 3 months or such lesser period as the Judge may by order specify.

(4) An application for cancellation of a warrant may be made by any of the Authorised Agencies to the Judge and with a notice to the Licensee that the warrant earlier granted is no longer necessary on grounds falling under regulation 7(3) of these Regulations and the Licensee shall notify the Commission of such cancellation within 48 hours of the receipt of notice of cancellation from the Authorised Agencies.

(5) A warrant may only be varied, amended, extended or cancelled by the same Judge that issued it, except in circumstances where it is impossible to do so by reason of death, incapacitation, transfer, retirement, elevation to a higher court or unavailability of the Judge.

15.—(1) For the purposes of execution, a warrant issued under these Regulations shall be executed by either the—

Execution of
the Warrant.

(a) Office of the National Security Adviser ;

(b) State Security Services ; or

(c) Nigeria Police Force.

(2) The execution of such warrant may where required by any of the parties stated in paragraph (1) of this regulation, take place in the presence of the Licensee or person who manages the facilities of such Licensee.

(3) Licensees shall on a monthly basis or at such regular intervals as the Commission may from time to time specify, notify the Commission in writing of any such warrant executed on it or on any person who manages the facilities of such licensee.

(3) For the purpose of these Regulations, provision of assistance and giving effect to warrant shall include, the disclosure of intercepted material obtained or provision of related communication data to the Authorised Agencies or its designees.

Penalties for
Contravention.

16.—(1) Any person, Licensee or its officers that fail to comply with the provisions of these Regulations shall be liable to a fine of N5,000,000.00 and where such an offence is allowed to continue, such person, Licensee or any of its officers shall be liable to a daily default penalty of ₦500,000.00.

(2) The Commission may revoke the Licence of a Licensee in accordance with the provisions of section 45 of the Act for failure to comply with these Regulations.

(3) The Commission may institute an action for non-compliance by way of an injunction or a specific performance or any order of the court as a means enforcing compliance with these Regulations.

PART VI—MISCELLANEOUS

Use of
information
obtained
under these
Regulations.

17. The use of any information obtained pursuant to these Regulations as evidence in any prosecution, is subject to the consent of the presiding Judge in an application that such evidence be tendered by the party seeking to rely on it.

Secrecy.

18.—(1) No Authorised Agency or any other person who is or was involved in the performance of any function under these Regulations, shall disclose any information which the person obtained in the performance of such function except—

(a) to any other person who of necessity requires it in the performance of his or her function under these Regulations or the Act ;

(b) if the person, of necessity, provides the information in the performance of his functions under these Regulations or the Act ;

(c) such information is required under any law or as evidence in any court of law ; or

(d) to any competent authority which requires it for any criminal investigation or prosecution.

(2) No employee of a Licensee shall disclose any information obtained in the course of its duty that is connected with the performance of any function under these Regulations, whether the employee is involved in the performance of that function or not, except for the purposes mentioned in paragraph (1) (a) to (d) of this regulation.

(3) Access to any information obtained during the interception of communications shall only be given to officers of the Relevant Authorised

Agency not below the rank of an Assistant Commissioner of Police or its equivalent rank, with the consent of either the National Security Adviser, the State Security Service or the Nigeria Police Force.

19.—(1) All Authorised Agencies shall keep logbooks of all interceptions carried out by them. Logbook.

(2) The contents of the logbooks shall be kept confidential and shall not be disclosed to anyone unless to persons authorised through a court order.

(3) Every Authorised Agency shall prepare a report on all concluded interception cases carried out annually.

(4) The report in paragraph (3) of this regulation shall be presented to the Attorney-General of the Federation not later than the first quarter of the following year and shall contain basic details of—

(a) the number of warrants obtained, renewed or cancelled for the preceding year ;

(b) the number of interceptions made pursuant to the warrants granted ;

(c) the warrants that could not be executed and the reason for non-execution ;

(d) general assessment of the importance of interception of Communication for investigation, detection, prevention and prosecution of crimes in Nigeria ; and

(e) any complaint received from the Licensees and the interception subject with respect to interception of Communications.

20.—(1) Any person or Licensee who is aggrieved by any interception activity shall in writing notify the Commission and may make a formal application to the Federal High Court for a judicial review. Complaints.

(2) Every decision or direction on interception of Communications shall subsist and remain in force until it is set aside by a Court of competent jurisdiction in a final decision of the court.

21. The Commission may from time to time review and modify these Regulations pursuant to its powers under section 72 of the Act, and may request and receive advice from external advisory groups. Amendments of Regulations.

22. The Commission may, from time to time, issue additional rules, directions or guidelines on any aspect of these Regulations, either of general application or specific to a proceeding. Power of the Commission to issue further directions.

Interpretation.

23. Terms and expressions used in these Regulations shall have the same meaning as in the Act. In addition, unless the context otherwise requires—

“Act” means, the Nigerian Communications Act, 2003 ;

“Apparatus” includes any equipment, machinery or device and any wire or cable ;

“Archived Communications” means Communication data stored as a back-up in the Communication system of a Licensee ;

“Authorised Agency” means the Office of the National Security Adviser, the State Security Service and the Nigeria Police Force ;

“Civil Proceedings” means any proceedings in or before any court or tribunal that are not criminal proceedings ;

“Communication” shall be as defined under the Act and includes wireless telegraphy as defined under the Wireless Telegraphy Act, 2004 ;

“Communications Data” means any of the following—

(a) any Traffic data comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of any Communications System by means of which it is being or may be transmitted ;

(b) any information which includes none of the contents of a Communication (apart from any information falling within paragraph (a) and is about the use made by any person :

(i) of any Communications Service ; or

(ii) in connection with the provision to or use by any person of any Communications Service, of any part of a communication system ;

(c) any information not falling within paragraph (a) or (b) that is held or obtained, in relation to persons to whom he provides the service, by a Licensee.

“Communications Service” means a service provided by means of a Communications System to any person for the transmission of Communication from, to or within Nigeria without change in the content or form ;

“Communications System” means any system (including the apparatus comprised in it) which exists in Nigeria for the purpose of facilitating any transmission, emission, or reception of signs, signals, writing, images, sounds or intelligence by means involving the use of wire, radio, visual or electro-magnetic energy; “Content” shall be as defined under the Act ;

“Licensee” means any person, body or organization which provides communications services in accordance with the Licence issued to such a person by the Commission ;

“*Enactment*” includes an enactment, regulations, guidelines, codes, rules, order or notices passed or issued before or after the issuance of these Regulations ;

“*Enforcement Regulations*” means the Nigerian Communications (Enforcement Processes, etc.) Regulations 2005, as may be amended from time to time ;

“*Guidelines*” means the Commission’s issued guidelines and such other guidelines that may be issued by the Commission from time to time ;

“*Interception Subject*”, in relation to a Warrant, means the person whose Communications information is sought by the interception to which the Warrant relates ;

“*Interception*” and cognate expressions shall be construed (so far as it is applicable) in accordance with these Regulations and shall include an interception of archived Communication or Communication in the course of its transmission, by means of a Communications System if, and only if, another person—

(a) monitor by means of aural or other acquisition of the contents of any Communication ;

(b) modifies or interferes with the system, or its operation ;

(c) monitor’s transmission or archived data made by means of a monitoring device ;

(d) retrieves Communications Data on a Communications System ; or

(e) monitors transmission or stored data made by wireless telegraphy to or from apparatus comprised in the system, as to make some or all of the contents of the Communication available, while being transmitted, to a person other than the sender or intended recipient of the Communication.

“*International Mutual Assistance Agreement*” means an international agreement designated for the purpose of regulation 12(2) of these Regulations ;

“*Judge*” means a Judge of the Federal High Court ;

“*Monitor*” includes the recording of communications by means of a monitoring device ;

“*Monitoring Device*” means any instrument, device or equipment which is used or can be used, whether by itself or in combination with any other instrument, device or equipment, to listen to or record any communication ;

“*Related Communication Data*” means any communication connected to the intercepted material which is necessary to aid an investigation ;

“*Authorised Agencies*” means the Nigeria Police Force, National Intelligence Agency, State Security Services, Economic and Financial Crimes Commission, National Drug Law Enforcement Agency and any other organization or agency as the Commission may from time to time specify and publish ;

“*Traffic Data*”, in relation to any Communication, means—

(a) any data identifying, or purporting to identify, any person, Apparatus, equipment, device or location to or from which the Communication is or may be transmitted,

(b) any data identifying or selecting, or purporting to identify or select, Apparatus, equipment or device through which, or by means of which, the Communication is or may be transmitted,

(c) any data comprising signals for the actuation of Apparatus, equipment or device used for the purposes of a Communication system for effecting (in whole or in part) the transmission of any Communication, and

(d) any data identifying the data or other data as data comprised in or attached to a particular Communication,

but that expression includes data identifying a computer file or computer program access to which is obtained, or which is run, by means of the communication to the extent only that the file or program is identified by reference to the Apparatus, equipment or device in which it is stored ; and

“*Warrant*” means a warrant issued or granted by a Judge for the Interception of Communications.

Citation.

24. These Regulations may be cited as the Lawful Interception of Communications Regulations, 2018.

MADE at Abuja this 11th day of January, 2019.

PROF. UMAR GARBA DANBATTI, FREAS, FA Eng, FNSE
Executive Vice Chairman
Nigerian Communications Commission

EXPLANATORY MEMORANDUM

*(This note does not form part of the above Regulations
but is intended to explain its purport)*

These provisions provide a legal and regulatory framework for the lawful interception of Communications in Nigeria.