



# ICLG

The International Comparative Legal Guide to:

## **Telecoms, Media & Internet Laws & Regulations 2018**

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A practical cross-border insight into telecoms, media and internet laws and regulations

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## EDITORIAL

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Welcome to the eleventh edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Three general chapters. These chapters provide readers with an overview of key issues affecting telecoms, media and internet laws and regulations, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 29 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Arnold & Porter Kaye Scholer LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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# Nigeria

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## 1 Overview

- 1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.**

The TMT industry in Nigeria has grown over the past two decades but the telecommunications sector has made the most impact. Prior to 1992, the telecommunications sector of Nigeria consisted of a monopoly provider – Nigerian Telecommunications Ltd. (“NITEL”), which was previously owned by the Government. NITEL was the primary provider of both fixed wire and mobile cellular services, and was regulated by the Ministry of Communications. When the government headed by General Olusegun Obasanjo came into power in 1999, it announced that a new National Policy on Telecommunications was to be formulated. The Ministry of Communications published the policy in May 2000 to lay the basis for a new telecommunications sector regulatory regime. Particularly, the policy sought to strengthen the existing regime by increasing certainty and transparency, removing arbitrary restrictions, reducing the largely unfettered discretion of the Nigerian Communications Commission (the “NCC” – Nigeria’s telecoms sector regulator), rationalising decision-making and providing a framework within which it would be possible to foster rapid growth in the telecommunications sector and enable substantial improvement in access to telecommunications services. The policy formed the basis for two separate legislative initiatives that led to the promulgation of the Nigerian Communications Act, chapter N97, Laws of the Federation of Nigeria 2004 (the “Communications Act”), which became the root for the liberalisation of the sector, major reforms and licensing.

From the previous era of very little activity/presence, the telecommunications sector has grown into a major industry. While the sector contributed 0.62% to Nigeria’s GDP in 2001, the contribution increased to 8.68% in 2014 and data published by the National Bureau of Statistics indicates that despite the serious impact of the recent recession in the Nigerian economy between 2015 and 2017, the sector’s contribution in Q1 of 2017 rose further to 9.1%. Since 2001, the subscriber numbers have grown upwards leading to significant increase in tele-density. While there were 41,975,275 active lines in 2007, the number of active lines recorded by the NCC as at July 2017 was 139,144,705 out of an estimated population of over 183 million people. Data from the NCC also shows an increase in the number of internet subscribers from 67,459,892 as of May 2014 to 91,419,943 subscribers as of July

2017. The major telecommunications operators are MTN Nigeria, Globacom, Airtel and 9mobile (previously Etisalat Nigeria).

The media industry on the other hand has made steady progress, even if not at the same pace as the telecoms industry. In a recently published PwC report, however, it was reported that the Nigerian entertainment and media market revenue, which rose to \$3.6 billion in 2016 is likely to increase at a compound annual growth rate of 12.2% to \$6.4 billion in 2021. In addition to the government-owned Nigerian Television Authority, the other operators include Channels, TV Continental, Multichoice Nigeria, Daar Communications Plc (operators of African Independent Television) and the Silverbird Group.

- 1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.**

The “Communications Act” is the principal legislation that governs telecommunications services (including internet services), while the National Broadcasting Commission Act, chapter N11, LFN 2004 (the “NBC Act”) regulates the broadcasting sector.

- 1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.**

The broadcasting sector is regulated by the National Broadcasting Commission (“NBC”), which is supervised by the Federal Ministry of Information. The NCC is supervised by the Federal Ministry of Communication Technology.

- 1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?**

There are no restrictions on foreign ownership or investment in the Nigerian telecoms sector. Anyone who wishes to provide a telecommunications service in Nigeria must do so through a body corporate and must be licensed by the NCC. A foreign investor can own the entire equity of the local licensee subject to meeting the requirement that a Nigerian company must have a minimum of two shareholders. In addition to obtaining telecommunications licences for each service to be provided, a licensee that has foreign shareholders is also required to obtain foreign investment authorisations required to do business in Nigeria.

With regard to the broadcasting sector, neither the NBC Act nor the National Broadcasting Code (5<sup>th</sup> edition) 2012 (the “Code”) published by the NBC, specify a minimum threshold for foreign ownership of shares in a broadcasting licensee. The Code, however, provides that to be able to satisfy the main objective of the broadcasting regulation – which is that broadcasting should play a pivotal role in the social, cultural, technological, economic and political lives of the people of Nigeria – the NBC must ensure that any broadcasting entity in Nigeria is substantially owned and operated by Nigerians. The Code requires an applicant company to demonstrate that it is not representing any foreign interests and the NBC is given the sole and absolute discretion to determine whether or not to recommend the grant of a new licence to any applicant by the President or to approve the acquisition of the equity of a broadcasting licensee by a foreigner.

## 2 Telecoms

### General

#### 2.1 Is your jurisdiction a member of the World Trade Organisation? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?

Nigeria became a member of the World Trade Organisation (“WTO”) on 1<sup>st</sup> January 1995, but has not submitted commitments in respect of the WTO Basic Telecommunications Agreement.

#### 2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

The Communications Act requires any person who wishes to operate a communications system/facility or provide a communications service in Nigeria to obtain a licence from the NCC or get an exemption under regulations made by the NCC. A separate licence may be required for each undertaking. Service providers that require radio frequency must apply for the applicable spectrum licence. Fixed, mobile and satellite services are licensed and regulated by the NCC pursuant to the provisions of the Communications Act, the Wireless Telegraphy Act, Chapter W5, LFN 2004 (“WTA”), regulations based on these Acts and the conditions of the licences granted by the NCC.

#### 2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government?

Nigeria does not currently have any dedicated competition legislation. However, the Federal Competition and Consumer Protection Bill that seeks to create a level playing field for all businesses across various sectors has been passed by the National Assembly and is expected to be signed into law.

There are, however, some sector-specific regulations on competition. For instance, the Securities and Exchange Commission is required, in determining whether to grant approval for a merger/acquisition, to consider whether such a merger/acquisition could substantially prevent or lessen competition.

Competition and anti-competitive practices in the telecommunications and broadcasting sectors are regulated by the

Communications Act and the NBC Act and also in licence conditions and regulations issued by each regulator. The NCC and the NBC, therefore, currently have the exclusive competence to determine all competition issues in the Nigerian telecommunications and broadcasting sectors respectively. There are no specific mechanisms to avoid conflicting exercise of jurisdiction. In the past, the two regulators have met on an *ad hoc* basis to discuss the grey areas and to seek to achieve a mutually acceptable resolution. The NCC and NBC enjoy a degree of autonomy, but they are not independent of the government.

#### 2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Appeals from any ‘matters, suits and cases, howsoever arising out of or pursuant to or consequent upon [the Communications Act]’, can be brought before the Federal High Court and appealed up to the Supreme Court (the highest appellate court). The decision or direction of the NCC that is the subject matter of an application for judicial review will subsist and remain binding and valid until it is expressly reversed in a final judgment or order of the court. The Communications Act, however, states that a person shall not apply to the court for judicial review unless that person has first exhausted all other (administrative) remedies provided under the Act. A person who is aggrieved or whose interest is adversely affected by a decision of the NCC may submit a written request to the NCC asking for a statement of the reasons for the decision. The NCC is required to respond, providing, together with such statement, any relevant information taken into account in making the decision, unless the publication or disclosure of the decision or information would disclose a matter that is, in the opinion of the NCC, confidential, or likely to prejudice the fair trial of a person, or that will involve the unreasonable disclosure of personal information about any individual, including a deceased person. At any time within, but not later than, 30 days after the date of receipt of the NCC’s statement of reasons for the decision, an aggrieved person may request a review of the NCC’s decision or action. Within 60 days from the receipt of the aggrieved person’s written submissions, the NCC is required to conclude its review of the decision (taking into consideration the aggrieved person’s submission) and inform the aggrieved person in writing of its final decision thereon and the reasons, therefore. It is only after exhausting the above procedure that the aggrieved person may appeal to the Federal High Court for judicial review of the NCC’s decision or action. Although the NBC Act makes no specific provision for review of the NBC’s decisions or actions, the courts do have a general power to review the acts of administrative agencies such as the NBC.

### Licences and Authorisations

#### 2.5 What types of general and individual authorisations are used in your jurisdiction?

Each category of service is regulated by a specific individual or class licence, which prohibits the licensee from engaging in any activity that is not specifically licensed.

#### 2.6 Please summarise the main requirements of your jurisdiction’s general authorisation.

To obtain a licence from the NCC, an application should be made to the NCC for the specific licence sought by the applicant. Upon

completion, the application form must be submitted with a copy of the applicant's certificate of incorporation, a certified true copy of the Memorandum and Articles of Association, a passport-sized photograph of the applicant's authorised representative, a copy of the applicant's current tax clearance certificate and a feasibility report on the proposed service. Upon approval of the application, the applicant would be required to make payment of the licence fee and value-added tax.

Regarding the media industry, the NBC can only make recommendations to the President for issuance of broadcast licences, as the power to issue licences is vested in the President. The process for obtaining a licence depends on the nature of licence that is sought but generally, an application should be made to the Director General of the NBC, asking for approval to purchase an application form. Upon approval of the application, the form should be purchased, completed and submitted to the NBC together with a copy of the applicant's certificate of incorporation, a certified true copy of the Memorandum and Articles of Association, an engineering design of system (that includes a feasibility study), a letter of undertaking and a letter from the applicant's bankers.

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**2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?**

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Each licence granted by the NCC or NBC authorises the licensee to carry out a specific number of activities.

The standard terms and conditions of licences can be reviewed on the NCC's website ([www.ncc.gov.ng](http://www.ncc.gov.ng)). Most of the licences are valid and subsist for periods ranging from 5–20 years. For example, Unified Access Service ("UAS") Licensees are authorised to offer a range of both fixed and mobile services for a period of 10 years (renewable for five years) subject to any geographical limitations stipulated by the licence. The UAS Licence permits eligible operators to provide both fixed and wireless voice telephony, as well as data services, digital mobile services, internet services, value-added services, international gateway services and other authorised telecommunications services on their networks.

A licence granted by the NCC is personal to the licensee and cannot be operated by, assigned, sub-licensed or transferred to any other party without the prior approval of the NCC. Broadcast licences cannot be assigned.

With regard to change of control, the NCC's Competition Practices Regulations 2007 and the provisions of various communications licences issued by the NCC require a licensee to pre-notify the NCC of proposed changes in shareholding if the number of shares that will change hands subsequent to the issuance of the licence will amount to at least 10% of the total shareholding, any other transaction that results in a change of control of the licensee and any transaction that results in the direct or indirect transfer or acquisition of any individual licence granted by the NCC. On the other hand, the Code requires a licensee to obtain the prior approval of the NBC in respect of any act, agreement or transaction that will directly or indirectly result in a change of the effective control of its undertaking. In relation to licence transfers, broadcast licences are not assignable but the NBC has, in the past, indicated a willingness to approve

the transfer of a licence from a licensee to its subsidiary. Failure to obtain the prior approval of the NBC is a ground for the revocation of the licence. The NBC has an absolute discretion whether or not to approve an application for a change of control.

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## Public and Private Works

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**2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?**

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Any person who wishes to install telecoms infrastructure on public land is required to obtain the necessary permit/approval from the relevant authorities. While in respect of private land, that person is required to acquire a leasehold interest in the land to be utilised. Under Nigerian law, all land in a state is vested in the Governor of the State for the benefit of Nigerians. As a result, only leasehold interests can be granted over any property in Nigeria either by an individual or by the Governor of the relevant State in Nigeria. Depending on the nature of the interest granted by an individual, the consent of the State Governor may be required for a valid transfer of a leasehold interest, from one party to another. Where approvals of the State Government, Local Government or any other relevant authority for installation, placing, laying or maintenance of any network facilities on, through, under or across land are required, it shall be the responsibility of such licensees to obtain the required approvals.

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## Access and Interconnection

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**2.9 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?**

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A service provider is obligated to interconnect its communications system with another licensee's network, upon receipt of an interconnection request, in accordance with the principles set out in the Communications Act and pursuant to the terms agreed by the parties in good faith. Licensees are required to negotiate interconnection arrangements in accordance with the principles of neutrality, transparency, non-discrimination, fair competition, cost orientation, universal coverage, access to information, equality of access and equal terms and conditions; and NCC Regulations and Guidelines, including the Telecommunications Networks Interconnection Regulations, Guidelines on Interconnection of Telecommunications Networks, Arbitration Scheme, Interconnection Rate Determination Guidelines, Mediation Rules and Interconnection Dispute Resolution Guidelines.

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**2.10 Which operators are required to publish their standard interconnection contracts and/or prices?**

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Operators are required to display a copy of a notice that sets out the tariffs that are approved by the NCC in a publicly accessible part of their offices, and to send a copy of the notice (or the relevant

part of the notice) to any person who may request the copy. The operators are also required to ensure that their interconnection contracts are registered with the NCC. There is no obligation to publish interconnection contracts.

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**2.11 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?**

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Parties are generally allowed to negotiate and agree on charges for interconnection between themselves. The NCC has, however, previously used its powers to establish the interconnection rates in situations where operators could not reach an agreement on what these rates should be.

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**2.12 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?**

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Licensees are required to establish accounting and reporting arrangements sufficient to enable the licensee's finances in relation to the services provided pursuant to the licence to be assessed. A licensee is required to submit separate reports for each telecommunications service it provides (separate from its other commercial activities).

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**2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?**

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There are no specific regulations governing high-speed broadband networks. They are regulated in the same manner as other licensees but as indicated in the Open Access Next Generation Fibre Optics Broadband Network Industry Consultation Paper published by the NCC in November 2013, infrastructure companies licensed by the NCC should provide wholesale layer 2 transmission services on a non-discriminatory, open access and price regulated basis. It was also mentioned in the 'Nigerian National Broadband Plan 2013–2018', that the infrastructure companies would be offered a one-off subsidy based on the peculiarity of the business model and geographical coverage that will provide access to remote areas and thereby enable the NCC to achieve the universal coverage objectives.

## Price and Consumer Regulation

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**2.14 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?**

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Retail tariffs and charges for telecommunications services are fixed by individual operators, but these charges must be approved by the NCC – in the form of a price cap, and licensees may not exceed such rates and charges without the NCC's prior approval. The NCC may intervene in such a manner as it deems appropriate in determining and setting tariff rates for non-competitive services provided by such licensees.

Tariffs must be based on the principles established by the NCC from time-to-time, including the principles of fair and non-discriminatory pricing, cost orientation and an absence of non-competitive discounts.

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**2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?**

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No. Depending on the nature of such electronic communications, such services are regulated by the Communications Act or the NBC Act.

## Numbering

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**2.16 How are telephone numbers and network identifying codes allocated and by whom?**

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Network identifying codes and telephone number range(s) are allocated by the NCC, but the telephone numbers within the number range are determined by the operators. The National Numbering Plan published by the NCC is aimed at the setting up of a numbering scheme and the associated dialling procedures to be used in the network to allow the subscribers and operators to set up calls. The National Numbering Plan also provides for uniform dialling procedures for various types of telephone calls.

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**2.17 Are there any special rules which govern the use of telephone numbers?**

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The NCC currently requires operators and customers to register every telephone subscriber identification module ("SIM") card that is currently in use in Nigeria. Unregistered SIM cards have been disconnected.

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**2.18 Are there any obligations requiring number portability?**

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Yes. Following the introduction of number portability in April 2013, operators are obliged to accept porting requests from subscribers. The Mobile Number Portability Business Rules and Port Order Processes limit the ability of subscribers to port their numbers to once in every 90 days.

## 3 Radio Spectrum

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**3.1 What authority regulates spectrum use?**

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The NCC and NBC are responsible for regulating the use of spectrum in Nigeria. With respect to any radio frequency ("RF") licences required for the provision of a telecommunications service, licensees are required to obtain specific frequency licences from the NCC. The NCC grants such licences pursuant to powers bestowed by the WTA. The WTA also authorises the NBC to assign RF for the broadcasting sector.

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**3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?**

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RF may be assigned by one or a combination of several methods ranging from 'first come, first served' (where supply exceeds demand), to auctions (where demand exceeds supply), to automatic

assignment (where, as with microwave frequency, there is unlimited sharing capability). This is based on the Commercial Frequency Management Policy, Administrative Procedures and Technical Guidelines issued by the NCC in 2007. RF may only be shared, transferred or traded with the NCC's permission.

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Yes, the 5.35–5.35GHz and 5.725–5.875GHz bands have been declared to be licence-exempt by the NCC. Some of the conditions for use are that all sites deploying licence-exempt bands must be registered with the NCC, the average time of occupancy on any frequency should not be greater than 0.4 seconds within a 30-second period and for frequencies greater than 10MHz above or below the band, the level must be greater than -27dBm/MHz.

### 3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

The NCC's Frequency Spectrum (Fees and Pricing, etc.) Regulations, published in 2004, provides that the price of a frequency spectrum shall be directly proportional to the size of the frequency spectrum assigned. For instance, the unit price per MHz for Tier 1 licensing region comprising only of Lagos State is ₦=3,000,000 (three million Naira), while Tier 2 (comprising Delta, Kaduna, Kano, and Rivers States and the Federal Capital Territory, Abuja), and Tier 3 (comprising Abia, Anambra, Edo, Ogun and Oyo State) cost ₦=1,500,000 (one million five hundred thousand Naira).

### 3.5 What happens to spectrum licences if there is a change of control of the licensee?

The licence remains valid provided that the prior consent of the NCC was obtained for the change of control.

### 3.6 Are spectrum licences able to be assigned, traded or sub-licensed and, if so, on what conditions?

The grant of an RF spectrum licence is personal to the licensee. The Commercial Frequency Management Policy, Administrative Procedures and Technical Guidelines, issued by the NCC in January 2007, prohibit the trading, transfer or sharing of RF to a third party, including the licensee's subsidiary or associated companies, without the prior approval of the NCC.

## 4 Cyber-security, Interception, Encryption and Data Retention

### 4.1 Describe the legal framework for cybersecurity.

The principal legislation in relation to cybersecurity in Nigeria is the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 (the "Cybercrimes Act"). The other relevant legislations are the Terrorism Prevention Act 2011 (as amended) and the NCC's Guidelines for the Provision of Internet Service ("NCC Internet Service Guidelines").

The Cybercrime Act was enacted in 2015 to provide measures for national cybersecurity and the prevention, detection, response and prosecution of cybercrimes and other related matters. It criminalises

several illegal activities including hacking, phishing, spamming, system interference, unlawful interceptions, computer-related forgery, issuance of fake electronic or verbal messages by the staff or agent of a financial institution, denial-of-service attacks, identity theft or fraud, electronic theft, unlawful interference with critical national information infrastructure, etc. The Cybercrimes Act also imposes obligations on service providers, financial institutions and other corporate entities.

As is the case with the Cybercrimes Act, the Terrorism Prevention Act 2011 (as amended) ("TPA") provides for intelligence gathering through the lawful interception of communications.

### 4.2 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

The Cybercrimes Act states that where there are reasonable grounds to suspect that the content of any electronic communication is reasonably required for the purpose of a criminal investigation or proceedings, a Judge may on the basis of a statement on oath, require a service provider to "intercept, collect, record, permit or assist competent authorities with the collection or recording of content data and/or traffic data associated with specified communications transmitted by means of a computer system". The judge may also authorise a law enforcement agent to collect or record electronic communications through application of technical means.

A service provider is also required by Section 40 of the Cybercrimes Act to comply with a Judge's order to "intercept, collect, record, permit or assist competent authorities with the collection or recording of content data and/or traffic data associated with specified communications transmitted by means of a computer system" and to generally assist with the identification, apprehension and prosecution of offenders.

Under the TPA, law enforcement agencies have the power to apply for a court order to compel communication service providers to intercept specified communications, provided they obtain the requisite approvals of the Attorney-General and the National Security Adviser. A judge can also, by an order, require a telecom provider to intercept and retain specified communication received or transmitted by that service provider, or authorise the relevant law enforcement agency to enter any premises and install and subsequently remove any device with which a communication or communications of a specified description may be intercepted and/or retained, for purposes of intelligence gathering.

### 4.3 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

By virtue of the Communications Act, the NCC may determine that a licensee or class of licensees should implement interception capabilities and specify the technical requirements for such interception. Under the TPA, law enforcement agencies (as defined) have the power to apply for a court order to compel communication service providers to intercept specified communications, provided they obtain the requisite approvals of the Attorney-General and the National Security Adviser. We confirm that the laws cover the forms of communication specified above.



#### 4.4 How does the state intercept communications for a particular individual?

Under the Cybercrimes Act and TPA, upon an application, a judge could require a telecoms provider to intercept and retain specified communication received or transmitted by that service provider, or authorise the relevant law enforcement agency to enter any premises and install and subsequently remove any device with which a communication or communications of a specified description may be intercepted and/or retained, for purposes of intelligence gathering. In addition to the above, the Cybercrimes Act also empowers a judge to authorise a law enforcement agent to collect or record electronic communications through application of technical means.

#### 4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

There are presently no rules governing encryption.

#### 4.6 What data are telecoms or internet infrastructure operators obliged to retain and for how long?

By virtue of section 38 of the Cybercrimes Act, a service provider is required to keep all traffic data and subscriber information that may be prescribed by the NCC, for a period of two years. Traffic data is defined in the Cybercrimes Act as “any computer data relating to a communication by means of a computer system or network, generated by a computer system that formed a part in the chain of communication, indicating the communication’s origin, destination, route, time, date, size, duration, or type of underlying service”.

On the other hand, the Guidelines for the Provision of Internet Service require internet service providers to retain internet service-related information, including user identification, content of user messages and traffic or routing data for a minimum period of 12 months or any other period directed by the NCC.

## 5 Distribution of Audio-Visual Media

#### 5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

Any person that wishes to operate a broadcast system, facility or any wireless equipment that uses broadcast frequencies is required by the NBC Act and the Code to be so authorised by the NBC through the assignment of a frequency, channel or licence by the NBC. A separate licence is required for each broadcasting undertaking.

#### 5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

No. Both content broadcasters over the traditional distribution platforms and internet platforms are required to obtain licences from the NBC in so far as they wish to carry out their operations from within Nigeria. Their content is usually monitored for compliance with the requirements of the NBC Act, the Code and any other directives issued by the NBC.

#### 5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

The categories of licences that can be granted by the NBC are as follows:

- a) Terrestrial Broadcast; Free-to-air (Audio and Video).
- b) Satellite Broadcast; Free-to-air (Audio and Video).
- c) Terrestrial Broadcast; Subscription (Audio and Video).
- d) Satellite Broadcast; Subscription DSB (Audio and Video).
- e) Satellite Broadcast; Subscription DTH (Audio and Video).
- f) Digital Terrestrial Television.
- g) Cable Television Subscription.
- h) Community (Radio and Television).
- i) Networking (Radio and Television).
- j) Content Distribution (syndication).
- k) Internet Broadcasting.
- l) Signal Distributor.

The obligations of these licences are contained in the Code, published by the NBC, and are available for review at [www.nbc.gov.ng](http://www.nbc.gov.ng).

#### 5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Broadcast licences are not assignable but the NBC has, in the past, indicated a willingness to approve the transfer of a licence from a licensee to its subsidiary. Change of ownership of a licensee is permitted by the NBC subject to the approval of the NBC being obtained prior to completion of the transaction. Failure to obtain the prior approval of the NBC is a ground for the revocation of the licence. The NBC has absolute discretion whether or not to approve an application for a change of control. Timing for the approval is also discretionary.

## 6 Internet Infrastructure

#### 6.1 How have the courts interpreted and applied any defences (e.g. ‘mere conduit’ or ‘common carrier’) available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

As far as we are aware, this issue has not been adjudicated upon by Nigerian courts.

#### 6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

The Guidelines for the Provision of Internet Service requires ‘all licensees providing internet services or any other related internet protocol based telecommunications service’ to cooperate with ‘all law enforcement and regulatory agencies investigating cybercrime or other illegal activity’ and to ‘provide any service related information requested by the NCC or other legal authority, including information regarding particular users and the content of their communications’.

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**6.3 Are there any 'net neutrality' requirements? Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks?**

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There are no other specific regulations or guidelines on net neutrality, but the Internet Services Licence issued to Internet Service Providers prohibits a licensee from showing undue preference to, or discriminating against, any person in respect of the provision of a service under the Licence or the connection of any equipment approved by the NCC.

Licensees are permitted to individually charge for the different types of traffic over their networks subject to approval of the tariffs by the NCC.

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**6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?**

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The Communications Act and NCC's Guidelines for the Provision of Internet Services prohibit ISPs from disseminating, causing to be disseminated or allowing to be accessed through its network, any information that directly, or indirectly, casts aspersions on a religious, political, ethnic group or race, any pornographic material, any obscene articles or any seditious material (as defined under the Nigerian Criminal Code). There is no indication that consumer VPN services are being regulated or blocked presently.

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Mrs. Olajumoke Lambo, a Partner, heads the Business Advisory unit of the firm and is the co-head of the firm's Telecommunications team. She also oversees the firm's company secretarial practice. She has almost three decades experience in telecommunications law, employment law, immigration law and general corporate practice with an emphasis on legislative drafting, mergers and acquisitions, foreign investment, corporate restructuring, regulatory compliance and due diligence. Her specialisations include foreign investment, TMT, employment law, capital market transactions and regulatory compliance.

Jumoke has assisted various operators within and outside the telecommunications and broadcasting sectors with establishing and doing business in Nigeria, as well as a variety of investors with the acquisitions of interests in Nigerian companies and regulatory compliance. She is also recognised by the Nigerian edition of *Who's Who Legal* for her M&A practice. Her work has been noted in the International Financial Law Review's *Expert Guides*, the Global Legal Group Guides and *Getting the Deal Through* Guides. She is a fellow of the Centre for International Legal Studies ("CILS").

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Mr. Godson Oghenechuko is a Senior Associate in the firm with specialisations in a range of corporate matters, including telecommunications, acquisitions, aviation and real estate transactions. He is a core member of the team that advises telecommunications operators in all areas of their operations, including acquisition of licences and other telecommunications assets, real property acquisitions and leasing, data protection and interception of communication.

He is a core member of the team that advises multinational telecommunications operators in all areas of their operations, including regulatory compliance and real property acquisitions. As part of his telecommunications practice, he advises and represents various clients in negotiations with regulatory authorities, and assists with procuring operational and regulatory permits relevant to their businesses and transactions in Nigeria. In addition to his work in the practice areas mentioned above, Godson regularly advises the firm's clients in connection with the collection, processing, storage and transfer of personal information under the applicable laws in Nigeria.

Godson has been a contributor to the *World Bank Doing Business Reports* ("Registering Property in Nigeria") since 2009, the *International Law Office Newsletters* (Telecoms and Media) from 2012–2014, and the *International Comparative Legal Guide to: Telecoms, Media and Internet Laws and Regulations* since 2013.

## UDO UDOMA & BELO-OSAGIE

BARRISTERS AND SOLICITORS

Udo Udoma and Belo-Osagie ("UUBO") is one of Nigeria's larger, full-service corporate and commercial law partnerships with offices in four of Nigeria's key business centres and an affiliate in Ghana. Our 12 (twelve) partners and 52 (fifty-two) associates work with our Nigerian and non-Nigerian clients to create and implement innovative transactions, financial and otherwise, designed to facilitate business in Nigeria and throughout West Africa. UUBO has been described in international rankings as one of Nigeria's "Magic Triangle" law firms – a description underscored by one of the highest ratios of internationally recognised partners per firm in the Nigerian legal market. As a firm, we seek to provide timely, practical, sophisticated and responsive legal solutions based on a philosophy of consistently striving to structure accessible, commercially-oriented advice tailored to the needs of each client.

UUBO has a robust telecommunications practice that has maintained a strategic market position since the liberalisation of the sector in the early 1990s. In 2002, the firm advised one of the bidders for the GSM licences that were auctioned in that year and continues to provide advice on licensing and other operational requirements to various private telecommunications operators that provide a range of services including local and international VSAT, internet and fixed wireless services. The firm consistently advises on TMT laws, regulations, licensing, practices and developments, compliance and investments, as well as data protection and privacy.

Although we are a full-service firm, we are especially well regarded in our niche specialisations, which include: private equity; energy, electric power and natural resources; banking, finance and capital markets; corporate restructuring (including mergers and acquisitions); project finance; foreign direct investments; taxation; labour and employment. Together with our litigation, alternative dispute resolution and company secretarial departments, we are able to provide proactive and cost-effective legal services throughout Nigeria and to clients outside Nigeria.

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