

TELECOMMUNICATIONS FACILITIES (LAWFUL INTERCEPTION OF
INFORMATION) BILL, 2015

ARRANGEMENT OF SECTIONS

Section:

PART I - GENERAL

1. Purpose of the Act
2. Application of the Act

PART II – OBLIGATIONS CONCERNING INTERCEPTIONS

3. Obligation concerning interception
4. Operational requirements for transmission apparatus
5. No degradation of capabilities
6. Maintaining capabilities in respect of new services
7. Beginning to operate transmission apparatus
8. New software
9. Time limited compliance for small service provider

10. Global limit
11. Order suspending obligations
12. Ministerial orders

PART III – OBLIGATIONS CONCERNING SUBSCRIBER INFORMATION

13. Provision of subscriber information
14. Exceptional circumstances
15. Use of information
16. Internal audit
17. Preservation of existing authority
18. Obligation to provide information
19. Obligation to assist in assessment and testing
20. Notification of change
21. Notification of simultaneous interception capability
22. Persons engaged in interceptions
23. Mandatory reporting in respect of existing service providers
24. No redundant performance required
25. Exemption order by the President

PART IV – REGULATIONS

26. Regulations

PART V – INSPECTION

27. Designation of inspectors

28. Power of inspectors

PART VI – ADMINISTRATIVE MONETARY PENALTIES

29. Violations

30. Designation of enforcement officers

31. Issuance and service

PART VII – DETERMINATION OF RESPONSIBILITY AND PENALTY

32. Payment of penalty

33. Making representations

34. Presumed responsibility

PART VIII – APPEAL TO MINISTER

35. Right of appeal

PART IX – RULES ABOUT VIOLATIONS

36. Liability of employees and agents

37. Officers of corporate bodies, etc.

38. Due diligence

39. Continuing violation

40. Limitation period

41. Violation or offence

42. Admissibility of documents

PART X – RECOVERY OF PENALTIES AND AMOUNTS

43. Debts to the Government of the Federation

44. Certificate

PART XI – OFFENCES

45. Misleading statements and information

46. Offence

47. Offence

48. Due diligence

49. Officers of corporate bodies, etc.

50. Continuing offence

51. Limitation or prescription

PART XII – INJUNCTIONS

52. Injunctions

PART XIII – INTERPRETATION AND SHORT TITLE

53. Interpretation

54. Short title

SCHEDULES

A BILL

FOR

AN ACT REQUIRING TELECOMMUNICATIONS FACILITIES TO FACILITATE THE LAWFUL INTERCEPTION OF INFORMATION TRANSMITTED BY MEANS OF THOSE FACILITIES AND RESPECTING THE PROVISION OF TELECOMMUNICATIONS SUBSCRIBER INFORMATION; AND FOR OTHER MATTERS CONNECTED THEREWITH

Sponsored by Hon. Uzoma Nkem-Abonta

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows—

PART I – GENERAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

1. The purpose of this Act is to ensure that telecommunications service providers have the capability to enable national security and law enforcement agencies to exercise their authority to intercept communications, and to require service providers to provide subscriber and other information, without unreasonably impairing the privacy of individuals, the provision of telecommunications services to Nigerians or the competitiveness of the Nigerian telecommunications industry.

Purpose of the Act

2.-(1) This Act does not apply to telecommunications service providers in respect of the telecommunications services specified in Part 1 of Schedule 1 or to the telecommunications service providers in the classes listed in Part 2 of Schedule 1 in respect of the activities specified in it for that class.

Application of the Act

(2) This Act (other than sections 5, 6, 12, 18 to 20, 22 and 26 to 52) does not apply to the telecommunications service providers in the classes listed in Part 1 of Schedule 2 in respect of the activities specified in it for that class.

(3) This Act, other than section 20, does not apply to the

1 telecommunications service providers in the classes listed in Part 2 of Schedule
2 2 in respect of the activities specified in it for that class.

3 (4) The President may, on the recommendation of the Minister, by
4 order, amend Schedule 1 or Schedule 2.

5 PART II – OBLIGATIONS CONCERNING INTERCEPTIONS

Obligation
relating to
interceptions

6 3.-(1) Telecommunications service providers, in connection with the
7 interception of a communication, shall, in accordance with any regulations,
8 have the capability to do (and, when requested to do so by an authorized person
9 or by that person's authority, do) the following—

10 (a) provide the intercepted communication to the authorized person;

11 (b) if the intercepted communication is encoded, compressed,
12 encrypted or otherwise treated—

13 (i) in cases where the service provider has applied the treatment,
14 either remove the treatment or, if the treatment cannot readily be removed
15 using the telecommunications facilities controlled by the service provider,
16 provide the authorized person with the means to remove it, and

17 (ii) in cases where the treatment has been applied by another, either
18 remove the treatment or, if the service provider does not control all the means
19 necessary to remove it, provide the authorized person with the means (other
20 than transmission apparatus) for removing the treatment that the service
21 provider controls;

22 (c) provide the authorized person with the prescribed information that
23 is in the possession or control of the service provider in respect of the location
24 of equipment used in the transmission of the communication; and

25 (d) comply with any prescribed confidentiality or security measures
26 in respect of interceptions.

27 (2) For greater certainty, a telecommunications service provider has
28 no obligation under subsection (1)(b) of this section if any other person has
29 applied the treatment and (either alone or with others, but to the exclusion of
30 the service provider) controls the means for its removal.

1 (3) A telecommunications service provider that is capable of
2 providing intercepted communications to an authorized person in more than
3 one form or manner that conforms with the regulations shall provide them in
4 whichever of those forms or manners the authorized person requires.

5 4. The operational requirements in respect of transmission
6 apparatus are that the telecommunications service provider operating the
7 apparatus have the capability, in accordance with any regulations, to do the
8 following—

Operational
requirements for
transmission
apparatus

9 (a) enable the interception of communications generated by or
10 transmitted through the apparatus to or from any temporary or permanent
11 user of the provider's telecommunications services;

12 (b) isolate the communication that is authorized to be intercepted
13 from other information and provide the intercepted communication to
14 authorized persons, including—

15 (i) isolating the communications of the person whose
16 communications are authorized to be intercepted from those of other
17 persons, and

18 (ii) isolating the transmission data of the person whose
19 communications are authorized to be intercepted from the rest of the
20 person's communications;

21 (c) provide information that permits the accurate correlation of all
22 elements of intercepted communications; and

23 (d) enable simultaneous interceptions by authorized persons from
24 multiple national security and law enforcement agencies of
25 communications of multiple users, including enabling—

26 (i) at least the minimum number of those interceptions, and

27 (ii) any greater number of those interceptions (up to the maximum
28 number and within the time provided for in the regulations) for the period
29 that an agency requests in accordance with any regulations.

No degradation
of capabilities

1 5. A telecommunications service provider who meets, in whole or in
2 part, an operational requirement in respect of transmission apparatus that the
3 service provider operates shall continue to so meet that operational
4 requirement.

Maintaining
capabilities in
respect of new
services

5 6. A telecommunications service provider who meets, in whole or in
6 part, an operational requirement in respect of transmission apparatus that the
7 service provider operates in connection with any of the service provider's
8 telecommunications services shall meet that operational requirement to the
9 same extent in respect of any new service that the service provider begins to
10 provide using that apparatus.

Beginning to
operate
transmission
apparatus

11 7.-(1) A telecommunications service provider who begins to operate a
12 transmission apparatus for the purpose of providing telecommunications
13 services shall meet the operational requirements in respect of the apparatus,
14 whether by means of the apparatus itself or by any other means.

15 (2) Subsection (1) of this section does not apply in respect of
16 transmission apparatus that a telecommunications service provider acquires
17 from another telecommunications service provider and operates in order to
18 continue to provide the same telecommunications service to approximately the
19 same users. However, the acquiring service provider shall continue to meet
20 any operational requirements in respect of the transmission apparatus that the
21 service provider from whom it was acquired was obligated to meet.

New software

22 8.-(1) When a telecommunications service provider installs new
23 software for a transmission apparatus that the service provider operates, the
24 service provider shall meet the operational requirements in respect of that
25 apparatus to the extent that would be enabled by the installation of the software
26 in the form available from the software's manufacturer that would most
27 increase the service provider's ability to meet those operational requirements.

28 (2) Subsection (1) of this section applies even if the form of the
29 software in question would require the telecommunications service provider to
30 acquire additional software licences or telecommunications facilities to

1 achieve that increased ability.

2 9. A telecommunications service provider who, together with any
3 affiliated or associated telecommunications service provider as defined by
4 the regulations, has fewer than 100,000 subscribers, without regard to the
5 telecommunications service to which they subscribe, is considered (during
6 the three years after this Act comes into force) to meet any operational
7 requirement in respect of transmission apparatus that the service provider is
8 obligated to meet by virtue of section 7 or 8 of this Act if the service provider
9 provides, in accordance with any regulations, a physical connection point
10 for the transmission apparatus permitting an authorized person to effect an
11 interception.

Time limited
compliance for
small service
provider

12 10. Subject to section 12 of this Act, a telecommunications service
13 provider is not required, under sections 5 to 8 of this Act, to increase the
14 service provider's capability to enable simultaneous interceptions beyond
15 the applicable global limit determined in accordance with the regulations.

Global limit

16 11.-(1) The Minister may, by order made on the application of a
17 telecommunications service provider, suspend in whole or in part any
18 obligation of the service provider to meet an operational requirement that
19 would arise from the operation of section 7 or 8 of this Act.

Order suspending
obligations

20 (2) The application must –

21 (a) specify the operational requirement with respect to which an
22 order is sought;

23 (b) set out the reasons for making the application;

24 (c) include a plan that –

25 (i) sets out the measures by which and the time within which the
26 telecommunications service provider proposes to meet the operational
27 requirement specified in accordance with paragraph (a) of this subsection,

28 (ii) describes any measures that the telecommunications service
29 provider proposes to take to improve the service provider's capability to
30 meet the operational requirements, even if they are not yet applicable, and

1 (iii) identifies the stages at which and methods by which the Minister
2 can measure progress in the implementation of the plan and the time, manner
3 and form for reports the service provider proposes to make to the Minister; and

4 (d) conform with any prescribed requirements relating to the content
5 or form of the application or the manner in which it is to be made.

6 (3) In deciding whether to make an order, the Minister shall take into
7 account the public interest in national security and law enforcement and the
8 commercial interests of the telecommunications service provider as well as any
9 other matter that the Minister considers relevant.

10 (4) The Minister shall, within 120 days after the day on which the
11 Minister receives the application, notify the applicant of the Minister's decision
12 to accept or refuse it and, if no notification has been received by the applicant at
13 the end of that period, the Minister is deemed to have refused the application.

14 (5) In the order, the Minister may include any conditions that the
15 Minister considers appropriate and shall fix its term for a period of not more
16 than three years.

17 (6) The telecommunications service provider shall comply with the
18 conditions of the order as soon as the service provider begins to operate the
19 telecommunications apparatus or installs the new software, as the case may be.

20 (7) The Minister may revoke an order on written notice to the
21 telecommunications service provider if—

22 (a) the service provider has contravened this Act, the regulations or
23 the conditions of the order; or

24 (b) the order was obtained through misrepresentation.

25 (8) The Minister may amend an order with the consent of the
26 telecommunications service provider.

Ministerial orders

27 **12.-(1)** The Minister may, if in the Minister's opinion it is necessary to
28 do so, order a telecommunications service provider—

29 (a) to comply with any obligation under section 3(1) of this Act in a
30 manner or within a time that the Minister specifies;

1 (b) to enable, in a manner or within a time that the Minister
2 specifies, a number of simultaneous interceptions greater than any
3 maximum or limit that would otherwise apply;

4 (c) to comply, in a manner or within a time that the Minister
5 specifies, with any confidentiality or security measures respecting
6 interceptions that the Minister specifies in addition to any that are
7 prescribed;

8 (d) to meet an operational requirement in respect of transmission
9 apparatus operated by the service provider that the service provider would
10 not otherwise be required to meet; or

11 (e) to meet an operational requirement in respect of transmission
12 apparatus operated by the service provider in a manner or within a time that
13 the Minister specifies.

14 (2) The Minister may not make an order under section (1) of this
15 section in respect of a telecommunications service provider in relation to a
16 telecommunications service specified in Part 1 of Schedule 1 or in respect of
17 a telecommunications service provider in a class listed in Part 2 of Schedule
18 1 or Part 2 of Schedule 2 in relation to the activities specified there for that
19 class.

20 (3) The Minister shall pay the telecommunications service
21 provider an amount that the Minister considers reasonable towards the
22 prescribed expenses that the Minister considers are necessary for the service
23 provider to incur initially to comply with an order made under this section.

24 (4) The Minister may provide the telecommunications service
25 provider with any equipment or other thing that the Minister considers the
26 service provider needs to comply with an order made under this section.

27 (5) Sections 5 and 6 of this Act do not apply in respect of any
28 equipment or other thing provided by the Minister under subsection (4) of
29 this section.

30 (6) An order made by the Minister under subsection (1) of this

1 section prevails over any orders made by the President under section 29 of this
2 Act and over the regulations, to the extent of any inconsistency.

3 PART III – OBLIGATIONS CONCERNING SUBSCRIBER INFORMATION

Provision of
subscriber
information

4 13.-(1) Every telecommunications service provider shall, in
5 accordance with the regulations, provide to a person designated under
6 subsection (3) of this section, on his or her written request, any information in
7 the service provider's possession or control respecting the name and address of
8 any subscriber to any of the service provider's telecommunications services
9 and respecting any other identifiers associated with the subscriber.

10 (2) A designated person shall ensure that he or she makes a request
11 under subsection (1) of this section only in performing, as the case may be, a
12 duty or function –

13 (a) of the State Security Service under the National Security Agencies
14 Act; or

15 (b) of a police service, including any duty or function related to the
16 enforcement of any laws of Nigeria, of a State or of a foreign jurisdiction.

17 (3) The Inspector-General of Police or the Director-General of the
18 State Security Service, may designate for the purposes of this section any
19 employee of his or her agency, or a class of such employees, whose duties are
20 related to protecting national security or to law enforcement.

21 (4) The number of persons designated under subsection (3) of this
22 section in respect of a particular agency may not exceed the greater of five and
23 the number that is equal to five percent of the total number of employees of that
24 agency.

25 (5) The Inspector-General of Police and the Director-General of the
26 State Security Service may delegate his or her power to designate persons
27 under subsection (3) of this section to, respectively, a member of a prescribed
28 class of senior officers of the Nigeria Police Force or a member of a prescribed
29 class of senior officials of the State Security Service.

30 (6) A designated person shall, with respect to requests made by the

1 person under subsection (1) of this section –

2 (a) keep, in accordance with the regulations, a record that –

3 (i) identifies the duty or function referred to in subsection (2) of this
4 section in the performance of which the request is made,

5 (ii) describes the relevance of the information requested to that
6 duty or function and includes any other information that is necessary to
7 know the reason for the request; and

8 (b) deal with the information provided in response to those
9 requests in accordance with the regulations.

10 14.-(1) A police officer may request a telecommunications service
11 provider to provide to the officer the information referred to in section 13(1)
12 of this Act in the following circumstances –

Exceptional
circumstances

13 (a) the officer believes on reasonable grounds that the urgency of
14 the situation is such that the request cannot, with reasonable diligence, be
15 made under subsection 13(1);

16 (b) the officer believes on reasonable grounds that the information
17 requested is immediately necessary to prevent an unlawful act that would
18 cause serious harm to any person or to property; and

19 (c) the information directly concerns either the person who would
20 perform the act that is likely to cause the harm or the victim, or intended
21 victim, of the harm.

22 The police officer shall inform the telecommunications service provider of
23 his or her name, rank, badge number and the place of his primary assignment
24 and state that the request is being made in exceptional circumstances and
25 under the authority of this subsection.

26 (2) The telecommunications service provider shall provide the
27 information to the police officer as if the request were made by a designated
28 person under section 13(1) of this Act.

29 (3) The police officer shall, within 24 hours after making a request
30 under subsection (1), communicate to a designated person in the same place

1 of primary assignment as the officer all the information relating to the request
2 that would be necessary if it had been made under section 13(1) and inform that
3 person of the grounds referred to in subsection (1)(a) and (b) of this section.
4 The designated person shall in writing confirm to the telecommunications
5 service provider the particulars of the request, including noting that it was
6 made in exceptional circumstances under the authority of subsection (1) of this
7 section, and shall, under section 13(6)(a) of this Act, keep a record of the
8 request that includes those grounds.

Use of
information

9 **15.** Information that is provided in response to a request made under
10 section 13(1) or 14(1) of this Act shall not, without the consent of the individual
11 to whom it relates, be used by the agency in which the designated person or
12 police officer is employed except for the purpose for which the information
13 was obtained or for a use consistent with that purpose.

Internal audit

14 **16.**-(1) The Inspector-General of Police or the Director-General of the
15 State Security Service, who makes a designation under section 13(3) of this Act
16 shall cause internal audits to be regularly conducted of the practices of his or
17 her agency to ensure compliance with sections 13 to 15 of this Act and the
18 regulations made for the purposes of those sections and of the internal
19 management and information systems and controls concerning requests made
20 under sections 13 and 14 of this Act.

21 (2) The person who causes an internal audit to be conducted shall,
22 without delay, make a report to the Minister of anything arising out of the audit
23 that in his or her opinion should be brought to the attention of the Minister,
24 including any corrective action proposed or taken.

Preservation of
existing authority

25 **17.** Nothing in this Act derogates from any other authority under law
26 to obtain the information referred to in section 13(1) of this Act from a
27 telecommunications service provider.

Obligation to
provide
information

28 **18.**-(1) A telecommunications service provider shall, on the request of
29 a police officer or an employee of the State Security Service –

30 (a) provide the prescribed information relating to the service

1 provider's telecommunications facilities;

2 (b) indicate what telecommunications services the service provider
3 offers to subscribers; and

4 (c) provide the name, address and telephone number of any
5 telecommunications service providers from whom the service provider
6 obtains or to whom the service provider provides telecommunications
7 services, if the service provider has that information.

8 (2) A telecommunications service provider shall, on the request of
9 an authorized person, provide the prescribed information concerning –

10 (a) telecommunications services that are provided by the service
11 provider to a person whose communications are the subject of a court order
12 authorizing their interception; and

13 (b) telecommunications facilities that are used by the service
14 provider in providing those telecommunications services.

15 19. A telecommunications service provider shall, on the request of
16 a police officer or of an employee of the State Security Service, provide in
17 accordance with any regulations the assistance that the police officer or
18 employee reasonably requires to permit him or her to assess or to test the
19 service provider's telecommunications facilities for the purpose of an
20 interception.

Obligation to assist in assessment and testing

21 20. If the State Security Service or a law enforcement agency has
22 provided a telecommunications service provider with any equipment or
23 other thing for intercepting communications, the service provider shall,
24 before making any change to the service provider's telecommunications
25 facilities that is likely to impair or reduce the interception capability of the
26 equipment or other thing, notify the Service or law enforcement agency, as
27 the case may be, of the change.

Notification of change

28 21. A telecommunications service provider shall notify the
29 Minister if –

Notification of simultaneous interception capability

30 (a) in respect of a particular transmission apparatus, the increased

1 number of simultaneous interceptions that the service provider is required, as a
2 result of a request referred to in section 4(d)(ii) of this Act, to be capable of
3 enabling is 75% or more of the maximum number that is applicable under that
4 section; or

5 (b) the number of simultaneous interceptions that the service provider
6 is required, under sections 5 to 8 of this Act, to be capable of enabling is 75% or
7 more of the global limit that is applicable under section 10 of this Act.

Persons engaged
in interceptions

8 **22.**-(1) A telecommunications service provider shall, on the request of
9 a police officer or of an employee of the State Security Service, provide the
10 names of the persons who are employed by or carrying out work for the service
11 provider and who may assist in the interception of communications.

12 (2) The Nigeria Police Force or the State Security Service may
13 conduct an investigation for the purposes of a security assessment of any of
14 those persons who consent to the investigation.

Mandatory
reporting in
respect of
existing service
providers

15 **23.**-(1) Every telecommunications service provider that is providing
16 telecommunications services on the day this Act comes into force shall submit
17 a report to the Minister within six months after that day, in the prescribed form
18 and manner, containing—

19 (a) the prescribed information concerning the extent to which the
20 service provider meets operational requirements in respect of transmission
21 apparatus; and

22 (b) any prescribed information relevant to the administration of this
23 Act.

24 (2) A telecommunications service provider that acquires transmission
25 apparatus that is referred to in section 7(2) of this Act shall, before using it in
26 providing telecommunications services, submit to the Minister a report in the
27 prescribed form and manner containing the prescribed information referred to
28 in subsection (1) of this section.

29 (3) The Minister may, at any time, require a telecommunications
30 service provider to submit a report or further report in the form and manner, and

1 within the period, that the Minister specifies containing the information
2 referred to in subsection (1) of this section and any additional related
3 information that the Minister specifies.

4 (4) Every report submitted under this section must be accompanied
5 by a written statement certifying that it does not contain any untrue
6 statements or omissions of material facts, that it fairly presents the
7 telecommunications service provider's operations at the time of submission
8 and that the signatory has taken steps to ensure the report's accuracy and
9 promises to correct any material error that is detected in the report after its
10 submission and to submit a revised report to the Minister as soon as possible,
11 with another similar written statement accompanying it.

12 (5) The statement must be signed—

13 (a) if the telecommunications service provider is a corporation, by
14 one of its officers or directors; and

15 (b) in any other case, by an individual who is an owner of the
16 service provider or by an officer or a director of a corporation that is an
17 owner of the service provider.

18 24. If two or more telecommunications service providers have, in
19 effect, the same obligation under this Act in connection with any given
20 transmission apparatus or a given interception and any one of them performs
21 that obligation, it is deemed to be performed by all.

No redundant
performance
required

22 25.—(1) The President may, on the recommendation of the Minister
23 and the Minister of Communication, make an order exempting any class of
24 telecommunications service providers from all or part of the obligations
25 under any of sections 3, 6 to 8, 13, 14 and 23 of this Act or under any
26 regulations made for the purposes of those sections.

Exemption order
by the President

27 (2) Before making an order, the President shall consider—

28 (a) the extent to which the exemption would adversely affect
29 national security or law enforcement;

30 (b) whether the telecommunications service providers can comply

1 with the obligations from which they would be exempted;

2 (c) whether the costs of compliance with those obligations would
3 have an unreasonable adverse effect on the business of the telecommunications
4 service providers; and

5 (d) whether compliance with those obligations would unreasonably
6 impair the provision of telecommunications services to Nigerians or the
7 competitiveness of the Nigerian telecommunications industry.

8 (3) In the order, the President may include any conditions that he
9 considers appropriate and shall fix its term for a period of not more than two
10 years.

11 (4) When an order under which a telecommunications service
12 provider is exempted from an obligation under section 7 or 8 of this Act expires
13 or is revoked, those sections apply to the telecommunications service provider
14 who was exempted as of the date of expiry or revocation as if the exemption
15 had never been made.

16 PART IV – REGULATIONS

Regulations

17 26.-(1) The President may, on the recommendation of the Minister,
18 make regulations for carrying out the purposes and provisions of this Act and
19 prescribing anything that is to be prescribed under this Act, including
20 regulations –

21 (a) in respect of obligations under section 3(1) of this Act, including
22 specifying the time, manner and form in which they must be performed and the
23 circumstances in which they do not apply or need not be performed;

24 (b) requiring telecommunications service providers to specify the
25 locations where intercepted communications will be provided and governing
26 which locations may be so specified;

27 (c) in respect of the operational requirements referred to in section 4
28 of this Act, including matters of time, manner and form in relation to them and
29 the circumstances in which they do not apply or need not be met and, for the
30 purposes of section 4(d) –

1 (i) providing for the minimum number and maximum number of
2 simultaneous interceptions or the manner of determining them,

3 (ii) prescribing what is to be counted as a single interception,

4 (iii) governing requests to increase the number of those
5 interceptions, including the circumstances in which requests may be made,
6 the manner of making them and the duration of the increases, and

7 (iv) in respect of the maximum number of agencies for which a
8 telecommunications service provider is to simultaneously enable
9 interceptions;

10 (d) for the purposes of section 12(3) of this Act, prescribing matters
11 that the Minister is to consider in deciding what amount is reasonable or
12 what expenses are necessary;

13 (e) for the purposes of sections 13 and 14 of this Act, respecting the
14 making of requests and the provision of information under those sections,
15 including –

16 (i) specifying information that is to be provided with respect to
17 name, address or other identifiers, the manner of (and time for) providing it
18 and the circumstances under which particular information is to be provided,

19 (ii) prescribing those other identifiers, and

20 (iii) prescribing any confidentiality or security measures with
21 which the telecommunications service provider must comply in providing
22 that information;

23 (f) for the purposes of section 19 of this Act, in respect of the
24 assessment and testing of telecommunications facilities and transmission
25 apparatus; and

26 (g) for carrying out sections 29 to 44 of this Act, including –

27 (i) designating any provision of this Act or of any regulation, or any
28 order or class of orders made under this Act or any requirement or condition
29 of such a provision or order or class of orders (or class of such requirements
30 or conditions) as a provision, order, requirement or condition whose

1 contravention may be proceeded with as a violation,

2 (ii) prescribing the maximum administrative monetary penalty for a
3 particular violation, which maximum may not exceed N5,000,000, in the case
4 of an individual, and N25,000,000, in any other case,

5 (iii) prescribing criteria to be taken into account in determining the
6 amount of a proposed penalty,

7 (iv) in respect of compliance agreements referred to in section 33(3)
8 of this Act,

9 (v) in respect of the service of notices referred to in those sections,
10 including the manner of serving them, the proof of their service and the
11 circumstances under which they are deemed to have been served, and

12 (vi) in respect of procedure on appeals, which procedure must provide
13 for a reasonable opportunity for the appellant to present written evidence and
14 make representations in writing.

15 (2) Regulations made under subsection (1) of this section may apply
16 generally or to particular classes of telecommunications service providers and
17 may vary by class of telecommunications service provider, by class of
18 telecommunications service provided, by class of telecommunications facility
19 or according to the population of the region in which a telecommunications
20 facility of a given class is located.

21 PART V – INSPECTION

Designation of
inspectors

22 27.-(1) The Minister may designate any qualified person as an
23 inspector for the purpose of verifying compliance with this Act.

24 (2) Inspectors are to receive a certificate attesting to their designation
25 and shall, on request, present the certificate to any person appearing to be in
26 charge of any place that they enter in the course of an inspection.

Powers of
inspectors

27 28.-(1) An inspector may, for the purposes for which the inspector is
28 designated—

29 (a) enter and inspect, at any reasonable time, any place owned by, or
30 under the control of, any telecommunications service provider in which the

1 inspector believes on reasonable grounds there is any document,
2 information, transmission apparatus, telecommunications facility or other
3 thing relevant to the enforcement of this Act;

4 (b) examine any document, information or thing found in the place
5 and open or cause to be opened any container or other thing for those
6 purposes;

7 (c) examine or test or cause to be tested any telecommunications
8 facility or transmission apparatus or related equipment found in the place;

9 (d) use, or cause to be used, any computer system at the place to
10 search and examine any information contained in or available to the system;

11 (e) reproduce, or cause to be reproduced, any information in the
12 form of a printout, or other intelligible output, and remove the printout, or
13 other output, for examination or copying; or

14 (f) use, or cause to be used, any copying equipment or means of
15 telecommunications at the place.

16 (2) An inspector carrying out an inspection may be accompanied
17 by any other person chosen by the inspector.

18 (3) Despite subsection (1)(a) of this section, an inspector may not
19 enter a dwelling-place except with the consent of the occupant or under the
20 authority of a warrant issued under subsection (4) of this section.

21 (4) A Judge may issue a warrant authorizing an inspector named in
22 it to enter a dwelling-place, subject to any conditions specified in the
23 warrant, if, on an ex parte application, the judge is satisfied by information
24 on oath that—

25 (a) the dwelling-place is a place described in subsection (1)(a) of
26 this section;

27 (b) entry into the dwelling-place is necessary for the enforcement
28 of this Act; and

29 (c) entry has been refused, there are reasonable grounds for
30 believing that entry will be refused or consent to entry cannot be obtained

1 from the occupant.

2 (5) An inspector who executes a warrant issued under subsection (4)
3 of this section shall not use force unless the use of force has been specifically
4 authorized in the warrant and the inspector either is a peace officer or is
5 accompanied by one.

6 (6) The owner or person in charge of a place entered or to be entered
7 by an inspector shall give the inspector –

8 (a) all reasonable assistance to enable the inspector to carry out his or
9 her duties under this Act; and

10 (b) any information that he or she reasonably requests.

11 (7) When an inspector is carrying out his or her duties under this Act,
12 no person shall –

13 (a) wilfully resist or obstruct the inspector; or

14 (b) knowingly make a false or misleading statement to the inspector
15 or knowingly provide false or misleading information to him or her.

16 **PART VI – ADMINISTRATIVE MONETARY PENALTIES**

Violations

17 **29.** Every person who contravenes a provision, order, requirement or
18 condition designated under section 31(1)(g)(i) commits a violation and is liable
19 to an administrative monetary penalty not exceeding the prescribed maximum
20 or, if no maximum has been prescribed, to a penalty not exceeding N5,000,000,
21 in the case of an individual, and N25,000,000, in any other case.

Designation of
enforcement
officers

22 **30.-(1)** The Minister may designate as enforcement officers for the
23 purposes of this Act persons or classes of persons that the Minister considers
24 qualified.

25 (2) Enforcement officers shall receive a certificate attesting to their
26 designation and shall, on request, present the certificate to any person
27 appearing to be in charge of any place that they enter in the course of carrying
28 out their duties or functions.

29 (3) Every enforcement officer is, in carrying out his or her duties and
30 functions, an inspector.

1 31.-(1) If an enforcement officer believes on reasonable grounds
2 that a person has committed a violation, the officer may issue, and shall
3 cause to be served on the person, a notice of violation.

4 (2) The Minister may establish the form and content of notices of
5 violation, but each notice of violation must—

6 (a) set out the name of the person believed to have committed the
7 violation;

8 (b) identify the violation;

9 (c) set out the penalty that the enforcement officer proposes to
10 impose;

11 (d) inform the person that they may, within 30 days after the day on
12 which the notice is served or within any longer period specified in it, either
13 pay the penalty proposed in the notice or make representations with respect
14 to the alleged violation or proposed penalty (including any representations
15 about entering into a compliance agreement) and set out the manner for
16 doing so; and

17 (e) inform the person that, if they fail to pay the penalty or make
18 representations in accordance with the notice, they will be considered to
19 have committed the violation and the proposed penalty will be imposed in
20 respect of it.

21 (3) The amount of a penalty is, in each case, to be determined
22 taking into account the following matters—

23 (a) that administrative monetary penalties have as their purpose to
24 encourage compliance rather than to punish;

25 (b) the degree of intention or negligence on the part of the person
26 who committed the violation;

27 (c) the harm done by the violation;

28 (d) the person's history of prior violations or convictions (or
29 compliance agreements entered into) under this Act during the five-year
30 period immediately before the violation;

1 (e) the cumulative amount of the penalties that may be imposed for
2 any violation in respect of which section 39 of this Act applies;

3 (f) any prescribed criteria; and

4 (g) any other relevant matter.

5 PART VII – DETERMINATION OF RESPONSIBILITY AND PENALTY

Payment of
penalty

6 32. If the person pays the penalty proposed in the notice of violation,
7 the person is considered to have committed the violation and proceedings in
8 respect of it are ended.

Making
representations

9 33.-(1) The person alleged to have committed a violation may make
10 representations to an enforcement officer other than the one who issued the
11 notice of violation.

12 (2) The enforcement officer to whom the representations are made
13 shall either—

14 (a) enter into a compliance agreement with the person on behalf of the
15 Minister; or

16 (b) decide on a balance of probabilities whether the person committed
17 the violation and, if so, impose the penalty proposed, a lesser penalty or no
18 penalty, taking into account the matters mentioned in section 31(3) of this Act.

19 The enforcement officer shall cause notice of any decision made under
20 paragraph (b) of this subsection to be issued and served on the person together
21 with written reasons for the decision and notice of the person's right of appeal
22 under section 35(1) of this section.

23 (3) A compliance agreement—

24 (a) may include any terms that the officer considers appropriate
25 including a requirement to give reasonable security, in a form and an amount
26 that the officer considers satisfactory, for the person's performance of the
27 agreement; and

28 (b) must provide for payment by the person to the Receiver General of
29 a specified amount not greater than the penalty proposed in the notice of
30 violation if the person does not comply with the agreement.

1 (4) Entry into a compliance agreement ends the violation
2 proceedings and precludes any further violation or offence proceedings in
3 relation to the act or omission in question.

4 (5) The Minister may issue and serve a notice of default on a person
5 who has entered into a compliance agreement but has not complied with it.
6 On service of the notice, the person is liable to pay without delay the amount
7 provided for in the agreement, failing which, the Minister may realize or
8 enforce any security for the person's performance of the agreement.

9 34. A person who neither pays the penalty nor makes
10 representations in accordance with the notice of violation is considered to
11 have committed the violation, and the enforcement officer shall impose the
12 penalty proposed and notify the person of it.

Presumed
responsibility

13 PART VIII – APPEAL TO MINISTER

14 35.-(1) A person served with notice of a decision made under
15 section 33(2)(b) of this Act may, within 30 days after the day on which the
16 notice is served or within any longer period that the Minister allows in
17 accordance with any regulations, appeal the decision to the Minister.

Right of appeal

18 (2) On an appeal, the Minister may confirm, set aside or vary the
19 decision of the enforcement officer.

20 PART IX – RULES ABOUT VIOLATIONS

21 36. A person is liable for a violation that is committed by the
22 person's employee acting in the course of the employment or the person's
23 agent acting within the scope of his or her authority, whether or not the
24 employee, or agent who actually committed the violation is identified or
25 proceeded against.

Liability of
employees and
agents

26 37. An officer, director or agent of a person other than an individual
27 that commits a violation under this Act is a party to the violation if he or she
28 directed, authorized, assented to, acquiesced in or participated in the
29 commission of the violation and is liable to the administrative monetary
30 penalty provided for that violation whether or not the person that committed

Officers of
corporate bodies,
etc.

1 the violation has been proceeded against under sections 31 to 34 of this Act. For
2 greater certainty, an officer or director, or any agent who is an individual, is
3 liable only to the penalty provided in respect of an individual.

Due diligence 4 38. Due diligence is a defence in a proceeding in relation to a
5 violation.

Continuing violation 6 39. A violation that is committed or continued on more than one day
7 constitutes a separate violation for each day on which it is committed or
8 continued.

Limitation period 9 40. Any proceedings in respect of a violation may be instituted at any
10 time within, but not later than, two years after the day on which the subject-
11 matter of the proceedings arose.

Violation or offence 12 41. -(1) If it is possible to proceed with any act or omission as a
13 violation and it is also possible to proceed with it as an offence, proceeding in
14 one manner precludes proceeding in the other.

15 (2) For greater certainty, a violation is not an offence.

Admissibility of documents 16 42. In any proceeding, in the absence of evidence to the contrary, a
17 document that appears to be a notice issued under section 31(1) or 33(2) or (5)
18 of this Act or given under section 34 of this Act or a certificate issued under
19 section 44(1) of this Act is presumed to be authentic and is proof of its contents.

20 PART X – RECOVERY OF PENALTIES AND AMOUNTS

Debts to the Government of the Federation 21 43.-(1) A penalty imposed under this Act and an amount referred to in
22 section 33(5) of this Act each constitute a debt due to the Government of the
23 Federation and may be recovered in the Federal High Court or any other court
24 of competent jurisdiction.

25 (2) No proceedings to recover such a debt may be commenced later
26 than five years after the day on which the debt became payable.

27 (3) Each such debt is payable to the Receiver General.

Certificate 28 44.-(1) The Minister may issue a certificate certifying the unpaid
29 amount of any debt referred to in section 43(1) of this Act.

30 (2) Registration in the Federal High Court or in any other court of

1 competent jurisdiction of the certificate has the same effect as a judgment of
2 that court for a debt of the amount specified in the certificate and all related
3 registration costs.

4 PART XI – OFFENCES

5 45. No person shall do any of the following things in performing Misleading
statements and
information
6 any obligation under this Act or in any application, declaration or report
7 made under it –

8 (a) knowingly make a false or misleading statement or knowingly
9 provide false or misleading information; or

10 (b) knowingly omit to state a material fact or to provide material
11 information.

12 46. Every person who wilfully contravenes section 3(1) of this Offence
13 Act, any of sections 5 to 8 of this Act or an order made under section 12 of
14 this Act commits an offence and is liable on prosecution by summary
15 conviction –

16 (a) in the case of an individual, to a fine not exceeding
17 N10,000,000; or

18 (b) in any other case, to a fine not exceeding N50,000,000.

19 47.-(1) Every person who contravenes section 11(6), 20, 23 or 45 Offence
20 of this Act or a condition referred to in section 25(3) of this Act is guilty of an
21 offence punishable on summary conviction and liable –

22 (a) in the case of an individual, to a fine not exceeding N2,500,000
23 for a first offence, or N5,000,000 for a subsequent offence; or

24 (b) in any other case, to a fine not exceeding N10,000,000 for a first
25 offence, or N25,000,000 for a subsequent offence.

26 (2) Every person who contravenes section 28(6) or (7) of this Act is
27 guilty of an offence punishable on summary conviction and liable to a fine
28 not exceeding N1,500,000.

29 (3) Every person who contravenes any other provision of this Act
30 or a regulation made under this Act is guilty of an offence punishable on

1 summary conviction and liable to a fine not exceeding N2,500,000.

2 (4) A prosecution may not be commenced in respect of a
3 contravention referred to in subsection (1) of this section or section 41 of this
4 section without the consent of the Attorney General of the Federation.

Due diligence 5 **48.** Due diligence is a defence in a prosecution for an offence under
6 this Act.

Officers of
corporate bodies,
etc. 7 **49.** If a person other than an individual commits an offence under this
8 Act, every officer, director, agent of the person who directed, authorized,
9 assented to, or participated in the commission of the offence is a party to and
10 guilty of the offence and liable on conviction to the punishment provided for
11 the offence whether or not the person that committed the offence has been
12 prosecuted or convicted. For greater certainty, an officer or director, or any
13 agent who is an individual, is liable only to the punishment provided in respect
14 of an individual.

Continuing
offence 15 **50.** If an offence under this Act is committed or continued on more
16 than one day, the person who committed the offence is liable to be convicted for
17 a separate offence for each day on which the offence is committed or continued.

Limitation or
prescription 18 **51.** Proceedings in respect of an offence under this Act may be
19 instituted at any time within, but not later than, two years after the day on which
20 the subject-matter of the proceedings arose.

21 **PART XII – INJUNCTIONS**

Injunctions 22 **52.-(1)** If a court of competent jurisdiction is satisfied, on application
23 by the Minister, that a contravention of section 7(1) or 8 of this Act is being or is
24 likely to be committed, the court may grant an injunction, subject to any
25 conditions that it considers appropriate, ordering the person to cease or refrain
26 from operating the transmission apparatus referred to in section 7(1) of this Act
27 or to refrain from acquiring, installing or operating the new software referred to
28 in section 8 of this Act.

29 (2) For the purposes of subsection (1) of this section, the Federal High
30 Court is a court of competent jurisdiction.

PART XIII – INTERPRETATION AND SHORT TITLE

53.-(1) Unless the context otherwise requires –

Interpretation

“authorized” in relation to a person, means having authority, under the –

(a) Police Act,

(b) National Security Agencies Act,

(c) Criminal Code and Penal Code,

to intercept communications;

“communication” means a communication effected by means of telecommunications and includes any related transmission data or other ancillary information;

“intercept” includes listen to, record or acquire a communication;

“Minister” means the Minister of Justice;

“person” includes a partnership, an unincorporated organization, a government, a government agency and any other person or entity that acts in the name of or for the benefit of another such as a trustee, executor, administrator, liquidator of the succession, guardian, curator or tutor;

“prescribed” means prescribed by the regulations;

“telecommunications facility” means any facility, apparatus or other thing that is used for telecommunications or for any operation directly connected with telecommunications;

“telecommunications service” means a service, or a feature of a service, that is provided by means of telecommunications facilities, whether the provider owns, leases or has any other interest in or right respecting the telecommunications facilities and any related equipment used to provide the service;

“telecommunications service provider” means a person who, independently or as part of a group or association, provides telecommunications services;

“transmission apparatus” means any apparatus of a prescribed class whose principal functions are one or more of the following –

(a) the switching or routing of communications,

1 (b) the input, capture, storage, organization, modification, retrieval,
2 output or other processing of communications,

3 (c) the control of the speed, code, protocol, content, format, switching
4 or routing or similar aspects of communications, or

5 (d) any other function that is similar to one described in paragraphs (a)
6 to (c);

7 “transmission data” means data relating to the telecommunications functions
8 of dialing, routing, addressing or signaling that identifies or purports to identify
9 the origin, type, direction, date, time, duration, size, destination or termination
10 of a telecommunication generated or received by means of a
11 telecommunications facility or the type of telecommunications service used.

Short title

12 **54.** This Bill may be cited as the Telecommunications Facilities
13 (Lawful Interception of Information) Bill, 2015.

1 SCHEDULES

2 SCHEDULE 1

3 *(Sections 2(1) and (4) and 12(2))*

4 EXCLUSIONS FROM THE APPLICATION OF THE ACT

5 PART 1

6 1. A telecommunications service intended principally for the use
7 of its provider and the provider's household or employees and not by the
8 public.

9 PART 2

10 1. Telecommunications service providers whose principal function
11 is operating a registered charity within the meaning of that expression in any
12 legislation, other than any service provider in a class listed in Schedule 2, or
13 operating an educational institution other than a post-secondary institution,
14 or operating a hospital, a place of worship, a retirement home or a
15 telecommunications research network, only in respect of
16 telecommunications services that they provide ancillary to their principal
17 function.

18 2. Telecommunications service providers that are also
19 broadcasting undertakings, as may be defined in the Nigerian Broadcasting
20 Commission Act, only in respect of broadcasting.

21 SCHEDULE 2

22 *(Sections 2(2) to (4) and 12(2))*

23 PARTIAL APPLICATION OF THE ACT

24 PART 1

25 1. Telecommunications service providers that transmit
26 communications on behalf of other telecommunications service providers,
27 that do not modify particular communications transmitted and that do not
28 authenticate the end users of the telecommunications services of those other
29 service providers, only in respect of the telecommunications services
30 provided to the other service providers.

1

PART 2

2

3

4

5

6

7

1. Telecommunications service providers whose principal business or function is operating a post-secondary educational institution, a library, a community centre, a restaurant or an establishment that provides lodgings or residential accommodations, such as a hotel, an apartment building or a condominium, only in respect of telecommunications services that they provide ancillary to their principal business or function.

EXPLANATORY MEMORANDUM

This Bill seeks to require telecommunications service providers to put in place and maintain certain capabilities that facilitate the lawful interception of information transmitted by telecommunications and to provide basic information about their subscribers to the Nigeria Police Force and the State Security Service.