

**International  
Comparative  
Legal Guides**



Practical cross-border insights into telecoms, media and internet law

**Telecoms, Media & Internet  
2022**

**15<sup>th</sup> Edition**

Contributing Editor:

**Emma Wright**  
Deloitte Legal



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**Contributing Editor:**

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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.**

### Telecommunications sector

Today, the telecommunications sector in Nigeria, which is primarily regulated by the Nigerian Communications Commission (“NCC”), is the largest segment of the Information and Communications Technology (“ICT”) sector. Between 2015 and 2020, it is reported that Nigeria’s telecommunications sector attracted around \$3.9 billion in foreign investment (portfolio and direct), and this, on average, accounted for 7% of Nigeria’s total capital importation during the same period.

According to the NCC, by the end of 2020, the telecommunications sector was contributing 12.45% to Nigeria’s GDP.

Subscriber and revenue figures have also been on a consistent increase although the National Bureau of Statistics (which reviews data obtained from the NCC) recorded a slight dip in Q1 2021. For subscriber data, as published by the National Bureau of Statistics, telecoms data for Q1 2021 reflected that a total of 192,413,613 subscribers were active on voice as against 204,601,313 in Q4 2020, while a total of 144,949,194 subscribers were active on the internet in Q1 2021 as against 154,301,195 in Q4 2020.

According to the NCC’s 2020 Subscribers/Network Data Report, the GSM operators generated ₦2.27 trillion in revenue in 2020 (approximately \$5.5 billion), which constitutes a 12.33% increase from the revenue numbers in 2019. Revenue generated by ISPs amounted to ₦68.96 billion (approximately \$168 million) in 2020, which constitutes a 28.31% increase from the revenue numbers in 2019.

The major players in the telecommunications market are telco (“GSM”) operators, followed by Internet Service Providers (“ISPs”) and then other market participants such as infrastructure providers, etc. The GSM operators currently dominate the market – MTN has the highest number of subscriptions, closely followed by Globacom (“GLO”), AIRTEL, and Emerging Markets Telecommunication Services Ltd. (“EMTS”) (trading as 9mobile), respectively.

### Audio-visual

The audio-visual market in Nigeria cuts across traditional broadcasting platforms and the entertainment industry – which represents a larger section of the Nigerian audio-visual market. Historically, the Nigerian audio-visual market was centred around the use of traditional broadcasting mediums such as radio, television, cable

radio, direct-broadcast satellite (“DBS”) and webcasting. However, with advancements in technology, and the increasing use of over-the-top platforms, the local laws can only play catch-up to regulating these new methods of content distribution.

In terms of market size, the Nigerian entertainment and media industry generated approximately \$4.5 billion in 2018 and is projected to generate approximately \$10 billion by 2023. The market size is largely based on revenue generated from the Nigerian movie (“Nollywood”) and music industries. For example, according to reports, Nollywood generates an impressive \$590 million in revenue annually.

Some of the major market participants within the audio-visual sector includes Channels TV, TV Continental, Multichoice Nigeria, Daar Communications Plc (operators of African Independent Television) and the Silverbird Group. It should also be noted that over-the-top television (“OTT TV”) platforms like Netflix, Apple, YouTube all have significant presence in the Nigerian market.

**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 and any significant legislation on the horizon such as the regulation of online harms, regulation of social media or artificial intelligence (please list the draft legislation and policy papers).**

### Telecoms and audiovisual

The most important legislation which applies to telecoms is the NCC Act, while the National Broadcasting Commission (“NBC”) Act (the “NBC Act”) is the most important legislation which applies to broadcasting.

The National Broadcasting Commission Code 2020 (6<sup>th</sup> edition) (the “NBC Code”) provides that all persons who wish to operate “web/online broadcasting services” in Nigeria shall be registered with the NBC and that such persons are required to comply with the provisions of the NBC Code. The NBC Code also recognises “international broadcasters” and stipulates that such broadcasters take cognisance of Nigeria’s broadcast laws and the international principles of reciprocity.

The National Film and Video Censors Board (“NFVCB”) Act (the “NFVCB Act”) regulates the exhibition and distribution of films and video works.

### Significant legislation

The regulation of social media and internet platforms has been a growing issue in recent years. The Federal Government of Nigeria (“FGN”) has grown increasingly concerned with regard to the alleged falsehoods or “fake news” being peddled on such platforms, and the legal regulation of social media has been attempted, to varying degrees of success.



- In 2019, there was a proposed Protection from Internet Falsehoods and Manipulations and Other Related Matters Bill (popularly referred to as the “**Social Media Bill**”). The Social Media Bill was strongly opposed and has been effectively halted in the legislative chambers.
- On 5 June 2021, the FGN executive action came into force, ordering the NCC and all telecoms sector operators to ban access to Twitter, the popular US-based social media platform, in Nigeria. The FGN, through the NBC, issued a directive stating that all OTT service providers and social media platforms operating in Nigeria are required to set up an entity in Nigeria and obtain a licence. There are many questions and challenges as to the legality of this directive, especially as there have been social and humanitarian pushbacks against the Twitter ban.
- From a broadcasting perspective, there is currently a National Broadcasting Commission Act (Amendment) Bill, 2019 (the “**NBC Bill**”) which proposes to expand the scope of coverage of the NBC Act by recognising newer forms of broadcasting within the broadcasting regulatory framework in Nigeria. This includes online broadcasting and internet broadcasting (webcasting) [defined as “transmitting via web/internet”]. OTT also appears to be regulated, given that an OTT licence is now required to be obtained from the NBC.

**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; (b) audio-visual media distribution sectors; and (c) social media platforms in your jurisdiction.**

- The NCC, supervised by the Federal Ministry of Communications, is the regulator in charge of regulating the telecoms sector.
- The NBC, supervised by the Federal Ministry of Information, regulates the broadcasting sector.
- The NFVCB regulates the exhibition and distribution of films and video works.
- Both the NCC and the NBC can, in practice, regulate social media platforms within their broad regulatory powers.

**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 including in relation to the supply of telecoms equipment? Are there any upper limits?**

### Telecommunications

The Nigerian telecommunications sector has been liberalised, and thus there are no restrictions on foreign investment in such sector. Additionally, companies incorporated in Nigeria with foreign ownership can supply telecoms equipment with no limitations, and anyone who wishes to provide a telecommunications service in Nigeria must do so through a body corporate and be licensed by the NCC. A foreign investor can own the entire equity of the local licensee, especially considering that Nigerian company law now allows companies to be owned by a single shareholder. 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.

### Audio-visual distribution

There are some restrictions with regard to the NBC. The NBC Code 2020 states that prime foreign sports content is not to be transmitted into Nigeria unless the broadcaster has also acquired prime local sports content of the same category, with a minimum of 30% of the cost of acquiring the prime foreign sports content.

The NBC Code provides that the NBC must ensure that any broadcasting entity in Nigeria is 70%-owned and -operated by Nigerians. The Code requires an applicant company to demonstrate that it is not representing any foreign interests and gives the NBC the sole and absolute discretion to determine whether or not to recommend the grant of a new licence to any applicant by the President. The NBC also has the discretion to approve the acquisition of the equity of a broadcasting licensee by a foreigner.

## 2 Telecoms

**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?**

Yes, Nigeria became a member of the World Trade Organization (“**WTO**”) on 1 January 1995.

The specific commitments for Nigeria regarding communication services under the GATS are set out in the Schedule of Specific Commitments dated 15 April 1994 (as amended on 26 February 1998). The commitments are with respect to modes of supply in four areas: (i) sale/installation of terminal equipment; (ii) operation of payphones; (iii) mobile communications (cellular phones, paging, voice and data, etc.); and (iv) value-added services (“**VAS**”). The modes of supply include cross-border supply, consumption abroad, commercial presence and presence of natural persons.

Yes, to an extent, Nigeria has adopted and implemented the principles in the telecoms reference paper. For example, Nigeria has introduced a licensing regime for the telecommunications sector in line with one of the six regulatory principles of the reference paper.

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

The NCC is the primary telecommunications regulator in Nigeria. The Nigerian Communications Act, 2003 (“**NCA**”) gives the NCC the power to make subsidiary legislation by way of regulations, guidelines, etc. to regulate telecommunications services.

The Act stipulates that anyone who intends to operate a communications system or facility or provide a communications service must have been authorised and licensed by the NCC or have been exempted such requirements. A separate licence is usually required for each type of telecommunications activity, although it is also possible for a number of activities to be undertaken under a single licence.

Generally, such licences are categorised into two categories: individual licences; and class licences. Individual licences are typically bespoke licences in which the terms and conditions upon which the licence is granted are specific to the activity undertaken by the licence holder; whereas for class licences, the terms and conditions upon which the licence is granted are common across all licensees.

Other relevant telecommunications laws include the Wireless Telegraphy Act (“**WTA**”) – which sets out the framework for regulating the use of wireless telegraphy, the NBC Act – which regulates broadcasting services in Nigeria, and the Cybercrimes (Prohibition and Prevention) Act, 2015 – which regulates cyber-crime and security in Nigeria.

**2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government? Which regulator is responsible for social media platforms?**

The Federal Competition and Consumer Protection Commission (“**FCCPC**”), established under the Federal Competition and Consumer Protection Act (“**FCCPA**”), is the primary competition regulator in Nigeria. Whilst the FCCPC serves as the primary competition regulatory authority in Nigeria, there are also sector-specific regulators with regulatory oversight on competition. For example, the NCA and the NBC Act give powers to the NCC and the NBC, respectively, to regulate competition as it relates to their licensees. Therefore, in practice, depending on the sector of the licensee, the jurisdiction of the FCCPC is not exclusive.

The FCCPC, NCC and NBC all enjoy some degree of autonomy, but they are not completely independent of the Government given that their leadership is appointed by the President of Nigeria.

It is not entirely clear who the exact regulator is for social media platforms given that both the NCC and the NBC have sought to exercise control over the regulation of OTT services. However, with the recent directive by the FGN mandating the NBC to license social media platforms, it could be argued that the FGN has recognised the NBC as the regulator for social media platforms.

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

Yes, decisions of the NCC, NBC and the FCCPA can be appealed to the Federal High Court in the case of the NCC or NBC, and to the Competition and Consumer Protection Tribunal with respect to decisions of the FCCPC.

**2.5 What types of general and individual authorisations are used in your jurisdiction? Please highlight those telecom based authorisations needed for the installation and/or maintenance of infrastructure?**

Every category of service is regulated by a specific individual licence or a class licence.

The Guidelines on Technical Specification for the Installation of Telecommunications Masts and Towers 2009 provide details on the maintenance and installation of infrastructure.

The guidelines provide that any person installing a telecommunications mast or tower with a height exceeding 20 metres is required to obtain a permit from the NCC before installation. It is also unlawful for a person to engage in the installation of telecommunication masts and towers without being issued a valid licence by the NCC.

Furthermore, under the NCA and the NCC Type Approval Regulations, the NCC is required to conduct approval tests

and issue certificates in respect of communications equipment and facilities generally. Licensed service or facilities providers, equipment manufacturers or suppliers must obtain approval certificates from the NCC with respect to their communications equipment or facilities prior to installation or sale.

Licensees may also require approvals of State Government, local Government, or any other relevant authority for installation, placing, laying or maintenance of any network facilities on, through, under or across any land.

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

The general requirement for operation in the telecommunications sector in Nigeria is to obtain a licence from the NCC in accordance with the NCA or any other applicable NCC regulation. The licence process is a documentary application accompanied by the required documentation.

If the application is approved, then the applicant is required to pay a licensing fee as well as value-added tax. It should be noted that NCC licensees are also required to pay an annual operating levy (“**AOL**”).

In relation to broadcasting and the media, the power to issue licences is vested in the President, and the NBC may only make recommendations to the President. The process for obtaining a licence is a documentary application process which typically varies depending on the nature of licence.

As part of the licensing process, the NBC may request for specific information depending on the nature of the licence application. Additionally, NBC licences also come with financial obligations in terms of application fees, licence fees and contributions.

**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?**

Licences granted by the relevant authority, i.e., the NBC and the NCC, authorise the licensee to carry out a specific number of activities. The terms and conditions of each specific licence can be reviewed on the NCC’s website (<https://www.ncc.gov.ng>). Most licences are valid and subsist for periods ranging from five to 20 years.

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.

The NBC 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 effective control of its undertaking. Failure to obtain prior approval of the NBC is a ground for the revocation of the licence granted and the NBC has absolute discretion as to whether to approve an application for a change of control.

The NCC’s Competition Practices Regulations, 2007 require a licensee to pre-notify the NCC of proposed changes in shareholding if the number of shares that will change hands after the licence issuance amount to at least 10% of 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.

### 2.8 Are there any particular licences or other requirements (for example, in relation to emergency services) in relation to VoIP services?

There are guidelines on International Gateway Access and VoIP services which provide requirements for obtaining a Full Gateway Licence and an International Data Access (“IDA”) Gateway Licence.

Only operational licensees are eligible for IDA Licences. A licensee is deemed operational upon the fulfilment of the following:

- a customer base of at least 5,000 connected subscribers or justifiable traffic volume;
- a known and identifiable address and operational base;
- up-to-date payment of AOL;
- submission of up-to-date audited accounts; and
- up-to-date settlement of interconnection obligations.

Full Gateway Licensees are assigned an International Signalling Point Code and may transmit direct voice signals, deploy Time Division Multiplexing and IP transport protocols.

International organisations of which Nigeria is a member may implement VoIP on their data networks provided they do not carry third-party traffic (voice or data), and their network is subject to type approval, inspection and monitoring by the NCC.

Any international organisation with existing private data will be allowed to carry voice traffic using VoIP technology.

Non-governmental and multinational organisations that have existing leased international data circuits are permitted to carry voice over such circuits subject to agreement with network carriers. Other international bodies or private companies are to subscribe to services of licensed operators.

### 2.9 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?

If a person wishes to install telecommunications infrastructure on public land, such is required to obtain requisite permits or approval from the State or local Government depending on the authority that owns the land.

With respect to private land, all land is vested in the governor of the State where such land is situated thus, only leasehold interest can be granted over land in Nigeria. A person seeking access or rights to private land must obtain leasehold interests over the land. This is extensively provided for in the Nigerian Land Use Act and, depending on the nature of the interest granted, consent of the State governor may be required for a valid transfer of interest from one party to another.

### 2.10 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

Upon receipt of a request for interconnection, a service provider is obligated to interconnect its communications system with a licensee’s network in accordance with the principles contained in the NCA and pursuant to the terms agreed upon by the parties.

Interconnection arrangements are also to be made in line with applicable regulations including generally the NCA, the NCC regulations and guidelines, guidelines on Interconnection of Telecommunications Networks, Mediation Rules, and Interconnection Dispute Resolution Guidelines, amongst others.

Licensees are required to negotiate interconnection arrangements in accordance with: principles of neutrality; non-discrimination; fair competition; cost orientation; and equality of access.

### 2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

Operators are not mandated to publish their interconnection contracts. However, every operator is required to register their interconnection contracts with the NCC. Operators are also required to publish their service agreements, which must state the charges, terms and conditions on which interconnection services are provided. Given that public institutions are required to publish a list of files which contains an application for any licence, contract or agreement, it could be argued that by extension, files relating to an application for the interconnect exchange operator licence and application for the registration of the interconnection agreement with the NCC can be published.

### 2.12 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?

Charges for interconnection are subject to price or cost regulation.

Although the terms of interconnection contracts are determined by parties, the NCC is empowered to intervene, on its own initiative, in a negotiation or a concluded interconnection agreement, where it considers that an agreement or individual provisions of the agreement are inconsistent with the provisions of any standards set by the NCC. In the exercise of its powers, the NCC has established interconnection rates, which serve as binding rules and a form of cost regulation for operators.

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

On accounting separation, specific operators are required to submit to the NCC a regulatory financial statement (“RFS”) and a financial and non-financial report, in line with the accounting separation framework established by the NCC. The operators that are subject to the accounting separation rules are: Airtel Nigeria plc; Emerging Markets Telecommunications Services Ltd; Globacom Limited; MTN Nigeria plc; Main One Cable Company Nigeria Limited; and IHS Nigeria. It is expected that the list will be reviewed by 2022, and consequently amendments may be made by the NCC, where necessary. Operators with an annual turnover of above ₦5 billion are similarly obligated to comply with the accounting separation rules.

There are no operators subject to functional separations.

In terms of legal separation, regulatory compliance with the Code of Corporate Governance for Telecommunications Industry 2016 is only mandatory for the following categories of operators:

- where an operator’s spread of operations covers a minimum of three geopolitical zones in Nigeria;
- where an operator has turnover in excess of ₦1 billion;
- where the operator’s number of staff employed is more than 200; or
- where the operator has a subscriber base of 500,000 or more.

Operators cannot undertake certain telecommunications activities. For example, operators are not allowed to undertake VAS aggregation or apply for a VAS aggregator licence.

**2.14 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'?**

High-speed broadband networks are not regulated by any specific regulations. 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 are obligated to provide wholesale layer 2 transmission services on a non-discriminatory, open-access and price-regulated basis.

The following incentives are available:

- grant of pioneer status (which includes a tax holiday) to interested investors for the production/assembly of telecommunication/ICT end-user equipment and devices; or
- reduction/waiver of duties, taxes and other charges on telecommunication/ICT equipment, devices and components.

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

Operators are subject to retail price controls by way of price caps and floors as set by the NCC. Operators are prohibited from setting tariffs in contradiction with the standards set unless the NCC approves otherwise. In the exercise of its regulatory role in the protection and promotion of the interests of consumers against unfair practices in matters relating to tariffs and charges, the NCC may also intervene in determining and setting tariff rates for non-competitive services provided by operators when it deems it appropriate.

**2.16 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?**

Yes. Operators who also provide internet access are subject to the NCC's Internet Code of Practice.

Some special rules as contained in the Internet Code of Practice include:

- Consumers shall have the right to open internet access for all lawful content, application, or services.
- The Internet Access Service Provider ("IASP") must include in its terms and conditions a clear set of rules for the use of the service that complies with the Cybercrime Act, 2015, child online protection policy, and rules prohibiting use of service to spam other internet users. The terms and conditions must be published on the IASP's website and in its service agreements.
- An IASP must provide consumers with a clear and sufficient procedure for reporting child sexual abuse content to the NCC.
- An IASP is required to offer to its consumers optional parental control measures.
- The NCC shall issue a takedown notice to an IASP when it deems it appropriate, and such IASP shall have 24 hours to comply with the notice.
- An IASP shall notify a consumer of any breach to their personal data within 24 hours of the breach.

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

The NCC is solely responsible for allocating the network identifying codes and specifies the range of telephone numbers to be assigned by operators. The National Numbering Plan ("NNP") published by the NCC specifies operator dialling codes, dialling procedure and routing codes. In general, the NNP contains the details of the Nigerian numbering scheme structure, thereby providing a uniform dialling procedure for national and international calls. Telephone numbers for each subscriber are allocated by operators, who shall allot numbers in compliance with the provisions of the NNP.

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

Every operator is obligated to register each subscriber identification module ("SIM") card issued to subscribers. Such registration recognises the National Identification Number ("NIN") as the only valid means of identification. No SIM registration, mobile number portability, or SIM replacement can be carried out, unless a subscriber provides the operator with a NIN.

**2.19 Are there any special rules relating to dynamic calling line identification presentation?**

Each party to an interconnection agreement shall ensure its network is adequately equipped to handle Calling Line identification ("CLIP"). The CLI of the call originating party shall be transmitted to the receiving party during the signalling procedure. This requires that the identity of the origin of a call should never be masked but transmitted right through to its destination operator, even where it must be masked from the called party at the request of the calling party.

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

Yes. All operators are required to offer mobile number portability services to subscribers, subject to regulations by the NCC. Request for porting by any subscriber must be granted by an operator once there is no previous history of porting within the last 45 days, or within seven days of SIM replacement on a number.

## 3 Radio Spectrum

### 3.1 What authority regulates spectrum use?

The NCC and NBC are responsible for regulating the use of spectrum in Nigeria.

The NCC is the major regulatory authority regarding spectrum use in Nigeria as it has vast powers to control, assign and monitor the use of spectrum by commercial users of telecommunications services, including the publishing of radio frequency regulations for the telecommunications industry. Other relevant regulatory authorities include the NBC, the National Frequency Management Council ("NFMC"), and the Ministry of Information and Communications ("MoIC").



### 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.?

Radio spectrum may be assigned by the NCC via one or a combination of several methods, ranging from “first come, first serve” (where supply exceeds demand), to auctions (where demand exceeds supply), to automatic assignment (where, as with microwave frequency, there is unlimited sharing capability).

The use of radio spectrum is authorised by the NCC, which issues frequency licences that may be categorised into short-term permits (four months), medium-term permits (one year) or long-term licences (a term of five, 10 or 15 years).

The NCC awards and assigns licences through several modes including tenders, fixed prices as determined by the NCC competitive policies, which include open or selective auctions (either by way of lotteries or beauty contests), administrative assignments, and other internationally accepted methods of bidding for the acquisition of frequency spectrum.

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions? Are there penalties for the unauthorised use of spectrum? If so, what are they?

Yes, the 5.25–5.35 GHz and 5.725–5.875 GHz bands are licence exempt. However:

- There must be at least 75 hopping frequencies.
- The average time of occupancy on any frequency should not be greater than 0.4 seconds.
- The radio equipment should have the capability to choose within the range of hopping frequencies, or a channel, or be frequency optimised for the desired service.
- Systems deployed in any of the licence-exempt bands shall employ transmitter power control (“TPC”), and if TPC is not used, the maximum mean equivalent isotropically radiated power density must be halved.
- The peak transmit power shall not exceed the lesser of 1 W or  $17 \text{ dBm} + 10 \log B$ , where B is the 26-dB emission bandwidth in MHz. For frequencies greater than 10 MHz above or below the band, the level must be less than  $-27 \text{ dBm/MHz}$ .
- The peak power spectral density should not exceed  $17 \text{ dBm/MHz e.i.r.p.}$

The NCA provides that any person who operates a communications system/facility such as a spectrum without a communications licence (unless exempted to) shall be liable for an offence. The penalty includes a fine not less than the initial fee for the relevant licence, a fine not exceeding 10 times the initial fee for the relevant licence, imprisonment for a term of a maximum of one year, or both fine and imprisonment.

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

The pricing may vary depending on the frequency band, with other factors taken into consideration, including: level of congestion; market demand; and the relative cost of deploying network infrastructures and other factors as determined by the NCC.

The formula for calculating spectrum fee is:

$$U l = (C 100 \times B p + B p) \times Y t$$

Where CPI = Consumer Price Index, Bp = price at base year, Yt = *Spectrum assignment tenure*, and C = CPI (of current year) – CPI (of base year).

### 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?

Generally, before any frequency licence may be transferred or assigned, the NCC must be notified and due approval obtained.

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

### 4.1 Describe the legal framework for cybersecurity. Are there any specific requirements in relation to telecoms operators?

The principal legislation governing cybersecurity in Nigeria is the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 (the “**Cybercrimes Act**”).

Other subsidiary legislation includes:

- the Money Laundering (Prohibition) Act, 2011 (as amended), which provides against the undeclared transfer of funds or securities to and from a foreign country in excess of \$10,000 which could be effected through the use of the internet;
- the Criminal Code Act, which criminalises the obtaining of goods and credit by false pretences or other fraud;
- the Advance Fee Fraud and Other Fraud Related Offences Act, 2006, which criminalises the obtaining of property by false pretence and with the intent to defraud;
- the NCC Act, which provides that licensees shall use their best endeavours to prevent the network facilities that they own or provide, or the network service, applications service or content application service that he provides from being used in, or in relation to, the commission of any offence under any law in operation in Nigeria; and
- the Nigeria Data Protection Regulation, 2019 (the “**NDPR**”).

Yes, there are specific requirements in relation to telecoms operators. Under the Cybercrimes Act, a relevant authority or a law enforcement agency can request for a service provider to: (a) keep any traffic data, subscriber information, and content or non-content information; or (b) release any information it has stored. The Cybercrimes Act further makes it a duty of service providers to release traffic data and subscriber information, but restricts the use of this information to legitimate purposes only.

### 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.

Under the Cybercrimes Act, 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 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 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 Terrorism Prevention Act, 2011 (as amended) (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.

In 2019, the NCC issued the Lawful Interception of Communications Regulations, 2019 (the "LIC Regulations") which legalises the interception of certain communications by authorised agencies in Nigeria under the circumstances described in the Regulations.

**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?**

Please see question 4.2 above, as the answer relates to the TPA and LIC Regulations. As previously stated, the LIC Regulations allow for the interception of any communication (which includes calls, emails and other forms of communication).

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

Under the LIC Regulations, 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.**

The LIC Regulations state that where the communication intercepted is an encrypted or protected communication within the possession of the licensee, the licensee shall, on request, provide the relevant authorised agency with the key, code or access to the protected or encrypted communication, and that where the key or code is in the possession of any person outside its jurisdiction, the authorised agency may seek assistance from a foreign authority in accordance with any international mutual assistance agreement.

**4.6 Are there any specific cybersecurity requirements on telecoms or cloud providers? (If so, please list the relevant legislation.)**

Other than those already stated in question 4.1 above, the National Information Technology Development Agency ("NITDA") also issued the Nigeria Cloud Computing Policy in 2019. However, the Cloud Computing Policy does not propose any specific cybersecurity requirements on telecoms or cloud providers.

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

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.

The NDPR also provides that personal data must be adequate, accurate, and stored only for a period within which it is reasonably needed.

The NCC's Guidelines for the Provision of Internet Service similarly requires ISPs 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?**

The distribution of audio-visual media is principally regulated by the NBC and the NBC Code issued pursuant to the Act. The Code sets out the minimum standard to be complied with by broadcasters.

Recently, the NBC have been making attempts to regulate OTT services and as such, it is expected that the drive to bring OTT services within the regulatory purview of the NBC will increase.

**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, the NBC has sought to regulate both traditional content and OTT content, although it could be argued that the NBC Act – which serves as the NBC's basis for the regulation of OTT services – do not contemplate OTT services. It should be noted that advertisement is also regulated by the Advertising Practitioners Council of Nigeria ("APCON") under the APCON Act, although the extent of its applicability is limited to advertising practitioners.

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

The following are the categories of licences that the NBC may grant:

- a. Satellite Broadcast; Subscription DTH ("Audio and Video").

- b. Cable Television Subscription.
- c. Community (“**Radio and Television**”).
- d. Networking (“**Radio and Television**”).
- e. FM Radio Broadcasting.
- f. Internet Broadcasting.
- g. Digital TV Content Aggregation.
- h. Broadcast Signal Distribution.
- i. Digital Terrestrial (“**Free-To-View**”) TV.
- j. Direct Satellite Broadcast.
- k. Mobile/Handheld (“**DVB-H**”).
- l. Digital Subscription Television.
- m. Electronic Programme Guide (“**EPG**”).
- n. OTT/ Video on Demand (“**VOD**”).

The key obligations range from filing of returns to complying with the broadcasting standards set out under the NBC Code. For example, the NBC Code imposes local content obligations on licensees. Amongst others, some of the obligations include: (a) the requirement to adhere to the general principles of legality, decency, truth, integrity and respect for human dignity as well as the cultural, moral and social values of the people within the purview of the Nigerian Constitution; (b) the requirement to respect community standards in the provision of programme materials; and (c) the requirement to establish a mechanism for addressing complaints as well as feedback.

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

Broadcast licences are generally unassignable, although the NBC has shown a willingness to allow the transfer of a licence by a licensee to its subsidiary. A transaction to transfer the ownership of a licence is only valid where such transfer has been pre-approved by the NBC.

## 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?

This is yet to be decided by any Nigerian court within the context of telecommunications operators or ISPs. The defence of “innocent dissemination” for liability for defamation has only been applied in Nigerian courts within the context of a traditional publisher. However, there are ongoing lawsuits on this subject involving internet intermediaries which may consequently lead to a court interpretation on this issue in future.

#### 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?

By the Guidelines for the Provision of Internet Service, ISPs licensed by the NCC have the precautionary obligation to protect their users, who may be content creators, by educating them on the methods by which they may restrict or control access to their content, by informing them of their rights under the relevant laws with regard to the placement of their content on

the internet and by informing them of the procedure that they may follow in the event that their content is infringed upon by another. The obligations of the ISPs, in this regard, are fulfilled when they display these instructions on the home pages of their websites.

ISPs are obligated to react to the infringement of such content by cooperating with relevant regulatory and law enforcement agents to investigate such illegal activity. This cooperation includes the provision of relevant information to the NCC.

ISPs may also suspend or disconnect the account of users who infringe upon the content of other persons in violation of the Guidelines.

#### 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?

ISPs are required to treat all lawful traffic equally “without discrimination, restriction or interference” irrespective of equipment used, the calibre of the user or the service that the user provides.

According to the Internet Services Licence issued to ISPs, a licensee would be deemed discriminatory where it favours one party over another in the provision of its services.

#### 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?

By the licence issued to them, ISPs and/or telecommunications operators has the obligation to restrict access, through their network, to information which have the effect of casting aspersions on a religion, a political group, a race, or an ethnic.

ISPs do not have the right to block “any lawful content, applications, services or non-harmful devices” except such as is reasonably necessary for the purpose of managing the network.

Presently, consumer VPN services are neither regulated nor blocked.

#### 6.5 Is there any regulation applicable to companies that act as intermediaries in their role of connecting consumers with goods, services, content, or are there any proposals for such regulation?

The NCC authorises the operation of a communication system or facility by persons or corporations by the grant of a communications licence. However, the NCA does not contain language which extends its provisions to regulate companies operating as intermediaries in the digital economy.

The NITDA Bill 2021 also contains provisions to regulate the activities of these companies. The Bill introduces a licensing regime for operators in the digital economy and information technology industry such as social media platforms, search engines and ISPs. By this Bill, the licences to be issued by the agency are the product licence, service provider licence and the platform provider licence.

As discussed in question 1.2, the Social Media Bill considered in 2019 had provisions relating to the regulation of internet intermediaries, although its legislative process appears to have been halted for now.



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