

HB. 08 TELECOMMUNICATIONS FACILITIES (LAWFUL INTERCEPTION
OF INFORMATION) BILL, 2010

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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

[]

Commence-
ment.

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

1 PART I — GENERAL

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

Purpose of the
Act.

9 2.—(1) This Act does not apply to telecommunications service providers
10 in respect of the telecommunications services specified in Part I of Schedule 1
11 or to the telecommunications service providers in the classes listed in Part 2 of
12 Schedule 1 in respect of the activities specified in it for that class.

Application of
the Act.

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

16 (3) This Act, other than section 20, does not apply to the telecommunications
17 service providers in the classes listed in Part 2 of Schedule 2 in respect of the
18 activities specified in it for that class.

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

PART II — OBLIGATIONS CONCERNING INTERCEPTIONS

Obligation
relating to
interceptions.

1
2 3.—(1) Telecommunications service providers, in connection with the
3 interception of a communication, shall, in accordance with any regulations,
4 have the capability to do (and, when requested to do so by an authorized person
5 or by that person's authority, do) the following—

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

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

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

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

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

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

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

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

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

Operational
requirements
for
transmission
apparatus.

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

7 (b) isolate the communication that is authorized to be intercepted from
8 other information and provide the intercepted communication to authorized
9 persons, including —

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

12 (ii) isolating the transmission data of the person whose communications
13 are authorized to be intercepted from the rest of the person's
14 communications;

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

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

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

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

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

No
degradation of
capabilities.

27 6. A telecommunications service provider who meets, in whole or in
28 part, an operational requirement in respect of transmission apparatus that the
29 service provider operates in connection with any of the service provider's
30 telecommunications services shall meet that operational requirement to the
31 same extent in respect of any new service that the service provider begins to

Maintaining
capabilities in
respect of
new services.

1 provide using that apparatus.

Beginning to
operate
transmission
apparatus.

2 7.—(1) A telecommunications service provider who begins to operate a
3 transmission apparatus for the purpose of providing telecommunications services
4 shall meet the operational requirements in respect of the apparatus, whether by
5 means of the apparatus itself or by any other means.

6 (2) Subsection (1) of this section does not apply in respect of transmission
7 apparatus that a telecommunications service provider acquires from another
8 telecommunications service provider and operates in order to continue to provide
9 the same telecommunications service to approximately the same users. However,
10 the acquiring service provider shall continue to meet any operational requirements
11 in respect of the transmission apparatus that the service provider 18 from
12 whom it was acquired was obligated to meet.

New
software.

13 8.—(1) When a telecommunications service provider installs new software
14 for a transmission apparatus that the service provider operates, the service
15 provider shall meet the operational requirements in respect of that apparatus to
16 the extent that would be enabled by the installation of the software in the form
17 available from the software's manufacturer that would most increase the service
18 provider's ability to meet those operational requirements.

19 (2) Subsection (1) of this section applies even if the form of the software
20 in question would require the telecommunications service provider to acquire
21 additional software licences or telecommunications facilities to achieve that
22 increased ability.

Time limited
compliance
for small
service
provider.

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

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

5 11.—(1) The Minister may, by order made on the application of a Order
6 telecommunications service provider, suspend in whole or in part any obligation suspending
7 of the service provider to meet an operational requirement that would arise obligations.
8 from the operation of section 7 or 8 of this Act.

9 (2) The application must—

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

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

13 (c) include a plan that—

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

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

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

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

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

31 (4) The Minister shall, within 120 days after the day on which the Minister

1 receives the application, notify the applicant of the Minister's decision to accept
2 or refuse it and, if no notification has been received by the applicant at the end
3 of that period, the Minister is deemed to have refused the application.

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

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

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

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

14 (b) the order was obtained through misrepresentation.

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

Ministerial
orders.

17 **12.—(1)** The Minister may, if in the Minister's opinion it is necessary to
18 do so, order a telecommunications service provider—

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

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

24 (c) to comply, in a manner or within a time that the Minister specifies,
25 with any confidentiality or security measures respecting interceptions that
26 the Minister specifies in addition to any that are prescribed;

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

30 (e) to meet an operational requirement in respect of transmission apparatus
31 operated by the service provider in a manner or within a time that the

1 Minister specifies.

2 (2) The Minister may not make an order under section (1) of this section
3 in respect of a telecommunications service provider in relation to a
4 telecommunications service specified in Part 1 of Schedule 1 or in respect of a
5 telecommunications service provider in a class listed in Part 2 of Schedule 1 or
6 Part 2 of Schedule 2 in relation to the activities specified there for that class.

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

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

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

16 (6) An order made by the Minister under subsection (1) of this section
17 prevails over any orders made by the President under section 29 of this Act and
18 over the regulations, to the extent of any inconsistency.

19 PART III — OBLIGATIONS CONCERNING SUBSCRIBER INFORMATION

20 13.—(1) Every telecommunications service provider shall, in accordance
21 with the regulations, provide to a person designated under subsection (3) of this
22 section, on his or her written request, any information in the service provider's
23 possession or control respecting the name and address of any subscriber to any
24 of the service provider's telecommunications services and respecting any other
25 identifiers associated with the subscriber.

Provision of
subscriber
information.

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

29 (a) of the State security service under the National Security Agencies
30 Act; or

31 (b) of a police service, including any duty or function related to the

1 enforcement of any laws of Nigeria, of a State or of a foreign jurisdiction.

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

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

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

15 (6) A designated person shall, with respect to requests made by the person
16 under subsection (1) of this section—

17 (a) keep, in accordance with the regulations, a record that—

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

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

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

25 **14.—(1)** A police officer may request a telecommunications service
26 provider to provide to the officer the information referred to in section 13 (1) of
27 this Act in the following circumstances—

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

31 (b) the officer believes on reasonable grounds that the information requested

Exceptional
circumstances.

1 is immediately necessary to prevent an unlawful act that would cause serious
2 harm to any person or to property; and

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

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

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

13 (3) The police officer shall, within 24 hours after making a request under
14 subsection (i), communicate to a designated person in the same place of primary
15 assignment as the officer all the information relating to the request that would
16 be necessary if it had been made under section 13 (1) and inform that person of
17 the grounds referred to in subsection (1) (a) and (b) of this section. The designated
18 person shall in writing confirm to the telecommunications service provider the
19 particulars of the request, including noting that it was made in exceptional
20 circumstances under the authority of subsection (1) of this section, and shall,
21 under section 13 (6) (a) of this Act, keep a record of the request that includes
22 those grounds .

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

Use of
information.

28 16.—(1) The Inspector-General of Police or the Director-General of the
29 State Security Service, who makes a designation under section 13(3) of this Act
30 shall cause internal audits to be regularly conducted of the practices of his or
31 her agency to ensure compliance with sections 13 to 15 of this Act and the

Internal audit.

1 regulations made for the purposes of those sections and of the internal
2 management and information systems and controls concerning requests made
3 under sections 13 and 14 of this Act.

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

Preservation
of existing
authority.

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

Obligation to
provide
information.

11 18.—(1) A telecommunications service provider shall, on the request of a
12 police officer or an employee of the State Security Service—

13 (a) provide the prescribed information relating to the service provider's
14 telecommunications facilities;

15 (b) indicate what telecommunications services the service provider offers
16 to subscribers; and

17 (c) provide the name, address and telephone number of any
18 telecommunications service providers from whom the service provider obtains
19 or to whom the service provider provides telecommunications services, if
20 the service provider has that information.

21 (2) A telecommunications service provider shall, on the request of an
22 authorized person, provide the prescribed information concerning—

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

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

Obligation to
assist in
assessment
and testing.

28 19. A telecommunications service provider shall, on the request of a
29 police officer or of an employee of the State Security Service, provide in
30 accordance with any regulations the assistance that the police officer or employee
31 reasonably requires to permit him or her to assess or to test the service provider's

1 telecommunications facilities for the purpose of an interception.

2 20. If the State Security Service or a law enforcement agency has provided
3 a telecommunications service provider with any equipment or other thing for
4 intercepting communications, the service provider shall, before making any
5 change to the service provider's telecommunications facilities that is likely to
6 impair or reduce the interception capability of the equipment or other thing,
7 notify the Service or law enforcement agency, as the case may be, of the
8 change.

Notification
of change.

9 21. A telecommunications service provider shall notify the Minister if —

10 (a) in respect of a particular transmission apparatus, the increased number
11 of simultaneous interceptions that the service provider is required, as a
12 result of a request referred to in section 4 (d) (ii) of this Act, to be capable
13 of enabling is 75% or more of the maximum number that is applicable under
14 that section; or

Notification
of
simultaneous
interception
capability.

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

18 22.—(1) A telecommunications service provider shall, on the request of a
19 police officer or of an employee of the State Security Service, provide the
20 names of the persons who are employed by or carrying out work for the service
21 provider and who may assist in the interception of communications.

Persons
engaged in
interceptions.

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

25 23.—(1) Every telecommunications service provider that is providing
26 telecommunications services on the day this Act comes into force shall submit
27 a report to the Minister within six months after that day, in the prescribed form
28 and manner, containing—

Mandatory
reporting in
respect of
existing
service
providers.

29 (a) the prescribed information concerning the extent to which the service
30 provider meets operational requirements in respect of transmission apparatus;
31 and

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

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

7 (3) The Minister may, at any time, require a telecommunications service
8 provider to submit a report or further report in the form and manner, and within
9 the period, that the Minister specifies containing the information referred to in
10 subsection (1) of this section and any additional related information that the
11 Minister specifies.

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

20 (5) The statement must be signed—

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

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

No redundant
performance
required.

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

Exemption
order by the
President.

30 25.—(1) The President may, on the recommendation of the Minister and
31 the Minister of Communication, make an order exempting any class of

1 telecommunications service providers from all or part of the obligations under
2 any of sections 3, 6 to 8, 13, 14 and 23 of this Act or under any regulations made
3 for the purposes of those sections.

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

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

7 (b) whether the telecommunications service providers can comply with
8 the obligations from which they would be exempted;

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

12 (d) whether compliance with those obligations would unreasonably impair
13 the provision of telecommunications services to Nigerians or the
14 competitiveness of the Nigerian telecommunications industry.

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

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

22 PART IV — REGULATIONS

23 26.—(1) The President may, on the recommendation of the Minister, Regulations.
24 make regulations for carrying out the purposes and provisions of this Act and
25 prescribing anything that is to be prescribed under this Act, including
26 regulations—

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

30 (b) requiring telecommunications service providers to specify the locations
31 where intercepted communications will be provided and governing which

1 locations may be so specified;

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

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

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

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

12 (iv) in respect of the maximum number of agencies for which a
13 telecommunications service provider is to simultaneously enable
14 interceptions;

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

18 (e) for the purposes of sections 13 and 14 of this Act, respecting the
19 making of requests and the provision of information under those sections,
20 including—

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

24 (ii) prescribing those other identifiers, and

25 (iii) prescribing any confidentiality or security measures with which
26 the telecommunications service provider must comply in providing that
27 information;

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

30 (g) for carrying out sections 29 to 44 of this Act, including—

31 (i) designating any provision of this Act or of any regulation, or any

1 order or class of orders made under this Act or any requirement or condition
2 of such a provision or order or class of orders (or class of such
3 requirements or conditions) as a provision, order, requirement or condition
4 whose contravention may be proceeded with as a violation,

5 (ii) prescribing the maximum administrative monetary penalty for a
6 particular violation, which maximum may not exceed ₦5,000,000 in the
7 case of an individual, and ₦25,000,000 in any other case,

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

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

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

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

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

24 PART V — INSPECTION

25 27.—(1) The Minister may designate any qualified person as an inspector
26 for the purpose of verifying compliance with this Act.

Designation of
Inspectors.

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

30 28.—(1) An inspector may, for the purposes for which the inspector is
31 designated—

Powers of
Inspectors.

1 (a) enter and inspect, at any reasonable time, any place owned by, or
2 under the control of any telecommunications service provider in which the
3 inspector believes on reasonable grounds there is any document, information,
4 transmission apparatus, telecommunications facility or other thing relevant
5 to the enforcement of this Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 PART VI — ADMINISTRATIVE MONETARY PENALTIES

16 29. Every person who contravenes a provision, order, requirement or
17 condition designated under section 31 (1) (g) (i) commits a violation and is
18 liable to an administrative monetary penalty not exceeding the prescribed
19 maximum or, if no maximum has been prescribed, to a penalty not exceeding
20 ₦5,000,000, in the case of an individual, and ₦25,000,000, in any other case. Violations.

21 30.—(1) The Minister may designate as enforcement officers for the
22 purposes of this Act persons or classes of persons that the Minister considers Designation of
enforcement
officers.
23 qualified.

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

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

30 31.—(1) If an enforcement officer believes on reasonable grounds that a Issuance and
service.
31 person has committed a violation, the officer may issue, and shall cause to be

1 served on the person, a notice of violation.

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

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

5 (b) identify the violation;

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

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

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

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

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

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

23 (c) the harm done by the violation;

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

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

29 (f) any prescribed criteria; and

30 (g) any other relevant matter.

PART VII — DETERMINATION OF RESPONSIBILITY AND PENALTY

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

Payment of penalty.

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

Making representations.

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

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

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

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

(3) A compliance agreement—

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

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

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

(5) The Minister may issue and serve a notice of default on a person who

	1	has entered into a compliance agreement but has not complied with it. On
	2	service of the notice, the person is liable to pay without delay the amount
	3	provided for in the agreement, failing which, the Minister may realize or
	4	enforce any security for the person's performance of the agreement.
Presumed responsibility.	5	34. A person who neither pays the penalty nor makes representations in
	6	accordance with the notice of violation is considered to have committed the
	7	violation, and the enforcement officer shall impose the penalty proposed and
	8	notify the person of it.
	9	PART VIII — APPEAL TO MINISTER
Right of appeal.	10	35.—(1) A person served with notice of a decision made under section 33
	11	(2) (b) of this Act may, within 30 days after the day on which the notice is
	12	served or within any longer period that the Minister allows in accordance with
	13	any regulations, appeal the decision to the Minister.
	14	(2) On an appeal, the Minister may confirm, set aside or vary the decision
	15	of the enforcement officer.
	16	PART IX — RULES ABOUT VIOLATIONS
Liability of employees and agents.	17	36. A person is liable for a violation that is committed by the person's
	18	employee acting in the course of the employment or the person's agent acting
	19	within the scope of his or her authority, whether or not the employee, or agent
	20	who actually committed the violation is identified or proceeded against.
Officers of corporate bodies, etc.	21	37. An officer, director or agent of a person other than an individual that
	22	commits a violation under this Act is a party to the violation if he or she
	23	directed, authorized, assented to, acquiesced in or participated in the commission
	24	of the violation and is liable to the administrative monetary penalty provided
	25	for that violation whether or not the person that committed the violation has
	26	been proceeded against under sections 31 to 34 of this Act. For o greater
	27	certainty, an officer or director, or any agent who is an individual, is liable
	28	only to the penalty provided in respect of an individual.
Due diligence.	29	38. Due diligence is a defence in a proceeding in relation to a violation.
Continuing violation.	30	39. A violation that is committed or continued on more than one day
	31	constitutes a separate violation for each day on which it is committed or

1 continued.

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

5 **41.**—(1) If it is possible to proceed with any act or omission as a violation
6 and it is also possible to proceed with it as an offence, proceeding in one
7 manner precludes proceeding in the other. Violation or
offence.

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

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

13 PART X — RECOVERY OF PENALTIES AND AMOUNTS

14 **43.**—(1) A penalty imposed under this Act and an amount referred to in
15 section 33 (5) of this Act each constitute a debt due to the Government of the
16 Federation and may be recovered in the Federal High Court or any other court
17 of competent jurisdiction. Debts to the
Government
of the
Federation.

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

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

21 **44.**—(1) The Minister may issue a certificate certifying the unpaid amount
22 of any debt referred to in section 43 (1) of this Act. Certificate.

23 (2) Registration in the Federal High Court or in any other court of
24 competent jurisdiction of the certificate has the same effect as a judgment of
25 that court for a debt of the amount specified in the certificate and all related
26 registration costs.

27 PART XI — OFFENCES

28 **45.** No person shall do any of the following things in performing any
29 obligation under this Act or in any application, declaration or report made
30 under it — Misleading
statements
and
information.

31 (a) knowingly make a false or misleading statement or knowingly provide

1 false or misleading information; or

2 (b) knowingly omit to state a material fact or to provide material
3 information.

Offence. 4 **46.** Every person who wilfully contravenes section 3 (1) of this Act, any
5 of sections 5 to 8 of this Act or an order made under section 12 of this Act
6 commits an offence and is liable on prosecution by summary conviction—

7 (a) in the case of an individual, to a fine not exceeding ₦10,000,000; or

8 (b) in any other case, to a fine not exceeding ₦50,000,000.

Offence. 9 **47.—(1)** Every person who contravenes section 11 (6), 20, 23 or 45 of this
10 Act or a condition referred to in section 25(3) of this Act is guilty of an offence
11 punishable on summary conviction and liable—

12 (a) in the case of an individual, to a fine not exceeding ₦2,500,000 for a
13 first offence, or ₦5,000,000 for a subsequent offence; or

14 (b) in any other case, to a fine not exceeding ₦10,000,000 for a first
15 offence, or ₦25,000,000 for a subsequent offence.

16 (2) Every person who contravenes section 28 (6) or (7) of this Act is guilty
17 of an offence punishable on summary conviction and liable to a fine not exceeding
18 ₦1,500,000.

19 (3) Every person who contravenes any other provision of this Act or a
20 regulation made under this Act is guilty of an offence punishable on summary
21 conviction and liable to a fine not exceeding ₦2,500,000.

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

Due
diligence. 25 **48.** Due diligence is a defence in a prosecution for an offence under this
26 Act.

Officers of
corporate
bodies, etc. 27 **49.** If a person other than an individual commits an offence under this
28 Act, every officer, director, agent of the person who directed, authorized,
29 assented to, or participated in the commission of the offence is a party to and
30 guilty of the offence and liable on conviction to the punishment provided for the
31 offence whether or not the person that committed the offence has been prosecuted

1 or convicted. For greater certainty, an officer or director, or any agent who is
2 an individual, is liable only to the punishment provided in respect of an individual.

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

Continuing
offence.

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

Limitation or
prescription.

9 **PART XII — INJUNCTIONS**

10 **52.—(1)** If a court of competent jurisdiction is satisfied, on application by
11 the Minister, that a contravention of section 7(1) or 8 of this Act is being or is
12 likely to be committed, the court may grant an injunction, subject to any conditions
13 that it considers appropriate, ordering the person to cease or refrain from
14 operating the transmission apparatus referred to in section 7(1) of this Act or to
15 refrain from acquiring, installing or operating the new software referred to in
16 section 8 of this Act.

Injunctions.

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

19 **PART XIII — INTERPRETATION AND SHORT TITLE**

20 **53.—(1)** Unless the context otherwise requires—

Interpretation.

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

22 (a) Police Act,

23 (b) National Security Agencies Act,

24 (c) Criminal Code and Penal Code, to intercept communications;

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

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

29 “Minister” means the Minister of Justice;

30 “person” includes a partnership, an unincorporated organization, a
31 government, a government agency and any other person or entity that acts in

1 the name of or for the benefit of another such as a trustee, executor,
2 administrator, liquidator of the succession, guardian, curator or tutor;

3 “prescribed” means prescribed by the regulations;

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

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

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

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

17 (a) the switching or routing of communications,

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

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

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

24 “transmission data” means data relating to the telecommunications
25 functions of dialing, routing, addressing or signaling that identifies or purports
26 to identify the origin, type, direction, date, time, duration, size, destination
27 or termination of a telecommunication generated or received by means of a
28 telecommunications facility or the type of telecommunications service used

Short Title.

29 **54.** This Bill may be cited as the Telecommunications Facilities (Lawful
30 Interception of Information) Bill, 2011.

SCHEDULES

SCHEDULE 1

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

EXCLUSIONS FROM THE APPLICATION OF THE ACT

PART 1

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

PART 2

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

2. Telecommunications service providers that are also broadcasting undertakings, as defined in subsection 2(1) of the Broadcasting Act, only in respect of broadcasting.

SCHEDULE 2

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

PARTIAL APPLICATION OF THE ACT

PART 1

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

PART 2

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.