

**NIGERIAN COMMUNICATIONS COMMISSION**  
**Draft Lawful Interception of Communications Regulations**

[ ]

Made Pursuant to the Provisions of the Nigerian Communications Act 2003

# **NIGERIA COMMUNICATIONS ACT**

## **Lawful Interception of Communications Regulations, []**

### **Arrangement of Regulations**

#### **Regulations:**

#### **PART I - Scope and Objectives of the Regulations**

1. Scope and Objectives of the Regulations

#### **PART II Application of these Regulations**

- 2 Application of these Regulations

#### **PART III - Interception of Communication**

- 3 Unlawful Interception of Communications
4. Interception without a Warrant
5. Interception with a Warrant

#### **PART IV - Administration of Lawful Interception of Communication**

6. Power to Lawfully Intercept Communication
7. Application for a Warrant
8. Issue and Content of a Warrant
9. Duration, Amendment, Cancellation and Renewal of a Warrant
- 10 Implementation of a Warrant

#### **PART V - Interception Capabilities**

11. Duties of Licensees or Persons Providing Assistance
12. Prohibition of Certain Communication Services

#### **PART VI- Protected or Encrypted Communications**

13. Power to Request the Disclosure of Protected or Encrypted Communication

## **PART VII- Miscellaneous**

- 14.** Use of Information Obtained Under these Regulations
- 15.** Secrecy
- 16.** Log book
- 17.** Complaints
- 18.** Storage of Archived Communication
- 19** Storage of Intercepted Communication
- 20.** Penalties for Contravention
- 21.** Amendment of Regulation
- 22.** Power of the Commission to issue further Directions
- 23.** General Interpretation
- 24.** Citation

DRAFT

**NIGERIAN COMMUNICATIONS ACT  
(2003 No.19)**

**LAWFUL INTERCEPTION OF COMMUNICATIONS REGULATIONS [ ]**

Commencement (.....)

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

**PART I - Scope and Objectives of the Regulations**

**Scope and Objectives of the Regulations**

1. These Regulations are made to provide a legal and regulatory framework for the lawful interception of Communications in Nigeria, the collection and disclosure of intercepted Communications. These Regulations shall;
  - (a) provide the legal and regulatory framework for the lawful interception of Communications in Nigeria and to put into effect the provisions of sections 146 and 147 of the Act;
  - (b) specify the nature and types of Communications to be intercepted;
  - (c) prescribe penalties for non-compliance with these Regulations;
  - (d) provide a notification procedure to the Commission of all Warrants issued, amended renewed or cancelled under these Regulations;
  - (e) ensure the privacy of subscribers as contained in the Constitution of Federal Republic of Nigeria is persevered.

**PART II- Commencement and Application of the Regulations**

**Application of these Regulations**

2. These Regulations shall be in operation in the Federal Republic of Nigeria.

## **PART III - Interception of Communications**

### **3 Unlawful Interception of Communications**

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

### **4. Interception without a Warrant**

- (1) The interception of any Communication by any person shall be lawful in the following circumstances:
  - (a) where one of the parties to the Communication has consented to the interception, provided that an incontrovertible proof of such consent is available; or
  - (b) where the intended recipient of that Communication has consented to the interception by another party, provided that proof of such consent is available;
- (2) The interception of Communication by a person is lawful;
  - (a) if done by a person who is a party to a Communication, who in the ordinary course of business is required to record or monitor Communication; or
  - (b) if it takes place for purposes connected with the provision or operations of a Communication service or with the compliance, in relation to that service, or of any enactment relating to the use of Communications services in Nigeria.

### **5. Interception with a Warrant**

- (1) Subject to the provisions in this part of the Regulations, the Licensees shall act upon Warrant issued by a Judge authorizing or requiring a Licensee to whom it is addressed to comply with the provisions of the Warrant, to secure any one or more of the following;
  - the interception of any Communication as described in the Warrant;
  - (a) the disclosure, in such manner as may be described in the Warrant of such intercepted Communication; or
  - (b) assistance to a foreign authority in accordance with an international mutual assistance agreement.

Provided that there is no other lawful means of investigating the matter for which the Warrant is required.

- (2) Except as provided in these Regulations, a Judge shall not issue a Warrant unless;
  - (a) the Warrant is necessary on grounds falling within sub-Regulation 5(3) of this Regulation; and
  - (b) where such information can only be obtained by lawful interception of any Communication.
- (3) A Warrant is necessary where it falls within any of the following grounds:
  - (a) in the interest of national security as directed by the persons listed in Regulation 7(1) (a) or (b)
  - (b) for the purpose of preventing or investigating a crime;
  - (c) for the purpose of protecting and safeguarding the economic well-being of Nigerians;
  - (d) in the interest of public emergency or public safety; or
  - (e) for the purpose, of giving effect to any international mutual assistance agreements directed by the persons listed in Regulation 7(1) (a),or (b).

#### **PART IV - Administration of Lawful Interception of Communication**

##### **6. Power to Lawfully Intercept Communication**

- (1) It shall be lawful for any law enforcement agency listed in Regulation 7(1) to intercept Communications pursuant to any enactment for the time being in force and these Regulations if;
  - (a) the interception relates to the use of a Communication Service provided by a Licensee to persons in Nigeria; or
  - (b) the interception relates to the use of a Communication Service provided by a Licensee to a person outside Nigeria;

Provided that a Licensee shall not be liable in any criminal proceedings of any nature for any damage (including punitive damages), loss, cost or expenditure suffered or to be suffered (whether directly or indirectly) for any act or omission done in good faith in the performance of the duty imposed under Sub-Regulations (a) or (b) of this Regulations.

## **7. Application for a Warrant**

- (1) Pursuant to the provisions of section 148 (c) of the Act, an application for a Warrant under these Regulations shall be made to the Judge by any of the following law enforcement agencies:
  - (a) The National Security Adviser or his designee who shall not be below the equivalent of an Assistant Commissioner of Police;
  - (b) The Director of the State Security Services or his designee who shall not be below the equivalent of an Assistant Commissioner of Police;
- (2) Where a Warrant is required pursuant to any international mutual assistance agreement, the application for a Warrant shall be made through the National Security Adviser; provided that the person making the application shall show evidence of authority from relevant country or jurisdiction. .
- (3) An application for a Warrant shall:
  - (a) be in writing;
  - (b) contain full particulars of all the facts and circumstances alleged by the relevant law enforcement agency in support of the application for the issuance of a Warrant; and
  - (c) state any of the grounds mentioned in Regulation 5(3) of these Regulations that is relevant for an application to issue a Warrant.
  - (d) state the names of the Licensee
  - (e) state the place at which interception is to take place; and
  - (f) interception of Communication is the only means of obtaining the information mentioned in the Warrant
- (4) Notwithstanding the provisions of this section, the National Security Adviser may initiate and request from the Licensees, interception of Communications without warrant in an emergency that involves:
  - (a) immediate danger of death or serious injury to any person;
  - (b) conspiratorial activities threatening national security; or
  - (c) conspiratorial activities characteristics of organized crimes

Provided that the National Security Adviser shall make an application to the Judge within 48 hours after the interception has occurred or begins to occur to sanction and issue a Warrant for the interception. If the application is not made, or denied within 48 hours, the interception must terminate immediately and be treated as unlawful.

## **8. Issue and Content of a Warrant**

- (1) The Warrant shall contain;
  - (a) the identity, if known, of the interception subject;
  - (b) the grounds upon which the application is made;
  - (c) a detailed description of the type of Communication sought to be intercepted;
  - (d) the identity of the law enforcement agency authorized to intercept the Communication;
  - (e) the duration of the Warrant; and
  - (f) the name and signature of the authorizing Judge.
- (2) The Warrant may authorize the relevant law enforcement agency to do all or any of the following:
  - (a) to enter into any premises, or board any vessel, vehicle or aircraft for the purpose of enforcing the Warrant or to install, maintain or remove a monitoring device or to intercept or take possession of any Communication or to install, maintain or remove a device by means of which any Communication can be intercepted for the purpose of these Regulations;
  - (b) to take possession of and examine any Communication, or as the case may be, listen to or make recording of any Communication to which the Warrant applies;
  - (c) to return any Communication that was taken into possession in terms of paragraph (b) or cause it to be returned to the Licensee or the interception subject if such Communication or recording of Communication is without prejudice to the maintenance of law and order or other compelling national interest;
  - (d) to request the assistance of any person for the purpose of enforcing the Warrant.



- (3) A Judge may only issue a Warrant if the Judge is satisfied of any the following:
  - (a) on the facts alleged in the application that there are reasonable grounds to believe that any of the matters mentioned in Regulation 5(3) of these Regulations has occurred, is occurring or about to occur; or
  - (b) where interception of Communication is the only means of obtaining the information required under the Warrant.
- (4) Any application for the issuance of a Warrant shall be heard and issued without the requirement of placing any party or the interception subject where known on notice.
- (5) The Commission shall be notified in writing by the Licensee of all Warrants presented to it, notification to the Commission shall be no later than 48 hours after receipt of the Warrant by the Licensee.

#### **9. Duration, Amendment, Cancellation and Renewal of Warrant**

- (1) A Warrant shall be granted for an initial period of 3 months or such lesser period as the Judge may determine based on the circumstances of the application made before the Judge and shall cease to have effect at the end of the period stipulated in the Warrant unless renewed
- (2) A Warrant may be amended by a Judge at any stage during the validity of such Warrant upon an application by the relevant law enforcement agencies mentioned in Regulation 7(1). The application to the Judge for an amendment of an existing Warrant, shall state the reasons for such amendment and the amendment required.
- (3) A Warrant may be renewed by a Judge any time before the expiration of the period for which it was issued upon an application by any of the relevant law enforcement agencies mentioned in Regulation 7. The renewal shall be for a maximum period of 3 months or such lesser period as the Judge may by order specify.
- (4) An application for cancellation of a Warrant may be made by any of the relevant law enforcement agencies mentioned in Regulation 7(1) to the Judge (and with a notice to the Licensee) where a Warrant is no longer necessary on grounds falling under Regulation 5(3). The Licensee shall notify the Commission of such cancellation within 48 hours of the receipt of notice of cancellation from the relevant law enforcement agency.

#### **10. Implementation of the Warrant**

- (1) For the purpose of implementation, a Warrant issued under these Regulations shall be implemented by either:
  - (a) the National Security Adviser or

- (b) the State Security Services.
- (2) The implementation of such Warrant may if required by the National Security Adviser or the State Security Service may take place with the collaboration of the Licensees or person who manages the facilities of the Licensees.
- (3) For the purpose of these Regulations, the provision of assistance with giving effect to Warrant includes the disclosure of intercepted material obtained or provision of related communication data to the law enforcement agencies, or its designees.

## **PART V - Interception Capability**

### **11 Duties of Licensees or persons providing assistance**

- (1). Every Licensee shall take such steps as the Commission may by way of notice direct from time to time, to install interception capabilities that allow or permit the interception of Communications.
- (2). the specifications issued by the Commission under Regulation 11(1) above may include the following:
  - (a) the technical requirements of any equipment to be installed by the Licensee;
  - (b) such standards as stipulated by the Act, this Regulation or guidelines as may be issued by the Commission from time to time.
  - (c) safeguards to protect information during transmission or when archived.
- (3) The specifications and technical requirement of the equipment to be installed by Licensees for the purpose of interception of Communication shall be as provided by the Commission from time to time.
- (4). It shall be the duty of the Licensee to whom a notice is given under Regulation 11(1) to comply with the notice; and that duty shall be enforceable by civil proceedings by the Commission for an injunction, or for specific performance of such duty in addition to any other action or remedy provided for under the Act, these Regulations or the Enforcement Regulations.

- (5) The Licensee shall remain compliant with the provisions of this Regulation and ensure that its system updates and upgrades do not adversely impact the implementation of this Regulation.

## **12. Prohibition of Certain Communication Services**

- (1) Notwithstanding any other law in force, no Licensee shall provide any Communication Service which does not have the capacity to be monitored and intercepted.
- (2) A Licensee shall at its own cost and within the period, if any specified by the Commission, acquire the necessary facilities and devices to enable the monitoring of Communications under these Regulations.
- (3) The investment, technical, maintenance and operating costs in enabling the Licensee to give effect to the provisions of these Regulations shall be borne by the Licensee.

## **PART VI- Protected or Encrypted Communication**

### **13. Power to request the disclosure of Protected or Encrypted Communication.**

- (1) Where the Communication intercepted is an Encrypted or Protected Communication, the Licensee shall provide the National Security Adviser and the State Security Service with the key, code or access to the Protected or Encrypted Communication;
- (2) Where the key or code is in the possession of another person, the Licensee shall be under an obligation to request such other person to disclose the key or code to the National Security Adviser and the State Security Service for the purpose of complying with the Warrant.
- (3) This provision shall only be satisfied where:
  - (a) the Licensee or any falling under Regulation 13(2) above person has provided or disclosed key, code or access to the Protected or Encrypted Communication to the law enforcement agent; or
  - (b) the Licensee or any falling under Regulation 13(2) above person in possession of the key or code has made a disclosure of any Protected or Encrypted Communication in an intelligible form.

## **PART VII- Miscellaneous**

### **14 Use of Information Obtained under these Regulations**

The use of any information obtained pursuant to these Regulations as evidence in any prosecution, is subject to the consent of a sitting judge in such suit upon an application that such evidence be tendered by the party seeking to tender same.

### **15. Secrecy**

- (1) No law enforcement agency or any other person who is or was involved in the performance of any function under these Regulations, may disclose any information which that person has obtained in the performance of such function except:
  - (a) to any other person who of necessity requires it in the performance of his or her function under these Regulations or the Act;
  - (b) if he or she is a person who of necessity provides the information in the performance of his or her functions under these Regulations or the Act;
  - (c) such information is required in terms of any law or as evidence in any court of law; or
  - (d) to any competent authority which requires it for any criminal investigation or prosecution.
- (2). No employee of the Licensee may disclose any information which is obtained in the course of duty and which is connected with the performance of any function in terms of these Regulations, whether the employee is involved in the performance of that function or not, except for the purposes mentioned in Sub-Regulation (1) (a) to (d).

### **16. Log book**

- (1) The Commission shall maintain a Log book in both physical and electronic format, of all Warrants issued, renewed or cancelled, as notified to the Commission pursuant to the Licensees obligations under Regulations 8(5) and 9(3) of this Regulation.
- (2) The contents of the Log book shall be kept confidential and shall not be disclosed to anyone unless to persons authorised under any law in force in Nigeria.
- (3) The Commission shall no later than the first quarter of each year, prepare a report with basic details in respect of:

- (a) The number of Warrants issued, renewed or cancelled for the preceding year;
- (b) The number of interceptions made pursuant to the Warrants granted;
- (c) The details of the Warrants that could not be implemented by a Licensee and the reason for non-implementation;
- (d) A general assessment of the importance of the interception of communication for the investigation, detection, prevention and prosecution of crimes in Nigeria.
- (e) Complaint received from the Licensees and the Interception subject with respect to interception of Communications

## **17. Complaints**

- (1) Any person or Licensee who is aggrieved by any interception activity shall in writing notify the Commission and such person may make a formal application to the court for a judicial review.
- (2) The interception decision or direction shall subsist and remain in force until it is expressly reversed in a final decision of the court reviewing such decision.

## **18. Storage of archived communication**

An intercepted communication irrespective of the internal governance of the Licensee shall be stored on the communication system of a licensee for a period of 3 years)

## **19. Storage of Intercepted Communication**

- (1) The law enforcement agencies shall store any intercepted Communication retrieved from a Licensee for the period of their investigation. Such intercepted Communication shall be destroyed upon completion of such investigation.
- (2) Once any piece of Intercepted Communication is admitted in evidence by a court of competent jurisdiction, all copies of that intercepted Communication shall be destroyed by the law enforcement agency in whose custody such information resides.

- (3) The intercepted Communication shall be kept confidential by the law enforcement agencies. Its content shall only be shared for the purpose of the investigation and in criminal proceedings and in accordance with these Regulations.

## **20. Penalties for Contravention**

If a Licensee or any of its officers, manager, chief executive officer, secretary or other similar officers of the Licensee required under this Regulation;

- (a) fails to comply with the provisions of this Regulation such Licensee or its officers shall be liable to a fine of ₦5,000,000.00. If such an offence is continuing, such a Licensee or officer shall be liable to a daily default penalty of ₦ 500,000.00.
- (a) the Commission may revoke the License of the Licensee for failure to comply with the Regulation. The Commission shall give a prior written notice to the Licensee of such revocation, not less than [30] days to the withdrawal of the License.

In addition the Commission may institute an action for non-compliance by way of an injunction or a specific performance or any or such other judicial means of enforcing a duty or obligation imposed on a Licensee pursuant to this Regulation.

## **21. Amendments of Regulation**

The Commission may from time to time review and modify these Regulations, including the Schedule, pursuant to the review of Section 72 of the Act, and in doing same; the Commission may request and receive advice from external advisory groups.

## **22. Power of the Commission to issue further directions.**

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

## **23. General Interpretation**

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

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

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

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

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

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

**“Communications data”** means any of the following:

- (a) any Traffic data comprised in or attached to a Communication (whether by the sender or otherwise) for the purposes of any Communication system by means of which it is being or may be transmitted;
- (b) any information which includes none of the contents of a Communication (apart from any information falling within paragraph (a)) and is about the use made by any person:
  - (i) of any Communications service; or
  - (ii) in connection with the provision to or use by any person of any Communications service, of any part of a Communication system;
- (c) any information not falling within paragraph (a) or (b) that is held or obtained, in relation to persons to whom he provides the service, by a Licensee.

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

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

**“Content”** shall be as defined under the Act;

**“Law Enforcement Agency”** means the National Security, the State Security Service and the Nigerian Police Force; and any other agency as the Commission may from time to time specify;

**“Licensee”** means any person, body or organization which provides a Communication service in accordance with the licence issued to such a person by the Commission;

**“NSA”** means the National Security Adviser

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

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

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

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

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

- (a) so monitor by means of aural or other acquisition of the contents of any Communication;
- (b) so modifies or interferes with the system, or its operation;
- (c) so monitor’s transmission or archived data made by means of a monitoring device,
- (d) retrieves Communication data on a Communication system; or
- (d) so monitors transmission or stored data made by wireless telegraphy to or from Apparatus comprised in the system,

as to make some or all of the contents of the Communication available, while being transmitted, to a person other than the sender or intended recipient of the Communication.

**“International Mutual Assistance Agreement”** means an international agreement designated for the purpose of Regulation 8(2) (d) of these Regulations;

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

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

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



**“Protected or Encrypted Communication”** means Communication which requires access by way of a key, password, codes, etc. from a person in possession of such Communication;

**“Regulations”** means the Lawful Interception of Communications Regulations, [].

**“Traffic data”**, in relation to any Communication, means:

- (a) any data identifying, or purporting to identify, any person, Apparatus, equipment, device or location to or from which the Communication is or may be transmitted,
- (b) any data identifying or selecting, or purporting to identify or select, Apparatus, equipment or device through which, or by means of which, the Communication is or may be transmitted,
- (c) any data comprising signals for the actuation of Apparatus, equipment or device used for the purposes of a Communication system for effecting (in whole or in part) the transmission of any Communication, and
- (d) any data identifying the data or other data as data comprised in or attached to a particular Communication,

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

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

## **24. Citation**

These Regulations may be cited as the Lawful Interception of Communications Regulations, [].