

**A LEGAL APPRAISAL OF THE NIGERIAN COMMUNICATION COMMISSION'S
REGISTRATION OF TELEPHONE SUBSCRIBERS REGULATION (RTS) 2011:
ISSUES AND CHALLENGES**

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Abstract

This paper sought to appraise the Nigerian Communication Commission Registration of Telephone Subscribers (RTS) Regulation 2011 with a view to reveal its challenges. The Nigerian Communication Commission compels its licensees to register their new, existing and foreign subscribers' personal information utilizing their medium to the government central database. The regulation made provision to promote constitutional rights to privacy, freedom of expression and electronic data protection. Having perused the regulation and accessing scholarly works on doctrinal methodology of research, it reveals that the regulation though logically sound, the motive for law enforcement and counter terrorism on the part of government was over emphasized. We discovered privacy infringement, implementation gap and few section of the society were discriminated due to limited access to enrolment facilities. Consequently re-regulation, active implementation and policy on massive digital inclusion were recommended among others.

Keywords: *Implementation, Law enforcement, Privacy, Subscriber, Service providers*

Introduction

Mandatory registration of telephone users emerged after the introduction of registration requirements in Brazil, Germany and Switzerland in 2003.¹ On November 7th 2011, Nigerian Communication Commission (NCC) issued Registration of Telephone Subscribers (RTS) Regulation 2011. It requires mobile phone subscribers to allow their fingerprints and biometrics map of their face to be collected and registered to their SIM card which are later stored in government central database (CDB). As of march, 2020 over 150 countries had mandatory SIM

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¹'Mandatory Registration of Prepaid Sim-card Users' *GSMA Whitepaper* (2013) p6 <www.gsma.com/publicpolicy/wp-content/uploads/2013/11/> Accessed 12 April 2023 at 5: 30 p.m.

registration laws.² Government that introduce mandatory SIM registration based their decision to do so on the belief that would improve the efficiency of law enforcement and counter terrorism efforts, the assurance to safeguard subscribers information from unauthorized use in line with constitutional right to privacy, freedom of expression and electronic data protection regime.³ However this is far from reality in Nigeria as criminals keep using the Licensees medium to communicate high crimes and negotiate ransoms in furtherance of kidnapping.⁴ In line with the above this paper appraises the RTS regulations, x-ray available literatures and surrounding reports to examine the challenges to efficient implementation of RTS regulations with a view to recommend a solution.

Clarifications of Key Terms

In order to appreciate the terminologies used in this paper the following terms carry their meanings according to Part1 of the RTS regulations which covers interpretation and were produced for clarification:

- a) 'Activate' means to allow full access to a licenses network service including the ability to make and receive calls, send and receive short message and other range of services
- b) 'ActivationWindow' means period of one month from the day a subscriber acquires a new line on the network of licenses within which is required to register
- c) 'CentralDatabase 'CDB' means subscribers information database, containing the biometrics and other registration n information of all subscribers.
- d) 'SubscriptionMedium' means a subscriber identity module (R-UIM) smart cards, a CDMA subscriber identity module (CSIM) smart card, a removable user identity module (R-IUM) smart card, a CDMA subscriber identity module (CSIM) or any other mobile phones subscriber medium containing the telephone number of a subscriber, encoded network

² Oreolowu Adebayo, 'Considering the Legal Tenability of the Implementation of New Sim Registration Rules' Mondaq (31 December 2020) <www.monda.com/ng> Accessed 11 August 2023 at 9:00 p.m.

³ Syed I. Ahmed and Others, 'Privacy, Security, and Surveillance in the Global South: A Study of Biometric Mobile SIM Registration in Bangladesh' *A Proceedings Of The 2017 CHI Conference on Human Factors in Computing Systems*(2017) Doi: <http://dx.doi.org/10.1145/3025453-3025961>; <<https://epublications.marquette.edu/mcs-fac/544/>><scholar.google.com> Accessed 5 October 2023 at 5:45 p.m.; GSMA whitepaper (n.1).

⁴ Ademola Popoola, 'Why Kidnappings Occur Despite SIM-NIN Linkage Policy: EX- Minister' *Premium Times* (15 January 2024) <premiumtimesng.com> accessed March 17, 2024 at 8:00 a.m.

identification details, the personal identification details, the personal identification number and other user data.

- e) ‘SubscriberInformation’ means biometrics and other personal information of subscriber recorded and stored by licensee or independent registration agent.
- f) ‘SubscriptionRegistrationPeriod’ means 6 months from effective date which existing subscribers are expected to register their subscription.
- g) ‘Licensees’ are mobile telephone service that utilize a subscription medium in Nigeria such as MTN, Airtel, Globacom and Visafone among others.

Appraising the Registration of Telephone Subscribers’ (RTS) Regulation 2011⁵

The (RTS) regulation was issued by the National Communication Commission (NCC), in the exercise of its powers pursuant to section 70 of the NCC Act 2003. It empowers telecom service providers (MTN, Globacom, and Airtel) to process the telecom consumers’ personal and biometric data.⁶ The objectives of the RTS regulation are twofold: (1) to provide a regulatory framework for the registration of subscribers to mobile telecommunication service utilizing subscription medium in Nigeria and (2) to provide for the establishment, control, management and administration of the CDB.⁷ The scope of the regulation is intended to apply to all person and licenses including corporate, private and commercial subscribers to mobile telecommunication service utilizing subscription medium in Nigeria and a foreign subscribers roaming on the network of licensee in Nigeria.⁸

The RTS Regulation has 5 parts and 23 sections. Part2oftheRTS regulations empowers the commission to establish the CDB, manage, control and administer the CDB with due regards to constitutional right to privacy and freedom of expression, and in accordance with standard issued by international organization for standardization in relation to security and management of electronic and personal data. A licensee dealing with subscribers data were mandated to observe the part vi of the General Consumer Code of Practice for Telecommunication Services and any

⁵ NCC’s Registration of Telephone Subscribers (RTS) Regulation 2011 NCC <www.ncc.org.ng> Accessed 11 January 2024 at 10:30 a.m.

⁶ Section 70 and 106 of the Nigerian Communication Commission (NCC) Act, 2003 (Act No. 19).

⁷ Section 2 of the RTS, 2011.

⁸ Section 3 of the RTS, 2011.

other instrument of the commission or any Act of the National Assembly on Personal Information.

Guidelines for Subscriber's Registration

Part 3 of the RTS regulation provide for the registration of new, existing and foreign subscribers examined below:

- **Registration of New Subscribers**

The RTS regulation empowers licensees, independent registration agents (IRA) and subscriber registration solution providers (SRSP) to capture register and transmit to the CDB the biometric and other personal information of their subscribers. If it is a corporate body, then the biometric and other personal information of its authorized representative name, address and registration number issued by the Corporate Affairs Commission should be provided. It is noteworthy that the registration of new subscribers is free. The subscriber has responsibility to supply his personal information to the licensee within activation period. Upon capturing and registration of the biometric and the personal information, the licensee is mandated by the Regulation to activate the subscription medium on its network service. The licensee, IRA, SRS are further mandated to transmit the subscriber information to the CDB on monthly basis.⁹

- **Registration of Existing Subscribers**

Existing subscribers are to be captured and registered within their subscription registration period in accordance with section 11 (2) of the RTS regulation. The existing subscribers (pre- RTS regulation) has six month within which to supply their personal information for registration. By the end of subscription registration period, upon notifying the commission, licensee shall promptly deactivate existing subscriber not registered in the CDB. However, reactivation is allowed after the existing subscribers have registered their biometric and personal information.¹⁰

⁹ Section 11 of the RTS, 2011; 'How to Register Sim Card in Nigeria' <<https://cube.ng/how-to-register-sim-card-in-nigeria>>; 'Sim Registration Tips-MTN Nigeria' <<https://www.mtn.ng/sim/sim-registration>> Accessed 20 February 2024 at 10:30 a.m.

¹⁰Section 13 of the RTS, 2011; 'Sim Registration' NCC (18 March 2024) <ncc.gov.ng/stakeholders/corporate-matters/projects/72-sim-registration> Accessed 20 March 2024 at 8: 30 a.m.

- **Registration of Foreign Subscribers**

For foreign subscribers, Licensee is mandated to register any foreign subscriber's personal information who is roaming on the licensee's network service in Nigeria. A licensee who is providing roaming services in Nigeria to a subscriber of a foreign licensee shall register the personal information of such subscriber in accordance with the provisions of the Regulation before providing such subscriber with roaming services. For the purposes of sub regulation (1) of the regulation, the activation window shall be a period of 48 hours.¹¹

Data Protection under the RTS Regulation

One of the most important aspects of the RTS is the part that discusses data protection and confidentiality of subscribers' information under section 9 in furtherance of the right of subscribers guaranteed by section 37 of the Nigerian Constitution 1999 As Amended and any guidelines issued by the commission including terms and condition that may from time to time be issued either by the commission or a licensees. The subscribers' personal information shall be stored in the central database on confidence. The licensees shall allow subscribers to view the said information and to request update and amendment there to.¹²

The right to privacy under section 37 of the Nigerian Constitution was interpreted widely to protect the privacy of individuals in Nigeria to include communication data.¹³ In essence, the regulation recognizes the importance of privacy of a subscribers and the need to protect same to the effect that the subscriber's information contained in a central data base shall be held on a strictly confidential basis that no persons or entity shall be allowed access to any subscriber information on the central data base except as provided in the RTS regulation- such as national security.¹⁴

Furthermore, licensees, independent registration agents and subscribers registration solution providers are prohibited not to under circumstances retain, duplicate, deal in or make copies of any subscriber information or store in whatever form any copies of the subscribers information

¹¹ Section 13 of the RTS, 2011.

¹² Section 9 (1), of the RTS, 2011.

¹³ *Incorporated Trustees of Digital Right Lawyers' Initiative v NIMC* (2021) LPELR-55623 (CA)

¹⁴ Section 9 (2), of the RTS, 2011.

for any purpose other than as stipulated in the regulation or the Act of National Assembly.¹⁵ This explained the efforts of the regulation towards protection of subscriber's personal information. This is a welcome development as its will put the minds of the subscribers at ease as far as their personal information is concerned.

The RTS regulation went further to obligates the licensees and their agents including the NCC to each take all reasonable precautions to ensure data security in accordance with international practices to prevent the integrity and prevent any corruption, loss or unauthorized disclosure of subscribers information obtained pursuant to the regulation and shall take steps to restrict unauthorized use of the subscribers information by their employees who may be involved in the capturing or processing of such subscriber information.¹⁶ Nor shall the licensees or their registration agents retain the biometrics of any subscribers after it has been transmitted to the central data base.¹⁷

Moreover, even personal information sharing with security agents shall be guided by the provision of National Communication Commission Act 2003; the RTS regulation and any guidelines or instruments issued from time to time by the NCC. As such, subscriber's information shall not be released to a licensee, security agency or any other persons, where such release of subscriber's information would constitute a breach of constitution or any other Act of the National Assembly, for the time being in force in Nigeria or when such release of subscriber information would constitute a threat to National security.¹⁸ Licensees are further mandated to abstain from releasing personal information of a subscriber to any third party without obtaining the prior written consent of the subscribers.¹⁹ This obligation extends further to cross border transfer of subscriber's information outside the Federal Republic of Nigeria without the prior consent of the NCC.²⁰

¹⁵ Section 9 (3), of the RTS, 2011.

¹⁶ Section 9 (4), of the RTS, 2011.

¹⁷ Section 9 (6), of the RTS, 2011.

¹⁸ Section 10 (2), of the RTS, 2011.

¹⁹ Section 10 (3), of the RTS, 2011.

²⁰ Section 10 (4), of the RTS, 2011.

Subscriber's Rights and Benefits of Registration

Having a cursory look at the regulation, certain right and benefits of the regulations are accruable to the subscriber. These rights and benefits include:

Firstly, a subscriber is entitled to limited access during his activation window. (The user is only allowed to make and receive calls and short messages-SMS). Secondly, a subscriber is entitled to activation of his SIM card upon registration and as such will benefit from: (a) unlimited access to licensees' medium, (b) digital participation (e-commerce, e-banking, e-education, and e-passport), (c) opportunity to keep the mobile number when switching to another network provider. Thirdly, a subscriber has a right of view, update and proper amendment to his personal information in the database -CDB.²¹ Fourthly, a subscriber has a freedom to deactivation and deregistration from the licensee if he desired.²² Finally, a subscriber has the right to register any number of subscription medium with any licensees. That is through mobile number portability.²³

Liabilities under the RTS Regulation

Both the subscribers and the licensees are subject to liabilities under the RTS regulations for failure to fulfil its respective duties or obligations. Some were provided below:

1. Subscriber is liable for activities carried out using his subscription medium he registered with his personal information.²⁴
2. Licensee who breach activation regulation would be liable to penalty of ₦200,000 two hundred thousand naira for each medium. However, lack of knowledge, consent or connivance in the breach, as well as reasonable precaution and due diligence to prevent the breach constitute a defence.
3. Breach of subscriber's personal data by licensee attract penalty upon conviction of ₦200,000 on each medium. When such information were utilize by licensee or its agent for business or gain, it attract a fine of ₦1, 000.000 one million naira.²⁵

²¹ S.9 (1) of the RTS 2011.

²² S.15 of the RTS 2011.

²³ S.17 of the RTS 2011.

²⁴ S.18 of the RTS 2011.

Addendum to the Regulation: NCC Directions and National Policy on SIM Registration

The Federal Government through (NCC) on 9th December 2020, issued directives suspending the on-going SIM registration. On 15th December 2020, it issued directive for the implementation of new SIM registration rules.²⁶ The directive mandate licensees to immediately suspend sale, registration and activation of new SIM cards pending an audit exercise on the CDB. Moreover, when registrations resume, existing subscribers are mandated to submit their national identity numbers (NIN) to their telecommunication service providers for synchronization with the SIM cards.²⁷ In furtherance of this development the NCC issued the National Identity Policy for SIM-card Registration whose framework includes establishing SIM Identity Management System to reduce fraudulent SIM registrations. It provides for Sim-card-NIN synchronization and implements device management system.²⁸ This allow for linking the registered sim-card to the national identity data of the users. It can be glanced from above that the citizens have fulfilled their civil and national obligations by submitting their personal information, bio-data and biometrics to the government in exchange for security but the irony is that the war against insecurity promised in return remain on the lips as acts of terror increased rather than decrease.

Issues and Challenges

Despite the efforts made by the NCC to issue the RTS regulations as head regulatory institution the object of the program is far from reality as following issues mitigates its success: limited access to source documents such as NIN enrolment centres, privacy infringement and implementation flaws.

²⁵ Part iv of the RTS 2011

²⁶ Press Statement: Implementation of New Sim Registration Rules (15 December 2020) <www.ncc.gov.ng> Accessed 11 December 2022 at 2:15 p.m.

²⁷ Ibid; 'Abuja Mobile Phone Users Rush to Register Sim Cards to Beat Deadline' *Premium Times* (29 January 2013) <Premiumtimesng.Com> Accessed 12 June 2022 at 4:30 p.m.

²⁸ The National Identity Policy for Sim-Card Registration, 2021 NCC <www.ncc.gov.ng> Accessed 11 January 2024 at 9:15 a.m.

Access to Enrolment Facilities

The RTS regulation and National policy on Sim card registration is made to foreclose the lacuna in crime detection and surveillance. However, it exposes the citizens more to vulnerability and excessive hardships due to flaws in process of registration especially when the national identity number is made a priori. The insufficient centres and resources both personal and infrastructural make some citizens lose access to telephone lines after been barred and lose access to digital and financial services.²⁹ Similarly remote settlements have limited access to enrolment centres to affordably register with the Licensees.³⁰

Privacy and Data Protection

Sim-card registrations has the benefits of national security and business convenience yet, there is a drawback such as privacy invasion through misuse or unauthorized access to personal information collected during the process or security breaches when hackers gain access to database.³¹The Federal Government in order to implement the RTS regulation and its Policy licensed over 200 agents and institution for the NIN enrolment in some states, and private and public sector.³² What is worrisome was these subsidiary registration centres may not appreciate the privacy and data protection responsibilities and consequently resort to abuse.³³

Similarly the NCC is empowered in the interest of public safety and national security to give orders to licensees to intercept or detained or disclose communication to authorized officers.³⁴ However recent reports show that phone communication data can be intercepted and released without prior court order and unrelated to crime prevention. Security experts viewed the tapping

²⁹ Samuel C. Uzoigwe, 'Biometric Technology in Nigeria: Examining Data Privacy Concerns. *African Academic Network on Internet Policy* (21 March 2022) retrieved from<aanoip.com.>; see also 'Nigerian Digital Economy Diagnostic Report' (World Bank Group: Washington, 2019), p. vii<www.worldbankgroup.org.> Accessed 23 March 2024 at 5:20 p.m.

³⁰ Eze Philips and T. Enem, 'A Short Review on the Penetration of Fingerprint Identification and Authentication System in Nigeria' *African Journal of Computer and ICT* [2021] 14 (2): 40-45 at p.41 ISSN 2006-1781 <https://afrijcict.net> Accessed 8 November, 2023 at 10:45 a.m.; it shows how the Director of NIMC equally laments this enrolment facilities gap- that the commission needed 4000 data capture centres against the 200 centres across the county.

³¹ 'The Sim Card Registration Act: Pros and Cons' (7 January 2023) <https://bog.route1>. Accessed 11 March 2024 at 11:45 a.m.

³² Press statement (n.29); nimc.gov.ng/approved-licensed-service-providers.

³³ Isuma Mark, 'How NIMC Compromise Nigerians Data by Recruiting Touts to Fleece NIN Seekers' *The Whistler* (23 January 2023) <thewhistler.ng>www.google.com Accessed 15 July 2023 at 9:15 p.m.

³⁴ Section 147, 148 of the NCC Act, 2003; Regulation 13 of the RTS 2011.

of phone conversations without public interest is more consistent with state surveillance or profiling for political aim.³⁵ It is also our view here that intercepting citizens' conversation for purposes unrelated to crime prevention or public interest is gross violation of privacy and breach of confidence. The citizens' needs confidence that their information are not traded unlawfully.

Implementation Gap

Many countries including Nigeria introduce mobile phone surveillance to monitor the phone usage after realizing that criminals make use of mobile phone to communicate organized crimes, cybercrimes and terrorism.³⁶ Sequel to that the service providers (MTN, Airtel, Globacom) processed phone users' biometrics and other personal information for identification; and the NCC Act, 2003 permits the interception or wiretapping phone usage for security purpose.³⁷ This coupled with the synchronization of Sim-card with NIN by the NCC, and NIN-enabled ATM cards shows that the government knows too much about its citizens and makes Nigeria a surveillance state.³⁸ The purpose of processing subscriber's bio-data and biometrics by government is to identify its citizens by mandating the licensees to know their customers KYC, which can be utilized when crime is involved. Yet one may ponder why act of terrorism, banditry, kidnapping is on the rise in the face of these human information despite the telecom service providers have a duty to prevent their network facility from being used in relation to committing offences and to assist security agents in prevention of crimes.³⁹ The then minister of Communication Isa Pantami who pioneered NIN-SIM data policy recently bowed to paying ransom to kidnappers further signifies government failure to utilize the available communication data to curb crimes perpetrated with the use of mobile phone.⁴⁰ This disintegrates the relationships between Sim-card registration and crime control as propagated by the then minister.

³⁵ Unini Chioma, 'Peter Obi and Oyedepo Phone Conversation: Whoever Leaked Audio Probably Used Security Agencies Telecoms Staff-Expert' *Nigerian Lawyer* (Abuja, 3rd April 2023) <<https://thenigerianlawyers.com>> Accessed 11 January 2024 at 11:30 a.m.

³⁶ Syed I. Ahmed, et al. (n. 5).

³⁷ Regulation 13 of the RTS 2011; Section 38 of the NCC Act 2003.

³⁸ 'Federal Government Approves Banks to Issue NIN-Enabled ATM Cards' (25 May 2023) <gazettengr.com> Accessed 31 July 2023 at 8:25 a.m.

³⁹ NCC Act 2003 s.146 (1) and (2); Lawful Interception of Communications Regulations 2019 <<https://www.ncc.gov.ng/documents/839-lawful-interception-of-communications-regulations-1/file>>.

⁴⁰ 'Nabeeha: Pantami under Fire for Raising N50m Ransom for Bandits' *VanguardNews* (16 January 2023) <vanguardngr.com> Accessed March 17, 2024 at 5:15 p.m.; AdemolaPopoola, (n. 6).

Policy is mere skeleton that receive its soul from implementation. It is the desired end of security that justify interfering with citizen's privacy and this must be reality.

Findings, Recommendations and Conclusion

Findings

1. The NCC's RTS regulations and National Policy on Sim Registrations was issued due to the growing incidence of abduction, kidnapping, bandits, cyber fraud dramatically using prepaid subscription medium to negotiate ransom with their victim family without trace. However it was observed that there was no evidence that mandatory SIM registration lead to reduction of these criminal activities.
2. There is privacy concern which is worrisome, for instance while the RTS regulation mandate limitation on release of subscribers personal information to third party and security agents, it also allowed security agents direct access to the CDB.
3. Finally the whole exercise, do not contemplate and promote rural participation as well as internally displaced person (IDPs) who may not have the necessary documents for registration and direct access to registration centres.

Recommendations

1. There is the need for reregulation to impose liability on licensees, and their agents whose medium were used to commit high crimes such as terrorism, kidnapping and robbery without making the communication data available for law enforcement. It include the establishment of cyber police department to receive direct reports from subscribers.
2. The benefits of registration are enormous; hence the regulation and entire legal regime on data protection should establish the mechanism for implementing licensees' obligation as data controllers. The access to subscribers' conversation data by security agents should only be crime related to ensure privacy in digital age.
3. Digital participation should be made a right alongside basic education. Inclusive mechanism such as enrolment facilities must be put at the doors of rural settlers, old and the illiterates.

Conclusion

Mandatory SIM registration is the policy rightly used to produce user personal information to register for or activate a prepaid SIM card. The concept was adumbrated by subsequent requirement of NIN number. This allows state to identify the owner and who is making calls, SMS and online presence to undermine anonymous communications to perpetrate crime. The reason behind it is logical; however we conclude that there are privacy issues and a challenge to accessibility as well as implementation flaws which makes the realization of its intended purpose of crime detection and counter-terrorism far from reality. Consequently the unintended flaws must be addressed to be more successful.