![A4AI Alliance for Affordable Internet — Nigeria Coalition]
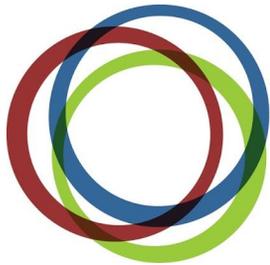
![World Wide Web Foundation]

TO
THE NIGERIAN COMMUNICATIONS COMMISSION - NCC

ON
ESTABLISHMENT OF INTERNET INDUSTRY CODE OF PRACTICE

SUBMISSION MADE ON FRIDAY JUNE 23, 2017

INTRODUCTION

We wish to thank the NCC for the open and engaging process of seeking comments for a code of conduct for the internet industry in Nigeria. Beyond a general overview, we have laid down core principles and key practices, as well as some policy considerations. It is our hope that the submissions made jointly by the A4AI Nigeria Coalition and the Web Foundation will help to deliver a strong, open internet in Nigeria — a neutral, free and open platform for collaboration, innovation and progress. Doing so will bring untold socio-economic benefit to all citizens. We believe that Nigeria is well positioned to be a good example to other other countries in showing how to balance the challenges of network investment with openness, while allowing citizens to benefit from the full power and potential of the internet.

Based on the consultation, we recommend the following policy considerations as part of an internet code of conduct which has been proposed:

We are proposing that the NCC consider the following as **basic principles for Nigeria**:

1. The **internet must be kept as a neutral and open space for everyone**, forever.
2. **A fully affordable and accessible internet must be upheld between all endpoints connected** to the internet without any form of restriction.
3. **Traffic management techniques deployed by ISPs must be reasonable, and focus exclusively on ensuring the safety, security and efficiency of the network itself**.
4. **All forms of discriminatory traffic management, such as blocking or throttling, should be prohibited**, unless as part of necessary, exceptional, and temporary traffic management measures.
5. **Information sharing mechanisms should be set up** to ensure ISP compliance with reasonable traffic management standards.
6. **Access providers have to indicate in their contracts and advertisements a guaranteed minimum bandwidth**, maximum latency and quality measures for the connection.
7. **Operators should be subject to strengthened transparency obligations**, such as around company disclosures on metrics related to QoS, traffic management and consumer reporting.
8. **An oversight committee should be established to work alongside the NCC to monitor compliance** with the Internet Industry Code of Practice.
9. **Allowances should be made for end users to be able to report violations of the Industry Code** to NCC directly, even if other recourse channels exist.
10. **A clearly defined communications channel** of stakeholders with NCC needs to be established and clearly communicated.
11. **Companies and public bodies must work together to respect and fulfill human rights, as well as legal and judicial obligations**.

The sections that follow outline each of these points in more detail.

Global Overview

The open internet has proven its potential to be a great equalising force, catalysing inclusive economic and social development. When equipped with connectivity, easily accessible information *and* an unrestricted many-to-many communications platform, people can participate more actively in decisions affecting them, and hold institutions accountable for delivery. They can also create or access new economic opportunities, often dismantling barriers to market entry and success. A well known study by the World Bank suggests that a ten percentage point increase in fixed broadband will generate an additional 1.35 per cent rise in national income for developing countries. In the case of the US, it is estimated that the internet generates around US$ 966 billion, which is equivalent to around six percent of the entire economy. In the EU, the estimate is that a single digital market for the region could contribute 415 billion euros each year to the economy and lead to hundreds of thousands of new jobs. Globally, the digital economy — skills and capital — is thought to represent 22.5% of the global economy, suggesting there there is still much growth ahead.

With this in mind, the United Nations and several national governments have recognised internet access, skills and freedoms as an essential part of people's human rights and a prerequisite for participating fully in society and democracy. The UN Sustainable Development Goals commit nations to broaden opportunities and empowerment through ICTs as a critical tool for fighting poverty and inequality. Frank La Rue, former United Nations Special Rapporteur on the Promotion of the Right to Freedom of Opinion and Expression, has stated that "Given that the Internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all States. Each State should thus develop a concrete and effective policy, in consultation with individuals from all sections of society, including the private sector and relevant Government ministries, to make the Internet widely available, accessible and affordable to all segments of population".[1]

Nigeria: The Economic and Social Ramifications of an Open Internet

With an estimated population of over 180,000,000, Nigeria is not just home to the largest population in Africa, it is also home to more than half the population of the Economic Community of West African States (ECOWAS). The Nigeria Vision 20:2020 expresses the aspiration for Nigeria to become one of the top 20 economies in the world by 2020. One of the six policy thrusts of the Plan is related to the open internet: *Developing a knowledge-based economy*. The critical policy priorities of the vision include the promoting of *private sector-led non-oil growth to build the foundation for economic diversification* and th*e investment in human capital development to enhance national competitiveness.*

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[1] http://www2.ohchr.org/English/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.PDF

The telecommunications sector contributed N1,580 billion to GDP (equivalent to 9.8%) in the second quarter of 2016, which represents an increase of 1.0% points relative to the previous quarter.[2] This is the largest contribution to GDP made from this sector in the rebased period, which emphasises that growth in telecommunications has remained robust when compared to total GDP in the country.

In terms of accessible and affordable internet, broadband affordability remains an obstacle for many Nigerians. Additional efforts are required to build momentum off previous policy and regulatory reforms to make broadband internet affordable and accessible to everyone, regardless of income or location. According to the Alliance for Affordable Internet (A4AI), it is estimated that 47% of Nigerians use the internet (but only 36% of all women) and that the cost of access remains high. One GB of mobile prepaid internet costs the average Nigerian 8% of his or her monthly income (well above A4AI's 2% target). The A4AI 2017 Affordability Report ranks Nigeria 13 out of 58 countries surveyed, awarding the country a score of 56.58 out of a possible 100 points for the policies it has in place to reduce broadband prices and improve access.

The economic, social and policy status of Nigeria make it a very critical country in Africa, and in the Global South, positioning the country as a player of key regional, continental, and global economic importance. From the robust growth being experienced in the internet Industry, the current exercise becomes even more critical, not just for Nigeria, but for Africa and the global economy.

Part 1: General Principles of the Open Internet and Net Neutrality

We foresee that the Industry Code will be espousing broad principles on openness of the internet. We propose that the NCC consider the following as basic principles for Nigeria:

1. The internet must be kept as a net neutral and open space for everyone, forever. Every Nigerian deserves to be able to get online, and to use the internet to improve their lives — regardless of gender, religion, socio-economic status, political affiliation, etc.
2. A fully affordable and accessible internet must be upheld between all endpoints connected to the internet, without any form of restriction.
3. Traffic management techniques deployed by ISPs must be reasonable, and focus exclusively on ensuring the safety, security and efficiency of the network itself.
4. All forms of discriminatory traffic management, such as blocking or throttling, should be prohibited, unless as part of necessary, exceptional, and temporary traffic management techniques.
   ○ ISPs should not block content unless necessary, proportionate and legally required.

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[2] http://www.nigerianstat.gov.ng/report/438

○ ISPs should not throttle or prioritise specific content or applications unless required to address a transient network management problem which cannot be dealt with otherwise.

5. Techniques used for all such traffic management must be pre-approved by the NCC, and information sharing mechanisms should be set up to ensure compliance can be objectively assessed by an independent authority such as the NCC. By default, only header information should be used for traffic management. The use of deep packet inspection (DPI) by Internet Service Providers (ISPs) should be prohibited.

6. Access providers have to indicate in their contracts and advertisements a guaranteed minimum bandwidth, maximum latency and quality measures for the connection. Tools need to be provided to verify those standards and they must be determined with a statistical method that should be defined and agreed upon through a public consultation process.

7. Operators should be subject to strengthened transparency obligations. These pertain in particular to providing more detailed information in customer contracts: the possible impact of traffic management techniques used by the ISPs, the concrete impact of the (traffic, speed, etc.) caps or allowances attached to the plan, information on connection speeds, etc.

8. An oversight committee should be established to work alongside the NCC to monitor compliance with the Internet Industry Code of Practice.

9. Allowances should be made for end users to be able to report violations of the Industry Code to NCC directly, even if other recourse channels exist.

10. A clearly defined communications channel between stakeholders and the NCC needs to be established and clearly communicated. Such a channel shall ensure interactivity between NCC and stakeholders. In order to build trust, stakeholders need to be assured that concerns communicated through this channel are guaranteed to be responded to and taken care of promptly.

11. Companies and public bodies must work together to respect and fulfill human rights, as well as legal and judicial obligations.
    ○ As a democratic and robust economy, the Nigerian Communications Commission must commit to keeping the internet on and consider internet shutdowns as a non-viable option.
    ○ Given the speed of evolution of the industry, mechanisms for the constant upgrading of the capacity of legal, judicial and legislative practitioners needs to be set into place.

Part 2: Practices around the Open Internet and Net Neutrality

Right to Create

Everyone has the right to create and share content without inappropriate censorship or interference. To create an economically stronger Nigeria, the industry needs to develop into one

that produces content, hence the need for the entrenchment of more creative power of digital content by the industry and an Open Internet that guarantees that content will be valorised. The Web Foundation's 2014 Web Index included a world-first assessment of net neutrality across countries, and found that only around a quarter of nations effectively enforce clear rules against commercial or political discrimination in the management of internet traffic.

Provision of Free Basic Data

Research by A4AI has shown that users prefer unrestricted access to the internet, even if time or data limits are enforced. The provision of free and unrestricted data would incentivise individuals to engage online and consequently pay for additional access. This would encourage more users to sign on, increasing digital penetration and ISP revenues. This free data quota could be implemented in either of the following means:
- Making the provision of a free data pack mandatory for mobile operators as part of their license conditions; or
- Subsiding the cost of this free data pack through the Universal Service Provision Fund (USPF) as an incentive to mobile operators who implement this free data.

A modification to the above model is the provision of free data during certain times of the day. ISPs can provide free data to everyone without restrictions for a particular part of the day. This would give an incentive to the consumers and would also adhere to the guidelines of NCC. This would enable traffic management, as a particular part of the day with low usage would be offset by the high usage. The Uganda example may be useful in this case.

Expansion of Affordable Access

We also recognise that there is a justified concern for the need to expand affordable access. This may translate to innovative interventions which should be encouraged by the government. However, we argue that efforts to improve broadband connectivity and affordability are in no way attenuated by following the above mentioned principles. Indeed, interventions to provide access for low-income and/or marginalised communities must also adhere to these principles, as they should for all Nigerians.

Traffic Management Techniques (TMTs)

Reasonable traffic management will be required at certain times to maintain network efficiency for all users. Where traffic management techniques are used, ISPs must make clear the reasons for doing so in a transparent and prompt manner, as required by NCC or another relevant authority.

Further, all traffic management techniques/methodologies that can be used by ISPs should be based on suitable methodologies recommended by NCC. Further, any traffic management

techniques utilised should be subject to scrutiny by NCC or a suitably empowered and independent committee (see below), as notified by the competent authority. This committee should include representatives from the sector, including civil society organisations and network neutrality experts. Efforts should be made to ensure there is no conflict of interest. Traffic Management Techniques should not discriminate between different types of traffic.

TMTs that should not be allowed
We would like to recommend a 'negative list' of TMTs that should not be allowed under any circumstances:
- Blocking content, unless it is illegal as defined under Nigerian law and international norms.
- Throttling/ degrading some types of traffic (e.g. P2P), unless required to address a transient network management problem which cannot be dealt with otherwise.
- Priority that is given to some service provider's content or application over others (perhaps for a fee raising revenue for ISPs); and
- Blocking rival content or applications e.g. rival IPTV services

Traffic Discrimination

In general, application-specific traffic discrimination should not be allowed, as it can lead to anti-competitive effects in the market (where the application is exclusively available to customers of specific ISPs), and can reduce the end users control over their internet experiences. Preferential treatment to particular content based on users' choice should be treated as an exception to the application-specific discrimination prohibition where there is no arrangement between the ISP and content provider. Examples of this are what we term 'service-specific plans' (see, for example, recent research by A4AI). This includes data plans that provide the user with access to specific content at a cheaper rate than if s/he were to access the content using a regular priced data plan. This can, in theory, lead to the use of traffic management techniques to ensure a certain level of quality for that content.

Crucially, such service-specific plans are typically offered by ISPs to the end user with no agreement between the ISP and content provider (this also should mean that neither the ISP nor content provider has a financial or non-financial interest in the other). This exception means that that the ISP and content provider cannot together arrange to benefit from certain traffic prioritisation, while allowing the ISP to offer services that it deems relevant to its market and customer demand. For the proposed exception (among ISPs) to work, it is important that the full details of relationships between ISPs and content providers be transparent and available to the NCC or another relevant authority. In addition, the content or application in question must be available on a non-exclusive basis to all operators.

Disclosures

We recommend a combination to be used similar to disclosures that companies are mandated to make under the Companies Act. Detailed and technically substantiated filings should be made with the NCC on a quarterly or half-yearly basis with summarised, publicly available documents to be made available on company websites. This would make all the relevant information accessible to citizens, as well as to intermediaries such as consumer groups, civil society, and all government agencies. Such disclosures may include specific metrics such as those related to QoS, traffic management, consumer reporting, and may be made available in open data formats. This can improve the ability of NCC and the public to analyse the extent to which ISPs are meeting these and other guidelines.

Oversight Committee

We recommend the creation of an independent, multi-stakeholder oversight committee that would work alongside NCC to monitor compliance with the Internet Industry Code of Practice, make recommendations on punitive measures, and explore opportunities to evolve the principles over time. This committee should be composed of representatives from at least the following stakeholder groups:

1. Academia
2. Civil Society
3. Private Sector
4. One representative each from MNOs/ISPs and content creators/platforms
5. Public Sector
6. One representative each from the NCC and the Line Ministry

We do not envision this body as one that can take actions in case of any violation of network neutrality. However, the committee will be able to make recommendations directly to NCC. One of the most important mandates of this committee would be to explore the implications of emerging technologies on the principles of network neutrality, which NCC should revisit every two years to allow for agile policy design. This body may engage nationally and internationally with the Internet Governance Forum (IGF), since its functions correspond to those of the IGF at national, sub-regional, and global levels. The body may also undertake some outreach and public information sessions on how the internet works and emerging principles relevant to protecting the open internet.

Part 3: Fundamental Human Rights, Legal and Judicial Considerations

Internet Shutdowns

For a democratic country, the internet must remain an open and safe space for all — including open for content without arbitrary discrimination while respecting the rule of law. The web should be seen as a place to post and share ideas — just as one would do by publishing them

in a book or newspaper, or speaking about them in public spaces. As such, internet shutdowns are not a viable tool and must be discouraged. They are a form of censorship and curtailing of free speech. Shutting down the internet, or parts of it, should be seen as equivalent to shutting down a newspaper, banning a book, or stopping the broadcast of a radio programme.

Internet shutdowns also have significant economic costs. Governments around the world shut down the internet more than 50 times in 2016 alone (Access Now), costing US$2.4 billion in economic losses from 2015-2016. When Egypt shut down its internet in 2011, in response to social unrest and protests, the Organization for Economic Development and Cooperation (OECD) subsequently found that this decision cost the country US$90 million due to its impact on ecommerce and the economy. If the shutdown had continued for a year, estimates suggest it could have caused the economy to contract by 3-4%.

In consideration of the huge dependence of the Nigerian economy on the Industry, its cashless policy and its long-term vision, internet shutdowns should be guarded against. The Federal Republic of Nigeria has enough security capacity to run peaceful elections and other major national engagements without resorting to internet shutdowns.

Legal, Judicial, and Legislative Capacity for a Vibrant Internet Industry

A vibrant and healthy internet industry needs to a functional judicial and legislative system that understands how the ecosystem works and evolves. Given the speed of evolution of the industry, a constant upgrading of the capacity of legal, judicial, and legislative practitioners needs to be in place. The corresponding committee at the National Assembly needs to be regularly informed of major changes in the industry. Regular information notes from NCC on the industry may also need to be sent to the corresponding judicial authorities to enable the interfacing of existing laws to cases that involve the internet before the authorities.

About the Alliance for Affordable Internet (A4AI) and the World Wide Web Foundation

A4AI is the world's broadest technology sector coalition, with more than 80 members from across the private, public and not-for-profit sectors, including the Swedish International Development Cooperation Agency, Google, and the US Agency for International Development. Launched in 2013 by the World Wide Web Foundation, A4AI is currently working in six countries — Nigeria, Ghana, Liberia, Mozambique, Myanmar, and the Dominican Republic — to drive down the cost of broadband internet through locally driven policy and regulatory change. At A4AI, our advocacy efforts are based around our commonly agreed policy and regulatory good practices and are underpinned by the findings of our case studies, annual Affordability Report, and other research products.

A4AI's Nigeria Coalition has been active since 2013, working through a Memorandum of Understanding (MOU) with the Ministry of Communications and Technology. THe A4AI-Nigeria Coalition has more than 80 members representing public and private sector as well as civil society, including but not limited to, Nigeria Network of NGOs and GSMA. We inform debates

with our research, speak out regularly in person and in the media, and appeal directly to key decision makers with concrete recommendations to improve the policy framework aimed at achieving affordable internet for all Nigerians.

Find out more at: www.a4ai.org

The World Wide Web Foundation — which serves as the secretariat for A4AI — was established in 2009 by the inventor of the web, Sir Tim Berners-Lee. Our vision is digital equality — a world where everyone can access the web and use it to improve their lives. To deliver digital equality, we aim to change government and business policies for the better

Find out more at: www.webfoundation.org

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