

## **Legislative Imperative for Rural Communications**

Why is a legislative imperative necessary for the provision of communications services in the rural areas? The simple answer is because, without such legal framework, the universal law of capitalism dictates that service providers operate only in profit centres and generally, this does not include rural areas and communities. Communications services in rural areas are generally unviable the world over and service providers are usually not induced or attracted to extending their services there.

The extreme poverty in Nigeria's rural areas underscores the need for such legislative imperative with which the regulator can compel the expansion and extension of communications infrastructure and provision of services to rural and commercially unviable communities and areas. It is the absence of such legislative backing that has resulted in most licensed network operators not extending their services beyond Nigeria's urban centres, notably Lagos and Port Harcourt. In particular, hardly has any of them gone beyond these profit centres.

Infrastructure development is also extremely poor in the rural areas. Transmission links to the rural areas are in the main in states of very low repair and extremely poor and can in particular hardly deliver even low-speed data for minimal Internet services. If then the local communities in Nigeria must have basic efficient telephony and data services, sufficient for Internet service provisioning, it is important that the regulator be armed with the legal capacity to compel the expansion of infrastructure for service delivery.

### **Existing legal framework**

What are the provisions in the existing legislation? Nigerian Communications Commission Act No. 75 of 1992 [**"NCC Act"**] is currently the sole vehicle for liberalisation of the communications sub-sector. The Act incidentally does not have any specific provision on rural telecommunications – not even a definition of "rural area".

However, Section 10(1) of the Act provides for mandatory licensing of service providers and one of the licensed undertakings in Schedule 2 of the Act is Community telephony. The problem however is that the Act does not define what a "community" is. An escape route is that the Act permits Nigerian Communications Commission [**"NCC"** or **"the Commission"**], the industry regulator to define "the terms, provisions and limitations" applicable to any of its licenses under the Act.

Using these powers, NCC has defined "community" in its Community Licences to include:

- (i) "a rural settlement such as a village with a high density demand for telephony services";
- (ii) "a special settlement or estate such as a University campus or industrial estate";
- (iii) "an urban settlement which has an inadequate telephony network such as a new town;
- (iv) "an urban settlement which does not have a telephony network".

This definition is totally inadequate, hopelessly generalised and porous. The only specific reference to "rural" community is in the first definition; the other three

definitions fit very snugly into Nigeria's urban centres. In regard to the generalised nature of the definitions, the entire geographical space known as Nigeria can, for example, fit into the third definition – an urban settlement that has an inadequate telephony network. Even the first definition – rural settlement such as a village with a high-density demand for telephony services – requires further definition of a “rural settlement” beyond the example.

In summary, NCC's Community telephony licences are clearly not rural-area specific and therefore licensees are not obliged to concentrate on service provisioning in rural communities. The result is that most Community telephony licensees have, like the private network links [**PNL**] licensees, concentrated their services in urban profit centres and, in most instances, migrated their licences from Community licences to PNL licences. The regulator in the circumstance needs a legal instrument to assist in compelling rural telephony penetration.

### **Required legislative Improvements**

Several legislative improvements are required to assist NCC in improving service delivery to rural areas. **First**, the ambit of rural and underserved areas would have to be properly defined in a legislative instrument. Underserved areas go beyond rural areas and include urban areas and locations with inadequate infrastructure and/or service provisioning.

The definition of underserved areas would have to be fluid and dynamic to accommodate changing social and service needs of the country. The legislation in several countries in this regard allow regulators the flexibility to modify the definition of “underserved areas” from time to time based on shifting parameters and country-specific needs.

In the case of rural areas, opinion is divided on whether the definition should be based on government prerogative [e.g the Land Use Act which defines “rural areas” as such area that government designates as “rural areas”], or on geographical parameters [e.g. size and population]. Communications experts on the other hand strongly suggest that the definition should be based on the quantity of basic telephony services [i.e. number of telephony lines] that are available in the defined location or area. Perhaps the ideal may lie between the last two definitions or considerations and it may be necessary to merge them for the purpose of producing the ideal definition of the “rural area”.

**Second**, there is the need for a Universal Service Obligation legislation and regulation that empowers NCC to, amongst others, set rollout targets for operators, penalise them for non-compliance and specify incentives for rural infrastructure development and service provision. Nigeria currently does not have any such legislation and the yet-to-be-signed-and-issued Digital Mobile Licence represents Nigeria's first attempt to institute Universal Service Obligations.

The fact that previous licences did not have universal service obligations made it impossible for NCC to impose those obligations on any of the service providers. This position was worsened by the lack of legislative muscle on the part of the Commission. In most other administrations, there is usually a legislative imperative on the regulator to impose Universal Service Obligations on service providers and to prepare and publish Regulations in regard thereto. Nigeria indeed needs to institute such provisions.

**Third**, because rural communications services is universally acknowledged to be economically unviable, it would be necessary to also establish a Universal Service Fund to assist operators, particularly in infrastructure build-out e.g. transmission

links. This could be used as a form of incentive for rural telecommunications penetration.

The sources of Fund would, amongst others be all network operators and other service providers who stand to benefit from the expansion and extension of the services to the rural communities. International donor organisations could also contribute to the Fund and the terms for application thereof [i.e. disbursement of the funds and repayments] would be specified in a separate NCC Regulation. An enabling legislation would have to provide for the making of these Regulations by NCC.

**Fourth**, specific legislative provision should be made empowering NCC to collect and collate statistics and data for planning purposes, e.g. traffic patterns in rural communities. One of the banes of Nigerian communications industry is the absolute lack of statistics and data for planning purposes. Such data would, for example, inform the structuring of differential tariffs for different communities based on traffic patterns. It could also influence negotiation of interconnectivity rates between network operators based on expected traffic flows.

Such legislation should in particular specify penalties for failure of any person or organisation to provide required data statistics and/or the failure to provide accurate and correct data. The penalties should be sufficiently stiff to act as deterrent to stakeholders. The regulator must also be empowered to investigate and determine the accuracy of such data and statistics.

### **Required steps within Existing legislation**

Within the existing legislative framework, NCC can still work towards the improvement of rural communications service provisioning. Perhaps the most outstanding way it can do this is by regulating tariff and charges for provision of services to rural areas. Section 2(d) of NCC Act stipulates as one of the Commission's objectives, the protection of "licensees and the public from unfair conduct of other providers of telecommunications services, with regard to the quality of service and to the payment of tariffs."

Using this provision, NCC can compel operators and service providers to introduce discriminatory charges and tariff, which would greatly enhance rural telecommunications service provisioning. Clearly rural Nigeria dwellers cannot afford to pay the installation charges that the private operators and service providers charge in the urban profit centres and discriminatory tariffs would clearly be an immediate process for expanding and extensive services to the rural communities. However, this provision can best be implemented if there is an unambiguous and clear definition of "rural areas" in a legislative instrument.