INTERNET NETWORK NEUTRALITY IN NIGERIA: THE NEED TO BORROW A LEAF FROM THE UNITED STATES LEGAL FRAMEWORK?

Habib S. Usman
Instructor,
School of Law
American University of Nigeria
November 16th, 2018.
Meaning and history

- Inter Net: Interconnected networks using standardized communication protocols.
- Introduced in the late 1960s as part of Military apparatus.
- Commercialized in the mid 1990s.
What it does

- The Internet serves as a tool for:
  - Administrative control,
  - Enforcement of the rule of law,
  - Awareness raising campaign and social enlightenment, which are essential requirements for good governance.
  - Promotes the principles of good governance, through accountability, transparency, citizens’ participation and the improvement of service delivery in the public sector, etc.
  - Therefore…
Ideally, a platform where users should have access to any content, as well as the ability to use any application and attach all forms of device as they deem fit.

Consequently, unfettered access to the Internet by all users entails the equality of traffic or ‘net neutrality.’
Network neutrality

- Network neutrality advocates for a transparent and reasonable network management on a permissive and non-discriminatory basis.

- The rationale behind these requirements is to promote openness on the Internet and for consumers to make informed consents over application and services, as well as to promote competition and innovation.

- The 3 As?.
The 3 As

■ **Accessibility:**
  - Internet services should be accessible to subscribers/consumers that have subscribed to such services.

  D.o.S could be a breach to the freedom of expression.

■ **Availability:**
  - Internet services should always be available to subscribers/consumers when such services are requested by them, notwithstanding the time of the request and the location.

■ **Affordability:**
  - It is mandatory that Internet services should be affordable without discrimination to people of varied social status.

  Digital divide must be prevented at all cost.
The Internet in Nigeria

- According to the International Telecommunications Union (ITU), World Bank and United Nations Population Division, Internet access in Nigeria has grown exponentially in recent years.

- In 2015, Internet penetration stood at 45.1%.

- An upsurge from 38% in 2013.

- BIAS?

- Does this reaffirms the 3 As?
Reoccurring terminologies

- **Backbone networks**: Long-haul fiber-optic links and high-speed routers that are capable of transmitting vast amounts of data.

  - Connection to the backbone network is facilitated by local broadband service providers such as CYBERSPACE LIMITED, NETCOM AFRICA LIMITED, SPECTRANET LIMITED, MTN NIGERIA, IPNX NIGERIA LTD, etc. These local broadband providers are responsible for providing the ‘last-mile’ transmission services.

- **Last-mile’ transmission services**: Provision of telecommunications technology that carries signals from the local broadband along relatively short distance-to and from.
Reoccurring terminologies

- **Broadband services**: These are high-speed communications technologies such as cable, modem services or fiber services.

- **Edge Providers**: Those who provide content, services, and applications over the Internet, like Amazon or Google.

- **Broadband Internet access services (BIAS)**: Means mass-market retail services that allow access to the entire Internet, and it includes both wired (e.g., cable broadband, or fiber broadband) and wireless (e.g., satellite, wireless data) services.
Internet traffic in theory

- The Internet is not a single network, but a compendium of interconnected networks.
- Connection on the Internet is based on an “end-to-end principles” consisting of: Backbone providers (for high speed and long distance connection), Middle-mile provider (for regional distributions emanating from backbone providers) and Last-mile providers whom re distribute connections acquired from backbone by middle-mile providers.
In this diagram, equality of traffic is concerned with how the content (video of a car) moves from the edge provider to local broadband access provider until it reaches the end user.

**Internet traffic in practice**

*Verizon v. FCC, 740 F.3d 623 (D.C. Cir. 2014).*
When is a network neutral?

- No blocking or slowing of access.
- Absence of throttling, impairing or degrading of lawful traffic based on content.
- No paid prioritization.
- No unreasonable Interference with the tools and facilities of providers.
No blocking or slowing of access

- A network operator should not decline to transmit data from an Internet content provider on its network.

- Net-nanny or Cyber-sitter are examples of application or services employed to block Internet access.

- The right to block or slow access to Internet facilities is subject to the tests of transparency, accountability and justification. Case T-201/04, Microsoft vs. Commission of the European Communities, 17 September 2007.
Throttling, impairing or degrading of lawful traffic.

- Network operators must not intentionally delay Internet traffic from a particular content provider, by way of discrimination or in order to serve other purpose.

- For example, the transport system responsible for exchange of data streaming between applications and processes (such as; Skype, Netflix, Twitter, Facebook, Dropbox and Google drive) and the network in question should be freely done.
No Paid Prioritization

- Where there is congestion on the Internet, network operators should refrain from accepting gratifications or any other form of consideration in transmitting the contents or application of one provider in preference to another.

- Example, a telephone company wishing to promote its traditional telephone services, should not deny Digital Subscriber Lines (DSL) customers the ability to use Voice over Internet Protocol (VoIP) services.
No Unreasonable Interference

- There must be no unreasonable interference with the tools and facilities of providers.
  - Where gaming supports for end user devices such as; file servers, Wi-Fi routers and pole attachments or cable systems are required in boosting signal strength, all network providers must be allowed to have access to the conduit points of such facilities. Simply because such facilities are the main thrust of connectivity.
Any Legal Framework?

- The U.S offers the best example of a country where network neutrality is regulated. In February 2015, “the Federal Communications Commission (FCC) adopted an order that imposes rules governing the management of Internet traffic as it passes over BIAS. The rules are known as the ‘2015 Open Internet Order’.
The ‘2015 Open Internet Order’.

- Regulates Backbone networks which transmit high volume of data through fibre-optic cables and high-speed routers, and Broadband services subscribed by end users through modems.

- Prohibits the blocking of legal content, makes paid prioritization and throttling of legal contents unlawful.
Interconnection under the Open Internet Order Rules 2015

- Mandates service providers to provide telecommunications (also Internet) services upon reasonable request and to establish physical connections with other carriers. [Sections 201, 202 and 706 of the Telecommunications Act of 1996].

- Charges and all practices in connection with the provision of a telecommunications service must be just and reasonable. Anything done on the contrary is unlawful.

- Accordingly, it is “unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services” or to give any undue or unreasonable preference to any person or class of person.
The Situation in Nigeria.

Guidelines?

The Internet in Nigeria is regulated by the Nigerian Communications Commission (NCC), and the National Information Technology Development Agency (NITDA). These institutions issues (and implements) guidelines, directives, and standards on the control and management of the Internet in Nigeria.

Effective?
What is happening?

According to the NCC Broadband Infrastructure Initiative, these factors are responsible for poor broadband penetration in Nigeria:

i. Power supply issues?

ii. Inadequate metro fiber infrastructure in several towns and cities.

iii. Distribution and last mile challenges.

iv. High cost of terminal devices and broadband access

v. Unsatisfactory “broadband” speeds

vi. Lack of end-to-end open access transmission services available on a widespread geographical basis.

vii. Security and community issues (damage and vandalisation of fiber infrastructure)
Way forward

- Access to the Internet is a fundamental right!
- The American model of regulation should be adopted.
- In addition, the following measures must be in place in order to ensure network neutrality:
  - Focus on bridging the infrastructure gap for intercity trunk routes in the country.
  - Availability of a fair, competitive (but affordable pricing), neutral and nondiscriminatory high speed broadband internet.
Way forward

- Policy enforcement must be applied accurately to avoid negative consequences. For example, to achieve precisely targeted congestion management, only the traffic corresponding to users on a congested resource should be managed.
Thank y’ all