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An Analysis of the Challenges to the Regulations of Telecommunications in Nigeria

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Abstract

The challenges posed to the legal and regulatory frameworks for telecommunications are real and imminent. The government in all its tiers therefore needs to develop approaches to respond to these challenges. Over the past one decade, the institutional and regulatory frameworks for the Nigerian telecommunications industry have changed radically with the commercial roll-out of Global System for Mobile Communications (GSM). Technical progress and regulatory changes are generally presumed to have brought about improvements in the amount, the range, the quality and prices of telecommunications services. Regulation concerning access and interconnection in telecommunications markets, institutional and regulatory reforms are generally spurred by the rapid evolution of both telecommunications technology and the structure of demand for telecommunications services, which has eliminated virtually all natural monopoly conditions, making it possible and efficient for a multiplicity of operators to supply these services to businesses and consumers. In turn, the new market and regulatory environments are having a substantial impact on the structure and organization of the industry. Thus, a lot of challenges are being faced by the regulation of telecommunications. In this paper, the various challenges facing legal regulations of telecommunications shall be examined. Recommendations are also made for effective and efficacious telecommunications industry for economic growth and development

I. Introduction

Since the liberalization of the telecommunications market in Nigeria in 2003, Nigeria's telecommunications industry has witnessed exceptional growth rates. It grew by 23 per cent in dollar value in 2008 and generated 8.42 billion dollars in overall telecommunications services revenue, which is expected to increase at a 5.7 per cent rate from 8.42 billion dollars in 2008 to 11.14 billion dollars in 2013.¹

¹ Dayo Oketola, 'Telecoms Growth: Experts Seek Urgent Harmonization of Multiple, Illegal Taxes', The Punch Newspaper (Nigeria 05 July 2013) <<http://www.thenigerianvoice.com/nvprint/29572/4/telecoms-growth-experts-seek-urgent-harmonisation-html>>accessed 27 January 2011. See also NBF News Newspaper (Nigeria 05 July 2010) <<http://www.nigerianbestforum.com/blog/?p=53429>>accessed 12 August 2011 and The Nigerian Voice (Nigeria 06 July 2013).

Without prejudice to the roles of the international telecommunications environment, the eventual launch of the National Telecommunications Policy in 2000, which crystallized into the licensing and establishment of Global System of Mobile Communications operations in Nigeria in 2001 has not only contributed immensely to the economic growth of the country, but has equally brought honour to the nation as one of the fastest growing telecommunications market in the world with a subscriber base of 90 million, rising from 400,000 active lines in 2001. The position of the Nigerian telecommunications sector has been vividly captured in the words of the Minister of Communications and Technology commenting on the ten year anniversary of the introduction of GSM in Nigeria:

All this in ten years and indeed these achievements are worthy of celebration. But as we celebrate these achievements we can't afford to rest on our laurels. There is still much work to be done as we move Nigeria and Nigerians to the technology age.⁵

Despite the bright outlook, the industry has been confronted with a lot of challenges including erratic power supply, acts of vandalism and security infrastructure. More disturbingly, multiple taxation has been considered as a bane to telecommunications growth and development. The Association of Licensed Telecommunications Operators in Nigeria (ALTON) has sought the intervention of the Joint Tax Board on the burden of multiple taxation imposed on its members from the three tiers of government.⁶ Other challenges facing Nigerian Telecommunications include multiple regulatory regime and regulatory overlap, problem of interconnectivity and price tag regime. The challenges facing the Nigerian telecommunications regulatory regime are too many to mention.

ii. Multiple Regulatory Regime and Government Interference

Multiple regulations are a bane of growth in the Nigerian telecommunications industry. The relatively stable regulatory and policy environment in the industry has accelerated investment inflow into the sector, resulting in the rapid roll-out of multi-nefarious telecommunications services. However, multiple regulation and government interference could hinder the sustenance of the growth in the telecommunications sector.⁷

The Nigerian Communications Commission (NCC) is the sector-specific

⁵ Mrs Omobola Johnson (Nigerian newly-appointed Minister of Communications and Technology), 'Telecoms Outpaced Other Sectors in One Decade' (Speech delivered at the 10th edition of Nigeria Telecoms Anniversary Award Night Organized by Publishers of Nigerian Telecommnews in August 2011, Lagos). See also Emma Elebeke, 'My mandate, by Communications & Technology Minister' <<http://www.vanguardngr.com/2011/08/my-mandate-by-communications-technology-minister/>> accessed on 27 August 2011.

⁶ Heanyi Onuoha, 'Multiple Taxation: Imperative for Codification' <<http://www.nigerianbestforum.com/generaltopics/?p=43096>> accessed 27 January 2013.

⁷ Emma Okonji, 'Nigeria: Challenges of a Telecom Sector despite Achievement' <<http://www.africafirst.com/stories/2009/09/290704.html>> accessed on 28 July 2013.

regulatory body in the Nigerian telecommunications industry. The NCC is responsible for the monitoring of performance standards and indices relating to telecommunications services and facilities in Nigeria.⁸ Its functions also include the general responsibility for economic and technical regulation of the communications industry.⁹ It also enforces technical specifications and standards for the importation and use of communications equipment and for connecting or interconnecting communications equipment and systems and carries out type approval tests on communications equipment and issuing certificate therefor on the basis of technical specifications and standards prescribed by the Commission from time to time. It is believed that the above functions of NCC are enough to cover technical specifications for importing and installation of telecommunications Masts and Towers.

In demonstration of its pivotal responsibility in its concern over the environmental implications of the installation of telecommunications equipment, the NCC issued Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers.¹⁰ However, the government does not leave the environmental conduct of telecommunications operations in the hand of NCC alone. The National Environmental Standards and Regulations Enforcement Agency (NESREA) also has statutory duties in the general environmental conducts.¹¹ NESREA is responsible for the protection and development of the environment, biodiversity conservation and the sustainable development in Nigeria's natural resources in general.¹² The vision of the agency is to ensure a clear and healthier environment for all Nigerians while the mission is to inspire personal and collective responsibility in building an environmentally-conscious society for the achievement of sustainable development in Nigeria.¹³

From the above, it could be seen that both NCC and NESREA have major roles to play in the formation of regulatory instruments which govern the environmental conduct of telecommunications operators in the installation of telecommunications equipment and facilities. Because of the regulatory overlap, therefore, there have been several clashes between NCC and NESREA on the one hand and NESREA and telecommunications operators on the other hand. The result of this is the shutting down of telecommunications base stations by NESREA over alleged environmental breaches.¹⁴

⁸ Nigerian Communication Act, Section 4 (b).

⁹ Ibid, Section 4 (w).

¹⁰ Ibid, Section 4 (l) and (n).

¹¹ See Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers issued by NCC on 9th April 2009. See <www.ncc.gov.ng> accessed on 17 July 2013.

¹² Established by Section 1 (1) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.

¹³ NESREA Act, section 2.

¹⁴ See Standard Organization of Nigeria <<http://www.nigeriafirst.org/printer-792.shtml>> accessed on 17 August 2011.

¹⁵ Patrick Osadebamire, 'Telecoms Revolution and Environmental Sustainability' Summit Newspaper (Nigeria 21 July 2011) 20; Emeke Ezekiel, 'FG Shuts MTN Base Stations over

NESREA has also posited that it will crack down on more telecommunications companies for flouting Environmental Impact Assessment Regulations.¹³

While the Association of Licensed Telecommunications Operators of Nigeria (ALTON) appreciated the need for NESREA to play a major role in the formation of regulatory instruments governing the environmental conduct of telecommunications operators, it opined that since NCC, as the sole statutory regulator of the telecommunications industry, has issued Guidelines on Technical Standards for the Installation of Masts and Towers based on applicable international standards, there is no need for a fresh set of regulations from NESREA; rather the NESREA should review its regulations and appropriate provisions be subsumed into the NCC's Guidelines on Technical Specifications for the Installation of Masts and Towers to address any additional concerns which NESREA believes have not been adequately addressed by the NCC Guidelines.¹⁴

There is therefore the need to work out harmonized laws and regulations to ensure that all interests are accommodated for a peaceful roll-on of quality telecommunications services and promote best practices without necessarily adversely affecting the environment.¹⁵

iii. Inadequate Power Supply

Due to unreliable power supply across the country, telecommunications operators rely on generating plants to power sites and back-end switches.¹⁶ Operators therefore have to manage their services. Price fluctuations of gas to fuel generating plants have also always caused hike in the price of telecommunications services and this adversely affects the quality of telecommunications services. The epileptic nature of the power supply system has necessitated the over-dependence on generating plants. The direct implication of this is that call tariffs will increase drastically. The cost of procurement and fueling is enormous. It is submitted that if the power supply system is stable, the huge amount

Environmental Breaches' The Punch Newspaper (Nigeria, 24 August 2010) 17; Aminah Mohammed, 'Communications Commission, NESREA Clash over Regulation of Telecoms' <<http://www.allafrica.com/stories/201007150188.html>> accessed on 20 July 2010.

¹³ Emeka Ezekiel, 'Erection of Masts: NESREA Goes Tough on More Telecoms Companies' <<http://www.nigeriaforum.com/generaltopic1?ps=52892>> accessed on 03 August 2013.

¹⁴ The Association of Licensed Telecommunications Operators of Nigeria <<http://www.altonnigeria.com/docs/Alton%20Comments%20on%20NESREA%20Regulations%20of%20Telecom%20Facilities.pdf>> accessed on 29 July 2011. ALTON made the comment in its submission on the NESREA'S Draft National Environmental (Standards for Telecommunications Facilities) Regulations 2010.

¹⁵ See Ariyosou D. A., 'Legal Regulation and Environmental Impacts of Telecommunications Installations: The Nigerian Experience' (Paper presented at the 13th Annual Conference of the Environmental Division of the Nigerian Society of Engineers on the theme: 'Environmental Impacts of Telecommunications Systems in Nigeria: Problems, Prospects and Solutions', International Conference Centre, Abuja 2010).

¹⁶ Managed Services: Problems, Solutions' <<http://www.telecomsinigeria.com/2010/09/managed-services-problems-solutions.html>> accessed on 07 July 2013.

being spent by operators on fueling could have been used in upgrading and optimizing existing base stations in order to improve service efficiency. Similarly, additional base stations and switching centres could be built for network expansion which will eventually alleviate congestion and the network will have capacity to handle more calls. So the network problems being experienced cannot be completely divorced from instability in power supply.¹⁷ There is therefore an urgent need for the Nigerian government to address the erratic power supply. The collapse of the power sectors is not only affecting the telecommunication industry but seriously affecting other sectors of the economy.¹⁸

The situation of power supply has gone worse that further deregulation of the power sector is of urgent necessity. The monopoly of Power Holding Company of Nigeria Plc (PHCN) should be broken while Public Private Partnership (PPP) should be urgently considered as a short or medium term measure for the sector.¹⁹ Similarly, power supply and cost of gas should be reviewed by the government and streamlined with current market prices and if this is done, the telecommunications services would improve drastically.

iv. Insecurity of Infrastructure

The regulation of telecommunications in Nigeria is being hampered by acts of vandalism. The regulation of telecommunications equipment and insecurity of infrastructure. Aside the armed forces of telecommunications equipment and insecurity of infrastructure. Aside the armed forces and the Nigeria police, the leading GSM operators have the highest number of security guards on their payroll. These security guards are employed to guard their infrastructural equipment against theft and vandalism.²⁰ The direct implication of this is that the cost incurred on these security guards goes into the total cost of operation and consequently leads to increase in call tariffs.²¹ The alarming aspect of the issue of security guards at base stations is that their presence has not totally prevented armed robbers, thugs and

¹⁷ Adegoke A. S., Babalola I. T. and Balogun W. A., 'Performance Evaluation of GSM Mobile System in Nigeria' (2008) 9 (2), The Pacific Journal of Science and Technology 437-438 <<http://www.akamaiuniversity.us/PJST/2-436.pdf>> accessed on 03 August 2013.

¹⁸ Isiaaka Sulu Babaita, 'Subscribers' Complaints and Response of the Global Satellite Mobile (GSM) Network Operators in Nigeria' (2010) 4 (1) African Research Review, 571-572. See also <<http://www.unikorin.edu.ng/publications/babaita/subscribers%27%20complaints%20and%20response%20of%20the%20GSM%20Operators%20in%20Nigeria.pdf>> 03 August 2013.

¹⁹ Prof. Bolaji Owasanoye 'Finding from Review of Laws for Social and Economic Development in Nigeria' (Paper presented at the Working Session of SPIDEL at the Nigeria Bar Association Annual General Meeting on Tuesday 18 August 2009 at Ocean Views Expo Centre, Eko Hotels & Suites, Victoria Island, Lagos, Nigeria 2009).

²⁰ As at October 2007, Zain (now Airtel) had 2500 base stations, MTN had 2900 while Globalcom had 3000. This translates to having 5000, 5800 and 6000 security guards respectively on their payrolls (since at least two personnel were guarding every base station). See Adegoke A. S., Babalola I.T. and Balogun W. A. 'Performance Evaluation of GSM Mobile System in Nigeria' 437.

²¹ Adegoke A. S., Babalola I. T. and Balogun W. A., 'Performance Evaluation of GSM Mobile System in Nigeria' 437.

hoodlums from vandalizing and stealing generators and telecommunications equipment. In addition, some base stations have been shut down due to these nefarious activities, the technical implication of which is that once a base station is shut down, call transmission for subscribers in that location would automatically be transferred to another nearby base station, which will eventually lead to network congestion. Consequently, subscribers within the area will experience poor quality of service.²²

Aside deliberate vandalism and theft of telecommunications facilities and equipment, operators need to upgrade existing facilities and equipment or replace them, where necessary and ensure compliance with best engineering practices in mounting or installing their facilities. This will prevent unnecessary breakdown and collapse of facilities and equipment, which must also be properly installed and necessary Environmental Impacts Assessment must be duly carried out.²³

V. Interconnectivity and Access to Network Facilities

Interconnection and access to telecommunications network facilities are regulatory matters that fall within the regulatory oversight of the Nigerian Communications Commission. One of the major problems encountered by subscribers is the inability to connect with the network of the same or another telecommunications operator when initiating a call. This is worrisome to the extent that subscribers often have to dial several times before getting connected, when the receiver's phone is not switched off. Worse still, when eventually connected, it may not be the number actually dialed. In this situation, the connecting party is often embarrassed to hear 'wrong number' from the other end of the call.²⁴ In some cases, an established call is abruptly terminated while conversation is still on-going. Calls may be dropped if a mobile subscriber is out of coverage area and the signal cannot be maintained between the phone and the network. Calls may also be dropped upon handoff between cells within the same provider's network. It may be due to an imbalance of traffic between the two cell sites area of coverage.²⁵ These problems stem from lack of access to network and interconnection problems.

The achievement of the goals of market-based competition in telecommunications requires that every operator has mandatory access to technically adequate and economically efficient interconnection with all other operators. It is therefore the responsibility of the NCC to ensure that such interconnection is available on a non-discriminatory and cost-oriented basis to all licensed operators.²⁶

²² Ibid.

²³ For instance, where telecommunications facilities and equipment are not upgraded or properly installed, it may lead to collapse of such facilities and equipment, leading to destruction of lives and properties, the resultant effect of which may be shutting down of such base stations where facilities and equipment are installed. This will ultimately affect the quality of services, adversely.

²⁴ Adegoke A. S., Bahalola I. T. and Balogun W. A., 'Performance Evaluation of GSM Mobile System in Nigeria' 438.

²⁵ Ibid, 439.

²⁶ National

Policy on Telecommunications' <<http://www.ncc.gov.ng/NationalTelecomsPolicy/Telecommunications.pdf>> accessed on 12 September 2013.

Without interconnectivity and access to network, there cannot be telecommunications. The delay interconnectivity to another operator or within the same operator on a timely basis has been a major challenge to the regulatory framework of the Nigerian telecommunications industry. Even when connected, the operators may not have enough links to the existing network, thereby causing congestion and degradation of services. This singular factor has imposed limit on how much expansion that can be undertaken by the operator and still maintain an acceptable level of quality of service.²⁷

Vi. Challenges of Pricing and Tariffs Control

Price regulation in the telecommunications sector has been accomplished in several ways. The most predominant are the rate of return regulation, price cap and benchmark pricing. Under rate of return regulation, prices are set so that the telecommunications company can recover its costs and make a fair rate of return on investment. Telecoms companies are in principle allowed to set their prices, subject to the overall return constraint so that the prices for different services reflect the different cost of providing these services. The regulators are expected to monitor the revenue of these companies' costs and capital stock to ensure that they remain within the imposed rate of return ceiling, an administratively sophisticated and burdensome task.²⁸

The long term goal of a telecommunications enterprise is not only to be self-financing but also to generate a reasonable return on investment. To achieve this goal, there must be careful consideration of the sources of investment and the conditions that are attached to them. Its long term interests should always be kept in mind in the choice of sources of capital which ideally should be diverse and a combination of different sources.²⁹

It is generally believed that the telecommunications enterprise should have a pricing and tariff policy that is consistent with national objectives set by the government and the cost of providing the services. It is only normal that returns from some parts of the network should subsidize shortfalls that may occur in other parts of the network, such as in the case of rural areas. This norm has always been observed in Nigeria. In addition, mechanisms are essential for identifying the need for investment projects, for evaluating them, for predicting accurately what they will cost and for determining priorities for their execution.³⁰ The telecommunications tariff should be as low as what an ordinary man can afford.

²⁷ Engr. Ernest Ndukwe, 'Telecommunications Challenges for Nigeria in the 21st Century' <<http://www.ncc.gov.ng/speeches-presentation/EVCS%20presentation/ncci-programme/EVCSpeech.pdf>> accessed on 21 July 2011.

²⁸ Afeikhena Jerome, 'Public Enterprise Reform in Nigeria: Evidence from the Telecommunications Industry' <<http://www.africafrica.org/documents/RP129.pdf>> accessed on 13 August 2013.

²⁹ Alabi G.A., 'Telecommunications in Nigeria' <http://www.africapenn.edu/ECA/aisi_infli.html> accessed on 07 July 2013.

³⁰ Ibid.

The National Telecommunications Policy (NTP)³¹ has already established the policy direction for tariff regulation in the telecommunications industry.³² In determining a tariff regulation regime, the NCC is to be guided by the following principles:

- Telecommunications service tariffs shall in all cases be cost-oriented, reflecting the actual cost required by operators to provide the services in question.
- Tariff setting rules must be transparent to both operators and their customers, with stable, predictable, and understandable standards for current prices and for changes to those prices over time.
- Telecommunications service tariffs shall generate sufficient revenues for regulated operators to compensate for their investments, while also seeking to be as affordable as possible to the broadest range of potential service customers.
- In general, cross-subsidies between services or service categories shall be prohibited. In certain circumstances, limited cross-subsidies may be permitted, only in connection with an explicit public purpose such as the promotion of universal access, and where such subsidies can be effectively targeted to accomplish that purpose at minimum cost.³³

These guidelines prescribe a clear and equitable balance between the protection of the public interest and the commercial interests of the mobile operators. The NCC is therefore called upon to implement the policy directives of the NTP by formulating a tariff regulation regime for the mobile sector, and in the event that it has already done so, it is further called upon to publish that regime on its website and other publicly accessible media for the benefit of operators and consumers alike. The primary objective of such a regime will be to ensure that end-user prices are fair and affordable, taking into account the cost of providing the mobile services as well as the long exclusivity period given to the operators for recouping their investments. While it is important to ensure that investors are guaranteed a reasonable return on their financial investments, the protection of the public interest must always remain uppermost in the mind of an industry regulator.³⁴

VII. Liberalisation Challenges

Telecommunications is at the fore front of current economic and social affairs. The digitalization of networks globally has further destroyed the boundaries which separated them from the fields of electronics and computing. The resultant multiplication of tele-

services and their increasing sophistication have exploded the technical and commercial limitations which previously existed. The evolution has been decisive and here in Nigeria, has followed from technical facts and not political will.³⁵

Today, the challenge of meeting the large and rising demand is being met by moving toward a sector structure that is plural and competitive, with a mix of service providers - private and public, using various technologies and offering services tailored to different user needs.³⁶

Though liberalisation of the Nigerian telecommunications is the best thing that has ever happened to the country's telecommunication sector, it was long overdue. The pre-liberalization era was characterized by government monopoly in the provision of telecoms services, low capacity utilization, poor telecoms infrastructure, un-met consumers demand, poor network, over-billing, and general lack of innovativeness. But with the full liberalisation of the telecom sector, the situation has changed from bad to good. The policy has steered competition in the sector, generated job opportunities for many, and contributed to the economic growth.

Despite the great achievements recorded in the post-liberalisation period, however, one great problem that persists and which concerns consumers is that of high tariffs. Since high tariffs are precipitated by high cost of fuelling generators as a result of constant power outage, the government at all levels should revive the electricity sector with much alacrity.³⁷

Propelled mainly by current technological advances, the telecommunications arena in Nigeria has started to undergo profound structural changes, giving rise to cheaper and more reliable telecommunications equipment and services on the one hand, and on the other, a whole new range of services. Public telecommunications is moving rapidly from protected national markets with huge cross-subsidies between certain services to global competitive markets. Public Telecommunications Operators (PTOs) are now responding to this liberalization challenge by becoming corporatized and in some cases also privatized. In order to respond to global competition, joint ventures and forms of alliances are increasingly being established between the major PTOs and equipment manufacturers. New operators are also being established focusing in particular on telecommunications growth areas such as integrated telecommunications services for multinational companies, international telephony and mobile telephony.³⁸

³¹Published by the Federal Government in September 2000. See National Policy on Telecommunications <[http://www.ncc.gov.ng/National Telecom Policy](http://www.ncc.gov.ng/National_Telecom_Policy)> on Telecommunications.pdf> accessed on 12 September 2013.

³²Ibid, Chapter Six.

³³Ibid.

³⁴Paul T. Oki, 'Regulating the Pricing of Mobile Telecommunications Services - The Role of the Nigerian Telecommunications Commission' <<http://www.geplax.com/media/Publications/Regulation%20the%20Pricing%20of%20Mobile%20Telecommunications%20Services.pdf?phpMyAdmin=17c4d67d23er18bbs73r72bc>> accessed 12 August 2013.

³⁵Alabi G.A., 'Telecommunications in Nigeria' <<http://www.africapenn.edu/ECA/ais-infll.html>> accessed on 07 July 2013.

³⁶Ibid.

³⁷Mohammed Abubakar Mawoli, 'Liberalisation of the Nigerian Telecommunication Sector: A Critical Review' (2009) 7(2) *Journal of Research in National Development*, <<http://www.transcampus.org/JORINDV7Dec2009/JournalsV7NO2Dec200930.html>> accessed 12 August 2013.

³⁸Dr. Alabi G.A., 'Telecommunications in Nigeria.'

VIII. High And Multiple Taxation

Operators in the telecommunications sector have not had peace of mind in the last few years in the process of service delivery as they are confronted with several challenges, some of which are distracting them from their main business of service delivery. Among some of the initiatives adopted by telecoms operators are collocation and outsourcing of base stations to infrastructure providers. As these initiatives were gradually addressing the known problems, other challenges began raising their head, and these are multiple regulation and taxation.³⁹

Heavy taxes imposed on telecommunications companies at the Federal, State and Local government levels have been a major obstacle which retards economic growth. It also limits profits, compromises quality of telecommunications services and slows network expansion. Globally, telecommunications industry is one of the most taxed economic sectors. According to findings, African governments will earn an estimated 71 billion US dollars in tax revenues paid by mobile operators by the year 2012. It was also estimated that an additional 43 million people could get connected by 2012, leading to an increase of 930 million in tax.⁴⁰

Telecommunications business attracts high operating cost and therefore multiplicity of taxes by tiers of government is having serious effects on the operators' profit and compromises quality of service. It is also believed that high taxation is responsible for the slow pace of digital penetration and connectivity.⁴¹ Apart from high taxation, however, the issue of multiple taxation from all tiers of government in the telecommunications sector has been a major source of concern for operators. Over the years, the Federal Government has been inundated with complaints from different sectors of the economy about multiplicity of taxes. The telecommunications operators have been particularly active in this regard.⁴² There is an emerging school of thought that the huge Nigeria are being retarded by multiple taxation from governments. Indeed, while tremendous progress and growth have been recorded in the ICT and telecommunications sectors, multiple taxation and the attendant ripple effects on pricing for telecommunications services may be implicated in poor service provisioning in Nigeria.

The Global System for Mobiles Association (GSMA)⁴³ has posited that mobile telephony taxation in Sub-Saharan Africa accounts for 35 per cent of revenue of mobile operators in Nigeria. The GSMA has Commissioned Frontier Economics to study the impact of lowering and removal of mobile specific taxes like air time, handset and

equipment across Sub-Saharan Africa. The study qualified and estimated the mobile industry's historical and future impact on tax and investment.⁴⁴

It has been argued that if government could lift taxes on ICTs, it will greatly reduce the operation cost of the operators, lessen exploitation, improve access to ICT solution by the people, enhance quality of service as well as catapult the economy because it affects every sector of the economy.⁴⁵ It is submitted, therefore, that if government should remove mobile specific taxes, mobile ownership and usage will rise and wider economic growth would be stimulated.⁴⁶

High and multiple taxation have had serious effects on the quality of telecommunications services. The operators in the telecommunications industry are seen as 'cash cows' and the belief is that everybody should have his own share of the cash, either in actual cash or in material acquisition. Government should note, however, that telecommunications business attracts operation costs and when the number of taxes paid by the operators increase just because all tiers of government want their various shares of the 'cake', it engenders less profits for the operators and compromise quality of service.⁴⁷ In addition to the statutory taxes levied on operators,⁴⁸ telecommunications operators pay Annual Operating Levy (AOL) of certain percentage of earnings to the Nigerian Communication Commission (NCC). They are also required to pay various rates and charges to other Federal Government Agencies,⁴⁹ in each state and local government in which they operate.

The government should therefore address the ugly menace of multiple and illegal taxation and charges in order to make the nation's telecommunications sectors more investor-friendly. The government should be concerned about the consequence of multiple and illegal taxes and charges which include the re-location of businesses outside Nigeria, downsizing and retrenchment of staff, unemployment and loss of revenue to the government. Nigeria has witnessed a situation where telecommunications operators are harassed, base stations and offices locked up indiscriminately by government over

³⁹ Nigerian Telecommunications Sector and the Tax Regime' <<http://www.scribd.com/doc/14876315/Nigerian-Telecommunications-Law-newsletter->> accessed 27 January 2013.

⁴⁰ Ibid.

⁴¹ For instance, the reduction of taxes has helped telecommunications development in India. The Indian government addressed some of the concerns regarding anomalies in the Customs Duty Structure and this has helped reduce costs of imports, which in turn had a position impact on roll-out and subsequently led to expansion in service in different services area and an increasing subscriber base.

⁴² 'We expect an End to Multiply Taxation Power Failure' <<http://www.firs.gov.ng/News/We-expect-an-end-to-multiply-taxation-power-failure.aspx>> accessed on 27 January 2013.

⁴³ Such as Companies Income Tax and Value Added Tax.

⁴⁴ Such as Consumer Protection Council, Nigerian Lottery Commission and Federal and State Ministries of Environment.

³⁹ Multiple Regulation, Taxation and Telecom Development' The Nigerian Telecommunications Week Magazine (Nigeria, 06 August 2011) <<http://www.nigeriatelecommunicationsweek.com.ng/details.php?category=telecom&id=30382>> accessed on 12 August 2013.

⁴⁰ Davo Oketola, 'Telecoms Growth: Experts Seek Urgent Harmonization of Multiple, Illegal Taxes.'

⁴¹ Ibid.

⁴² Ibid.

⁴³ An organization of more than 700 mobile phone operators in more than 220 countries, supported by over 178 equipment manufacturers.

alleged refusal to pay taxes and levies.⁵⁰ Thus, multiple taxation has been identified as a major threat to manufacturers and investors.⁵¹ It is the hope that the rate of taxes and charges as statutorily prescribed would be respected by all tiers of government and government should address the impact of multiple, high and illegal taxation to enhance economic growth and development, especially in the telecommunications sectors.

Multiple taxation is not good for the industry because the amount will be transferred to the customers. It does not allow business to flow smoothly, which is unfair. The issue of multiple taxation should be resolved in favour of telecommunications because it is borderless. While that is not easy to handle, frivolous taxation does not exist in law. Those that are doing it are mainly the states and local governments and they can even be non-governmental organisations. The area boys are example of non-governmental groups. They are government on their own because if one does not play the ball (pay the tax), they can destroy the system.

⁵¹ It is the legislature that can change the face of multiple and illegal taxation, but the judiciary (the judges) also has a role to play because some of the cases on multiple taxation are instituted before the court.⁵²

Telecommunications operators in the country have described cases of multiple and illegal taxation by different levels of government as some of the major challenges affecting their operations and growth of the sector. It has been observed by the Association of Telecommunication Companies of Nigeria (ATCON) that the telecommunications sector would perform better if the multiple and illegal taxation challenge is addressed as a matter of urgency.⁵³

IX. Conclusion

In this paper, various challenges facing the regulation of telecommunications have been considered. The deregulation of telecommunication networks in Nigeria and the corresponding development of the Internet have resulted in an online environment that is ostensibly borderless in nature. With the development of telecommunications and wireless technologies, businesses require minimal or no physical presence to conduct commercial activities.

In order to have appropriate institutional framework that will meet minimum

⁵⁰ Nigeria Communications Week's Editorial, 'Multiple Taxations Choking Telecom Companies' <<http://www.nigeriacommunicationsweek.com.ng/print.php?category=editorials&id=3240>> accessed on 27 January 2013. See also Eneke Aginam, 'Multiple Taxation Remains Disincentive, Says ATCON' <<http://www.vanguardngr.com/2010/09/multiple-taxation-remains-disincentive-says-altcon/>> accessed on 27 January 2013.

⁵¹ 'Multiple Taxation: A Big Threat to Investment' Compass Newspaper (Nigeria 01 March 2010) <<http://www.compassnewspaper.com/NG/index.php?option=com-content&view=article&id=42302:multiple-taxation-a-big-threat-to-investment&catid=649:industry&Itemid=715>> accessed on 27 January 2013.

⁵² Omo-Etun, 'Multiple Taxation Destroys Telecom Operators' <<http://allafrica.com/stories/201101130769.html>> accessed on 13 August 2013.

⁵³ 'Multiple Taxation Destroys Telecom Operators' <<http://allafrica.com/stories/201101130769.html>> accessed on 13 August 2013.

international standards, there is a need to always have regulatory reforms in the telecommunications sector without necessarily losing focus on the importance and essence of telecommunications policy of having effective and efficient telecommunications service provisions. However, any reform in the industry must be transparent, coherent and comprehensive to ensure competitive policy in the sector.

The mere fact that the Nigerian telecommunications sector has recorded success over the years is a clear testimony that the sector has virile and dynamic institutional and regulatory structures. The need to further look outwardly into international environment cannot, however, be jettisoned for a more conducive, efficient and effective telecommunications environment in Nigeria. And because the world is now battling with technological development, there is a need for the government to respect international regulatory regimes and take necessary steps to form part of, and actively participate in, the affairs of international regulatory organizations to benefit from the enormous advantages of the programmes of such organizations as they affect regulation of telecommunications.⁵⁴

Despite the encouraging current market and economic structures of the Nigerian telecommunications sector, the overlapping functions of government agencies and regulatory bodies left more questions than answers. It is recommended that the concerned agencies and bodies should enter into memorandum of understanding to determine which functions should be performed by which agency or body pending any amendment to the laws creating the overlapping functions. While NESREA may wish to address peculiarly environmental issues which it considers as insufficiently addressed in the NCC's Guidelines, such concerns should be addressed through a revision of the NCC's Guidelines. The NCC, as the telecommunications industry's sector-specific regulator, is best placed to drive the current review process as it has acquired the requisite technical knowhow and has full understanding of the issues to be addressed as it concerns the telecommunications industry.

Incessant power failures should be addressed by the government. This will stop the over-dependence on generators for power supply. If this is achieved, call tariffs would drastically go down because the money expended on fueling generating plants would have been used for building another base station and more facilities and equipment would be bought. Ultimately, quality of service would improve. There should therefore be true liberalization of electricity power supply and the liberalisation must be embraced with absolute honesty and seen as a change policy. A sure way to achieve this is to further deregulate the power sector and the monopoly of the Power Holdings Company of Nigeria Plc should be broken and Public Private Partnership (PPP) should be considered as a short term measure for the revival of the power sector.

In order to prevent proliferation of telecommunications facilities such as masts and towers, government should encourage collocation among telecommunications operators. This is necessary because if many telecommunications operators collocate, the amount to be used in building more base stations and making telecommunications

⁵⁴ That is where Nigeria has not become a member.

installations especially in urban and areas already covered by some other operators would have been expended on other things such as building base stations in non-coverage and rural areas. This would generally improve quality of service and alleviate fear of falling towers. However, where necessary, operators should increase their base stations and invest more on equipment that would enhance their service delivery and operational efficiency.

In mounting and installing telecommunications facilities and equipment, operators must comply with best engineering practices. This will prevent unnecessary breakdown and collapse of the facilities and equipment. Similarly, appropriate Environmental Impact Assessment⁵⁵ must be duly carried out before the erection and installation of facilities and equipment.

There is an urgent need for equipment standardisation in the country. This will ease the manufacture of telecommunications equipment and facilities and reduce maintenance cost. Also maintenance personnel should be provided with adequate tools and they should be located sufficiently close to the facilities they are to maintain. There should be availability of core industries for the fabrication and manufacture of equipment and telecommunications facilities. There should be a multidisciplinary team to work on the standardisation of telecommunication equipment modules, tools and test gears for operations in the Nigerian market.

The need for consumers of telecommunications services to have access to service offices of operators to lodge their complaints is of utmost importance. The operators also must respond quickly and adequately to the consumer's complaints. Similarly, the 'doors' of the regulatory authorities must be easily accessed by consumers. Both the consumer services location of operators and the authorities' offices should be strategically located for easy reach of the public at large as an all-purpose centre for telecommunications services. The competitive environment of telecommunications which allows more than one field operator must of necessity attract standards and rules of operation for orderliness, effectiveness and efficiency. The flexibility of choice open to customers also call for a wide interconnecting boundary between operators and a specific level of quality of service to be attained by all to avoid harmful effects on other operators and the public being served at large. There is therefore need for an effective monitoring and enforcement mechanism in the structural framework of managing telecommunications. Furthermore, penalties applicable to violation of rules must be commensurate and promptly applied to deter violators.

The heavy taxes imposed on telecommunications operators by the government in all its tiers since the inception of GSM have resulted in high tariffs, and this constitutes a major obstacle which retards economic growth. The government should therefore urgently address the ugly menace of multiple and illegal taxation in order to make the Nigerian telecommunications sector more investor-friendly. The judiciary should endeavour, in its interpretative function, to interpret taxation provision in a way to prevent illegal taxes.

⁵⁵Under the Environmental Impact Assessment Act, *Cap E12 LFN 2004*.