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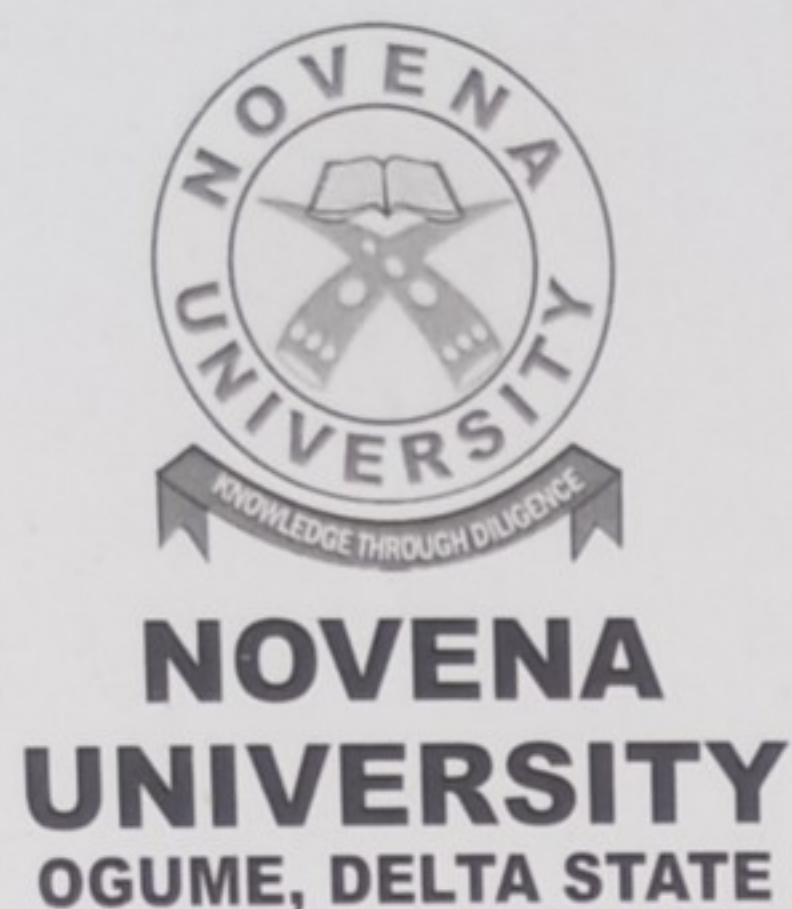
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The Novena University (NULJ) is a peer review international academic publication that publishes contributions dealing with national, regional and international law and policy with special focus in interdisciplinary legal scholarship of relevance to dialectical discussion. As a policy NULJ intends to promote balanced scholarly research in all aspects of law and policy particularly emerging themes relevant to students, judges, legal practitioners, legislators, decision makers etc. the journal is published in March, July, October and December every year.

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Submitted articles should have an abstract of not more than 200 words and should also include a short professional profile of the author (s) with individual contact details. Articles should be submitted by e-mail in MS Word format to the editorial board or mailed to the Provost/Dean Novena University, College of Law, P.M.B. 2 Kwale, Ogume, Delta State Nigeria.

EDITORIAL

We are very pleased to inform the international community, particularly diplomatic missions, development partners, heads and members of the Judiciary, legislature, executive arm of governments, scholars and researchers of 'the birth' of the Novena University Law Journal (NULJ). The idea behind this publication is to address the innocuous absence of critical and detailed law reports that focus on the judgments of federal/ state high courts and customary courts of appeal in Nigeria and most Africa countries. These courts, although not the apex or supreme courts, are in the forefront of providing critical scholarly resources in the advancement of justice in the society. This is self-evident because the principles of law - Criminal Law, Environmental Law and Policy, Anti-corruption, Evidence, International Trade Law, Constitutional Law, good governance, terrorism, space and satellite communications, biotechnology and science regulation, etc., expressed in the judgments of these courts, shape the appellate decision making process of the various Supreme Courts. There is a consensus that judgments of these courts have contributed immensely to good governance. Being courts that are closer to the citizenry, they are the guarantors of the state institutions' effective functioning within their constitutionally mandated roles. Notwithstanding, in practice, the important decisions of these courts are not often reported except the few that go on appeal.

Novena University Law Journal (NULJ)'s novel and contemporary appeal is its commitment to report the recondite hallmark decisions of these courts from all over Africa. It is our editorial philosophy that we identify through a rigorous selection process and report the 'hallmark judicial research and reasoning' in the judgments of these courts in all aspects of law and policy. It is our hope that this rare platform of detailed reporting will draw attention to the important work being done in these courts by judges who have the calling, commitment and integrity to do justice.

It is an invaluable addition to legal and judicial literature and will continue to be a real tribute to the selfless work, effort and commitment of judges and lawyers who appear in these cases. It is against this backdrop that we feel compelled to reiterate our editorial philosophy that regardless of the political party in power, scholars must engage in meaningful discourse with a view to suggesting reforms to law and policy as it affects existing social, economic and political circumstances in Nigeria and the African continent. On our part, we will publish these scholarly contributions for the benefit of all citizens. This issue fits the balance forum for intellectual discourse. In it, we have articles that immediately remind us of contemporary events in Nigeria, the ECOWAS Sub region, African continent and the world. For instance, Professor Orubebe Bibobra Bello investigates the critical implications of President Donald Trump's 'America First' Policy and Nigeria's interest in the patenting of the human genome, insisting that when the international community agreed to collaborate on the Human Genome Project (HGP) three decades ago, the aim was to share the findings for the advancement of humankind. However, the United States has started allowing patent filings for partial gene sequences. A move Nigeria rightly believes has initiated an avoidable controversy in international relations. The US attempt to allow private property rights over the huge discoveries accruable by reason of global efforts on a material that rightly belongs to all humans appears invidious. This issue is thorny and critical in all ramifications. In reality, the consequences have the potential of generating feelings of unfairness and injustice in both countries relations, particularly on perceptions of business innovation and transfer of knowledge in science. This article attempts a conceptual legal and socio-economic analysis of Nigeria's fears over the United States' approach on the patenting of the human genome. It also makes suggestions that could reward or encourage innovation and deepen global efforts aimed at promoting this common human heritage exclusively for peaceful purposes. He however

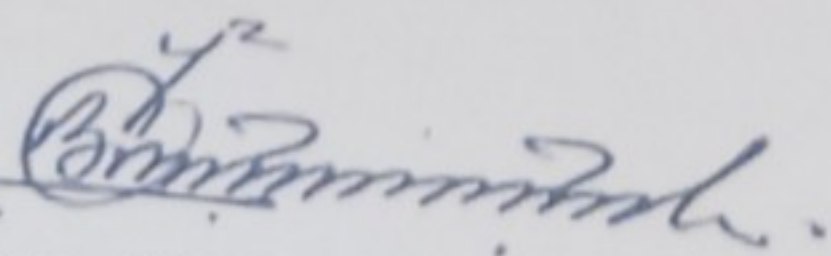
made passionate case for international legal reform. On his part, Chukwu, Johnkennedy Obinna reviewed land and property taxation on real property and infrastructural development in Lagos and Rivers States, Nigeria. Mahmud kayode Adebayo espoused the underlining's of gender equality and access to education reviewing the factors inhibiting the Girl Child Education in Northern Nigeria. Dr. Erimma Gloria Orie investigated the legal perspective of the role of the Prosumer in Nigeria's energy sector. While Elvis Akele Mannie re - visited the subsidiarity principle and its dominant role in federal systems concluding that inclusion was the best way forward for multi ethnic Nigeria.

As expected, Ngozi J. Udombana evaluated the statutory requirements that could achieve effective implementation of the institutional and reporting requirements under the Freedom of Information Act 2011. On their parts, Adamu Idris Tanimu and Habilah Isah Barau discussed the overview of electoral offences in the light of the Electoral Act, 2010. Oluwabusayo Temitope Wuraola and Solomon O. Afolabi appraises Hijab Perceptions in Selected Countries: A Legal Analysis. S.M. Abdulmalik discussed the Legal Protection of Maternity Rights of Women under Nigerian Employment Law. Razaq Justice Adebimpe writes on the fluidity of Nigerian law on the Question of Proper Custody of Documents. Dr. Tumbo H Brodrick and Asoro Ejoro Gladys evaluates Greater Local Government Autonomy, critiquing the meaningless exercise of executive power and authority by Chairmen, and recommended the need for checks on corrupt practices. Dr. Ganiat Mobolaji Olatokun expounds on the implementation of convention on the elimination of all forms of discrimination against Women (CEDAW) by the Malaysian government concluding that the Nigerian government could draw some lessons. The trio of Rilwan F. Mahmoud, Abdulazeez, Hamza Okene and Wuraola, Oluwabusayo Temitope writes on An Examination of the Challenges of the Nigerian Telecommunication Sector's Legal Regime and Joshua Ajasin unravels the negative impact of the Boko Haram Terrorism phenomenon on education in Northern Nigeria.

In keeping with the editorial philosophy of the Journal, we included in this volume the historical letter written by the former Governor of Delta State James Inanefe Ibori addressed to Late Chief Diepreye Solomon Peter Alamieyeseigha, former Governor of Bayelsa State. It is the thinking of the Editorial Board that this 'letter' contains issues that transcend the field of law, sociology, human relations, governance perceptions amidst others and could make an interesting read for those who care.

Publishing in Africa is fraught with a lot of challenges. A lot is therefore owed to our intellectual Honourable team of judges. Notably, we are grateful to the provost and Dean of the Novena University College of law, external assessors our respected Editorial Board of Advisers. Also deserving our sincere gratitude are the Vice Chancellor, Deputy Vice Chancellor, Registrar of Novena University, the editorial board and article contributors.

We hope that the readers and users of this Journal be they Judges, lawyers, students, scholars, researchers, and policy makers will by this publication expand the scope and coverage of future editions by sending to us well researched Judgments from their jurisdictions that will form the critical bases for the continuous publication of this high impact law and policy Journal.



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AN EXAMINATION OF THE CHALLENGES OF THE NIGERIAN TELECOMMUNICATION SECTOR LEGAL REGIME

Rilwan F. Mahmoud*
Abdulazeez, Hamza Okene**
&

Wuraola, Oluwabusayo Temitope***

ABSTRACT

This article seeks to examine the Legal regime of the Nigerian Telecommunication sector, the agencies charged with the regulations of the telecommunication sector, the subscribers' rights and duties in the sector with the intent of drawing out challenges faced in the telecommunication Industry. Thus, it further examines the challenges facing the regulation of the telecommunication sector which includes security, power, inadequate legislation, challenges on interconnectivity and enforcement machineries and recommendations as to necessary steps that can be taken to eradicate the enumerated challenges which include sensitization programmes, improvements in the security and power sector as well as the enactment of clearer and unambiguous legislations.

Keywords: Telecommunication, Regulation agencies, Communications, Regulations, Enforcement, Interconnectivity, Nigeria.

1.0.0 INTRODUCTION

1.1.0 The 21st Century has seen a soaring rise in the Telecommunication Industry around the world. In the year 2005, the worldwide revenue of telecommunications reached 196 billion euro, this figure in less than 7 years had grown to an astonishing figure of about 256 billion euro,¹ with forecast of

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¹ Statista Research Group "Technology and communications" Last Accessed 13th of April, www.statista.com/markets/418/technology-telecommunications/

it rising in the year 2014 to 274 billion euro.² This figures and its rapid growth shows that the telecommunication industry if properly tapped, can contribute immensely to the revenue and GDP of a country. Thus, Nigeria is widely acknowledged as one of the major markets for telecommunications business and opportunities in Africa and the world. With a population of over 150 million,³ Nigeria remains Africa's most populous nation and also holds, at least one fifth of the entire population of Africa.⁴

As at 1960, when Nigeria attained independence, there were only 18,724 telephone land lines, forty years later; in 2000 the installed capacity had risen to about 700,000 lines,⁵ which shows that the subscription base has grown at an average rate of about 18,000 lines per annum nation-wide over those forty years. Engr. Ernest C. A. Ndukwe, former Executive Vice-Chairman of the Nigerian Communications Commission stated in 2000 that only about 400,000 lines were actually connected to subscribers. He also stated that since the mid 1980's when cellular service was commenced in Nigeria, the number of cellular lines actually connected was just 20,000 representing an average annual growth rate of 1,250 subscribers per annum. It might in fact be that not

² Ibid.

³ Central Intelligence Agency "CIA'S The world Fact book" Cited in "The world Fact book" Wikipedia http://en.wikipedia.org/wiki/CIA_World_Factbook accessed 10/04/2012 "

⁴ ibid

⁵ Engr. Ernest C. A. Ndukwe: 'Telecommunications Challenges For Nigeria In The 21st Century', 2000 http://www.ncc.gov.ng/archive/speeches_presentations/EVC's%20Presentation/nici_programmeEVCspeech.pdf (last accessed on the 18th of January 2017)

up to 200,000 individual Nigerian family units actually have telephone lines within their premises.⁶

There is no doubt that Nigeria has come a long way from the times described by the former Vice Chairman. The Nigerian telecommunications sector is now the fastest growing sector of the Nigerian economy, from about 450,000 active telephone lines in 2001 to over 78,000,000 in 2010.⁷

The exponential expansion of the Telecommunication Industry has necessitated the enactment of rules and regulations by the Nigerian government specifically designed to regulate the evolving nature of the Telecom sector.

The government of Nigeria is conscious of the role telecommunications can play in national development and is committed to ensuring that telecommunications facilities and services are expanded rapidly.⁸ The Private investment in this sector has grown from about \$50m in 1999 to over \$25 billion by 2010⁹ with commensurate rapid growth in subscriber lines.

⁶ *ibid*

⁷ Ariyoosu, D.A., 'Legal Regulation and Environmental Impacts of Telecommunications installations: the Nigerian experience' A Paper Presented at the 13th Annual Conference & AGM of the Environment Division of the Nigerian Society of Engineers at International Conference Centre, Abuja 9TH-11TH November, 2010.

⁸ Akintunde Otubu: 'The Regulator and the Regulated: An examination of the Legal Framework for Telecommunication in Nigeria', *Acta Universitatis Danubius Communicatio* (2013) *AUDC* vol. 7 No. 2 152-167

⁹ Abimbola Tooki: 'A New Dimension to Nigeria's Telecom Revolution' *Business World* Newspapers April 11th, 2011

The nation's tele-density stands at about 65% (a 15% increase from 2010¹⁰) with about 89 million connected lines by end of 2010.¹¹

1.2.0 The Statement of the Problem/Gap in the Knowledge

Since the inception of mobile telecommunications in Nigeria, there has been a substantial development as the number of telecom subscribers has risen greatly. These developments are not without challenges accruing from the necessary need to regulate the activities in the fast growing sector.

A primary challenge of the regulation the legal regulation of the telecom sector in Nigeria is the poor interconnectivity and network access. Most of our activities resonate around information in world where information is true power. Our dependency of network interconnectivity is astonishing from a simple social call to a work email; most of our daily activities revolve around absorbing and dispensing information.

Challenges of Poor power supply and security are also in dire need of attention as we move into a Nigeria that is dependent on telecommunication services for the progress of the economy.

2.0.0 THE REGULATORS IN THE NIGERIAN TELECOMMUNICATION SECTOR

¹⁰ The Association of Licensed Telecommunications Operators of Nigeria (ALTON): Submissions on the draft National Environmental (Standards for Telecommunication Facilities) Regulations, 2010. <http://www.altonnig.com/docs/ALTON%20Comments%20on%20NESREA%20Regulations%20for%20Telecoms%20Facilitiesl.pdf>

¹¹ Abimbola Tooki: 'A New Dimension to Nigeria's Telecom Revolution' Business World Newspapers April 11th, 2011

Now more than ever in an era of alarming growth in the Telecommunication Industry in Nigeria, the need for regulation of market has never been more dire. Both the Service providers and subscribers would benefit from the government regulation which is to cover the service quality, market prices, competition as well as enforcement processes of the legislations. In recognition of the forgoing responsibilities, The Nigerian Government has put in place, several key regulatory bodies saddled with the task of making rules in relation to all aspect of the Telecom market as well as implementing those rules.

It is pertinent to note that the telecom industry is the fastest growing industry in Nigeria and as such, liberalization of the market is of great significance not only to the providers and subscribers of the services but to the Nigerian economy as well as the World's.

The telecommunications industry is a key part of the economy in the world and of crucial strategic importance for the economy's competitiveness.¹² Resultantly, the aim and objective of market liberalization includes not only the benefits to consumers of improved prices, choice, quality of service and widened product range but also overall economic development¹³.

The primary regulatory bodies that have direct or indirect link with telecommunications industry and services within the Nigerian legislative competence are as follows:

¹² Ariyoosu D. A: 'Legal Regulation and Institutional Framework for the Nigerian Telecommunications Industry: An overview' African Multidisciplinary Journal, 2013, Vol.1, No.1, 43-80

¹³ Organization for Economic Co-operation and Development (OECD) Reviews of Regulatory Reform in
<http://www.ictregulationtoolkit.org/en/publication>. p 23

1. Nigerian Communications Commission
2. The Governing Board of the Nigerian Communications Commission
3. National Frequency management Council
4. Universal Service Provision Board
5. National Environmental Standards and regulations Enforcement Agency (NESREA)
6. Standard Organisation of Nigeria
7. Consumer Protection Council

2.1.0 **The Nigerian Communications Commission**

2.1.1 The Establishment of the Nigerian Communications Commission

The Nigerian Communications Commission was established under the Nigerian Communications Commission Act¹⁴ with responsibility of the regulation of the communications sector in Nigeria. The Commission shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and has the power to enter into contracts and incur obligations, acquire, hold, mortgage, purchase and deal howsoever with property, whether movable or immovable, real or personal; and do all such things as are necessary for or incidental to the carrying out of its functions and duties under the Nigerian Communications Commission Act.¹⁵

¹⁴ Section 3 of the Nigerian Communications Commission Act, *Cap N 97 Laws of the Federation of Nigeria 2004*.

¹⁵ *ibid*

Also, the Commission is given the power, by the act, to be structured into departments as the Governing board of the Nigerian Communications Commission may from time to time deem appropriate for the effective discharge of its functions.

2.2.0 The Governing Board of the Nigerian Communications Commission.

2.2.1 The Establishment of the Board

The Nigerian Communications Commission Act established for the Commission a Governing Board charged with the administration of the affairs of the Commission¹⁶. The Board consists of 9 Commissioners made up of a chairman, a chief executive who shall also be the Executive Vice Chairman, 2 Executive Commissioners, and 5 non-executive Commissioners who shall be appointed by the President of the Federal Republic of Nigeria.

2.3.0 National Frequency Management Council

2.3.1 Establishment of the National Frequency Management Council

The National Frequency Management Council (hereinafter referred to as the Council) is established under Section 26 of the Nigerian Communications

¹⁶ Section 5 of the Nigerian Communications Commission Act, Cap N 97 Laws of the Federation of Nigeria 2004

Commission act¹⁷ to regulate all matters relating to frequency management in the telecommunication sector.

2.4.0 Universal Service Provision Board

2.4.1 Establishment of the Universal Service Provision Board

The Nigerian Communications Commission act established the Universal Service Provision Board (hereinafter referred to as "USP Board")¹⁸ for the purpose of supervising and providing broad policy directions for the management of the USP Fund. The USP Board shall be constituted by the President based on the recommendations of the Minister and the USP Board shall, in carrying out its functions and duties pursuant to this Act, collaborate and consult at all times with the Commission and be subject to the provisions of this Act.

2.5.0 National Environmental Standards And Regulations Enforcement Agency

2.5.1 Establishment of NESREA

The National Environmental standards and regulation enforcement agency (NESREA) was established as a parastatal of the Federal Ministry of Environment, Housing and Urban Development.¹⁹ The Agency is charged with the protection and development of the environment, biodiversity

¹⁷ Section 26 of the Nigerian Communications Commission Act, *Cap N 97 Laws of the Federation of Nigeria 2004*

¹⁸ Section 115 of the Nigerian Communications Commission Act, *Cap N 97 Laws of the Federation of Nigeria 2004*

¹⁹ Section 1 (1) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.

conservation and sustainable development in Nigeria's natural resources in general and environmental technology²⁰

2.6.0 The Standard Organisation of Nigeria (SON)

2.6.1 The standard organisation of Nigeria (SON) was established by Section 1 (1) of the Standards Organisation of Nigeria Act²¹. The Organisation is saddled with the responsibility of standardizing and regulating the quality of all products in Nigeria.

2.7.0 CONSUMER PROTECTION COUNCIL

2.7.1 The establishment of the Consumer Protection Council

The Consumer Protection Council Act established the Consumer Protection Council. The council is a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name²²

3.0.0 The Regulations in the Nigerian Telecommunications Commission

The rapid growth in telecom industry has greatly affected the quality of telecommunications services and protection of telecoms subscribers. The need to have regulatory reforms therefore, cannot be over-emphasised.²³ With the objective of overcoming several apparent challenges as well as anticipated ones. The Acts and Regulations that govern the Telecommunication sector are as follows:

²⁰ Ariyoosu D. A: 'Legal Regulation and Institutional Framework for the Nigerian Telecommunications Industry: An overview' (n. 13).

²¹ Cap S 9 Laws of the Federation of Nigeria 2004

²² Section 1 (1) of the Consumer Protection Council Act, Cap C 25 Laws of the Federation of Nigeria 2004

²³ Ariyoosu.D.A 'An Examination Of The Legal Regulations And Taxation Of Telecommunications And Electronic Commerce In Nigeria, 2012' unpublished doctoral thesis

1. Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004
2. Wireless Telegraphy Act
3. Nigerian Communications Commission Act(2003 No. 19), Telecommunications Networks Interconnection Regulations 2007
4. Nigerian Communications Commission Act(2003 No. 19), Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations, 2011
5. Nigerian Communications Commission Act(2003 No. 19), Nigerian Communications Commission Act—Competition Practices Regulations, 2007
6. Nigerian Communications Commission Act(2003 No. 19), Consumer Code of Practice Regulations, 2007
7. Nigerian Communications Commission Act(2003 No. 19), Numbering Regulations 2008
8. Nigerian Communications Commission Act(2003 No. 19), Nigerian Communications Commission Act(No. 19 of 2003), Quality of Service Regulations, 2012
9. Nigerian Communications Commission Act(2003 No. 19), Type Approval Regulations 2008
10. Nigerian Communications Commission Act(2003 No. 19), Universal Access and Universal Service Regulations 2007
11. Nigerian Communications Commission Act (2003 No. 19) Frequency Spectrum (Fees and Pricing, etc.) Regulations 2004

Price Regulation

Price regulation has been very helpful in the telecommunications industry. The affordability of telecommunications services has helped the economy and also assisted in the expansion of the telecommunications industry. Some of this importance includes:

- substantial decreases in the prices conveyed to consumers in the telecoms industry helps to secure low prices for consumers who value high levels of service quality just as they value low prices.²⁴
- affordable tariff levels which improves the welfare of citizens and enhances the equity and equality of access to information.²⁵
- attaining distributional goals. For example, regulation may mandate particularly low prices for consumers with limited income or require similar prices for essential retail services throughout a broad geographic region, even though the costs of serving customers vary widely across the region.²⁶
- the promotion of effective universal services. Price policies are made to regulate incumbent suppliers to make basic telecommunications services available on similar terms and conditions throughout their

²⁴ David E.M. and Dennis L.W., 'Price Cap Regulation: What Have We Learned from Twenty-Five Years of Experience in the Telecommunications Industry', <http://www.repec.org/a/kap/regeco/v38y2010i3p227-257.html> accessed on 17 February 2017

²⁵ 'South African Transport and Communications- Policy Guidelines on Tariffs for Telecommunications Services' <http://www.itu.int-d/projects/itu_ec_acp/hopssa/docs/> accessed on 23 February 2017

²⁶ Janice A.H. 'Pricing in Network Industries' <http://www.warrington.ufl.edu/centers/purc/.../1013_Hauge_Pricing_in_Network.pdf> accessed on 17 February 2017

operating territories.²⁷ This helps quality services to be available in rural or non-metropolitan areas at the same or a lower price and on the same price-related terms as it offers to metropolitan areas.

- the promotion of uniformity, consistency and efficiency in the telecommunications industry.
- achievement of government policy objectives of even development of telecommunications infrastructure across Nigeria.

On price regulation, the Nigerian National Telecommunications Policy requires NCC to establish tariff regulation requirements for such dominant operators which will ensure that service prices are cost oriented, that the consumers and competitors interests are protected and that the industry develops in the most efficient manner possible.²⁸ Though the NCC does not set retail prices, the regulator consistently monitors the rates at which the providers offers services to Nigerians, and intervenes when necessary in determining inter-connect rates for the industry when the need arises.²⁹

By the provision of the Nigerian Communications Act, a transparent, fair, competitive and non-discriminatory pricing structure was to be set by the

²⁷ibid

²⁸ Oserogho E.O 'NCC, Telecommunications and Tariffs Regulations' <<http://www.oseroghoassociates.com/news/news-2003-06.shtml>> accessed on 15 February 2017

²⁹ 'NCC: Raising the GSM Pulse through Lower Tariffs' <<http://www.dailyindependentnigeria.com/2013/04/ncc-raising-the-gsm-pulse-through-lower-tariffs/>> accessed on 23 February 2017

NCC.³⁰ However, in the past, NCC refused to regulate the pricing of mobile service on the premise that competition is firmly established in the mobile sector that regulatory intervention is not necessary for the determination of appropriate prices³¹ but in recent times, network operators in Nigeria are divided over the new interconnection rates³² proposed by the NCC.³³ For instance, NCC in 2009 pegged interconnection rate for mobile voice termination at N10.12 for telecoms companies that had operated for less than four years in the country.³⁴

A consistent and predictable regulatory price policy is very crucial for the satisfactory running of the telecommunications industry in Nigeria. It has an economic advantage of achieving the optimum level of production from a societal point of view; to ensure delivery of good services at appropriate prices for all consumers desiring them.³⁵ By achieving affordable tariff levels,

³⁰ Nigerian Communications Act (2003 NO. 19) Frequency Spectrum (Fees and Pricing, etc) Regulations, 2004

³¹ Paul T.O., 'Regulating the Pricing of Mobile Telecommunications Services- The Role of the Nigerian Commission' <<http://www.geplaw.com/media/publications/regulating..>> accessed on 28 January 2017.

³² Interconnection rates are what operators charge themselves for allowing calls to be terminated on another's networks. These rates are considered very critical to the proper functioning of a competitive telecoms market.

³³ 'New Interconnection Rate Divide Telecom Operators' <<http://www.it/telecom/news/main...>> accessed on 20 February 2017

³⁴ *ibid*

³⁵ Morten F., 'Cost and Demand Characteristics of Telecom Networks' <http://www.ftp://nefeli.uop.gr/e-books/.../Telecom%20Reform/TR_Chapter_B9.pdf> accessed on 01 February 2017

the welfare of citizens is improved thereby enhancing equity and equality of access to information.³⁶

4.0.0 Challenges to the Legal Regulations of the Telecommunication Sector In Nigeria

4.0.1 Introduction

With the rapid growth in the Telecommunication Industry, The Nigerian Government has grown quite watchful of the sector. The repeal of the Nigerian Communications Commission Act; the Nigerian Communications Commission (Amendment) Act; and the Telecommunications and Postal Offences Decree No. 21 of 1995 and all subsequent amendments thereto by section 150³⁷ marked a remarkable beginning in the regulation enforcement and promotion of the Telecommunication sector.

Since the establishment of the Nigerian Communications Commission Act³⁸, the regulatory bodies that have been vested with the regulation of various aspect of telecommunication in Nigeria have no doubt, stepped up efforts in the ever evolving task. Not only have there been various regulations drafted, as examined in previous chapters, there have also been improvements in how

³⁶ 'South African Transport and Communications- Policy Guidelines on Tariffs for Telecommunications Services' <http://www.itu.int-d/projects/itu_ec_acp/hopssa/docs/> accessed on 23 February 2017

³⁷ Nigerian Communications Commission Act, *Cap N 97 Laws of the Federation of Nigeria 2004*.

³⁸ *ibid*

those regulations are implemented and preparations towards newer inevitable challenges that the Nigerian regulatory regime will face in the coming years.

Close monitoring of areas such as frequency spectrum has led to constant review and amendment one of which is the Frequency Spectrum (fees and pricing, etc.) (amendment) regulations 2009. This new attitude towards the telecommunication sector necessary now more than ever as the industry is evolving at an exponential rate.

However, such great achievement by the Nigerian Government per the regulation of the telecom sector, there are quite a number of challenges which have substantially hindered the growth of the Nigerian Telecommunication Industry.

The Primary Challenge most Nigerian agency face is that of enforcement. Limitations from inadequate regulations to lack of man power have plagued the enforceability of the regulations in the Telecom sector. This will be examined in details visa vie the enforcement regulations and some of the Compliance and monitoring report as well as other relevant materials.

For an industry that has exhibited such rapid growth in the last few years, the need for constant drafting of regulations for areas of telecommunication that are yet fully unregulated could not be more eminent. The previous chapters of this work attempt to examine as many regulations that have both direct and indirect effect on the Nigerian telecommunication sector, the laws found however detailed and encompassing are not enough as there are some fields which are yet fully regulated and are, at best, protected by vague laws and

even the constitution³⁹ which is meant to be but a mother law. Some of such relatively unregulated areas include:

Interception of communication, with the recent commencement of the registration of the Subscribers Identity model card on the 28th of March 2011⁴⁰ for the regulation of Subscribers identity Model card (SIM Card) the need for the protection of the Private information of the Nigerian subscribers is no doubt a necessity so as to abide by section 37 which provides among other things protection of the privacy of citizens as well as their telephone conversations. This begs the dire need for a law made to provide a legal and regulatory framework for the lawful interception of Communications in Nigeria, the collection and disclosure of intercepted Communications. This has, at the date of the completion of this work not been accomplished.

There are several other challenges to be overcome before the regulation of the Telecommunication sector can be considered adequate but for the purpose of this work the above stated challenges shall be considered in addition to the following:

- Interconnectivity and access to network facilities
- Infrastructural Security
- Inadequate power supply
- Inadequate Regulations

³⁹ Constitution of the Federal republic of Nigeria, 1999 (as amended).

⁴⁰ The registration was a result of a consultative forum involving various telecoms operators, consumer groups, security agencies, telecoms association, dealers, the Nigerian Identity Management Commission, National Population Commission, National Census Commission, the media and a host of others. Resultantly, The National Communication Commission approved the registration of all phone subscribers in Nigeria

- Regulatory Overlap

4.1.0 Interconnectivity and Access to Network Facilities

The Communications Act distinguishes between Interconnection and Access and contains separate provisions for them⁴¹ Interconnection is defined under the Act as “the physical and logical linking and connection of communications systems used or operated by the same or different licensees in order to convey messages to and from their respective systems.”

Access is defined by the act as ‘making available of communications facilities and communications services one licensee to another for the purpose of providing services and includes the connection of equipment by wire or wireless means, access to physical infrastructure including but not limited to buildings, ducts and masts, access to mobile networks, in particular for roaming and access to number translation or systems offering equivalent functionality.’

From the forgoing, it is clear that access to internet facilities as used by the Nigerian Communications Commission Act is defined strictly as access from one operator/licensee to another. This definition of access will be adopted for purpose of this subtitle “Interconnectivity and access to Network facilities.”

A primary challenge of the regulation the legal regulation of the telecom sector in Nigeria is the poor interconnectivity and network access. Most of our activities resonate around information in world where information is true power. Our dependency of network interconnectivity is astonishing from a

⁴¹ Sections 96-100 of the Act refer to interconnection while sections 101-103 deal with access. Of the Nigerian Communications Commission Act Cap N 97 Laws of the Federation of Nigeria 2004.

simple social call to a work email; most of our daily activities revolve around absorbing and dispensing information. With an ever growing population of telecommunication subscribers, the clogging of mobile broadband is a dominant issue as the Changes in technology have engineered the use of high technology devices like Smart phones for sending videos and other high data capacity packets.

Broadband is a transmission medium that is capable of supporting a wide range of frequencies, typically from audio, video and up to date frequencies. It could carry multiple signals by dividing the total capacity of the medium into multiple independent bandwidth channels where each channel operates only on a specific range of frequencies. It is a fast permanent internet connection that could be accessed through Asymmetrical Digital Subscriber line (ADSL), cable, 3rd Generation or satellite platforms⁴².

Arihilam E.C and Eguzo examined the data consumption in Nigeria today and the predicted forecast⁴³ 'The increase according to Informat Telecoms and Media will foresee faster growth in data volume than data revenue. Current predictions indicate that global mobile data revenues will increase by 77% between 2007 and 2012, but global data growth will increase even more rapidly by over 1000% over the same period, with mobile video traffic growing more than 30% by 2012' a further examination of the situation led

⁴² Arihilam E.C and Eguzo C.V 'Handling Mobile Broadband Traffic (The Nigeria Perspective)',
www.wiloudjournal.com/ojs/index.php/cijinfotech/article/download/642/588 2011

⁴³ ibid

the duo to conclude, based on Cisco's chart (fig.1) that the user data demand is comparably higher than the optimum capacity.

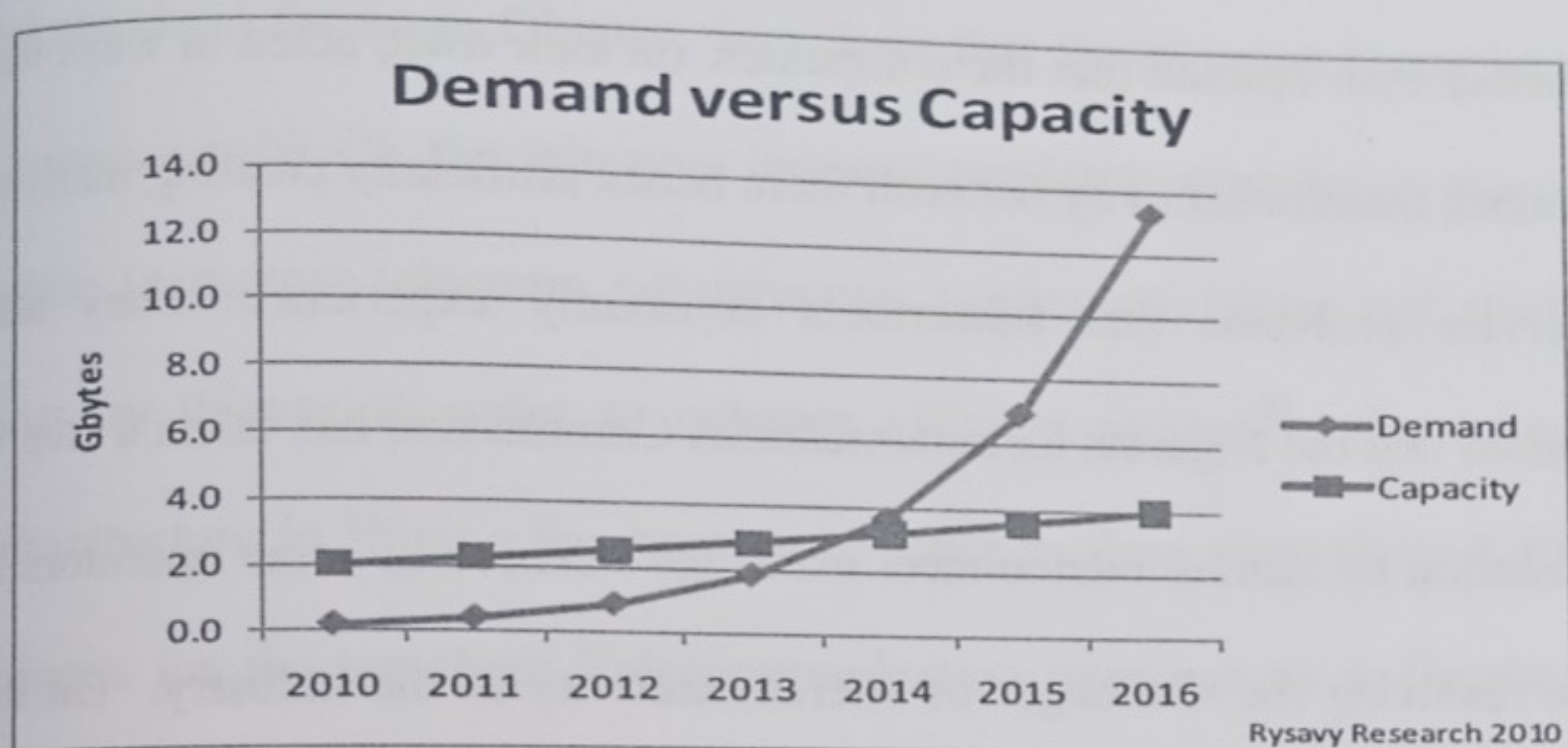


Figure 1: Average Demand Per User Versus Average Capacity per User⁴⁴

This Predicted growth shows not only a current problem but an imminent one as well. Making the interconnectivity and accessibility problem a potential disaster.

Patience Akpan-Obong and William A. Foster in the examination of the Challenges faced by the operators, subscribers and the regulators of communications interconnectivity⁴⁵ opine that one of the causes of this challenge is, Right from the beginning of the operation of the digital mobile services, the question was raised about why the four original providers, MTN, InterCellular, the then Econet and Nitel, were not sharing their infrastructure. They believed that it is because they were not legally allowed to share

⁴⁴ Average Demand Per User Versus Average Capacity per User: Rysavy Research Feb 2010
http://www.rysavy.com/Articles/2010_02_Rysavy_Mobile_Broadband_Capacity_Constraints.pdf

⁴⁵ Patience Akpan-Obong and William A. Foster 'Africa's telecommunications giant awakes'
www.fosterandbrahm.com/docs/cc%20africaissue081pg12-16.pdf

infrastructure and to associate because of concerns that they might collectively have too much power and therefore “gang up” against the public interest. It was further their opinion that the companies, on their own, acted in ways that constrained interconnectivity between them hence artificially creating many of the service problems that subscribers constantly experience. They also recognised that the Nigerian Communications Commission has taken a step in this direction by issuing interconnect exchange licences to some operators to help in resolving the challenges of interconnectivity in the industry. On the interconnect exchange licence, Bede Chukwudiebube Opata opined that although rules are essential for securing seamless interconnection, the regulatory activities geared towards this end need not be confined to rules. Other activities such as authorisations or in Nigeria’s case licensing of interconnect exchanges could facilitate this objective especially where there are a plurality of operators some of which are small regional operators. In adoption of the recommendation of Opata, it is pertinent to note that the challenges of interconnectivity and access to internet facility is one that will only get worse if left unchecked.

4.2.0 **Infrastructural Security**

The nationwide dependency on telecommunication has led to the necessity of keeping all the required infrastructure running for a smooth operation of the telecom sector. For the achievement of this, security of telecommunication infrastructure has become a key area of challenge.

Director of Technical Standard and Network Integrity, Balarabe Sanni revealed in a paper titled, 'protection of Telecom Infrastructure' at a stakeholders' forum in Okigwe, Imo State that the Nigerian Communication Commission(NCC), the telecoms industry regulator, appealed to the general public to protect telecoms infrastructure against vandalism and stealing of parts by thieves in order to enhance efficient service⁴⁶. The security of infrastructure in Nigeria has become an issue as there were about 8,400 base stations for the top three Telecommunication operators as at October 2007 with Zain, now Airtel having 2500 base stations, MTN had 2900 and Globalcom , 3000. With an average of two security guards each, this translated to having 5000, 5800 and 6000 security guards respectively on their payrolls (since at least two personnel were guiding every base station).⁴⁷

This number has certainly increased since and efforts on the parts of the Regulators, operators and consumers to protect telecommunication facilities have not hindered the vandalism and theft of these infrastructures. The recent unrest in Nigeria have not helped the matter as factions of Boko haram and other groups have contributed to the vandalism of these infrastructures.

This Day reported that Boko Haram operatives are staging "unrelenting attacks on the telecommunications infrastructure, especially in the states of Borno, Yobe, Bauchi, Gombe, and Kano, Nigeria's second largest city. It

⁴⁶ Balarabe Sani "Protect Communication infrastructure from thieves and vandals" www.nigeriacurrent.comck84-business/protect-communication-infrastructure-from-thieves-vandals-ncc Thursday, 9 January 2014

⁴⁷ Adegoke A. S., Babalola I.T. and Balogun W. A. 'Performance Evaluation of GSM Mobile System in Nigeria' p. 437 <http://proceedings.informingscience.org/InSITE2012/InSITE12p301-316Awodele0092.pdf>

reports that members of the Association of Licensed Telecommunications Operators of Nigeria (ALTON), principally MTN, GLO, Airtel, and Etisalat, are threatening to suspend telecommunications services in the North of Nigeria. An Alton spokesperson said at least twenty-five base stations belonging to its members have been destroyed, many of them hubs. A spokesman said that a base station costs between 500 million and 1 billion naira⁴⁸

Recently, Freedom C Onuoha, in an article published on the 3rd of November 2013 opined on the financial cost of the both Boko Haram and the recent flooding in 2012, stating that Telecom operators in Nigeria have lost about 75 billion naira to damages caused. He further stated that telecom infrastructure analysts have put the average cost of a base station in Nigeria at about 39.47million naira and it will cost some 15.9billion to replace the damaged base station.⁴⁹

The issue of Infrastructural security is one that goes to the heart of telecommunication performance in the existence and efficient operation of mobile communication in Nigeria.

4.3.0 Limited Power Supply

Electricity plays a very important role in the socio-economic and technological development of every nation. The electricity demand in Nigeria

⁴⁸ John Campbell 'Boko Haram Attacking Nigeria's Mobile phone Infrastructure' Council on Foreign Relations www.blogs.cfr.or/Campbell/2012/11/boko-haram-attacking-nigerias-mobile-phone-infrastructure/

⁴⁹ Freedom Onuoha 'The costs of Boko Haram Attacks on Critical Telecommunication Infrastructure In Nigeria' 2013 www.e-ir.info/2013/11/03/the-cost-of-boko-haram-attacks-on-critical-telecommunication-infrastructure-in-nigeria/

far outstrips the supply and even the supply is a continuously interrupted and fluctuating.

The reliance on Energy supply by the Telecommunication sector cannot be understated. Both the Operators as well as the subscribers require electric power for the effective performance of the equipment's providing telecommunication services by the telecom operators as well as the equipment's utilising these services by the telecom subscribers. This shows that the proper and efficient operation of the telecommunication sector is predicated on the Energy sector in Nigeria.

This Challenge of the telecommunication sector has led to a dependency of self-generated electricity via power plants, i.e. both the telecommunication operators as well as the subscribers have resulted to electricity generators for the efficient supply and usage of the infrastructure.

However, the cost of Petrol in Nigeria is also a determining factor in the usage of such Electric Generators. In the recent years, Nigeria has seen a soaring rise in fuel price and there are predictions for further rise in prices.

President Goodluck Jonathan recently said the Federal Government would still remove fuel subsidy.⁵⁰ The total removal of fuel subsidy will increase the fuel price from the current 65 naira per litter to as high as 141 naira per litter. The Association of Telecommunications Companies of Nigeria, (ATCON) in a Memorandum submitted to the senate committee on communications as

⁵⁰ Ademola Alawiye and Maureen Azuh "Petrol price to go up" www.punchng.com/business-economy/petrol-price-to-go-up-jonathan/

input to its public hearing on matters relating to quality of service⁵¹ stated that as at 2012, there was an average of 25,000 base stations in Nigeria at an average 50,000 generators (two generators for each base station). They further stated that the cost of diesel is not included in the logistics incurred in procuring and transporting the diesel as well as the cost of servicing the generators. They also mentioned that there are places that are not connected to the power grid ergo, the operations in those areas are 100% powered by generators, bringing the total amount spent monthly to about 5 billion naira by the operators on power generation.

From the foregoing, there is little doubt that power generation is a challenging issue in the proper operation of the Telecommunication sector as virtually the entire infrastructure in the telecom sector is ran by power in form of petrol, diesel and Electricity.

4.4.0 Inadequate regulations.

The regulatory bodies of the telecommunication sector are saddled with the responsibilities of checking the rather rapid growth in the sector. The Nigerian Communications Commission have only produced eleven regulations some of which are examined in the earlier chapters of this work. These regulations have proved not to be sufficient for adequate regulations of the sector.

⁵¹ Submitted by the President of ATCON Engr. Lanre Ajayi to the Committee on communications as input to its public hearing on matters relating to quality of service (QoS) and obvious non-co-location of facilities among service providers in the Nigerian telecommunications sector., 2012 www.atcon.org.ng/wp-content/uploads/downloads/2012/12/memorandum-to-the-Senate-committee-on-quality-of-service.pdf

It is pertinent to note that efforts have been made to check this as there are several draft regulations which have yet to be given statutory backing. As at 13th January 2013, draft regulations which are intended to properly regulate areas such as licensing, Enforcement Procedure⁵², Interception of communications⁵³, mobile number portability⁵⁴, Licensing⁵⁵, as well as annual operating levies⁵⁶ are yet to be given legal backing hence remain unenforceable.

There is also the much needed amendment for the Nigerian Communications Commission Act which has not been enacted. The need for the enactment of these regulations cannot be overstated as the development in the telecom sector is not met by necessary regulations. This is now more than ever, a necessary requirement. As facilities such as porting from one network to another is now being implemented by mobile operators. It is unthinkable a time, where there will not be sufficient laws to regulate the very essence of telecom operation in Nigeria. And the telecom operators will be left to dictate prices and quality of services not expressly covered under the available regulations.

4.5.0 Regulatory Overlap

⁵² Nigeria Communications (Enforcement Processes, etc.) Regulation. Nigerian Communications Commission Act, Cap N 97 Laws of the Federation of Nigeria 2004.

⁵³ Lawful Interception of Communications Regulations Nigerian Communications Commission Act, Cap N 97 Laws of the Federation of Nigeria 2004.

⁵⁴ Mobile Number Portability Regulations, 2013 Nigerian Communications Commission Act, Cap N 97 Laws of the Federation of Nigeria 2004.

⁵⁵ Licensing Regulations 2013 Nigerian Communications Commission Act, Cap N 97 Laws of the Federation of Nigeria 2004.

⁵⁶ Annual Operating Levy Regulations, 2012 Nigerian Communications Commission Act, Cap N 97 Laws of the Federation of Nigeria 2004.

The overlap of regulatory powers of the agencies charged with the regulation of the telecommunication sector has also been a clog in the progress of the telecommunications in Nigeria. An example is on the issue of the height of telecommunication masts. Section (7) (n) of Nigerian Civil Aviation Authority (Establishment) Act, 1999 empowers the Authority to prohibit and regulate the installation of any structure which by its height or position is considered to endanger the safety of air navigation. The height and closeness of tower to the airport or helipads may constitute air navigation danger therefore, in order to prevent this possible air hazard, a tower which height exceeds 30 meters must be approved by National Air Management Agency (NAMA)⁵⁷. However, the Nigerian Communications Act's guidelines on Technical Specifications for the installation of Telecommunications Masts and Towers issued on 9th April, 2009. As regards the height of towers and masts states that the maximum height that may be approved for a telecommunication tower in Nigeria is 150 meters. Any tower more than 150 meters in height, may be approved by the National Communications Commission if the Commission is satisfied that the increased height of the tower will not be detrimental to the public health or safety of the general welfare.

Another overlap in regulation of telecommunications in Nigeria is the issue of distance in which a mast or a base station should be from a residential area in order to prevent environmental hazards. Section 11 of NESREA puts the minimum between a base station and a residential building at 10 meters

⁵⁷ Y.A AlaJo 'Environmental Impact of Telecom Installations: The Law, Machinery and Practice' a seminar Paper presented at the LL.M class of Telecommunication Law 2013/2014 session on the 14th of March, 2014

however the NCC puts the minimum distance to about 5 meters. This is an obvious challenge which will hinder the course of effective running of the telecommunication industry.

4.6.0 Conclusion and Recommendation

4.6.1 This paper sought to examine the challenges to the legal regulations of the telecommunication sector in Nigeria. A detailed examination of the Principal regulatory bodies in the Telecommunication sector and the statutory regulations available to check the activities in the telecommunication sector has revealed tremendous success by the Nigerian government.

However this has also revealed a number of challenges which are evident and some, quite imminent in the effective regulation of the telecommunication sector. There is quite a lot of room for improvement in areas such as enforcement of the available regulations, the enactment of very much needed legislation and the improvement of power supply as well as sensitization of both operators and subscribers on the roles each of them need to play for the adequate regulation of the telecommunication sector.

4.6.2 The Challenges of legal regulations in the telecommunication sector are faced by the regulators, the Telecommunication Operators as well as the subscribers to the telecommunication services. For the effective resolution of these challenges, there is much need to bring this parties together vide representative to examine, in details, each of the issues and find a way to implement decisions reached by them.

In consideration of the challenges stated in the previous chapter of this work, some recommended solutions include the following

- Recommendations as to the Regulatory agencies
- Recommendations as to Enforcement of available regulations
- Sensitization of Subscribers as well as operators
- Improvements in other sectors: security and Power
- Registration of identities vide Subscribers Identity Module Card(Sim Card) as well as Internet Protocol Address(I.P address)

4.6.2.1 Recommendations as to the Regulatory agencies and available regulations.

The earlier chapter revealed a high large number of Principal bodies in the Telecommunication sector. This, regardless of the positive intention behind the establishment, has the effect of clashing agencies against one another as their jurisdictions are sure to collide. It is my belief that fewer regulatory agencies/bodies can achieve the intended objectives especially if their duties are well defined as against others.

For instance, a careful examination of quality of service regulations, 2012 as well as the Standard organisation of Nigeria Act will show that the scope of both regulations is the ensure quality of services. This will obviously necessitate the collision of functions of both the Nigerian Communications commission and the Standard Organisation of Nigeria as they are both vested with the power to regulate service quality in the Telecommunication sector.

It is my recommendation that such situations should be checked by a detailed definition of the duties of each of these bodies as regards the Telecommunication sector.

4.6.2.2 Recommendations as to enforcement of available regulations.

There is very much a need for the Regulatory bodies of the Telecommunication sector to step up their efforts in regulating the activities in the telecommunication sector. The website of the Nigerian Communications Commission will show persistent and successful efforts in regulating the telecommunication operators but there is very little evidence of the enforcement of the telecommunications subscribers. The need for a regulatory agency charged with the duty of enforcing telecommunications regulations contravention is a necessary requirement for the achievement of this objective.

4.6.2.3 Sensitization of Subscribers as well as Operators:

The transformation of the telecommunication sector over the last few years has left a large gap in the knowledge required for the effective operation of the telecommunication sector.

The need for awareness programmes for the telecommunication operators on the current situation in Nigeria as well as the new laws put in place to check them is a necessary step to check the challenges facing the telecommunication sector.

There is also a need to sensitize the subscribers of these services on their rights and duties as subscribers to a telecommunication service. This will empower them to enforce their rights where they've been breached and also help check challenges such as security issues and vandalism which are caused primarily by lack of knowledge.

4.6.2.4 Improvements in other sectors: Security and Power

It has been well covered in this work that the adequate functionality of the Telecom sector is predicated heavily on the stability of Power and security in Nigeria.

Ergo, the need for improvement in the power and security sector is necessary for eradication of some of the challenges plaguing the sector.

4.6.2.5 Registration of identities vide Subscribers Identity Module Card (Sim Card) as well as Internet Protocol Address (I.P address)

There have been steps taking, successfully, to Register SIM cards. There is now a registration booth every mile in urban cities. There is further need to improve registration accessibilities for SIM card.

It is further recommend that IP addresses need to be registered in Nigeria as most of the utilisation of the telecom services are by devices such as mobile phones, tablets as well as computers this will help check some of the challenges faced in the Telecommunication sector.