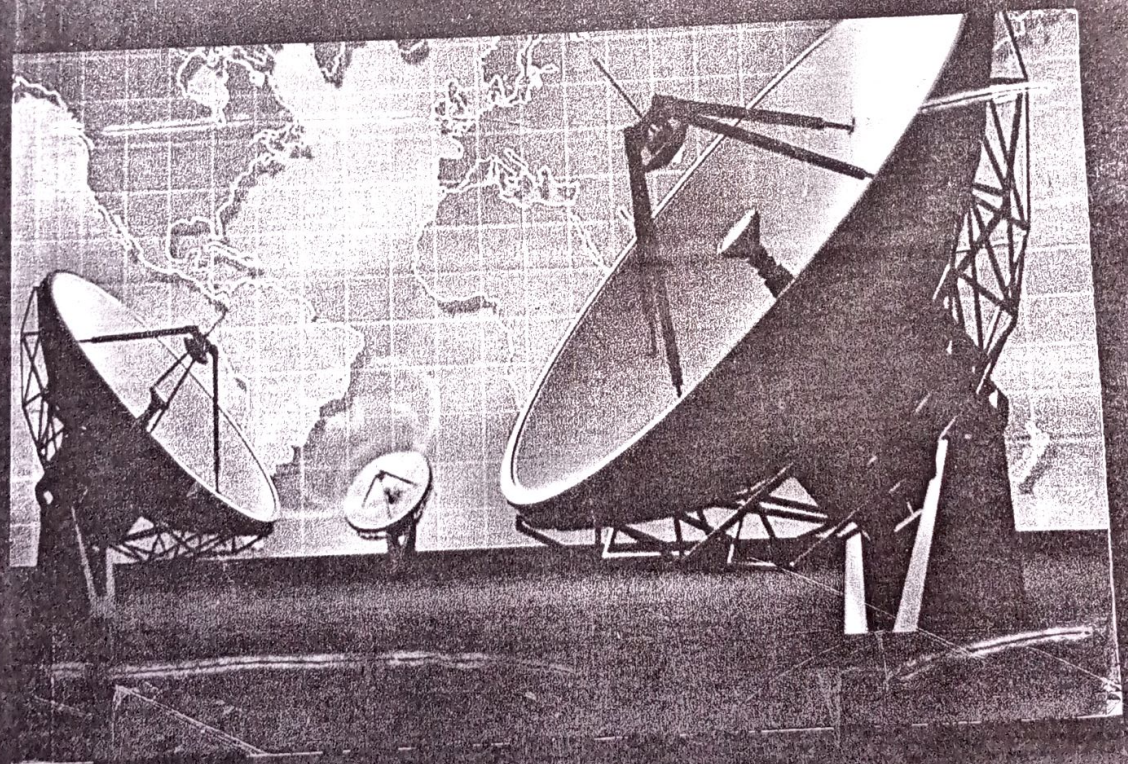
# NIGERIAN TELECOMMUNICATIONS LAW AND REGULATION

D. A. Ariyoosu



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# Dedication

To all Nigerian users of telecommunications services who have been illegally deprived of their right to minimum standards of quality of service

# Acknowledgements

Those who have inspired me to acquire the desire
to embark on the writing of this book

# Preface

e Nigerian telecommunications sector has, in recent years, nessed exponential growth. The reality, however, is that the wth has posed very great challenges to the institutional nework in the regulation of telecommunications. The advent he Global System for Mobile Communications (GSM) in eria with its economic potentials poses some legal and latory challenges. The main objective of this book is to yse issues relating to legal, regulatory and institutional eworks for the telecommunications in Nigeria.

This book focused on the examination of legal regulations of ommunications in Nigeria. In writing this book, analytical arch methodology was employed through a careful ination and evaluation of relevant legislation, statutory ments and policies on regulation of telecommunications in ia and other common law jurisdictions. This book, being a ative research which is concerned with legal and regulatory nges in telecommunications is essentially library-based with ce placed on relevant primary and secondary sources als available in the library and other online databases.

his book revealed that the existing Nigerian mmunications regulations are inadequate to engender an t and effective regulation of telecommunications business; gerian telecommunications environment is faced with ental institutional, operational and regulatory challenges; e jurisdictional problems, that is, uncertainties regarding licable law, choice of jurisdiction and enforcement in n to telecommunications disputes; and there are acies of infrastructure and shortage of manpower to boost ctive operation of telecommunications in Nigeria.

In summary, it cannot be gainsaid that a lot of challenges are fa
the legal regulations of telecommunications in Nigeria. The b
therefore, recommended a new legal regime and regula
framework to address the inadequacies in the existing Nige
telecommunications law. The book further recommen
harmonisation of the statutory and operational framew
applicable to the designated telecommunications regula
authorities and agencies in Nigeria. It also recommended
international regulatory regime be respected and advocated
effective monitoring and enforcement mechanism in the struct
framework of the Nigerian telecommunications sector.

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*ACIArb, AILEA, ACIIR, Notary Public*
**January, 2019**

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## India

- Consumer Protection Act, 1986.

## Nigeria

- Constitution of the Federal Republic of Nigeria 1999 (as amended).
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- Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, *Cap C3 Laws of the Federation of Nigeria 2004.*
- Environmental Impact Assessment Act, *Cap E12 Laws of the Federation of Nigeria 2004.*
- Federal Environmental Protection Agency Decree No 58 of 1988.
- Food and Drug Act, *Cap F32 Laws of the Federation of Nigeria 2004.*
- Food, Drug and Related Products (Registration etc) Act, *Cap F33 Laws of the Federation of Nigeria 2004.*
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- Merchandise Marks Act, *Cap M10 Laws of the Federation of Nigeria 2004.*

- National Agency for Food and Drug Administration and Control Act, *Cap NI Laws of the Federation of Nigeria 2004.*
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- Nigerian Communications Act, *Cap N97 Laws of the Federation of Nigeria 2004.*
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- Trade Malpractices (Miscellaneous Offences) Act *Cap T 12 Laws of the Federation of Nigeria 2004.*
- Weight and Measures Act, *Cap W3 Laws of the Federation of Nigeria 2004.*

## United States

- Telecommunications Act 1996.
- Telephone Consumer Protection Act 1991.
- Fair Debt Collection Practices Act.
- Fair Credit Reporting Act.

## United Kingdom

- Consumer Credit Act 1994.
- Sales of Goods Act of 1789.
- Unfair Contract Terms Act 1974.

# List of Abbreviations

- 3-G: Third-Generation.
- ALLFWLR: All Federation Weekly Law Report.
- ALTON: Association of Licensed Telecommunication Operators of Nigeria.
- AOL: Annual Operating Levy.
- APT: Asia-Pacific Telecommunity.
- ATU: African Telecommunications Union.
- AU: African Union.
- BPE: Bureau for Public Enterprises.
- BTA: Botswanan Telecommunications Authority.
- C2C: Consumer to Consumer.
- C2CD: Consumer to Consumer Disputes.
- CAB: Consumer Affairs Bureau.
- CAMTEL: Cameroon Telecommunications.
- CAP: Chapter.
- CCD: Corporate Communications Department.
- CEPT: European Conference of Postal and Telecommunications.
- CITEL: Inter-American Telecommunications Commission.
- CLR: Communications Law Report.
- CPA: Consumer protection & Advocacy.
- CPC: Consumer Protection Council.

- CPL: Conference of Plenipotentiaries.
- CTO: Commonwealth Telecommunications Organisation.
- CTU: Caribbean Telecommunications Union.
- ECOWAS: Economic Community of West African States.
- EU: European Union.
- FCT: Federal Capital Territory.
- FEC: Federal Executive Council.
- FRN: Federal Republic of Nigeria.
- FWLR: Federation Weekly Law Report.
- GSM: Global System for Mobile Communication.
- GSMA: Global System for Mobile Communications' Association.
- ICT: Information and Communications Technology.
- IT: Information Technology.
- ITU: International Telecommunications Union.
- LFN: Laws of the Federation of Nigeria.
- LTD: Private Limited Liability Company.
- MNP: Mobile Number Portability.
- M-TEL: Nigerian Mobile Telecommunications Limited.
- NCC: Nigerian Communications Commission.
- NESREA: National Environmental Standard Regulation and Enforcement Agency.
- NET: Nigerian External Telecommunications.
- NFM: National Frequency management Council.
- NIPOST: Nigeria Postal Service.
- NITDA: National Information Technology Development Agency.

- NITEL: Nigerian Telecommunications Limited/ Niger
  Telecommunications Plc.
- NTP: National Telecommunications Policy.
- NWLR: Nigerian Weekly Law Report.
- OAU: Obafemi Awolowo University/ Organisation of
  African Unity.
- OECD: Organisation for Economic Co-operation and
  Development.
- P&T: Post and Telecommunications.
- PATU: Pan-African Telecommunications Union.
- PLC: Public Limited Company.
- PTO: Public Telecommunications Operator/ Private
  Telecommunications Operators.
- RTDF: Rural Telecommunications Development Fund
- SG: Study Group.
- SON: Standards Organisation of Nigeria.
- SUDATEL: Sudan Telecom Company Limited.
- TAG: Technical Assistance Group.
- TCPC: Technical Committee on Privatisation and
  Commercialisation,
- TLR: Telecommunications Law Report.
- TRANSCORP: Transnational Corporation of Nigeria
- TTCL: Tanzania Telecommunications Company Limit
- UK: United Kingdom.
- UN: United Nations.
- USA: United States of America.
- USF: Universal Service Fund.
- USP: Universal Services Provision.
- VoIP: Voice over Internet Protocol.

WATRA: West African Telecommunications Regulations Association.

WG: Working Group.

WIN: Wire Nigeria.

WWW: World Wide Web.

ZANTEL: Zanzibar Telecom Limited..

# 1 Introduction

Telecommunications industry is a key part of the economy in the world and of crucial strategic importance for the economy's competitiveness. Resultantly, the aim and objective of market liberalisation includes not only the benefits to consumers of improved prices, choice, quality of service and widened product range but also overall economic development.[1]

Regulation of telecommunications is of utmost importance as a tool for regulatory reforms in the telecommunications industry. Regulatory reform has emerged as an important area in the telecommunications sector and for regulatory reforms to be beneficial, therefore, the regulatory regimes need to be transparent, coherent and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network, industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.[2]

This book traces the historical background of telecommunications in Nigeria. It examines several developments that have taken place in the Nigerian telecommunications industry. It further examines several regulatory regimes in the

[1] See Organisation for Economic Co-operation and Development (OECD) Reviews of Regulatory Reform in Telecommunications <http://www.ictregulationtoolkit.org/Standard/Core/Pages/404.aspx?aspxerrorpath=%2fen%2fpublication>accessed on 12 June 2015.

[2] Ibid.

Nigerian telecommunications industry. But because telecommunications is an international phenomenon, the book also considers what obtains in the international environment. It juxtaposes the roles of various regulatory authorities with a view to finding out their interrelationship and proffering recommendations on the need to avoid multiple and confusing regulatory regimes which may be counter-productive to the very existence of telecommunications systems.[3]

As part of regulatory framework for telecommunications, the need for efficient market structure, authorisation and licensing cannot be over emphasised, so also is the logical and physical linking of one telecommunications service with another.

A number of countries have undertaken far-reaching initiatives to reform and privatise telecommunications and many others are demonstrating substantial interest.[4] One reason for the surge of interest in the privatisation of telecommunications may be the rapid technological change and development in the sector and the associated opportunities for technological improvements. A second reason may be widespread political change and a questioning of the appropriateness of public management of productive enterprises.[5]

Whatever the reason for the trend, there is broad agreement that private participation should not be viewed as an end in itself but as means of improving performance.[6] Liberalisation and

---

[3] For instance, there may be a need for the Nigerian Communications Commission (NCC) and National Environmental Standards Regulation and Enforcement Agency (NESREA) to harmonise their regulatory duties in the telecommunications industry and set regulatory boundaries for efficient telecoms operation without adversely affecting environmental sustainability.

[4] See Brian Levy and Pablo T. Spiller,
'Regulation, Institutions and Commitment in Telecommunications: A Comparative Analysis of Five Country Studies'< http://documents.worldbank.org/curated/en/1994/03/698570/regulation-institution-commitment-telecommunications-comparative-analysis-five-country-studies> accessed on 12 June 2015.

[5] Ibid.

[6] Ibid.

vatisation of telecommunications bring about global best
ctices and competitive market structure and this is part of the
us of this book.

That a regulatory framework of telecommunications is put
place is not the end of regulation. There needs to be
hanisms for the enforcement of the regulation.[7] The roles of
rt and other dispute resolution mechanisms[8] are also
sidered an integral part of this book. Interconnection also
s a vital role. Telecommunications systems have to be
nically compatible with each other and have to be actually
ected.[9]

---

mechanisms are put in place to ensure adequate enforcement procedure in the
munications industry. There are several statutory instruments such as
ment Regulations of 2004, Telecommunications Network Interconnection
ons 2007 etc. all aimed at sanitising the telecommunications industry for the
ent of global standards in telecommunications.

the dispute resolution mechanisms examined include litigation, arbitration
tiation.

D. Long, *Telecommunications Law and Practice* (2nd Ed., Sweet and Maxwell,
995) p. 3.

# 2 Developments in Telecommunications in Nigeria

The telephone was invested in the seventeen century by Alexander Graham Bell. Over the years, the telecommunications network has grown to become the largest man-made machine ever made, handling more than 1000 billion calls annually and encompassing the whole globe.[1]

The most rapid growth is the period from the late 1960s to the present day. This rapid growth is the result of the combination of the development in electronics; the development of digital communication and the convergence of telecommunications and computing technologies; the development of optical fibres and the application of micro-electronics to radio communications.[2]

The earliest systems were telegraph systems, which were a form of digital system. Telephony was analogue from its inception up to the early 1970s when developments in computing began to transfer across into telecommunications.[3] Until the early 1980s, in almost all countries, telecommunications was the subject of monopoly supply with the public network operator normally being a state-owned corporation. This monopoly culture was in contrast to the competitive culture of the new computing

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[1] See Colin D. Long, *Telecommunications Law and Practice*,(2nd Ed., Sweet and Maxwell, London 1995) p.4.

[2] Ibid.

[3] Ibid, p. 5.

industry, which uses, to a large extent, the same technology and saw rapid reductions in costs and improvements in capabilities.[4]

## Pre-Independence Era[5]

The need for interconnectivity at international level was not through the international telecommunications union.[6] Historically, Nigerian telecommunications standards were dictated by British practice from the colonial times to the early 1970s.. However, the journey to success in Nigeria's telecommunications milieu has been long and tortuous. Telecommunications facilities in Nigeria were first established in 1886 by the colonial administration,[7] although what is today the Nigerian telecommunications subsector actually began in 1855 when the colonial administration agreed to a request by their officers in the sub-Saharan African Countries to establish telecommunications links with the colonial officers in London.[8] Before then, the British Post Office had extended its services to the colonies within the British West African regions.[9]

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[4] Ibid.

[5] Nigeria as a nation got independence from the British on 1st October 1960. The pre-independence era in the Nigerian telecommunications industry is the period before 1st October 1960.

[6] Colin D. Long, *Telecommunications Law and Practice*, p. 5.

[7] Case Study: Telecoms in West Africa<www.itlaw.strath.ac.uk/distlearn/downloads>accessed on 20 June 2010. See also Revisiting Nigeria's Telecommunications Industry< www.nigeriabusinessinfo.com>accessed on 20 September 2010.

[8] Adewale S.A. and Bamise J.B., 'The Legal Protection of Consumers of Telecommunications Services' (Paper presented to 2005/2006 LL.M Class of Aviation and Communications Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.

[9] Ibid.

## Post-Independence Era: Period between 1960 and 1985

At independence in 1960, with a population of about 40 million people, the country had about 18,724 phone lines for use.[10] Nigeria was really telecommunicationally challenged.[11] Between 1960 and 1985, the telecommunications sector consisted of the department of Post and Telecommunications (P&T) in charge of the internal network and a limited liability company, the Nigerian External Telecommunication (NET) Limited, responsible for the external telecommunications services.[12] At that period, telephone penetration remained poor and the quality of service was largely unsatisfactory.[13] The system was invaluable, congested, expensive and customer unfriendly. In 1985, the Post and Telecommunications (P&T) was split into Postal and Telecommunications Division which was later merged with Nigerian External Telecommunications (NET) to form Nigerian Telecommunications Limited (NITEL). However, unlike in United Kingdom where a 51% of stake of British Telecoms was sold, the Nigerian Federal Government was the sole regulator and the financier of NITEL until when NITEL was sold to Transnational Corporation of Nigeria Plc (Transcorp) in 2006.[14]

---

[10] See Adegbemile A. A., 'Development in Telecommunications in Nigeria and its Impact on National Development: Experience from around the World' (2007) 6 (8) Asian Journal of Information Technology, p. 554-884. See also <http://www.medwelljournals.com>accessed on 15 June 2013.

[11] Telecommunicationally challenged is a political term for being under-phoned, that is, having too few phones. See Harry Newton, *Newton's Telecoms Dictionary* (Miller Freeman Inc. USA 1999) p. 780.

[12] Adegbemile A. A., 'Developments in Telecommunications in Nigeria and its Impact on National Development: Experiences from around the World', p. 885. This is similar to what is obtainable in most countries of the world where a department of the government is in charge of all posts service telephone and telegraph services. Telecommunications traditionally have been by a vertically integrated state-owned monopoly. Countries such as United Kingdom, Portugal, Belgium, Greece, Germany, Ghana etc. operated these Telecommunications systems.

[13] Ibid.

[14] Ibid.

## Period between 1985 and 1992 and Privatisation of Telecommunications Sector in Nigeria

In order to deal with the issue of reforms which apply to all public enterprises in Nigeria, in July 1987, the Federal Military Government set up a Technical Committee on Privatisation and Commercialisation (TCPC)[15] and promulgated the Privatisation and Commercialisation Decree No. 25 of 1988.[16] The Decree provides for the necessary legal framework for planning, organisation and implementation of government anticipated programmes on public enterprises commercialisation and privatisation as integral parts of Nigerian restructuring of national economy.[17] The Decree established the Technical Committee on Privatisation and Commercialisation (TCPC) and with the coming of the TCPC,[18]the status of NITEL changed. This was made possible with the tripartite performance contract agreement signed on 22nd May, 1992 by the trio of NITEL, Federal Government and TCPC which projected NITEL as a full-fledged commercial entity.[19] Under the agreement, NITEL is to be self-

---

[15] Professor Ehi Oshio P. and Stewart N.F., 'The Legal and Institutional Frameworks o Privatisation in Nigeria: A Discourse'<://nigerialawguru.com/articles/company%20law . THE%LEGAL%20%AND%20INSTITUTIONAL%20FRAMEWORKS%20OF%20F%20PRIV AT ISATION%20IN%20 NIGERIA20 A%20DISCO URSE.pdf>accessed on 12Jun 2015.

[16] Can now be found as Public Enterprises (Privatisation and Commercialisation) Act *Cap P 38 LFN 2004.*

[17] Obadan Mike I. and Ayodele A. 'Sesan, *Commercialisation and Privatisation Polic in Nigeria* (National Centre for Economic Management and Administration, Ibadan Nigeria, 1998)73.

[18] Now Bureau for Public Enterprises (BPE). The current Act establishing the BPE is th Public Enterprises (Privatisation and Commercialisation) Act, *Cap. P 38 LFN 2004* which, by Section 12, established the Bureau. By the Act, NITEL and its mobile section Nigerian Mobile, Telecommunications Limited (M-Tel)were partially privatised vid Section 1 (1) and Part I of the First Schedule to the Nigerian Communications Act *Cap N97, Laws of the Federation of Nigeria 2004.*

[19] See Adewale S.A., 'The Legal Protection of Consumers of Telecoms Services'. Th resultant effect of this agreement is the change in the nomenclature of NITEL fro *Limited Liability Company (Ltd) to Public Limited Liability Company (PLC).*

financing and should improve telecommunications services. The major event in the Nigerian Telecommunications industry between 1985 and 1992 is that NITEL was the main basic provider of domestic and international services. This monopoly has had serious effects on the industry in terms of gross inefficiency, high cost and lack of universal access.[20] Competition was only available as far as equipment supply was concerned and there was no convergence[21] between the three arms of communications.[22] From 1986, NITEL embarked on the modernisation of the telecommunications networks through the introduction of digital exchange, optic fibre and digital satellite earth stations. NITEL services being offered were equally increased to include mobile telephone, prepaid card public payphone terminal, cellular paging and electronic mails (e-mails).[23]

In order to achieve the self-financing and telecommunications service improvement of NITEL, three measures have been taken namely: re-organisation, staff training and improvements in the installation of the state of the art exchange and transmission equipment and facilities.[24] Although modernisation of Telecommunications networks started in 1986 while commercialisation of NITEL started in 1992, deregulation of Nigerian Telecommunications industry started partially in 1991 under the regulatory arms of NITEL, Planning and Operation Division.

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[20] Adegbemile A. A., 'Developments in Telecommunications in Nigeria and its Impact on National Development: Experience from around the World', p. 884.

[21] Paul Usoro (SAN), 'Telecommunications in Nigeria: Operation and Legal Framework', Materials of the 2004 Workshops ALPHA JURIS Continuing Legal Education Series (Law West Limited) 151. See also Paul Usoro, 'Telecommunications in Nigeria Legal Framework <http://www.paulusoro.com/Publications/LegalFramework.pdf> accessed on 14 August 2010.

[22] The three arms of Communications are Telecommunications, Information Technology and Broadcasting.

[23] Adegbemile A. A., 'Development in Telecommunications in Nigeria', p. 885.

[24] Ibid.

In October 1991, approval were given to five companies[25] operate prepaid card public payphone in the six geopolitical zo of Nigerian.[26] This was the trend in the developments in Nige telecommunications industry until 1992 when the Niger Communications Commission was established.

## Period between 1992 and 2003 and Deregulation Nigerian Telecommunications sector

In 1992, the Nigerian Communications Commission (NCC) v established vide the instrumentality of the Niger Communications Commission Act No. 75 of 1992. The N was established to take over the regulation of telecommunicati activities from NITEL's Planning and Operation Division, since then, all telecommunications service operators are be licensed by the commission.

As at the onset of deregulation in 1992, NITEL had 500,( lines to a population of 100 million.[27] The 1992 Act introdu competition and regulation of the telecommunications sub-sec A major post-1992 legal framework issue in the Niger telecommunications industry is the location of regulatory po for a converged industry in the three arms of communicatio

In 1992 when NCC was established, the body opened all telecommunications activity areas to private operators participate and compete with the former government monop NITEL.[28] However, until 1999, NITEL had a monopoly on telecommunications sector and on assumption of office in 19

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[25] The five companies are Chawaleks Telecommunications Ltd, SATCOMS Ltd, Na Holdings Ltd, GPT Ltd and Murhi International Ltd.

[26] The six geopolitical zones in Nigeria are: North-Central, North -East, North-West, South-South, South-West and South-East.

[27] Adegbemile A.A., 'Developments in Telecommunications in Nigeria and its Impact on Nati Development: Experience from around the World', p. 884.

[28] Ibid, p. 886.

e President Olusegun Obasanjo Administration swung to gear make the complete deregulation of the telecommunications ctor a reality, most especially the granting of licences to Global ystem for Mobile Communications (GSM) service providers. nus, in August 2001, the GSM Services were launched mmercially and several GSM operators have been licensed.[29]

## eriod between 2003 and Beyond

new regime of telecommunications industry in Nigeria emerged 2003 when the Nigerian Communications Act 2003[30] was ssed into law by the National Assembly and with it the regulator s been armed to do more. The NCC is now more empowered d by virtue of the powers conferred on it, the NCC has blished many rules, guidelines and regulations in order to complish its primary objective of creating and providing a gulatory framework for the Nigerian communications dustry.[31]

The grant of licenses to private operators is not without its merits. The NCC envisaged emergence of private monopolies

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Osondu C. Nwokor, 'Regulatory Challenges in the Nigerian GSM Market' (Paper Presented at the Nigerian Bar Association Annual Bar Delegates Conference, Abuja, 004).

The Nigerian Communications Act No 19 of 2003 repealed the Nigerian Communications Commission Act 1992 and all subsequent amendments there to by he effect of Section 150 of the Act No 19 of 2003. The Nigerian Communications Act 003 is now embodied in *Cap N97, Laws of the Federation of Nigeria 2004*.

Guidelines and Regulations published by the Nigerian Communications Commission nclude: Enforcement Regulations 2004; Consumer Code of Practice Regulations 2007; Determination of Interconnect Rate 2006 (which replaced Interconnection Rate Determination 2003); Guidelines on Procedure for Granting Approval to Disconnect Telecommunications Operations; Guidelines on International Gateway Access and Voice Over Internet Protocol (VOIP); Dispute Resolution Guidelines 2004; Telecommunications Network Interconnection Regulations 2003 (now replaced by the Telecommunications Networks Interconnection Regulation 2007); Universal Access nd Universal Service Regulation 2007; Competition Practices Regulations 2007; requency Spectrum (Fess & Pricing, etc.) Regulations 2004; Technical Specifications r the Installation of Telecommunications Masts and Towers.

or cartels and thus it increased its regulatory oversight of th industry in 2003/2004. Regulatory interventions also came abou to prevent hapless consumers from inefficient telecoms networ and poor consumer services.[32] The NCC also announced number of strategic plans including a strategic plan for 200 2007 such as the Wire Nigeria (WIN) project and the Rur Telecommunications Development Fund (RTDF). NCC has als worked and made specific pronouncements on reduce interconnection rates and has ensured that Privat Telecommunications Operators (PTO) reduce International Ca charges rates and also established a consumer parliament.[33]

The growth of the telecommunications market in Nigeri has continued at geometric rates, thereby sustaining the marke as one of the fastest growing telecommunications markets in th world. Nigeria is now officially the largest growth market fo telecommunications in Africa and the Middle East, and possesse the most vibrant fixed and mobile telephony companies in Africa.[34]

## Mobile Telephony in the Nigerian Telecommunication Market

Since the emergence of GSM in Nigeria, the dynamism of th mobile operators has resulted in mobile outpacing fixedlines This shows that the Nigerian telecommunications landscape ha witnessed an exponential growth in the last decade; it took 4

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[32] Nigerian Communications Commissions, Trends in Telecommunications Markets Nigeria 2003-2004. The publication details the Trends in Telecommunications Marke in Nigeria during the years 2003-2004. The publication is the second edition made b the NCC.

[33] Trends in Telecommunications in Nigeria 1997-2002 (a publication of NCC an published in 2003) 64. This is the maiden edition of the NCC report on Trends Telecommunications in Nigeria. The success of the publication *vis-à-vis* its usefulne for research and planning purpose probably encouraged the commission to embark o the second edition, Trends in Telecommunications Markets in Nigeria 2003-2004 2005.

[34] NCC 'Trends in Telecommunications Markets in Nigeria 2003-2004'.

years to reach 400, 000 connections, 3 years to reach 4 million connections and just another 4 years to reach 40 million connections.[35] Thus, Nigeria has emerged as a significant contributor to the global telecommunications growth. The dynamic open market approach adopted by the government since the emergence of GSM from 2001 to date has promoted rapid deployment of Information and Communication Technology (ICT) services nationwide. While connected lines only grew at an average of 10,000 connections per annum between 1960 and the end of 2000, an average growth rate of over 7 million lines per annum was attained between 2001 and 2008.[36] As at the end of June 2008, Nigeria had attained 53.3 million of (fixed and mobile) active subscriber connections.[37] Total teledensity which was less than 0.4% in 2000 soared to 38.09% by June 2008[38]

The Nigerian telecommunications market offers a clear and exciting opportunity for many telecommunications operators. The market is highly deregulated with the Nigerian Communications Commission(NCC) licensing a wide variety of telecommunications operators. This market has moved from 'zero to hero' and is now considered a leading opportunity for both telecommunications operators and equipment suppliers.[39]

The telecommunications industry has undergone radical change over the past few years, driven primarily by the introduction of mobile licences. The Nigerian

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Engr Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry' (Paper presented at the Annual Distinguished Lecture of the Justice Chambers, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria, 2008). Engr Earnest Ndukwe was the Executive Vice-Chairman/Chief Executive Officer of Nigerian Communications Commission.

Ibid.

Ibid.

Ibid.

Andre Wills & Geoff Daniels, 'Nigeria Telecommunications Market, A Snap Shot View' <http:// www.africa analysis.co.za/NigeriaTelecommsWhitePaper.pdf> accessed on 12 June 2015.

telecommunications market has now moved to a fully liberalised market where the law of jungle has been replaced by the law of competition. NCC has removed the barriers to market entry and the market now relies upon natural market forces to ensure market sustainability.[40]

The market structure that evolved in the Nigerian telecommunications industry was informed by the main objective of the country's national telecommunications policy to establish a long term telecommunications market structure in which multiple operators provide service on competitive basis to the broadest range of customer. The Nigerian telecommunications policy envisages that with a structure the appropriate and sustainable levels of prices charged by carriers for access to their services would be determined by market forces.[41] Today, the Nigerian telecommunications market is characterised by a positive impact of relatively fair and stable policy and regulatory regime with intense participation of the private sector.[42]

Mobile services in Nigeria were introduced in commercial quantity in 2001, but growth in the mobile communications sector has been so fast that mobile penetration has surpassed fixed line penetration with wire line penetration struggling at barely one percent.[43]

A major development in the Nigerian Telecommunications is the commercial roll-out of mobile telephony. The mobile market continues to grow at a rapid rate. The dynamism of the mobile operators has made mobile telephony out-space its fixed

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[40] Ibid.

[41] Ike Mowete, '2007 Nigeria Telecommunication Sector Performance Review<http://www.researchictafrica.net/new/images/uploads/RIA_SPR_Niageria_07.pdf>accessed on 12 September 2010.

[42] Ibid.

[43] Major African Mobile Markets: Future Growth, prospects 2006-2011, Key Markets Nigeria http://www.ametw.com/resources/Africanopp-nigeri.shtmlaccessd on 2 September, 2010.

counterpart by every measure. The technological advances have also made mobile roll-out much faster than fixed lines.[44]

Nigeria has a large potential to boost its mobile market given the fact that penetration rate was about 43% at the end of 2008. With rapidly improving mobile infrastructure and intense competition among mobile operators, the number of mobile subscribers is expected to grow at a Compound Annual Growth Rate (CAGR) of around 15.5% between 2010 and 2012 and the penetration rate exceeded 75% by the end of 2012.[45] It was expected that Nigerian mobile subscribers would rise to approximately 90.47 million at the end of 2011. This is as demonstrated in the table below:

| Year End | Subscribers | Year End | Subscribers |
|---|---|---|---|
| 2002 | 1.5 | 2007 | 44.28 |
| 2003 | 3.15 | 2008 | 57.73 |
| 2004 | 9.58 | 2009 | 70.14 |
| 2005 | 18.56 | 2010 | 81.08 |
| 2006 | 30.76 | 2011 | 90.47 |

**Source:** Major African Mobile Markets: Future Growth Prospects 2006-2011, Key Market-Nigeria.[46]

The table above illustrates the forecast for mobile subscribers in Nigeria for 10-year period from 2002-2011 in million.

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*Trends in Telecommunications Market in Nigeria 2003-2004.*

See 2012 Doomsday Predictions Trends & Developments in Nigeria Telecommunication Market <http://www.2012-doomsday-predictions.com/16042/trends-development-in-nigeria-telecommunication-market/>accessedon 14 September, 2010.

<http://www.ametw.com/resources/AfricanOpp_nigeria.shtml> accessed on 24 September, 2010.

However, Nigerian mobile networks have surpassed t projection demonstrated in the above table. As at July, 2010, t subscriber data for mobile (GSM) shows that connected line mobile subscribers have risen to 91,576, 647.[47]

As at April 2015, the telecommunications subscriber da shows that there are 196,941,125 connected lines out of whi fixed lines are just 371,978 lines[48] while the total number of acti lines is 145,476,326 out of which fixed lines are just 184, 7 lines.[49]

The tremendous achievement recorded in the Nigeri telecommunications market has left no one in doubt that Nige remains Africa's most important telecommunications market. is hoped that the trends in Nigerian telecommunications mark will bridge the gap between the rural and previous telecommunicationally disadvantaged areas and urban areas terms of telecommunications networks and utility.

Deregulation and liberalisation of telecommunicatio industry is a global phenomenon and a welcome approach in t International telecoms market. However, the regulatory author needs to exercise extreme caution so that private operators w not monopolise the industry because if this happens, the wh essence of deregulation and liberalisation may be defeated. T regulatory body should authorise operators to provi competitive telephoning services and improve service over th networks.

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[47] Subscriber Data at a Glance (Year 2009-July 2010) <http://www.ncc.gov.ng/> acce on 17 September, 2010.

[48] <www.ncc.gov.ng/indez.php?option=com_content&view=article&id=125:subscr statistics&catid=65:industry-information&Itemid=73>accessed on 07 June 2015

[49] Ibid.

# 3 Regulatory Authorities in the Nigerian Telecommunications Industry

In this chapter, regulatory authorities of telecommunications industry in Nigeria are considered within the Nigerian legislative framework. This is to ensure coherence and logical arrangement of the work. Although this chapter may not be a discussion of all regulatory authorities of telecommunications industry in Nigeria, it is believed that the chapter will cover the main regulatory bodies that have direct or indirect link with telecommunications industry and services within the Nigerian legislative competence. This part will, therefore, examine the establishment, powers, staffing and functions of each of the regulatory bodies.

## Nigerian Communications Commission (NCC)

Regulatory bodies in telecommunications industry are established in different countries. These bodies are to regulate the activities and affairs of telecommunications industry. In Nigeria, the specific regulatory body in the telecommunications industry is the Nigerian Communications Commission (NCC).

### Establishment

NCC was first established in 1992 by virtue of the Nigerian Communications Commission Act No 75 of 1992.[1] By the

[1] See Section 5 of the Nigerian Communications Act, *Cap N97 Laws of the Federation of Nigeria 2004*.

enactment of the Nigerian Communications Act 2003,[2] whic repealed the Nigerian Communications Commission (NCC) Ac the establishment provision of the NCC can now be found i Section 3 of the Act[3] with responsibility for the regulation of th communications sector in Nigeria.[4]

The commission is a corporate body with perpetu succession and a common seal, capable of suing and being sue in its corporate name and shall have the power:

- to enter into contract and incur obligations;
- to acquire, hold, mortgage, purchase and deal howsoev with property whether movable or immovable; real personal; and
- to do all such things as are necessary for or incidental the carrying out of its functions and duties under the Ac

**Functions of Nigerian Communications Commission**

The commission has the following functions under the Act:

(a) the facilitation of investments in and entry into t Nigerian market for provision and supply communications services, equipment and facilities;

(b) the protection and promotion of the interests of consume against unfair practices including but not limited matters relating to tariffs and charges for and t

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[2] Nigerian Communications Act 2003 cannot be found in the original LFN 2004 sinc contains all Acts of the National Assembly or deemed to have been made by the Natio Assembly up till December 2002 by virtue of Revised LFN Edition Act 2004, as Nigeria Communications Act 2003 was passed into law in 2003, and is now embod in *Cap N97 LFN 2004* as an attachment thereto.

[3] Nigerian Communications Act, *Cap N 97 Laws of the Federation of Nigeria 2004*

[4] Ibid, Section 3 (1). For the purpose of this part of this chapter the Nigerian Communications Act shall be referred to as "the Act" for ease of refere while the Nigerian Communication Commission shall be referred to as the Commiss or NCC.

[5] Section 3 (2) of the Act.

availability and quality of communications services, equipment and facilities;

(c) ensuring that licensees implement and operate at all times the most efficient and accurate billing system;

(d) the promotion of fair competition in the communications industry and protection of communications services and facilities providers from misuse of market power or anti-competitive and unfair practices by other service or facilities providers or equipment suppliers;

(e) granting and renewing communications licences whether or not the licences themselves provide for renewal in accordance with the provisions of this Act and monitoring and enforcing compliance with licence terms and conditions by licensees;

(f) proposing and effecting amendments to licence conditions in accordance with the objectives and provisions of this Act;

(g) fixing and collecting fees for grant of communications licences and other regulatory services provided by the Commission;

(h) the development and monitoring of performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria having regard to the best international performance indicators;

(i) making and enforcement of such regulations as may be necessary under this Act to give full force and effect to the provisions of this Act;

(j) management and administration of frequency spectrum for the communications sector and assisting the National Frequency Management (NFM) Council in developing a national frequency plan;

(k) development, management and administration of a national numbering plan and electronic addresses plan and the

assignment of numbers and electronic addresses therefrom to licensees;

(l) proposing, adopting, publishing and enforcing technical specifications and standards for the importation and use of communications equipment in Nigeria and for connecting or interconnecting communications equipment and systems;

(m) the formulation and management of Nigeria's inputs into the setting of international technical standards for communications services and equipment;

(n) carrying out type approval tests on communications equipment and issuing certificates therefore on the basis of technical specifications and standards prescribed from time to time by the Commission;

(o) encouraging and promoting infrastructure sharing amongst licensees and providing regulatory guidelines thereon;

(p) examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration;

(q) preparation and implementation of programmes and plans that promote and ensure the development of the communications industry and the provision of communications services in Nigeria;

(r) designing, managing and implementing Universal Access strategy and programme in accordance with Federal Government's general policy and objectives thereon;

(s) advising the Minister on the formulation of the general policies for the communications industry and generally on matters relating to the communications industry in the exercise of the Minister's functions and responsibilities under this Act;

(t) implementation of the Government's general policies on communications industry and the execution of all such other functions and responsibilities as are given to the Commission under this Act or are incidental or related thereto;

(u) generally advising and assisting communications industry stakeholders and practitioners with a view to the development of the industry and attaining the objectives of this Act and its subsidiary legislation;

(v) representation of Nigeria at proceedings of international organisations and fora on matters relating to regulation of communications and matters ancillary and connected thereto; and

(w) general responsibility for economic and technical regulation of the communications industry.[6]

rsuant to the Act, the commission also has the power to make d publish regulations for all or any of the following issues:

a) written authorisations, permits, assignments and licences granted or issued under this Act;

b) assignment of rights to the spectrum or numbers under Chapter VIII, including mechanisms for rate-based assignment;

) any fees, charges, rates or fines to be imposed pursuant to or under this Act or its subsidiary legislation;

a system of universal service provision under Chapter VII, including but not limited to the quality of service standards;

communications and related offences and penalties;

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(1) of the Act.

(f) any matter for which this Act makes express provision; and

(g) such other matters as are necessary for giving full effect to the provisions of this Act and for their due administration.[7]

**Governing Board**

The Act also established a Governing Board (the Board) for the commission. The board is charged with the administration of the affairs of the commission.[8] It consists of 9 commissioners, a chief executive who shall be the Executive Vice Chairman of the Board, 2 executive commissioners and 3 non-executive commissioners. The Board members are appointable by the president.[9] The acts of the Board are deemed to be acts of the commission[10].

**Qualification for Appointment as Commissioners**

Commissioners of the commission shall be persons of recognised standings, qualification and experience in one or more of the field of financing or accounting, law, consumer affairs telecommunications engineering, information technology engineering generally and public administration.[11] A person shall not be appointed or remain in office as a commissioner in the following circumstances:

- if he is not a Nigerian citizen;
- if he is not ordinarily resident in Nigeria;
- if he is a serving member of the National Assembly, State House of Assembly or any Local Government Council

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[7] Section 70 (1) of the Act. Pursuant to the provision, the Commission has issued and published several guidelines and regulations. See footnote 31 in chapter two for a list of the Guidelines and Regulations.

[8] Section 5 (1) of the Act.

[9] Sections 5 (2) of the Act.

[10] Section 5 (5) of the Act.

[11] Section 7 (1) of the Act.

- if he is incapacitated by any physical illness;
- if he has been certified to be of unsound mind.
- if he has been convicted in Nigeria or elsewhere of a criminal offence, being a misdemeanour or felony;
- if he has at any time been removed from an office of trust on account of misconduct.[12]

Subject to the provision relating to disqualifications of the commission, all Commissioners are appointable by the President of the Federal Republic of Nigeria from the 6 geopolitical Zones of Nigeria, subject, however, to the confirmation of the Senate.[13]

**Management and Staffing of the Commission**

The Chief Executive of the Commission has the primary responsibility for the execution of the policies and decision of the Board and for the day-to-day management and supervision of the activities of the Commission.[14] The Chief Executive and Executive Commissioners shall be persons possessing sound knowledge of and ability in the organisation and management of communications matters and holds office for a term of 5 years, renewable for another term and no more.[15] The Board has the responsibility of appointing a secretary for the commission. The secretary shall not be a commissioner but shall possess relevant and adequate professional qualifications with not less than 10 years post-qualification experience.[16] It is the duty of the Secretary to keep the corporate records of the commission and perform such other duties and functions as the Chairman or the Chief Executive may from time to time direct.[17]

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[12] Section 7 (2) of the Act.
[13] Section 8 (1) of the Act.
[14] Section 12 (1) of the Act.
[15] Sections 12 (2) & 13 of the Act.
[16] Section 14 (1) of the Act.
[17] Section 14 (2) of the Act.

The commission has powers to appoint such number of other persons as it deems necessary as staff of the commission.[18]

## National Frequency Management Council (NFM Council)

### Establishment

The National Frequency Management Council was established by the Nigerian Communications Act with membership and functions as set out in the Act itself.[19]

### Membership of the Council

The membership of the National Frequency Management Council (hereinafter referred to as 'the Council') is made up of a Chairman who shall be the Minister responsible for communications; one representative of the Federal Ministry for the time being charged with the responsibility for communications; one representative of the Federal Ministry of Aviation; one representative of the Federal Ministry of Transport; one representative of the Federal Ministry of Science and Technology; two representatives of the Nigerian Communications Commission; one representative of the National Broadcasting Commission and one representative from one of the security agencies of the Federal Republic of Nigeria.[20]

### Functions of the Council

The National Frequency Management Council has the following functions:

(a) assist and advise the Minister on the representation of the Federal Republic of Nigeria and carrying out ancillary functions at international and regional spectrum allocation

[18] Section 15 (1) of the Act.
[19] Section 26 of the Act.
[20] Section 27 of the Act.

bodies including but not limited to International Telecommunications Union (ITU);

(b) assist and advise the Minister on the preparation and negotiation of bilateral and multilateral spectrum allocation treaties with other sovereign administrations;

(c) assist and advise the Minister on the preparation, negotiation and adoption of spectrum coordination agreements that are applicable to cross-border spectrum uses involving the Federal Republic of Nigeria and other countries;

(d) in consultation and conjunction with the Commission, prepare, update and publish on a regular basis a national frequency allocation table and establish a data bank that would assist and facilitate the management of the national spectrum;

(e) carry out bulk trans-sectoral allocation of spectrum to statutory bodies that are authorised by enabling laws to allocate spectrum to end-users; and

(f) receive and collate returns and statistics on spectrum allocation to end-users from the statutory bodies specified in paragraph (e) of this section and coordinate their respective activities.[21]

## niversal Service Provision Board

part of the effort at ensuring effective and efficient[22] ordination and technical regulation of Universal Service visions of telecommunications services, the Nigerian mmunications Act makes provision for establishment of versal Service Provision Fund.

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n 28 of the Act

This Fund[23] comprises funds derived from but not limited to the following sources:

i. such monies as may be specifically appropriated to the Universal Service Provision (USP) Fund from time to time by the National Assembly;
ii. contributions from the Commission based on a portion of the annual levies paid to the Commission by licensees; and
iii. gifts, loans, aids and such other assets that may from time to time specifically accrue to the USP Funds.[24]

The administrative and operational expenses for USP shall be funded directly from the USP Fund and such expenses include salaries, emoluments, remunerative packages and allowances for USP Board members, the commission staff who are assigned on full-time basis to the USP Secretariat or such other staff of the USP Secretariat however engaged and USP Fund managers.[25]

**Establishment of USP Board**

For effective management of the USP Fund, the Act established the Universal Service Provision Board to supervise and provide board policy and directions for the management of the USP Fund.[26]

**Membership of the Board**

Subject to the approval of the Senate, the President, acting on the recommendation of the Minister responsible for communications, must ensure that the USP Board members are

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[23] Universal Service Provision Fund. In the US, a similar fund is called Universal Service Fund (USF), and its goal is to provide at least one access line for basic telephone service to every household.

[24] S. 114 (2) of the Nigerian Communications Act.

[25] S. 114 (3) of the Nigerian Communications Act.

[26] See section 115 of the Nigerian Communications Act.

sons of integrity and professional standing and shall be ointed either on their own self-recognition or as esentatives of organisations who are stakeholders in and can tribute meaningfully towards the attainment of the USP ctives.[27]

**nbership of the USP Board**

nbership of the Board are:

The Minister,[28] who shall be the USP Board chairman
. The Board chairman of the commission,[29] who shall be the USP Board Vice-Chairman
i. 2 Commissioners[30]
. 1 representative of the ministry[31]
1 representative of the Minister of Finance
. 1 representative of the chairman of the National Planning Commission, and
i. 4 private sector representatives[32]

Board is, however, duly constituted when 6 of the total er of its members have been appointed[33].

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n 116 (2) of the Nigerian Communications Act.
the Minister responsible for communications.
s the Chairman of the Governing Board of the Nigerian Communications ission. The Governing Board is established by Section 5 (1) of the Act.
ssioner of the Nigerian Communications Commission (NCC). It is the duty of sident to ensure that at all times there is a duly constituted Board of NCC issioners. The Commissioners must be persons of recognised standing cation and experience in their respective fields. See Sections 5 and 7 of the Act.
Ministry of Communications.
erally Section 116 (1) of the Act. This shows that the USP Board has 11 members.
al Access and Universal Service Regulation 2007, Regulation 5.

**Functions of Universal Service Provision (USP) Board**

The functions of the Universal Service Provision (USP) Boar include:

- supervising and providing broad policy directions for th management of the USP fund and the USP fund manager
- appointing and removing the USP fund managers, consultation with the Corporate Affairs Commission;
- appointing and removing auditors of the USP fund;
- appointing Operating Plans, which shall include one more USP programmes and USP Projects and a budg for all operations and expenses of the USP Board, US fund managers and all other matters to be financed the USP fund during the period of the Operating Plan;
- approving standing orders to establish and regulate th activities of the USP fund manager and revisions to su standing orders from time to time;
- approving all processes, procedures, guidelines a decisions necessary to give full force and effect to t Universal Access and Universal Service Regulations; a
- performing all other functions assigned to the USP Boa pursuant to the Nigerian Communications Act and t Universal Access and Universal Service Regulations.[34]

**Establishment of Standing or Ad-hoc Committee by US Board**

The USP Board has the power to make standing orders for t regulation of its meetings and proceedings and may establ standing or Ad-hoc Committees to assist in exercising

[34] Universal Access and Universal Service Regulation 2007, Regulations 4.

functions.[35] However, membership of the USP Board Committees may be constituted beyond the members of the Board to include persons and representatives of organisations that are capable, in the USP Board's estimation, of assisting the Commission and the USP Board in the discharge of its USP functions, provided that such USP Board Committees shall at all times be headed by USP Board members.[36]

Decisions of the USP Board Committees shall, however, not be binding and valid until they are adopted and agreed upon by the Board.[37]

## Consumer Protection Council (CPC)

Consumer protection laws are designed to ensure fair competition and the free flow of information in the market place. The laws are designed to prevent businesses that engage in fraud, or specified practices, from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves.[38] Consumer protection laws are a form of government regulation which aims at protecting the interests of consumers.[39]It is considered an area that regulates private law relationships between individual consumers and the businesses that sell those goods and services.[40]

Consumers protection covers a wide range of topics, such as product liability, privacy rights, unfair business practices, fraud, misrepresentation and other consumer/business interactions, and it is linked to the idea of consumer rights, hence the need for legal and regulatory frameworks for consumer protection.[41]

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[35] Section 117 (1) of the Act.
[36] Section 117 (2) of the Act.
[37] Section 117 (3) of the Act.
[38] Consumer Protection from Wikipedia, the Free Encyclopedia < http://en.wikipedia.org/wiki/consumer-protection> accessed on 18 August 2010.
[39] Ibid.
[40] Ibid.
[41] Ibid.

Consumer Protection Laws are commonplace and regulatory authorities are set up in various jurisdictions to protect consumers of products and services[42].

In Nigeria, there are various laws that regulate consumer affairs and protection.[43] With particular reference to telecommunications industry, the Nigerian Communications Act provides for consumer protection and quality of service.[44] However, the Consumer Protection Council regulates consumer affairs generally, including consumers affairs in the telecommunications industry.

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[42] The following are various foreign laws and regulations on Consumer Protection: The Consumer Protection Act, 1986 of India which provides for the Central Consumer Protection Council and the State Consumer Protection Council in Sections 4 and 7 of the Act. See <http://ncdrc/nic.in/1_1.html#Hk149661864>accessed on 18 August 2010 ; UK Unfair Terms in Consumer Contract Regulations 1999, Consumer Credit Act 1994 and Unfair Contract Terms Act 1974. See Consumer Protection Law in the Republic of China (Taiwan) and having Consumer Protection Commission of Executive Yuan Serving as Ombudsman supervising, coordinating, reporting any unsafe products/ services and periodically reviewing the legislation. See < http://en.wikipedia.org/wiki/ Republic_of_China_%28Taiwan%29 >accessed18/ August 2010; Article 12 of the Basic Law for the Republic of Germany (that is the Constitutional Law of Germany. See < http://en.wikipedia-org/wiki/Basic_Law_for_the_Federal-Republic-of-Germany>accssed on 18 August 2010; Trade Practices Act 1974 of Australia and the Australian Competition and Consumer Commission is the Regulatory body of Consumer Protection in Australia. See <http://en.wikipedia.org/wiki/ Australian_Competition_and_Consumer_Commission>accessed 18 August/2010; In the United States, a variety of laws of both federal or state levels regulate consumer affairs such as the Fair Debt Collection Practices Act, the Fair Credit Reporting Act.

[43] These include: the Consumer Protection Council Act, *Cap C25 LFN 2004*; the Standards Organization of Nigeria Act, *Cap S59, LFN 2004*; the Weight and Measures Act, *Cap W3 LFN 200*; the National Agency for Food and Drug Administration and Control Act, *Cap N1 LFN 2004*; the Trade Malpractices (Miscellaneous Offences) Act *Cap T 12 LFN 2004*; the Food, Drug and Related Products (Registration etc) Act, *Cap F33 LFN 2004*; the Nigerian Communications Act, *Cap N97 LFN 2004*; the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, *Cap C3 LFN 2004*; the Food and Drug Act, *Cap F32, LFN 2004;* Merchandise Marks Act, *Cap M10 LFN 2004*; English Sales of Goods Act of 1789; Sale of Goods Law of the various States of the Federal Republic of Nigeria.

[44] See Section 104 of the Nigerian Communications Act, *Cap N 97 LFN 2004*.

## ablishment of Consumer Protection Council

e Consumer Protection Council Act[45] established the nsumer Protection Council. The council is a corporate body h perpetual succession and a common seal capable of suing l being sued in its corporate name.[46]The council consists of a irman appointable by the president[47] on the recommendation he Minister of Commerce and Tourism; a person to represent h of the states of the federation on the recommendation of Governor of each state; and four persons to represent the deral Ministries of Commerce and Tourism, Industries and chnology, Health and Petroleum Resources.[48]

## wers and Functions of the Consumer Protection Council

ne functions of the Consumer Protection Council (CPC) are to:

(a) provide speedy redress to consumers complaints through negotiations, mediation and conciliations;

(b) seek ways and means of removing or eliminating from the market hazardous products and causing offenders to replace such products with safer and more appropriate alternatives;

(c) publish from time to time, list of products whose consumption and sale have been banned, withdrawn, severally restricted or not approved by the Federal Government or foreign governments;

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[45] *Cap C25 LFN 2004*. Originally the Act was promulgated into law by the Federal Military Government during General Ibrahim Babangida regime. It was signed into law on 23rd day of November 1992 *vide* Decree No.66 of 1992. It automatically became an Act of the National Assembly by virtue of the combined effects of Sections 315 and 318 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

[46] Section 1 (1) of the Consumer Protection Council Act, *Cap C25 LFN 2004*. For ease of reference, the Act shall henceforth be referred to as the CPC Act.

[47] The President of the Federal Republic of Nigeria.

[48] Section 1(2) of the CPC Act.

(d) cause an offending company, firm, trade, association or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous;

(e) organise and undertake campaigns and other forms of activities as will lead to increased public consumer awareness;

(f) encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers;

(g) issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligation under this Decree;

(h) encourage the formation of voluntary consumer groups or associations for consumers well being;

(i) ensure that consumers' interests receive due consideration at appropriate forum and to provide redress to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade association or individual;

(j) encourage the adoption of appropriate measures to ensure that products are safe for either intended or normally safe use; and

(k) perform such other functions as may be imposed on the Council pursuant to this Decree.[49]

In exercise of the above-mentioned functions, the Council has the power to:

(a) apply to court to prevent the circulation of any product which constitutes an imminent public hazard;

(b) compel a manufacturer to certify that all safety standards are met in their products;

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[49] Section 2 of the CPC Act.

c) cause as it deems necessary, quality tests to be conducted on a consumer product;
d) demand production of label showing date and place of manufacture of a commodity as well as certification of compliance;
e) compel a manufacturer, dealer and service company, where appropriate, to give public notice of any health hazards inherent in their products;
f) ban the sale, distribution, advertisement of products which do not comply with safety or health regulations.[50]

**tablishment of State Committee**

state committee of the council in each state of the federation also established to assist the council in the discharge of its nctions, and subject to the general supervisions of the council, e state committee has the power to receive, investigate and act complaint from consumers[51] and specifically the state mmittee has the power:

- to receive inquiry into the causes and circumstances of injury, loss or damage suffered or caused by a company, firm, trade association or individual;
- to negotiate with the parties concerned and endeavour to bring about a settlement; and
- where appropriate, recommend to the Council the payment of compensation by the offending person to the injured consumer[52]

ne state committee of the Council shall consist of three members be nominated by the Governor of the state concerned, one of hom shall be the Chairman of the state committee and the maining two persons to represent other diverse interests. In

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ection 3 of the CPC Act.
ection 4 of the CPC Act.
ection 5 of the CPC Act.

addition, the state committee shall have two other members be appointed by the Minister of Commerce and Tourism, one whom shall be the professional officer of the Ministry Commerce and Tourism in the state and who shall act as t Secretary of the state committee.[53]

**Appointment of Inspecting Officer**

In the exercise of its functions under the law, the council ma designate a person as an inspector. The person to be designate must possess such qualification and fulfil such requirements a may be prescribed by the council. The inspecting officer may

- enter any premises for the purpose of conducting a investigation;
- examine or take samples or specimen of any goods o product;
- open and examine whilst on premises any container o package which he reasonably believes may help him i his investigation;
- examine any book, document or other records found i the premises which he reasonably believes may contai any information relevant to the enforcement of the law and may even make copies thereof or extracts therefrom
- seize and detain for such time as may be necessary, any article or goods by means of or in relation to which he reasonably believes any provision of the law has been contravened.[54]

**Appointment and Staffing**

The chief executive of the Council is the Director-General who is appointable by the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. The Director General must possess relevant academic qualifications and

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[53] Section 4 (2) of the CPC Act.

[54] Section 15 (1) and (2) of the CPC Act.

ractical experience as appropriate for his functions under the aw. He is responsible to the council for the execution of the olicies of the council and the day-to-day running of the affairs f the council.[55]The council has the power to appoint other mployees to assist the Director-General in the exercise of his unctions.[56]

## tandards Organisation of Nigeria (SON)

he Standards Organisation of Nigeria (SON) is the statutory ody that is vested with the responsibility of standardising and gulating the quality of all products in Nigeria.[57] It is submitted at since the Organisation standardises and regulates the quality all products, therefore, any discussion on the quality of product nd service of telecommunications operation is a discussion on oducts within the purview of the responsibility of the Standards rganisation of Nigeria.

### Establishment of Standard Organisation of Nigeria (SON)

The Standards Organisation of Nigeria (SON) was originally established by the General Yakubu Gowon Military regime in 1971. Then, it was called the Nigerian Standard Organisation

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[5] Section 22 (1) and (2) of the CPC Act.

[6] Section 22 (4) of the CPC Act.

[7] See the Standard Organisation of Nigeria<http://www.nigeriafirst.org/printer_7928 html>, accessed on 21 August 2010. Note that the Standards Organisation of Nigeria (SON) has affiliates and these include: British Standards Institute (BSI). See <http:// www.bsigroup.com/accessed 21 August 2010; American National Standard Institute (ANSI). See http://www.ansi.org/accessed on 21 August 2010; German National Standards. See <http://www.din.de/cmd?level>tpl-home&context=din>accessed 21 August 2010; Japanese National Standards, See <http://www.jisc.gojp/en/jisc/national-std.html>accessed on 21 August 2010; Korean Industrial Standards. See <http:// www.ats.go.kr/english/cm-01/cm-01.asp?olapcode=ATSU2001>accessed on 21 August 2010; China National Standards. See http://www.sac.gov.cn/english/home.asp>accessed on 21 August 2010; Ghana Standards Board. See <http://www.ghanastandards.org/ >accessed on 21 August 2010; South African Bureau of Standards. See <http:// www.sabs.co-zal >accessed on 21 August 2010; International Organisation for Standardisation. See <http://www.iso.org/ >accessed on 21 August 2010.

(NSO). The Act establishing the body was eventually amended in 1976 by the then Military regime of General Olusegun Obasanjo. It was later amended by the short-lived regime of Major General Muhammadu Buhari in 1984 and in 1990 it was further amended by the regime of General Ibrahim Babangida.[58] The original Act provides the body with the authority to specify and elaborate standards, as well as provide a quality assurance system for commodities, including manufactured, industrial and imported products and services. But the 1976 amendment to the Act conferred on the Minister of Industry the power to declare mandatory industrial standards in respect of products or processes recommended by the Nigeria Standards Council. The 1984 amendment change the name of the body from Nigerian Standards Organisation (NSO) to the Standards Organisation of Nigeria (SON) because the acronym, NSO, created confusion with a newly established security organization, known as Nigerian Security Organisation.[59]

In 1990, the amendment to the Act conferred partial autonomy on the SON from the Ministry of Industry. The 1990 amendment, however, was a significant turning point for the organisation and its corporate image. Its Chief Executive Officer was elevated to the position of Director-General.[60] The amendment also provided for the strict enforcement of powers of seizure, confiscation and destruction of sub-standard products including powers to seal up premises where defective products are manufactured or stored.[61] The Act is now Standards Organisation of Nigeria Act and is embodied in *Chapter S9 Laws of the Federation of Nigeria 2004*.[62]

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[58] Standards Organisation of Nigeria <http://www.nigeriafirst.org printer_792.shtml>accessed on 22 August 2010.

[59] Ibid.

[60] Ibid.

[61] Ibid.

[62] By Section 1 (1) of the Act, Standards Organisation of Nigeria was established as an integral part of the Federal Ministry of Industries.

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in 1976 by the then Military regime of General Oluseg
Obasanjo. It was later amended by the short-lived regime
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[58] Standards Organisation of Nigeria <http://www.nigeriafirst.org printer_792.shtml>acc
on 22 August 2010.

[59] Ibid.

[60] Ibid.

[61] Ibid.

[62] By Section 1 (1) of the Act, Standards Organisation of Nigeria was established
integral part of the Federal Ministry of Industries.

**Functions of the Organisation**

The following are the functions of the organisation:

(a) to organise tests and do everything necessary to ensure compliance with standards designated and approved by the Council;

(b) to undertake investigations as necessary into the quality of facilities, materials and products in Nigeria, and establish a quality assurance system including certification of factories, products and laboratories;

(c) to ensure reference standards for calibration and verification of measures and measuring instruments;

(d) to compile an inventory of products requiring standardisation;

(e) to compile Nigerian standards specifications;

(f) to foster interest in the recommendation and maintenance of acceptable standards by industry and the general public;

(g) to develop methods for testing of materials, supplies and equipment including items purchased for use of departments of the Government of the Federation or a State and private establishments;

(h) to register and regulate standards marks and specifications;

(i) to undertake preparation and distribution of standards samples;

(j) to establish and maintain such number of laboratories or other institutions as may be necessary for the performance of its functions under this Act;

(k) to compile and publish general scientific or other data

(i) resulting from the performance of its functions under this Act; or

(ii) from other sources when such data are of importance to scientific or manufacturing interests or to the general public and are not available elsewhere;

(l) to advise departments of the Government of t Federation or a state on specific problems relative standards specifications;

(m) to sponsor such national and international conferenc as it may consider appropriate;

(n) to co-ordinate all activities relative to its functi throughout Nigeria and to co-operate wi corresponding national or international organisations such fields of activity as it considers necessary with view to securing uniformity in s t a n d a r d specifications; and

(o) to undertake any other activity likely to assist in t performance of the functions imposed on it under th act.[63]

**Staffing and Organisational Structure of Standar Organisation of Nigeria**

The organisation consists of a Director of Standards, a Secreta and such member of staff as may be required to assist the Direct and the director, the Secretary and the other members of staff the organisation shall be members of the public service of t Federation within the meaning of the Constitution of the Fede Republic of Nigeria.[64]

The highest decision-making body of the organisation the governing council which is the Standards Council Nigeria[65]having the following functions:

(a) to advise the Federal Government generally on t national policy on standards specification, quality cont and metrology;

(b) to design, establish and approve standards in respect metrology, materials, commodities, structures a

[63] See Section 4 (1) of the Standards Organiation of Nigeria Act.

[64] Section 1 (2) & (3) of SON Act.

[65] Section 2 of the SON Act.

processes for the certification of products in commerce and industry throughout Nigeria;

(c) to provide the necessary measures for quality control of raw materials and products in conformity with the standard specifications;

(d) to determine the overall policy of the organisation in particular with regards to the financial, operational and administrative programmes of the Organisation and to ensure the implementation of the said policy; and

(e) to carry out other functions imposed on it under the Act or any other written law.[66]

The council consists of seventeen members and shall be appointed by the Minister of Industries.[67]

## National Environmental Standards and Regulations Enforcement Agency (NESREA)

Prior to the dumping of toxic waste in Koko village in Delta State of Nigeria in 1987, Nigeria was ill-equipped in managing serious environmental issues, as there were no institutional arrangements or mechanisms for environmental protection and enforcement of environmental laws and regulations in the country. Following the Koko toxic waste episode, the Federal Government promulgated the Harmful Waste Decree 42 of 1988, which facilitated the establishment of the then Federal Environmental Protection Agency (FEPA) through Decree No 58 of 1988.[68]

In the wisdom of the Government, FEPA and other relevant departments in other Ministries were merged to form the Federal Ministry of Environment in 1999, but without an appropriate

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[66] Section 3 of the SON Act.

[67] See Schedule 1 (1) of the Schedule to the SON Act.

[68] See 'About NESREA, the Establishment of the National Environmental Standards and Regulations Enforcement Agency (NESREA) <http://www.nesrea.org/about.pht>accessed on 22 August 2010.

enabling law on enforcement issues, [69]hence the need for a law to address and enforce environmental issues.

The agency has nexus with telecommunications industry particularly with regards to technical standards and specifications in the telecommunications installations such as installation of masts and towers and other telecommunications equipment.

**Establishment of National Environmental Standards and Regulations Enforcement Agency (NESREA)**

To address the ugly situation of lack of enforcement law in the field of environmental law, the National Environmental Standards and Regulation Enforcement Agency (NESREA) was established as a parastatal of the Federal Ministry of Environment, Housing and Urban Development.[70]The agency is a corporate body with perpetual succession and a common seal, capable of suing and being sued in its corporate name.[71] NESREA is charged with the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development in Nigeria's natural resources in general and environmental technology, including liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.[72] The vision of the agency is to ensure a cleaner 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.[73]

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[69] Ibid.

[70] NESREA was established vide section 1 (1) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007. Its commencement date was 30th July 2007. By Section 36 of NESREA Act, the FEPA Act *Cap F10 LFN 2004* has been repealed.

[71] See section 1 (2) (b) of the NESREA Act.

[72] Section 2 of the NESREA Act.

[73] See Standards Organisation of Nigeria < http://www.nigeriafirst.org/printer_792.shtml

**Functions of the National Environmental Standards and Regulations Enforcement Agency**

The functions of the NESREA are to:

(a) enforce compliance with laws, guidelines, policies and standards on environmental matters;

(b) coordinate and liaise with stakeholder, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;

(c) enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate changes, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wide life, pollution, sanitation and such other environmental agreements as may from time to time come into force;

(d) enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement;

(e) enforce compliance with guidelines and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;

(f) enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;

(g) enforce compliance with regulations on the importations, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;

(h) **enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;**

(i) ensure that environmental projects founded by donor organisations and external support agencies adhered to regulations in environmental safety and protection;

(j) enforce environmental control measures through registrations, licensing and permitting systems other than in the oil and gas sector;

(k) conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;

(l) create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions;

(m) carry out such activities as are necessary or expedient for the performance of its functions.[74]

**Staffing and Governing Council of NESREA**

The NESREA Act established a Governing Council for NESREA consisting of a Chairman, Permanent Secretary of the Federal Ministry of Environment or his representatives and such other representatives of government parastatals as stipulated by the Act.[75] The Agency has five directorates and each directorate is

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[74] See Section 7 of the NESREA Act.

[75] See Section 3 of the NESREA Act. The government parastatals are Federal Ministry of Solid Minerals Development; Federal Ministry of Agriculture and Natural Resources; Federal Ministry of Water Resources; Federal Ministry of Science and Technology; representation of the Standard Organisation of Nigeria; a representative of the Manufacturers' Association of Nigeria; a representative of the Oil Exploratory and Production Companies in Nigeria; the Director-General of the Agency; and three other persons to represent public interest, to be appointed by the Minister of Environment. Each representative of the parastatals must not be below the rank of Director from his or her parastatals. See generally Section 3(1) of the NESREA Act.

headed by a Director.[76]The agency has a Director-General who is the Chief Executive and responsible for the day-to-day administration of the agency.[77] The agency appoints such other persons as members of staff as it may deem necessary, to assist the agency in the performance of its functions.[78]

# 4 International Regulatory Regime

There is no country in the world today that does not consider it essential to develop its communications infrastructures. While the 1960s and 1970s established the importance of developing transport and energy infrastructures for the harmonious development of developing countries, the 1980s showed that the development of many sectors of economic activities could no longer be envisaged without consistent development of telecommunications networks.[1]

International trade has to develop in the light of both the globalisation and the increasing inter-linkage of economies, and the necessary tool to achieve this is telecommunication. Telecommunication has to be regarded as a key resource for international trade in goods and services,[2] and this is the more reason why discussions on telecommunications in a given country cannot be complete without considering the international environment, telecommunications also being an international phenomenon.

Although there are lots of international regulatory bodies and organisations in telecommunications industry, this chapter shall consider only five of them viz: the International Telecommunications Union (ITU), African Telecommunications

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[1] Carlos Moreira, 'Telecommunications: A Key Resources for International Trade', (1996)1 (5) JIBC< http://www.arraydev.com/commerce/jibc/>accessed on 12 June 2015.

[2] Ibid.

Union (ATU), Commonwealth Telecommunication Organisatio (CTO), West African Telecommunications Regulators Assembl (WATRA) and Organisation for Economic Co-operation an Development (OECD).[3]

It is the hope of this chapter that Nigeria should be able t borrow leave from international regulatory bodies i telecommunications in its effort at achieving global standards i telecommunications industry. Nigeria should endeavour to joi some of these international bodies where it has not done so, an where it has joined, the government should take steps t domesticate the treaties and conventions therein for effecti legal consequences.

## International Telecommunications Union (ITU)

The International Telecommunications Union (ITU) is an agenc of the United Nations which regulates Information an Communication Technology (ICT) issues. For nearly 145 year ITU has co-ordinated the shared global use of the radio spectru promoted international co-operation in assigning satellite orbit worked to improve telecommunications infrastructure in th developing world and established worldwide standards.[4]

### Establishment of ITU

ITU was established on 17th May, 1865 in Paris with i headquarters in Geneva, Switzerland on the initiative of th French Government. It also organises worldwide and region exhibitions and fora, such as ITU TELECOM WORLD, bringi

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[3] Some other international telecommunications regulatory bodies are Asia-Paci Telecommunity (APT). See <http://www.APTSEE.org/>accessed on 24 June 20 Caribbean Telecommunications Union (CTU). See <http://www.c-t-u.org/>acces on 24 June 2009; European Conference of Postal and Telecommunications (CEP See <www.cept.org>accessed on 24 June 2009; Inter-American Telecommunicati Commission (CITEL). See<www.cited.oas.org/>accessed on 24 June 2009.

[4] International Telecommunication Union< http://en.wikipedia.org/wi International_Telecommunication_Union>accessed on 24 August 2010.

ether representatives of government and the communications and ICT Industry to exchange ideas, wledge and technology.[5]

ITU is active in areas including broadband Internet, latest-eration wireless technologies, aeronautical and maritime gation, radio astronomy, satellite-based meteorology, ergence in fixed-mobile phone, Internet access, data, voice, vision (TV) broadcasting, and next-generation networks.[6]

**nbership of ITU**

bership of ITU is open to governments, which may join Union as member states, as well as to private organisations arriers, equipment manufacturers, funding bodies, research development organisations and international and regional ommunications organisations, which can join ITU as sector bers.[7]The membership of ITU includes 191 member states nore than 700 sector members and associates.[8]

**Sectors**

TU comprises four sectors[9] viz:- ITU Radio Communication r (ITU-R),[10] ITU Telecommunications Standardisation r (ITU-T),[11] ITU Telecommunications Sector Development -D)[12] and ITU TELECOM.[13]Private companies and other

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ctor manages international radio-frequency spectrum and satellite orbit resources.
s the best known and oldest activity of ITU. This sector is known as the
ational Telephone and Telegraph Consultative Committee (or CCITT from its
name '*Comite consultatif international telephonique et telegraphique*)
ctor was established to help spread equitable sustainable and affordable access
rmation and Communication Technology (ICT).
ctor organises events such as exhibition.

organisations may elect to join one or more of the se
according to their particular sphere of interest. Sector me
also develop the technical standards which will underpin
telecommunications systems and services.[14]

## The Mission and Developing Roles of ITU

As an international telecommunications organisation, the I
mission is to enable the growth and sustained developme
telecommunications and information networks, and to facil
universal access to the emerging information society and gl
economy. The ITU assists in mobilising the technical, finan
and human resources required by such developmen
concentrates on strengthening emergency communications
disaster prevention and mitigation, especially in less develo
regions.[15]

A major priority of the ITU is bridging the so-called 'dig
divide' by building adequate and safe information
communication infrastructure and developing confidence in
use of cyberspace through enhanced online security.[16]

## ITU and the World Summit on the Information Society

ITU has reached a greater height as an international institut
in telecommunications and ICT. It was the lead organising age
of the World Summit on the Information Society (WSIS)[17]

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[14] International Telecommunication Union <http://en.wikipedia.org/w
International_Telecommunication_Union>accessed on 24 August 2010.

[15] Ibid.

[16] Ibid.

[17] WSIS is a United Nations Summit aiming at bridging the digital divide and turnin
into digital opportunity for all. It provided a global forum on the theme of ICT
development. It was a pledge for building a people-centred development-orien
Information Society. Other themes of the sumunit were Internet governance and financ
mechanisms for meeting the challenges of ICT for development. See Internatio
Telecommunication Union < http://en.wikipedia.org/wi
International_Telecommunication_Union>accessed on 24 August 2010.

he idea of holding WSIS came from the Tunisian President[18] on e ITU Plenipotentiary Conference in Minneapolis in 1998.. he Process was launched late in 2002 on the initiative of Kofi nnan,[19] and the first phase of WSIS summit took place in ecember 2003 in Geneva while the second and final phase ook place in Tunis in November, 2005.[20]

A six action programme was proposed at the ITU's World elecommunications Development Conference (WTDC) in 1998 nd these include:

(i) assisting governments in the preparation and implementation of reform, while keeping in mind the technological convergence of telecommunications, broadcasting and informatics;

(ii) developing technologies and applications, including the internet; spectrum management and monitoring; network and infrastructure planning; innovative technological applications;

(iii) promoting universal accesses to basic telecommunications, broadcasting, value added services and the Internet in particular as tools of development;

(iv) helping the developing countries to adapt to the telecommunications environment by putting into place the appropriate financial policies;

(v) developing partnerships with private sector and promoting various types of partnership agreements with the private sector in activities related to telecommunications development; and

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[18] Ben Ali.

[19] Former United Nations Secretary-General.

[20] See generally International Telecommunication Union <http://en.wikipedia.org/wiki/International_Telecommunication_Union>accessed 24 August 2010.

(vi) assisting developing countries to build institutional and organisational capacity through human resources management, development and organisational[21] development activities.

In 2002, another plenipotentiary conference was held in Marrakech between 23rd September, and 18th October, 2002. The conference endorsed the organisation's strategic plan which sought to bridge international digital divide by facility development of fully interconnected and interoperable networks and services taking a leading role in the preparatory and follow up of the WSIS.[22]

In its action plan for 2003, the ITU sought to have universal access, the impact of new technologies on the regulatory environment, the regulatory impact of convergence of telecommunications, broadcasting information technology and content sectors, promotion of infrastructure and use of the Internet in developing countries, the role of telecommunications in socio-cultural development and the study of array of issues specific to its development.[23]

The ITU has equally launched a unique development drive called 'Connect the World'. The drive is designed for easy accessibility of ICT to the estimated billion people worldwide.[24]

The year 2010 marks the midpoint between the 2005 Tunis Phasè of the WSIS and 2015, the deadline for achieving the ten targets that governments agreed upon at the WSIS. The ten targets agreed upon are: to connect villages with ICTs and establish community access points; to connect universities, colleges,

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[21] Report from ITU's World Telecommunication Development Conference held in Valletta Malta, 1988. See Shemudarra O. T., 'International Telecommunication Union: An Appraisal of the Law, Practice and Machinery (Paper presented to 2006/2007 LL.M Class of Aviation and Communications Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria).

[22] Shemudarra O.T. 'International Telecommunications Union: An Appraisal of the Law Practice and Machinery.

[23] Ibid.

secondary school and primary schools with ICTs; to connect scientific and research centres with ICTs; to connect public libraries, cultural centres, museums, post offices, and achieve with ICTs; to connect health centres and hospitals with ICTs; to connect all local and central government departments and establish websites and e-mail addresses; to adopt all primary and secondary school curricula to meet the challenges of the information society, taking into account national circumstances; to ensure that all of the world's population has access to television and radio services; to encourage the development of content and put in place technical conditions in order to facilitate the presence and use of all world languages on the Internet and to ensure that more than half of the world's inhabitants have access to ICTs within their reach.[25]

## ITU and the Nigerian Telecommunications Industry

The ITU has impacted positively on the development of telecommunications in Nigeria. In 2001, Gbenga Sesan who has been profiled as one of the 35 icons of ICTs in Nigeria was awarded the 2001 International Telecommunication Union African Youth Fellowship Award.[26] Also in 2007, the then Chief Executive Officer of NCC, Engr. Ernest Ndukwe was selected by the ITU to chair the African Information Meeting (AIM) for the 2007 World Radio Congress (WRC), a global meeting of experts who discuss and agree on proposals for various new applications in the telecommunications industry.[27]

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Ibid.

See generally the 9th Edition of the World Telecommunication/ICT Development Report 2010-Monitoring the WSIS targets on <http://www.itu/pub/D-IND-WIDR-2010/en>accessed on 23 August 2010.

Oduntayo Y.O., 'The International Telecommunication Union: An Appraisal of the Law, Practice and Machinery' (Paper presented to 2006/2007 LL.M Class of Aviation and Communications Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria).

Ibid.

The invitation of Engr. Ernest Ndukwe to chair the informa meeting is not only an honour to him as a person but recogni of the role of Nigeria as an active member of the ITU. Ndu has been a regular resource person at ITU organised events has chaired a number of global meetings and committees o ITU.[28]

From the foregoing, it cannot be gainsaid that the w has today become a global village as a result of efficient effective communication and technological development advancement through the immense contributions of the which has drawn its membership from across the globe.

## African Telecommunications Union (ATU)

The African Telecommunications Union (ATU) is the lea continental organisation fostering the development Information and Communication Technologies infrastructure service. It is a continental organisation that combines count and mobile telecommunications providers within Africa in attempt to dramatically increase development of the contine ITC infrastructure in Africa.[29]

### Establishment of ATU

The formulation of the ATU dates back to 1977 when its miss was a part of the Organisation of African Unity (OAU).[30] ATU was officially formed in 1999 as the successor to the P African Telecommunications Union (PATU) and is headquarte in Kinshasa, Democratic of Congo.[31] At this time, the Un slightly transformed from primarily a co-ordinating body government related activity to include private and pub

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[28] Ibid.

[29] African Telecommunications Union <www.atu-nat.org/>accessed on 24th June 2

[30] Which has been replaced by the African Union (AU).

[31] Due to war, the headquarters of ATU relocated to Nairobi, Kenya.

stakeholders in the information and telecommunications technology sector. The ATU now enforces a constitution and has added a secretary general along with a technical management team to ensure a more effective transformation from the PATU.[32]

## Membership and Organisational Structure of ATU

The ATU is out to provide a collaborative atmosphere for public and private stakeholders to formulate and negotiate policies that might increase the role of Africa in the booming environment of ICT. So, while the PATU previously only allowed public membership of governments, the ATU now allows organisations from the private sector to become associate members.[33] The ATU has 46 member states[34] and 16 associate members.[35] Any private entity in the ICT sector may also apply for membership of ATU.[36]

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[32] See African Telecommunications Union< www.atu-vat.org/accessed> on 24 June 2009.

[33] Ibid.

[34] The 46 members spanning North Africa, Southern Africa, East Africa, Central Africa and West Africa are North Africa: Algeria, Egypt, Libya, Morocco, Tunisia and Mauritania; Southern Africa: Lesotho, Malawi, South Africa, Swaziland, Zambia and Zimbabwe; East Africa: Cameroon, Djibouti, Ethiopia, Madagascar, Mauritius, Somalia, Sudan, Tanzania and Uganda; Central Africa: Angola, Burundi, Cameroun, Central African Republic, Republic of Congo, Equatorial Guinea, Gabon and SaoTome & Principe; West Africa: Benin Republic, Burkina Faso, Cote d'ivore, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. See African Telecommunications Union <www.atu-uat.org/about.htm>accessed 24 June 2009.

[35] These are Cameroon Telecommunications (CAMTEL), Cote d'Ivoire Telecom, Sudan Telecom Company Limited (SUDATEL), Sudan, Loteny Telecom, Coted'Ivoire, Botswana Telecommunications Authority (BTA), Botswana, Safari Com Limited, Kenya, Telkom Kenya Ltd, Kenya, Telecom Lesotho (PT Y) Ltd, Lesotho, P.Q. Africa, South Africa, Vodacom (PTY) Limited, South Africa, Zanzibar Telecom Limited (ZANTEL), Tanzania, Tanzania Telecommunications Company Limited (TTCL), Tanzania, Ghana Telecommunications Company Ltd, Ghana, Mauritius Telecom Ltd, Mauritius, Telecom Egypt, Egypt and INFOTEL Consulting, Nigeria. See African Telecommunications Union<www.atu-aut.org/about/htm accessed on 24 June, 2009.

[36] Whether or not it is affiliated with a host country in the African Union.

The ATU is divided into five principal parts viz: the Confere of Plenipotentiaries, (CPL) the Administrative Council, Technical and Development Conference, the General Secreta and Non-Permanent Unit.[37]

The CPL occurs on a four-year cycle, which is attended the Ministers of Communications, and has the authority to ad the constitution and is the major policy platform of ATU. T CPL also elects the Secretary General and members of Administrative Council. The Administrative Council me annually and approves the policy actions and budgets. T Technical and Development Conference serves as a platfo for regulatory measures among the public and private member

**The Mission of the African Telecommunications Union**

The ATU advocates for increased information developme within the continent of Africa. The aim of the ATU is to ensu transparency and accountability, effective funding and financi and quality service to all with whom it collaborates. The AT also promotes positive collaboration with the Institute f Computer Technology Research and Development.[39]

Internet has become the permanent communicati technology for fostering economic growth, and this is a gre focus area of ATU. ATU attempts to address the connectivi gap among the nations in Africa and strives for universal acce through Africa. In achieving its goals, the ATU hopes to be meaningful player in the development and progression of Afri as a significant contributor to the global information an knowledge society.[40] The core activity programmes of the ATU include contributing to global decision-making, integratin

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[37] African Telecommunications Union <www.atu-uat.org/>accessed on 24 June 2009.
[38] Ibid.
[39] Ibid.
[40] Ibid.

regional market, attracting investment into ICT infrastructure and building human and institutional capacity. It is part of its mission to promote rapid development of info-communication in Africa in order to achieve universal access and full inter-country connectivity.[41]

The ATU has contributed immensely to global decision-making and has achieved most of its core activity programme. It manages membership relations.[42]

## Commonwealth Telecommunications Organisation (CTO)

The Commonwealth Telecommunications Organisation (CTO) is an international development partnership between Commonwealth and non-Commonwealth Governments, business and civil society organisation. It provides the international community with effective means to help bridge the digital divide and achieve social and economic development, by delivering to developing countries unique knowledge-sharing programmes in the use of ICT in the specific areas of telecommunications, Information Technology (IT), broadcasting and the Internet.[43]

### Establishment of Commonwealth Telecommunications Organisation (CTO)

The history of Commonwealth Telecommunications Organisation (CTO) dates back to its creation in 1901 as the Pacific Cable Board. Since then, the CTO has been at the centre of continuous and extensive international communications development funding, co-operation and assistance programmes. Since 1985, the organisation has delivered over 3,500 bilateral and multilateral telecommunications and ICT capacity-building

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[41] Ibid.

[42] Ibid.

[43] Commonwealth Telecommunications Organisation (CTO) <http://ww.thecommonwealth.org/Internal/151940/>accessed on 24 August 2010.

projects in the form of policy, operational and regulatory training and expert assistance to its recipient members in Europe, the Caribbean, Americas, Africa and Asia-pacific regions.[44]

### Mission of Commonwealth Telecommunications Organisation (CTO)

The long history of CTO as a development agency provides the organisation with a unique and growing delivery capacity of ICT-for-development programmes and services. Recently, the CTO has significantly reviewed its mandate to reflect and respond to today's global development challenge as set in the United Nations Millennium Development Goals (MDGs). The mission of CTO today is to offer the highest quality programmes for capacity development, knowledge sharing and information services, expand and diversify partnerships between governments, business and other organisation to reduce global poverty and fulfil the global development agenda for ICT.[45]

### West African Telecommunications Regulators Association (WATRA)[46]

The Economic Community of West African States (ECOWAS) vision for the telecommunications sector is 'to have a single liberalised telecommunications market in the Community, following the adoption of uniform legislative and regulatory frameworks, and the interconnection and integration of national networks'. ECOWAS reiterated its total support for WATRA and its endeavour to develop harmonised ICT policy and regulatory guidelines for use by the ECOWAS countries.[47]

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[44] Ibid.

[45] Ibid.

[46] Otherwise interchangeably known as West African Telecommunications Regulator Authority (WATRA).

[47] See the West African Telecommunications Regulators Authority <http//:www.watra.org> accessed on 11 September 2010.

**stablishment of WATRA**

he West African Telecommunications Regulators Association VATRA) was established in November 2002. It was borne out the need to address present realities in the telecommunications dustry in the sub-region while focusing on the need for West frica to evolve a harmonised regulatory identity to boost vestment and investor-confidence and to more effectively gulate and monitor telecommunications service.[48]

The first Annual General Meeting (AGM) of WATRA was d in Abuja, Nigeria between 24th and 27th March, 2003.

**mbership of WATRA**

e membership of WATRA is fifteen countries with dquarters located in Abuja, Nigeria[49]. It consists of ependent National Regulatory Authorities and departments regulation of telecommunications services established by ernments of member states in the ECOWAS sub-region and uritania.

WATRA partners with international development nisations, private telecoms operators, governments, ICT pment manufacturers, ICT equipment vendors and industry eholders.[50]WATRA comprises three institutions namely: the ference of Regulators, the Executive Committee and the etariat. The Secretariat is the administrative organ of RA.[51]

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RA members are: Benin Republic, Burkina Faso, Cape-Verde, Coté d 'Ivoire, The ia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, gal and Sierra Leone. See <http://www.watra.org/ pht?option=com_content&view=article&id-176&Itemid=184&lang=en> accessed September 2010.

/est African Telecommunications Regulators Authority <http//:www.watra.org>

**Aims of WATRA**

The aims of WATRA include:

- to encourage the creation of a viable, homogeneou telecommunications marketplace in West Africa;
- to establish conditions that will allow any operator t provide trans-national or global services, in line with th principle of non-discrimination;
- to ensure that commitments entered into in dealings wit the World Trade Organisation (WTO) are not at varianc with ECOWAS objectives;
- to establish a conducive framework within which membe states of ECOWAS can evolve a common stand regardin international telecommunications agreements, convention and treaties;
- to allow joint management of certain scarce or limite telecommunications facilities and resources such as th radio frequency spectrum;
- to enable application of uniform rate and tariffs for IC services;
- to implement mutual recognition of equipment an terminal type approval processes;
- to provide ECOWAS with the legal instruments regulatin network interconnection; and
- to define a framework for the functions and purposes o member state regulatory bodies.[52]

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[52] See Site Search WATRA objectives, <http:/www.watra.or index.pht?option=com_content&view=article&id-176&Itemid=224&lang=e accessed on 11 September 2010. See also Nigeria Telecoms Market, A snap Shot Vie http://www.africaanalysis.co.za/NigeriaTelecomsWhitePaper.pdf>accessed on June2010.

## Objectives of WATRA

WATRA has the following objectives:

- to encourage the establishment of modern legal and regulatory structures for telecommunications service delivery in all states in the sub-region; and to encourage the separation of the roles of policy-maker, regulator and licensed operator/service provider, and the establishment of distinct, independent and adequately empowered national telecommunications regulatory agencies in countries in the sub-region where such agencies have not been created;
- to seek the development and harmonisation of regulations for telecommunications service delivery and pricing in countries in the sub-region;
- to promote the establishment and operation of efficient, adequate and cost-effective telecommunications networks and services in the West African sub-region which meet the diverse needs of customers while being economically sustainable;
- to encourage increased liberalization and competition initiatives in networks development and to enhance efficiency in telecommunications service delivery in the sub-region;
- to contribute to the development of policies to enhance universal access and telecommunication penetration in rural and under-served areas in the sub-region;

- to facilitate the exchange of ideas, views and experience among members on all aspects of regulation of the telecommunications sector;
- to conceptualise and formulate for eventual recommendation to policy makers in the sub-region, an information and communications technology master-plan which will set policy objectives and milestones for the modernisation of telecommunications infrastructures and service delivery in the sub-region;
- to contribute, through the progressive integration of regulatory mechanisms, towards sub-regional market integration in the telecommunications sector, leading eventually to integration of the continental African market;
- to work towards the attainment of a uniform telecommunications service standard in the sub-region and the adoption of uniform technical and quality standards for telecommunication applications and equipment employed in the sub-region;
- to contribute to human resource and capacity building efforts aimed at redressing the shortage of indigenous skills, competencies and capabilities in emerging information and communications technologies in the sub-region;
- to collaborate and co-operate with the Economic Community of West African States (ECOWAS) towards the attainment of its treaty objectives of sub-regional economic and social integration, as envisaged in the ECOWAS Treaty of 1975, especially in Chapter VIII of the Treaty, with particular reference to Articles 40 and 45, thereof, and in various ECOWAS protocols;
- to collaborate and co-operate with the African Telecommunications Union (ATU) towards the attainment of its stated mission of promoting rapid development of info-communications in Africa to achieve universal access

to basic telecommunications and full inter-country connectivity in Africa; and the fulfilment of its objectives, especialiy the objective of promoting the development and adoption of appropriate African telecommunications policy and regulatory frameworks;

- to collaborate and co-operate with the International Telecommunications Union (ITU) towards the attainment of its agenda for global telecommunications development, especially with respect to its initiatives for the development of regional and sub-regional structures for more effective telecommunications service delivery; and
- to collaborate and co-operate with any other regional or international body or institution whose objectives or activities may facilitate or enhance the attainment of WATRA's aims and objectives.[53]

## Organisation for Economic Co-Operation and Development (OECD)

The Organisation for Economic Co-operation and Development (OECD) is an international organisation in the area of economic growth and development. Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. Over the years, much has changed in the context of telecommunications regulation. The jurisdiction of regulators has changed in many countries. The OECD has assessed regulatory policies in its member countries as part of its regulatory reform programme.

The OECD is a unique forum where the government of thirty-two[54] countries work together to address the economic, social and environmental challenges of globalisation. The

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[53] Ibid.

[54] See Organisation for Economic Co-operation and Development <http://en.wikapedia.org wiki/Organisation for Economic_cooperation and_Development#Formation_of_the_OECD>accessed on 29 August 2010.

organisation is also at the forefront of efforts to understand a help governments respond to new developments and concer such as corporate governance, the information economy and t challenges of an emerging population. The organisation defin itself as a forum of countries committed to democracy and t market economy, providing a setting where governments ca compare policy experiences, seek answers to common problem identify good practice and work to co-ordinate domestic an international policies.[55]

**Origin and Establishment of Organisation for Econom Cooperation and Development (OECD)**

The OECD originated in 1948 as the Organisation for Europe Economic Co-operation (OEEC) led by Robert Marjolin France, to help administer the Marshal Plan for the reconstruct of Europe after World War II. Later, its membership was extend to non-European states. In 1961, it was reformed into OECD

The Organisation for Economic Co-operation a Development (OECD) was re-formed pursuant to Article 1 the OECD convention signed in Paris on 14th December, 19 and which came into force on 30th September, 1961.[57] Since establishment, and particularly in the recent years, t telecommunications sector in OECD countries has se significant regulatory reform. Twenty-six OECD countries h in 2001, unrestricted market access to all forms telecommunications, including voice telephony and infrastruct investment, compared to only a handful just a few years back

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[55] See OECD DAC Handbook on Security System Reform (SSR) Supporting Sec and Justice <http://www.oecd.org/data_oecd/43/25/38406485.pdf > accessed o August 2010.

[56] See Organisation for Economic Co-operation and Development <http://en.wikipedia wikiorganisation_for_economic_cooperation_and_Development#Foundation_of_the_OE

[57] See OECD Reviews of Regulatory Reforms in the Telecommunications Industry< http://www.oecd.org/dataoecd/48/28/1960562.pdf >access on 28 August 2010.

[58] Ibid.

e contribution of OECD to the growth and developments in ecommunications is not infinitesimal. It has dealt with nmunications convergence,[59] anti-spam regulation,[60] ecommunication regulatory institutional structures and onsibilities,[61] regulatory reforms in telecommunications,[62] tection of consumers from fraudulent deceptive commercial tices across borders,[63]competition law,[64]access pricing in communications,[65]challenges to economic growth and elopment, market structure and performance in communications,[66] to mention but a few.

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Report on the OECD Roundtable on Communications Convergence (London 2005).

D Task force on Spam- Anti-spam Regulation 2005.

elecommunications Regulatory Institutional Structures and Responsibilities, Report ented to the Working Party on Telecommunications and Information Services ies to OECD in June 2005.

ECD Regulatory Reform in Germany, Regulatory Reform in Telecommunications. ://www.ictregulationtookkit.org/en/publication.2382.html>accessd on 20 July ; Regulatory Reform in the Telecommunications Industry, Regulatory Reform in d From Transition to New Regulatory Challenges<http://www.oecd.org/dataoecd/ /1954711.pdf>accessed on 28 August 2010; OECD Regulatory Reform in Canada Transition to New Regulation Challenges<http://www.oecd.org/dataoecd/48/28/ 562.pdf>accessed on 28 August 2010.

ECD Guidelines for Protecting Consumers from Fraudulent and Deceptive nercial Practices across Borders, issued in 2003.

ce on Competition Law to Regulate Telecommunications in OECD Countries //www.ictregulationtoolkit.org/en/PracticeNote.aspx?id=2631>accessed on 28 t 2010.

Reports Access Pricing in Telecommunications. The report was adopted by the tition Committee of OECD in 2004. See<http://www.oecd.org/dataoecd/26/6/ 944.pdf>accessed on 28 August 2010.

Boyland and Giuseppe Nicoletti 'Regulation, Market Structure and Performance ecommunications.<http://www.regulationbodyofknowledge.org/external/ ent/ww.oecd.org/dataoecd/24/33/2736298.pdf>accessed on 28 August 2010.

**Membership of Organisation for Economic Co-Operation and Development (OECD)**

The original member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.[67] Also subsequently became members through accession are Japan,[68] Finland,[69] Australia,[70] New Zealand,[71] Mexico,[72] the Czech Republic[73] Hungary,[74] Poland,[75] Korea,[76] the Slovak Republic,[77] Chile[78] and Slovenia[79]

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[67] See OECD Guidelines for Protecting Consumers From Fraudulent Across Borders, OECD Regulatory Reform in Canada From Transition to New Regulation Challenges, OECD Regulatory Reform in Germany, Regulatory Reform in Telecommunications, shows that the original member countries are twenty.

[68] Became member on 28th April 1964.

[69] Became member on 28th January 1969.

[70] Became member on 7th June 1971.

[71] Became member on 29th May 1973.

[72] Became member on 18th May 1994.

[73] Became member on 21st December 1995.

[74] Became member on 7th May 1996.

[75] Became member on 22nd November 1996.

[76] Became member on 12th December 1996.

[77] Became member on 14th December 2000.

[78] OECD agreed to invite Chile to open discussions in becoming an official member December 2009. It eventually accepted and became member in January 2010. See http://en.wikipedia.org/wiki/chile>accessed on 29 August 2010.

[79] Became members on July 21, 2010. On 10th May 2010 Estonia and Israel were invited to join the organisation.

## Mission of OECD

Pursuant to Article 1 of the OECD Convention signed in Paris on 14th December, 1960, the OECD shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in member countries while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral non-discriminatory basis in accordance with international obligations[80].

Regulatory Reforms has emerged as an important policy area in OECD and non-OECD countries[81] and in achieving its aims and objectives in the telecommunications sector, the OECD has embarked on various regulatory reforms in the telecommunications sector of member countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network, industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment[82].

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[80] See OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practice Across Borders. See especially convention on the Organization for economic Co-operation and Development http://www.oecd.org/document/7/0,3343,en-2649-201185-1915847-1-1-1-1,00html accessed on 29 August 2010.

[81] OECD Regulatory Reform in Germany.

[82] Ibid.

As part of the OECD regulatory policies and reforms programme the OECD reviewed and accessed regulatory policies in almost all the member countries. In most OECD countries, regulatory reforms have also concerned the policy and institutional setting [84]Regulatory authorities in most OECD countries have traditionally adopted a national geographical area of focus when framing the geographical scope of telecommunications markets.[85]

**OECD Relations with Non-Members**

Twenty-five non-members are currently participating as regular observers or full participants in OECD Committees. About 50 non-members are engaged in OECD working parties, schemes or programmes. The OECD conducts a policy dialogue and capacity building activities with non-members to share their views on best policy practices and to bear on OECD's policy debate.[86]

The OECD's Centre for Co-operation with non-members develops and oversees the strategic orientation of the relations with non-members.[86]

In 2003, the OECD established a working group headed by Seiichiro Noboru[87] to work out a strategy for the enlargement and co-operation with non-members. The working group proposed that selection of candidate countries to be based on

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[84] Olivier Boyland and Giuseppe Nicoletti

'Regulation, Market Structure and Performance in Telecommunications'

[85] See About Statistics Publications & Documents Information by Country<http://www.oecd.org/topic/0,3373,en_264937441_1_1_1_1_1,37441,00.html> accessed on August 2010.

[86] Organisation for Economic Co-operation and Development <http://en.wikipedia.org/wiki/Organisation_for_Economic_Cooperation_and_Development#Foundation_of_OECD >accessed on 29 August 2010.

[86] Ibid

[87] Japan's Ambassador to the Organisation for Economic Cooperation and Development

four criteria: 'like-mindedness', 'significant player', 'mutual benefit' and 'global considerations'.[88]

It was as a result of the recommendations of the working group, that the OECD Ministerial Council decided to open accession discussions with Chile, Estonia, Israel, the Russian Federation and Slovenia and to strengthen co-operation with Brazil, China India, Indonesia and South Africa through a process of enhanced engagement.[89]

Several civil society groups and developing countries, however, criticised the OECD, and the main criticism has been the narrowness of the organisation because its membership is limited to a selected few rich nations.[90]

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rganisation for Economic Co-operation and Development <http://en.wikipedia.org/

# 5 Consumer Protection, Consumer Rights and Quality of Telecommunications Services

The legal and regulatory frameworks for consumer protection in Nigeria consist of the extant common law rules on contractual and tortuous liability, case law and a plethora of Nigerian legislation that regulate specific sectors of the economy.[1] In Nigerian telecommunications industry also, consumer protection and quality of service are regulated by the common law rules of contract and tortuous liability, case law and legislation.

Specifically, the Nigerian legislation that regulates consumer protection and quality of service in telecommunications sector include Nigerian Communications Act,[2] Standards Organisation of Nigeria Act,[3] Consumer Protection Council Act,[4] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act[5] and a lot of guidelines, regulations and other statutory instruments made thereunder.

Each of the above-mentioned legislation establishes its respective body or authority saddled with the responsibility of protecting consumers and ensuring quality of service. Thus, the Nigerian Communications Act established the Nigerian Communications Commission,[6] National Frequency

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[1] Okechukwu Agwu Uche, 'Legal and Regulatory Framework for Consumer Protection in Nigeria' (Materials of 30th and 31st workshops, ALPHAJURIS Continuing Legal Education Series 2008) 12. [2] *Cap. N97, Laws of the Federation of Nigeria (LFN) 2004.* [3] *Cap. S9. LFN 2004.*

[4] *Cap. C25. LFN 2004.*

[5] Act No.25 of 2007.

[6] See Section 3 of the Nigerian Communications Act.

Management Council[7] and Universal Service Provision Board[8]. The Standards Organisation of Nigeria Act established the Standards Organisation of Nigeria.[9] The Consumer Protection Council Act established the consumer Protection Council[10] while the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act established the National Environmental Standards and Regulation Enforcement Agency.[11]

## Consumer Protection and Quality of Service

To ensure quality of service, all telecommunications service providers are mandated, in respect of their specific services, to meet such minimum standards of quality of service, deal reasonably with consumers and adequately address consumer complaints.[12]

Consumer Protection is also recognised internationally as many international organisations make provisions, directly or indirectly, for consumer protection from fraudulent and deceptive commercial practices.[13]

Consumer Protection is linked closely with consumer rights. For quality of telecommunications service and consumer protection, the rights of telecommunications consumers must

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[7] Section 26 of the Nigerian Communications Act.

[8] Section 115 of the Nigerian Communications Act.

[9] Section 1 of the Standards Organisation of Nigeria Act.

[10] Section 1 (1) of the Consumer Protection Council Act.

[11] Section 1(1) of the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act.

[12] See Section 104 of the Nigerian Communications Act, in pursuance of which the Nigerian Communications Commission (NCC) made Quality of Service Regulations 2009 to identify minimum quality of service standard, and associated measurement, reporting and record keeping task.

[13] See Organisation for Economic Cooperation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Boarders under which OECD countries recommend that Consumer Protection Enforcement Agencies in member countries, having a common interest in preventing fraudulent and deceptive commercial practice against consumers, co-operate with one another in enforcing their laws against such practices.

be adequately protected. The Nigerian constitution recognises certain rights of citizens as inalienable.[14] It protects right to life,[15] right to dignity of human person;[16] right to personal liberty,[17] right to freedom of expression and the press,[18] right to freedom of movement,[19] right to fair hearing,[20] right to private and family life[21] and right to freedom of thought, conscience and religion,[22]among others. All these rights are also enjoyed by consumers of telecommunications services.

## Consumer Rights

Consumer rights in the Nigerian telecommunications industry is partly sourced from the Nigerian constitution itself.[23]

Another source of consumer rights is the United Nations (UN) Guidelines on Consumer Protection wherein the UN adopted in its General Assembly Resolution 39/248 on April 9, 1985, eight rights of consumers as Right to Satisfactions of Basic Needs, Right to Safety, Right to Information, Right to Choice, Right to Representation, Right to Redress, Right to Education and Right to Healthy Environment.[24]

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[14] See Chapter IV of Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).

[15] Section 33 of the Constitution of the Federal Republic of Nigeria.

[16] Section 34 of the Constitution of the Federal Republic of Nigeria.

[17] Section 35 of the Constitution of the Federal Republic of Nigeria.

[18] Section 39 of the Constitution of the Federal Republic of Nigeria.

[19] Section 41 of the Constitution of the Federal Republic of Nigeria.

[20] Section 36 of the Constitution of the Federal Republic of Nigeria.

[21] Section 37 of the Constitution of the Federal Republic of Nigeria.

[22] Section 38 of the Constitution of the Federal Republic of Nigeria.

[23] Using the word 'partly' does not, however, suggest that Nigerian Constitution is being robbed of its indisputable status as the ground norm since all Laws and Acts and all authorities derive their validity therefrom and any law that is inconsistent with any of the provision of the Constitution is, by the effect of Section 1(3) of the Constitution, to the extent of its inconsistency, null, void and of no effect whatsoever.

[24] See Adewale, S.A and Bamise J.B., 'The Legal Protection of Consumers of Telecommunications Services' (Paper presented to 2005/2006 LL.M Class of Aviation and Communications Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife. Nigeria.

In addition, the Nigerian Communications Act provides for certa rights and obligations of consumers in telecommunicatio industry, and pursuant to the powers conferred upon it, the NC made Consumer Code of Practice Regulations 2007.[25]

## Right to Minimum Standards of Quality of Servi

Every consumer of telecommunications services is entitled such minimum standard of quality of service.[26] Quality of Servi in this sense is a measure of the telephone service provided to subscriber.[27] Call must be clear and easy to hear. It must be lo enough and the longest time a consumer should wait after picki up the phone before receiving dial tone must be adequate determined. The consumers should be able to enjoy requir applications services such as emergency services, directo assistance services, operator assistance service and services f disabled customers.[28] As part of the functions of NCC, the NC shall protect and promote the interests of customers against unf practices including matters relating to availability and quali of communications services, equipment and facilities.[29]

Operating companies must provide and list in their directo a twenty-four-hour repair service number. Consumers shou have the right to access vendor's annual quality of servi

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[25] The specific objections of the Regulations are to confirm and clarify the proced to be followed by licensees in preparing approved Customer Codes of Practice. Consumer Code of Practice Regulations 2007, Regulations 2.

[26] Section 104 (a) of the Nigerian Communications Act. In *Nkwocha & 2 Ors v. M Nigeria Ltd & 4 Ors* (2004) 1 TLR, 1, 4 and *Njikonye Esq. v MTN Communications Ltd* (2008) All FWLR (Pt 413) 1343, the plaintiffs approached Court as a result of poor quality of service.

[27] Harry Newton, *Newton's Telecom Dictionary* (15th ed, Miller Freeman, Inc, York 1999) p. 641.

[28] See the Nigerian Communications Act, Section 107 (2).

[29] See the Nigerian Communications Act, Section 4 (1) (b).

eports.[30] Licensees must also comply and cause their agents to omply with the relevant fault repair standards set out in the NCC's quality of service regulations. Licensees must endeavour o give advance warning of anticipated service disruptions or lanned outages, including details of the disruption or outage, ne services and service area affected and any applicable ompensation or other remedies[31]

## ight to Information and Consumer Education

onsumers have the right to receive clear and complete terms d conditions for telecommunications service agreements and sclosure of prices for goods and services, and to affirmatively cept all terms and conditions before being charged for services. ey have the right to be protected against fraudulent, misleading d deceitful information, advertisement or labelling.[32] The otection of the right to be informed and educated about terms d conditions of service enables the customers to make informed oice according to individual customer's needs and wishes. eir right to education provides them with necessary education he environmental, social and economic implications of their ices.

Consumers of telecommunications services should be perly educated even before paying for the services. The right e informed extends to upgrade or migration options. Thus, re services are subject to upgrade or migration options, sumers must be provided with clear and complete information rding the upgrade or migration terms, including any changes rvice performance and any duly approved fees or charges lting from the upgrade or migration.[33]

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Engr. Ernest C.A. Ndukwe, Consumer Rights in the Telecommunications Industry. per presented at the Annual Distinguished Lecture of the Justice Chambers, Faculty aw, Obafemi Awolowo University, Ile-Ife, Nigeria (2008)).

e 13 (2) & (3) of the General Consumer Code of Practice.

. Ernest C.A. Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

e 8 (5) of the General Consumer Code of Practice.

The General Consumer Code of Practice made under Consume Code of Practice Regulation 2007 provides that 'Licensees shal provide consumers with information on their services that complete, accurate, and up-to-date and in simple, clea language'.[34]

Licensees shall also endeavour to respond in a timely manne to consumers requests for information on their services and such information shall be provided free of charge and shall include at least the following:

(a) current service arrangements, including rates and term and conditions for all services offered to the public, sha be readily available in print and electronic form (including on each licensee's website). Such informatio shall also be available at all retail outlets where th licensee's services are sold;
(b) services that are subject to price or tariff regulation b the Commission shall be described in services tariff pag published in an accessible form including being ma available at designated company offices and on th licensee's website;
(c) for those licensees that publish subscriber directories, t terms of service shall be printed in the front of su directories; and
(d) where a licensee seeks any change in the tariff rates f services, affected consumers shall be notified of t proposed price change in an effective manner that, particular, lets them comment to the commission on t

[34] Ibid Code 6 (1). Note also that the NCC established the Consumer Affairs Bur (CAB) in September 2001 to inform, educate and protect the consumers telecommunications services in Nigeria. The Consumer Protection & Advocacy (C is one of the units of CAB that is charged with the responsibility of respondi Consumer complaints and enquiries. See Consumer Inquiries and Complaints <h /www.ncc.gov.ng/>. accessed on 30 August 2010.

proposed changes. After approval by the commission, consumers should also be notified of the resulting tariff changes in an effective manner.[35]

Before entry into any contract for any service, consumers have the right to be provided with a complete description of the services in clear and plain language, avoiding unnecessary technical terms. Where other services are required in order to effectively utilise the service, the consumer must be sufficiently informed of such requirements or service dependencies.[36]

The consumer is also entitled to be provided with information on the service quality levels offered, the waiting time for initial connection and any service area and coverage maps, if applicable. He is also entitled to specific information regarding any compensation, refund or other arrangements which may apply if contracted quality levels are not met.[37]

As regards pricing information, before a contract for service is entered into, the consumer is entitled to be informed of the applicable rates or charges, what the charges include, each part or element of an applicable charge, and the method of its calculation, the frequency of the charge or other circumstances that give rise to the charge and whether the charges to elements thereof are subject to change from time to time, the circumstances of such changes and how the consumer will be informed of such changes.[38] Licensees are also required to provide the consumer with specific information regarding any maintenance services offered and before entering into a contract to provide services, the licensee must inform the consumer if there is any contractual warranty relating to products supplied for use in connection with the service.[39]

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[35] Ibid, Code 6 (2).
[36] Ibid, Code 8 (1).
[37] Ibid, Code 8 (2) & (3).
[38] Ibid, Code 9.

## Right to Safety, Healthy and Suitable Environment

The consumer has right to be protected against the marketing of goods that are hazardous to public health.[40]

In specific regard to emergency services, the NCC has the responsibility to promote and enhance public safety through the use of a particular number which shall be designated as the universal safety and emergency assistance number for telephony services generally.[41]

The need for consumer right to safety is to provide goods and render services, the consumption of which will not be inimical or hazardous to consumer's health and the social well-being at large.[42] The crucial issue is how can an average consumer of telecommunications service know how much unhealthy radiation is being emitted from the handset while making or receiving calls or charging the batteries? Can one assume that a consumer of telecommunications service can know whether tasteless and odourless poisonous and harmful gases or other objects is seeping into his mouth, ear and environment from the handset or base stations?[43] The licensee is duty-bound under section 135(3)(b) of the Nigerian Communications Act to take all reasonable care in connection with installation of network facilities to protect the safety of lives and property.

## Right to Choice

Consumers are not expected to be compelled into accepting telecommunications services. They are entitled to choose whichever services they need, freely and willingly. This right entails the right to be assured access, wherever possible, to a

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[40] Engr. Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

[41] Section 107 (3) (a) of the Nigerian Communications Act.

[42] Adewale, S.A and Bamise J.B., 'The Legal Protection of Consumers of Telecommunications Services'.

[43] Ibid.

variety of goods and services at competitive prices with satisfactory quality.[44] It helps to ensure protection of consumers against monopolistic tendency and practice in the marketplace. It helps to ensure ability and right to choose from varieties rather than a situation of no alternative. Thus, Anti-Trust and Competition legislations are finding a foothold in many economies to protect consumers against price collusion and monopolistic practices.[45]

The regulatory body is to ensure that right to choice is not denied the consumer, by promoting fair competition in the communications industry. The consumer should be able to choose which network is favourable to him and no consumer should be deprived of this right unless in accordance with the Law.

## Right to Complaint and be Heard

Consumers of telecommunications services have right to a fair complaint process. They have right to get fair, inexpensive and quick redress of grievances. They must have accessible knowledge of the complaint process and steps needed to lodge a complaint. They have the right to a consumer-oriented response for complaints and as prescribed by the Consumer Codes of Practice and Regulations.[46] Part VII of the Schedule to the NCC Consumer Code of Practice Regulations 2007 provides for complaints handling. Thus, licensees must provide easily understood information about their complaint processes in various media and formats, and ensure that customers can easily identify how a complaint may be lodged. All customers' complaints are required to be recorded by licensees, and processed in accordance with identified practices and procedures.[47]

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[44] Engr. Ernest Ndukwe, 'Consumer Rights in the Telecommunications Industry'.
[45] Adewale, S.A. and Bamise J.B.,
'The Legal Protection of Consumers of Telecommunications Services'.
[46] Engr Ernest Ndukwe 'Consumer Rights in the Telecommunications Industry'.
[47] Code 39 of the General Consumer Code of Practice.

Licensees are also encouraged to make adequate provis
ensure that people with physical disabilities or other special
are able to access their complaint handling process, incl
ensuring that customers can be easily represented by
representatives in order to make a complaint. Where consu
specifically request assistance in lodging complaints, se
providers are encouraged to provide reasonable assistance

Complaint handling process is provided free of charge u
where investigation of the complaint requires the retriev
records more than 12 (twelve) months old, and where the retr
results in any incremental expense or significant inconveni
to the licensee, and in which case a reasonable charge agree
by the consumers may be imposed.[49]

The complaint process in the Nigerian Telecommunicat
industry as it affects consumer protection is clearly stated in
NCC General Consumer Code of Practice.[50] Thus, the consu
will forward a written complaint which shall be acknowled
by the licensee and acted upon within the prescribed time fra
as stated in the NCC Quality of Service Regulations.[51] T
licensee can acknowledge and respond to a complaint eit
verbally or in writing, but should make reasonable efforts
make the initial response in the manner requested by t
complainant. Non-written complaints can also be accepted a
taken as acknowledged by the licensee at the time the compla
is made by the consumer. [52]

Consumers are entitled to be advised on the expected actio
and timing for investigating and resolving the complai
However, in the event the licensee regards the complaint

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[48] Ibid, Code 40.
[49] Ibid, Code 42.
[50] Ibid, Code 41 (1)-(8).
[51] The current of which is Nigerian Communications Act 2003 Quality of Servi
Regulations 2009.
[52] Code 41 of the General Consumer Code of Practice.

frivolous or vexatious, the consumer shall be informed accordingly and if dissatisfied, the consumer shall have the further recourse. In any event, no consumer complaint shall remain unresolved for more than three (3) months. Licensees must implement processes to provide consumers with sufficient information and the means to inquire on the progress of complaints. Such processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent enquiries by consumers.[53]

Consumers must also be advised of the outcome of the investigation of their complaint, and any resulting decision by the licensee. Where a consumer is not satisfied with a decision reached pursuant to a complaint, the licensee shall give the consumer the option of pursuing an identified escalation process by which the decision may be examined by a suitably qualified person in the licensee's organisation. Where the Consumer has already been provided with the benefit of the licensee's escalation process and where there are no further escalation processes, the licensee shall inform the consumer accordingly. In the event that a complaint has not been resolved to the consumer's satisfaction within sixty (60) days of being communicated to the licensee, the licensee must inform the consumer that he or she may refer the complaint to the NCC. Failure to deal with consumer complaints, and any related service, are also subject to the requirements of the Quality of Service Regulations, including payment of any specific service credits or rebates established pursuant to those regulations.[54]

## Right to Timely Installation, Restoration and Repair of Services

Consumers have the right to timely installation of new services, and restoration and repair of existing service. It is the duty of the service provider to implement the facilities and processes needed to permit consumers to report faults 24 hours a day and comply with the relevant fault repair standards set out in the NCC's Quality of Service Regulations. In the event of force majeure such as floods and storms damaging or destroying telecommunications facilities, consumers are entitled to have any fault thereby caused to be rectified within a reasonable time.[55] Where consumer services are not timely restored, the consumer has a right of action. In *Barrister Mike Nkwocha & 2 Ors v. MTN Nigeria Ltd & 4 ors*[56] and *Jeph C. Njikonye Esq. v. MTN Nig. Communications Ltd,*[57] the plaintiffs who were subscribers of GSM services of the defendants sued the defendants for dropped/uncompleted calls resulting from network failures.[58] The observation noted here is that if the defendants had timely restored their network services, perhaps there might be no need for the plaintiffs to approach the Court.

## Right of Privacy

The Nigerian Constitution guarantees right to private life.[59] Thus individual right to privacy cannot be ordinarily trampled upon. Consumers of telecommunications services have right to persona

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[55] Ibid, Code 13.

[56] (2004) 1 TLR, 1.

[57] (2008) All FWLR (Pt 413) 1343.

[58] Although in the 2 cases, the issue: which court (State High Court or Federal High Court) has jurisdiction to entertain the suits arose respectively, in the former it was held that the Federal High Court has exclusive jurisdiction to entertain the suit relying on Section 138 of the Nigerian Communications Act, while in the latter case, the Court of Appeal held that the dispute was founded on contract and therefore the State High Court (and not the Federal High Court) has the jurisdiction to entertain the case. This is despite the fact that the facts of the 2 cases are not too dissimilar.

[59] Section 37 of the Constitution of the Federal Republic of Nigeria.

privacy. They have right to protection from unauthorised use of their records and personal information, and to reject intrusive communications and technology.[60]

In developed countries, anti-spam policies have been developed and Task Force on spam established.[61] Many countries, particularly in the European Union, have chosen to introduce anti-spam legislation within the framework of modification of privacy and data protection laws.[62] Nigeria has absolutely no specific privacy and personal information laws.[63] The need to have specific privacy and personal information laws and regulations cannot, therefore, be overemphasised.

Although a licensee may collect and maintain information on individual consumers reasonably required for its business purpose, the collection and maintenance of such information must be protected against improper or accidental disclosure. Similarly, such information must not be transferred to any person except as permitted by any terms and conditions agreed with the customer or as permitted by any applicable law or regulation.[64]

Also, any telecommunications licensee that collects information on individual consumers must adopt and implement a policy regarding the proper collection, use and protection of that information and ensure that any other licensee or person with whom they exchange or otherwise disclose such information have adopted and implemented an appropriate protection of consumer information policy.[65]

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[60] Ernest Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

[61] See OECD Anti-Spam Regulation published on 15th November 2005 under the responsibility of the Secretary-General of the OECD.

[62] Ibid.

[63] See Paul Usoro, 'E-commerce in Nigeria: How to move Forward. Legal Framework for the Introduction of E-commerce <http://www.paulusoro/Publication/E-commerce.com >accessed on 24 July 2010.

[64] Code 35 (g) and (h) General Consumer Code of Practice.

[65] Ibid, Code 36.

## Right to Accurate, Clearly Worded and Organised Bill

Consumers have the right to be accurately billed for service they subscribed to.[66] Before a contract for service is entered into the telecommunications operator is duty-bound to inform the consumer of the applicable rates and charges, what the charges include, elements of the charge and the method of calculation of the charge. The consumer is also entitled to be informed of the frequency of the charge or other circumstances that give rise to the charge and whether the charge or elements of the charge are subject to change from time to time, the circumstances of such change and how the consumer will be informed of such changes.[67]

Code 21 of the Nigerian Communication Act, General Consumer Code of Practice provides for the general principles of consumer billing and charges thus:

A Licensee shall at all times endeavour to-

(a) ensure that billing is accurate and timely;
(b) ensure that billing accuracy is verifiable;
(c) ensure that sufficient information shall be on the bill or otherwise readily available to the consumer for verification of the bill without any charge;
(d) ensure that upon a *bona fide* request from a consumer, the licensee shall inform or provide the consumer with timely, accurate and current information about its billing terms and conditions and options relevant to that consumer;
(e) retain records of a consumer bill and related charges for a minimum period of twelve (12) months; and
(f) in interpreting the obligations described in this section, references to "billing" or "bill" include the licensee

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[66] Earnest Ndukwe,
'Consumer Rights in the Telecommunications Industry'.
[67] Code 9, General Consumer Code of Practice.

systems for recording and processing any prepaid transactions, including the debiting of call charges against prepaid card balances.

The consumer is also entitled to have access to itemised details of all charges and licensees must ensure that itemised details contained in the previous bills are available for 12 months or any longer period required by law.

A licensee must not charge consumers for bills or billing related information, except where the customer requests information not required to be provided under the General Consumer Code of Practice[68] and licensee must inform consumers of any applicable charge resulting from their billing requests and obtain the consent of the consumer before any charge is imposed.[69]

A licensee must also process and issue bills within 30 days of the closure of each billing period, and a bill must include all charges incurred during the billing period.

Code 24 of the General Consumer Code of Practice, however, provides for exceptions to the processing and issuance of bills within 30 days of the closure of billing period. The circumstances are where:

(a) there exists a separate agreement with the customer to the contrary; or

(b) there is a delay as a result of the inclusion by the licensee of information from other suppliers or service providers in the bill; or

(c) there is a delay as a result of a change initiated by the consumer such as where the consumer has requested a different billing frequency or billing period; or

(d) there is a delay as a result of the suspension of charges that are in dispute; or

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[68] Such as requests for billing details more than 1 (one) year old

(e) there has occurred a billing system or processing problem in which case the problem shall be rectified and bills issued without undue delay and in accordance with any time period identified by the commission; or

(f) billing is delayed by circumstances beyond the reasonable control of the licensee, such as an event of force majeure.

From the above, it would appear that Code 24 is not applicable to prepaid telecommunications services.[70]

## Right to Redress and Action on Disputed Charges

There is a need to be proper and effective redress mechanism for violating consumer's rights. The consumer has the right to be charged appropriately for services enjoyed by him and where charges are disputed by consumers, there should be timely redress.

Consumers should have the right to express their grievances and seek redress where products or services are not satisfactory. This in essence would guarantee and increase consumers' confidence in telecommunications system and its social and economic benefits.

Where complaint is being investigated on billing or charges dispute, service providers should not impose any disconnection or credit management action regarding the service to which the compliant relates and consumers must have their compliants addressed in a timely manner without harassment.[71]

In an effort to protect the consumer's right of action in telecommunications industry, the NCC is possessed with the power to set up necessary machinery to address consume

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[70] In the United States, Telephone Consumer Protection Act 1991 does not apply commercial SMS text Messages sent to cellular phones. This is exemplified in *Satterfield v. Simons & Schuster*, No. C 06-2893 CW, 2007 U.S. Dist. LEXIS 46325 (N. Cal. June 26, 2007 <http://brownraysman.typepad.com/technolo>, accessed 24 Aug 2010.

[71] Code 44, General Consumer Code of Practice.

disputes. Section 105 of the Nigerian Communications Act provides:

> 105(1) The commission may use any of its powers under this Act in the Resolution of Complaints received from consumers in relation to matters of customer services and consumer protection including but not limited to quality of service or the failure by licensee to comply with consumer code prepared under this chapter.
>
> (2) The commission shall establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees and may, at its discretion, institute alternative dispute resolution processes for the resolution of the complaints or disputes **provided** that the licensee's dispute resolution procedures shall first have been exhausted by the consumer without resolution of the complaint before presentation of the complaint to the commission.[72]

In the exercise of the power conferred upon it by Section 70 of the Nigerian Communications Act and all other enabling powers, the NCC made Enforcement Regulations[73] to carry out its monitoring and enforcement duties and all other functions ancillary thereto. The NCC also made Dispute Resolution Guidelines,[74] pursuant to the provisions of Sections 4(1) and 75(2) of the Nigerian Communications Act. The Dispute Resolution Guidelines provide for Consumer Resolution by Arbitration with Arbitration Rules, Mediation Procedure Rules and Rules for the Arbitration of Interconnection issues and disputes.

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[72] See also Code 53 of the General Consumer Code of Practice.
[73] Nigerian Communications Act, Enforcement Regulations 2004.
[74] See Nigerian Communications Commission Dispute Resolution Guidelines 2004.

# 6 Interconnection

Communications facilities and services of different licensees of telecommunications must be made available to each other for effective and meaningful interconnectivity and supply of telecommunications services. Access in telecommunications services forms an indispensable discourse in telecommunications. Provisions of access enable a telecommunications licensee to have access to another licensee's communications facilities and services for the purpose of providing telecommunications services. Such facilities and services include the connection of equipment, access to physical infrastructure such as buildings, ducts and masts. And because of the all-important roles being played by access in telecommunications, access is controlled by the Nigerian Communications Act, and subject to any exception as may be determined by the Nigerian Communications Commission (NCC) and duly published, a network facilities provider and a network service provider are bound to provide access to their network facilities or network services listed in the access list[1] to any other network facilities provider, network service provider, applications services provider or content applications service provider, who makes a written request for

[1] The facilities and services which may be included in the access lists are network facilities, network service and other facilities and services that facilitate the provision of network services or applications services, including content application services. See Section 102(1) of the Nigerian Communications Act.

access to such network facilities provider or network service provider on reasonable terms and conditions.[2]

## Access and Interconnection

The access provided by one provider[3] to another provider must be of at least the same or more favourable technical standards and quality provided on the first provider's network facilities or network service.[4]

The NCC also maintains a register of network facilities,[5] network services[6] and other facilities which facilitates the supply of network services or application services,[7] including content applications services[8] included in the access list.

Access and interconnection are indispensable for logical linking of telecommunications services; hence the provisions relating to interconnection under the Nigerian Communications Act, including the powers of the NCC thereunder, applies *mutatis mutandis* and extends to access provision and issues ancillary thereto.[9] By extension, therefore, any regulation or guideline

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[2] Section 101(1) of the Nigerian Communications Act *Cap. N97, Laws of the Federation of Nigeria (LFN) 2004.*

[3] Known as the first provider.

[4] Section 101(2) of the Nigerian Communications Act.

[5] Network facilities mean any element or combination of elements of physical infrastructure used principally for or in connection with the provision of services but does not include customer equipment.

[6] Network Service is a service for carrying communications by means of guided or unguided electromagnetic radiation.

[7] Applications Service means a service provided by means of, but not solely by means of one, or more network services.

[8] Content applications service is an application service which provides content while content itself is any sound, text, still picture, moving picture or other audio-visual representation, tactile, representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved, or communicated electronically.

[9] See Section 103 of the Nigerian Communications Act. The provisions relating to Interconnection under the Act are contained in Sections 97, 98, 99 and 100 of the Nigerian Communications Act and they relate to interconnection agreements, registration of interconnection agreements, interconnection regulations and disconnection of interconnection.

e pursuant to the powers of the NCC to make regulations guidelines on interconnection also applies to access *mutatis ndis*. It is in this regard that focus shall be on interconnection oid repetition in the applicability of the provisions of the o access and interconnection.

In the telecommunications sector of the economy, the peting and complementary technologies are wired, wireless satellite. Obviously, the consumer determines the types of mission he or she wants, and at what speed and clarity, e necessary.[10] In any given nation, telecommunications ators provide the technological means for a fee, presumably manner affordable, simple, flexible and transparent to all cribers so as to enhance their economic productivity and onal pleasure.

As a result of the economic productivity and development, pivotal and dynamic roles being played by ommunication, it cannot be an overstatement to conclude elecommunication is the engine of the world economy with actions in millions of dollars being done everyday over the hone, by fax, by electronic mail and the Internet.[11]

In order to ensure that existing multiple ommunications operators play fair and square and act onsibly among themselves and satisfy the subscribers within rticulated national interest, a national regulatory authority ts with the primary responsibility of regulating the ommunications sector in a given economy.[12]

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olaji Aluko, 'Resolving the Interconnectivity Battle in Nigeria- Some Suggestions.' ://www.com./ publication/ aluko/ resolving- interconnectivity. htmkwenu!>accessed 7 February 2005.

communications & Information Technology Practice Group<www.itlaw. trath.ac.uk/distlearn/downloads> accessed on 15 October 2005.

egulatory body is Nigerian Communications Commission established vide Section of the Nigerian Communications Act 2003 while an International Regulatory ority is International Telecommunication Union (ITU). The ITU is an agency of nited Nations (UN).

It cannot be gainsaid that the world is fast becoming a global village and a necessary tool for this process is evidently communications of which telecommunication is a key player. The quantum of development in the telecommunications industry all over the world is very rapid as one innovation replaces another in a matter of weeks. A major breakthrough among the competing and complementary technologies in this regard is the Wireless Telephone System (WTS) which comes in either fixed wireless telephone lines or the Global System for Mobile Communications (GSM).

What is special about telecommunications is interconnectivity as telecommunications systems have to be technically compatible with each other and have to be actually interconnected, and this results in there being a major emphasis on international standards and harmonisation.[13]

To a large extent, the benefit of telecommunications depends on the ability to communicate with others in changing circumstances and in response to a need that may not be foreseeable[14]

## Rights and Obligations of Interconnection

The overriding objective of the national telecommunications policy is to achieve the modernisation and rapid expansion of the telecommunications network and services. This will enhance national economic and social development, and integrate Nigeria internally as well as into the global telecommunications environment. Telecommunications service should accordingly be efficient, affordable, reliable and available to all. It is as a result of the essence and objective of telecommunications policy that the Federal Government of Nigeria actively liberalised the telecommunications market and encourages participation of the private sector at all levels.[15]

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[13] Colin D. Long, *Telecommunications Law and Practice* (2nd Ed., Sweet and Maxwell London 1995) p. 3.

[14] Ibid.

[15] Mobolaji Aluko, 'Resolving the Interconnectivity Battle in Nigeria- Some Suggestions

is part of the economic and technical regulation of the NCC at requires every licensed telecommunications operator to have andatory access to technically adequate and economically ficient interconnection with all other operators.

As a result of this, in exercise of the power conferred on it Section 26 of the Nigerian Communications Commission Act 92, as amended, and of all other powers enabling it in that half that NCC with the approval of the Minister of mmunications made the Telecommunications Networks erconnection Regulations 2003.[16]

The Regulations provide for the rights and obligations of y telecommunications operator to interconnection cordingly, the Regulations provide that a licensed ecommunications operator shall, on receipt of a request for erconnection from another licensed telecommunications erator, have an obligation to interconnect its ecommunications network with that of another licensed communications operator's network in accordance with the nciples of Section 97 of the Act, the Regulations and delines on interconnection adopted by the NCC.[17]

It should, however, be noted that the NCC may, in its retion, limit the obligations required under the Regulation ed above in any of the following circumstances:

a) if an interconnection agreement is prohibited by law;
b) if the licence issued to an operator does not authorize the services for which interconnection is requested;
c) if the requested interconnection is rendered impossible as a result of technical specifications;

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mmencement date is 20th May, 2003. However, the Regulations have been repealed Telecommunications Networks Interconnection Regulations 2007, and for the e of this chapter, the Telecommunications Networks Interconnection Regulations hall be cited and is hereinafter referred to simply in this section as "the tions" for ease of reference.

tion 1(1). See also Section 96 of the Act

(d) if such interconnection would endanger life or safety;
(e) if such interconnection would result in injury or harm
the property of the licensed telecommunications operat
(f) if such interconnection would hinder the quality
services provided by the licensed operator.[18]

## Interconnection Procedure

There is no universal procedure for interconnection. In Nigeri by the communal reading of Regulation 5(1) and (2) of th Telecommunications Networks Interconnection Regulation 2007,[19] where the requesting telecommunications netwo operator desires to interconnect its telecommunications netwo with that of requested party, a request shall be made to th requested party, and any request so made shall be made in writi and contain sufficient information in relation to the types interconnection; the suggested date for the commencement negotiation; the date from which the interconnection is requir and an estimate of the interconnection capacity require Similarly, such request must be brought to the notice of t commission by the requesting party. Thereafter, the request party shall inform the requesting party in writing within 14 da of the receipt of a request for interconnection if it shall be ab to supply the form of interconnection requested and within t time frame requested by the requesting party.[20]

It is not, however, automatic that once a requesting pa makes its request, the requested party must accept. A requ may be refused on reasonable grounds and shall be justified writing by the party requested to provide the interconnect and the commission shall be notified accordingly.[21]

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[18] See Regulation 1(5)
[19] Hereinafter referred to as "the Regulation" for ease of reference.
[20] Regulation 5 (3).
[21] Regulation 5(4).

Where the parties are unable to agree within 28 days from the date of first request as to the date upon which to commence negotiations, the NCC has the power to compel both parties to commence negotiations on an interconnection agreement on a date as may be prescribed by the commission.[22] It is, however, humbly submitted that this power of the commission appears to be too coercive in nature as parties ought to freely commence negotiation and enter into an agreement and not by compulsion or coercion, if the agreement must be honoured and respected by the parties.

[22] Regulation 5(7).

# 7 Agreements on Networks Interconnection

To date, internationally, no consistent set of guidelines has emerged for network interconnection agreements. Each nation has tackled the issue of interconnection and evolved its own approach in keeping with its own legal principles and regulatory framework. Interconnection agreements among operators are negotiated freely and in good faith and each negotiating party cannot intentionally mislead the other party or coerce the other party into making an agreement that it would not otherwise have made or intentionally obstruct negotiations.[1]

Another essential feature of interconnection agreement is that the agreement must be in writing. Regulation 3(3)[2] of the Telecommunications Networks Interconnection Regulations 2007 provides:

The interconnection agreement shall be in writing and comply with-

(a) the provisions of the Act, these Regulations and any guidelines on interconnection adopted by the commission; and
(b) the principle of neutrality, transparency, non-discrimination, fair competition, cost orientation, universal coverage, access to information, equality of access and equal terms and conditions.

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[1] Telecommunications Networks Interconnection Regulations 2007, Regulation 3 (1).
[2] See also Section 97 (1) of the Nigerian Communication Act, *Cap N97 Laws of the Federation of Nigeria 2004*.

An interconnection agreement would normally be expected to cover certain issues, and it goes that such interconnection agreement shall contain mutual obligations and responsibilities of the interconnecting telecommunication service providers to protect the interest of the users as well as the interconnecting operators.

Issues and procedures to be covered in the Telecommunication Interconnection Agreements include description of interconnection service to be provided terms of payment including procedure of payment points of interconnection force majeure intellectual property rights dispute resolution procedure between parties operation and maintenance procedures confidentiality of non-public part of the agreement publication and access to interconnection agreements duration and re negotiation of agreements assignment of agreements training of staff and termination procedure.

## Filing and Registration of Interconnection Agreements

As part of the interconnection procedure after the parties have crossed the hurdle of negotiations the interconnection agreement shall be made in compliance with the provision of Regulation 3. All interconnection agreements shall be filed and registered with the commission not later than 30 days from the date of the execution of the interconnection agreement.

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[illegible] is the point of the two networks at which they are to be interconnected

[illegible] telecommunications networks interconnection Regulations 2011 Regulation 3 (1) (a) subject to the Regulations

[illegible] See also Section 88 (1) of the Act

By Section 79 (2) of the Nigerian Communications Act, it is the duty of the commission to register the written agreement if it is satisfied that the agreement is consistent with:

(a) the object of the Act i.e. to create and provide a regulatory framework for the Nigerian communications industry and all matters related thereto;
(b) any relevant instrument under the Act; and
(c) any relevant provisions of the Act or its subsidiary legislation.

Similarly, by Sections 98(2) & (3) of the Act, the parties to the agreement are bound to furnish the commission with any additional information that the commission may require in respect of such interconnection agreement and upon evaluating the agreement, the commission may require the parties thereto to revise the agreement if, in its opinion, the agreement is inconsistent with the Act, the regulation or the interconnection guidelines or the integrity of the public network.

It is the duty of the commission to maintain a register of all interconnection agreements and such register, in line with Section 80 (2) of the Act, must contain the names of the parties to the agreement, a general description of the matter pertaining to the agreement and the date of the agreement, but not the terms and conditions of the agreement.

## Amendment of Interconnection Agreement

With the approval of the commission, the parties to interconnection agreement are at liberty to amend or modify such agreement. Where such an amendment is necessary, the parties must give a written notice to that effect to the commission accompanied by a copy of the proposed amendment or modification to the agreement. A situation may arise whereby the commission will refuse to give its approval to the amendment or modification sought. In such a situation, Regulation 4(2) provides:

> Where the commission does not request additional information on the modification or does not rule on the amendment or modification of the interconnection agreement within 30 days of the receipt of the notice then the amendment or modification shall be deemed to be approved by the commission.

The above quoted provision is, no doubt, a clear expression of the legislative intention to curtail the powers of the commission so that the default of the commission would not be visited on the parties to interconnection agreement, once the parties have fulfilled their own obligations.

## Termination of Interconnection Agreement and Disconnection

Termination of any interconnection must be strictly in line with the terms and conditions of the interconnection agreement between the parties.[6] A party wishing to terminate the agreement is obliged to give the other party a six-month written notice of its intention to terminate the agreement specifying the grounds of termination.[7] Similarly, in case of any breach of the terms and conditions of the agreement, the requested party shall give to the requesting party three months written notice to remedy the breach and if the party in breach fails to remedy the breach within the period, the requested party may then terminate the agreement without giving further notice.[8] No operator shall, however, terminate any interconnection agreement without the written consent of the commission first sought and obtained.[9]

Where the commission fails or refuses to give its consent to any operator wishing to terminate or discontinue the interconnection agreement after notice has been given it, the

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[6] Regulation 4 (5).
[7] Regulation 4 (6).
[8] Regulation 4 (7).
[9] See Section 100 of the Act and Regulation 4 (8).

egulations do not provide remedy for the aggrieved party. It is umbly submitted that once the party wishing termination or iscontinuance has fulfilled his own obligation and conditions. he fault or neglect of the commission to give consent ought not o be visited on the party; rather, consent should be deemed to ave been given and the termination becomes effective after a easonable period of time so that a willing operator would not e forced to continue operating with an unwilling operator.

The NCC has been given powers under the Nigerian Communications Act to grant approvals for applications made under any circumstance to disconnect or discontinue interconnection with a licensee. However, the commission shall not consider any disconnection request except there is a subsisting interconnect agreement between both parties duly filed with the commission.[10] The commission shall, in granting approval for the disconnection of an operator, be guided by the need to ensure that the interest of consumers and public are protected and the need to entrench good corporate governance practices among operators.[11]

Every telecommunications operator has a right to apply to the commission for approval to disconnect an interconnected operator where:

(a) there is a failure or refusal to settle interconnection indebtedness;
(b) an interconnection agreement has been terminated in accordance with the terms thereof;
(c) there is a fundamental breach of interconnection agreement;
(d) the respondent is engaged in acts contrary to the terms of its license as may be determined by the NCC.

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[10] NCC Guidelines on Procedure for Granting Approval to Disconnect Telecommunications Operators, Section 2.
[11] Ibid, Section 2 (3).

(e) for any other reasons established under the Act or any subsidiary legislation made by the Commission.[12]

Where a determination is made on the merits that a request for approval to disconnect should be granted, the commission reserves the right to authorise an applicant to partially disconnect the respondent on terms to be decided by the commission. Where the discretionary power to approve partial disconnection is not exercised, the commission shall grant approval for disconnection upon due consideration of the application for approval to disconnect. In any event, where approval for partial disconnection is granted, if the commission is not satisfied with the remedial efforts made by the respondent subsequent to the approval, the commission may grant approval for total disconnection of the respondent.[13]

## Resolving Interconnectivity Disputes

The problem of interconnection among network service providers usually revolves round sharing the revenue that accrues from calls generated from one network that terminates in another network. Failure to agree by the interconnecting parties may resort to the regulatory authority resolving the dispute.[14] But in practice, most regulatory authorities have their resources stretched quite enough by dealing with specific tasks assigned to them under the law. In some cases, the contracting parties may need to have recourse to the court of law or other alternative dispute resolution procedures such as arbitration, conciliation, mediation or multi-door courthouse/room.[15]

In Nigeria, interconnect problems began making headlines at the inception of the Global System for Mobile

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[12] Ibid, Section 3 (1).

[13] Ibid, Section 10 and 11.

[14] Colin D Long, *Telecommunications Law and Practice* (2nd edn, Sweet and Maxwell, London, 2008) p.200. See also Section 73 of the Act.

[15] Ibid.

Communications (GSM) service in late 2001 when the Nigerian Telecommunications Limited posited that it did not have enough capacity to interconnect operators.[16] Today, the matter has grown so bad that the foundation of the country's telecommunications industry is becoming threatened as the survival of many operators is threatened by the development.[17] The problems start even right from the negotiating stage.

It is not uncommon that a disagreement ensues between telecommunications operators in respect of interconnection, and in such a case an attempt is first made to resolve the dispute between the parties through negotiations or other alternative dispute resolution mechanism. Where no agreement[18] is reached within the specified period, either party may appeal to the commission and the commission shall decide on the case, taking into consideration the interest of both parties.[19] Such an appeal shall be made in writing, setting out the areas of agreement and dispute, including but not limited to when interconnection was requested, what telecommunications network or service offerings were requested and on what issues agreement failed to be reached.[20]

Upon filing an appeal by any of the interconnecting parties, the following steps shall be taken:

(a) the commission shall give the parties concerned the opportunity to state their case;

(b) a preliminary enquiry phase shall be introduced when initial consideration is given, so that the commission can decide if there is a case to answer or to proceed to a detailed investigation;

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[16] See *The Punch* Newspaper (Nigeria, 05 July 2005) p. 36.

[17] Ibid.

[18] See Section 74(1) of the Act.

[19] Regulation 17 (1).

[20] Regulation 17 (2). See also Section 75(1) of the Act.

(c) the commission shall inform the complainant of the outcome of the preliminary enquiry phase within three weeks;
(d) the preliminary enquiry phase shall be followed by an investigation phase involving the gathering of analysis and assessment of more detailed information;
(e) the commission may require written argument with supporting facts and research, if necessary, to assist in clarifying the issues in dispute;
(f) the commission may give representatives of business circles affected by the dispute the opportunity to state their case where appropriate;
(g) the commission may also consider inviting other interested parties to comment on the issues. [21]

Having followed the above procedure, the commission shall decide on the dispute based on oral or written submissions and public proceedings. However, a decision can be reached without oral submission, subject to the agreement of the parties concerned.[22]

It is important to note that the hearing of the proceedings of the commission in public is not mandatory. Where the presence of the public may pose a threat to public order, national security or an important business, the public may, at the request of any of the parties concerned or by a determination of the commission be excluded from the proceedings or any part thereof.[23]

The commission has time frame within which to conclude its hearing and will have due regard to the urgency of the matter before it. Thus, Regulation 17(9) provides that the commission may, given the urgency of the case, issue an interim order before

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[21] Regulation 17 (5).
[22] Regulation 17 (6).
[23] Regulation 17 (7) & (8).

arriving at a decision and shall decide the case within four months, beginning from the date of the appeal.[24]

Any party who is not satisfied with the decision of the commission may appeal to the Federal High Court for a review of the decision and a copy of the application shall be lodged with the commission within 30 days from the date of the decision but the decision of the commission remains binding pending the final determination of the appeal by the Federal High Court.[25]

It should be noted that instead of following the above express statutory administrative procedure in settling interconnection problems, some operators head to Court. While some channel their grievances through the Federal High Court, some approach the State High Court. It is humbly submitted that sidetracking the stated procedure is palpably of no moment as the law is settled beyond peradventure that where a statute provides for resort to an administrative remedy in the determination of a dispute, the court cannot competently adjudicate on any suit arising therefrom unless the administrative remedy has been exhausted.[26] In the case of *Blue-Chip Communications Co Ltd vs. Nigerian Communications Commission,*[27] the plaintiff applied

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[24] Note that by Section 76 (1) of the Act, the Commission may resolve the dispute by Alternative Dispute Regulation or such other means and upon such terms and conditions as it may deem fit.

[25] Regulation 17 (12) & (13).

[26] See the following cases: *MTN Nigeria Communications Ltd v. Nigerian Communications Commission* (2004) 1 TLR, 5 at 15-16; Lawal *vs. Oke* (2001) 1NWLR (pt 711) 88 at 106- 107; *Faloye vs. Omoseni* (2001) 9 NWLR (pt 717) 190 at 200-201; *Kasunmu vs. Shitta-Bay & Ors* (2007) ALLFWLR (pt 356) 741 at 783; *Ojogbede v. Ogundipe* (2008) ALLWLR (pt 399) 589 at 599; *Blue-Chip Communications Co Ltd vs. Nigerian Communications Commission* (2004) 1 TLR 23 at 40; *Econet Wireless Nigeria Ltd vs N.C.C.* (Unreported) Suit No. FHC/ABJ/CS/58/2004 delivered on 20th April, 2004 by His Lordship, Hon Justice B.F.M. Nyako. See also Section 88 (3) of the Act. Note that following the procedure stated in the statute for settlement of interconnection dispute is a condition precedent to the jurisdiction of the court before which the matter is brought and if the procedure is not followed the court lacks the prerequisite competence and jurisdiction to entertain the matter.

[27] (2004) 1 TLR, 23.

for a third-Generation (3-G) Spectrum Mobile License from the defendant pursuant to the Nigerian Communications Act 2003. The defendant refused to grant the application explaining that there is a Five-year Exclusivity Contract between it and the GSM operators by reason of which no mobile licence could be issued within the period. Being disgruntled by the defendant's decision the plaintiff commenced an action at the Federal High Court, Abuja challenging the defendant's decision. The issue arose whether the suit was competent in view of the fact that the plaintiff did not complain against the defendant administratively. In striking out the case, the Court, per Stephen Jonah Adah J., held:

> There is no evidence of the fact of compliance in this case. The plaintiff in his affidavit never alleged that he has followed the process of review of the decision he has brought to Court in this case under the Communications Act 2003 before accessing this court. In this situation therefore the action is incompetent.[28]

It is equally of court's jurisdictional importance to note that it is immaterial whether telecommunications matters involve interconnection or not, once any matter arises out of the provision of the Nigerian Communications Act 2003, the Federal High Court has the exclusive original jurisdiction to entertain the matter,[29] after the prerequisite administrative procedure might have been exhausted.

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[28] *Blue- Chip Communications Co Ltd vs. Nigerian Communications Commission*(200 1 TLR 23 at 41.

[29] This is the effect of the combined reading of the provisions of Section 251 (1)(s) 252 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Section 138 of the Nigerian Communications Act. See also the case of *Barrister M Nkwocha & Ors v. MTN Nigeria Ltd & Ors* (2004) 1 TLR, 1 at 4.

# 8 Technical Standards and Competition

The importance of technical standards and competition in the telecommunications sector cannot be overemphasised. The workability of telecommunications efficiency is directly connected with the need for network interoperability which the regulator must take seriously. Also, regulations and guidelines in a competitive market are a necessity to avoid lessening competition in the telecommunications market.

## Competition Practices

In Nigeria, there is no direct and specific competition law, yet business combinations are a feature of the economy. Although the law allows merger and business combination, the absence of a competition law clouds the horizon and makes the consumer open to monopolies that will hurt rather than help the economy.[1] Standards are critical to the long term commercial success of telecommunications as they can allow telecommunications products and services from different stakeholders to work together. They also encourage competition and reduce uncertainty in the global telecommunications market place.

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[1] Prof. Bolaji Owasanoye, 'Findings from Review of Laws for Social and Economic Development' (Paper Presented at the Working Session of SPIDEL at the Nigerian Bar Association Annual General Conference on Tuesday August 18,2009 at Ocean view Expo Centre, Eko Hotel & Suites, Victoria Island, Lagos, Nigeria).

In the Nigerian telecommunications sector, the law provides for technical standards[2] and general competition practices[3] with sanctions upon violation of set down rules and regulations made thereto, pursuant to the powers conferred on the regulatory authority. Section 130 of the Nigerian Communications Act provides:

130-(1) Subject to subsection (2) of this section, the commission shall specify and publish to the general public, technical code and specification in respect of communications equipment and facilities that may be used in Nigeria.

(2 The technical code and specifications prepared by the commission under this section shall include-

(a) requirements for network interoperability including the provision of certain network capabilities such as calling line identification capability and pre-selection capability;
(b) the promotion of safety network facilities;
(c) the provision of network facilities or services, including requirements for qualified providers and installers;
(d) the provision of customer requirement and cabling including requirements for qualified installers;
(e) the approval of customer equipment and other access devices; and
(f) the adoption of technical standards promulgated by international bodies.

In specifying and publishing any technical code and specification it is the duty of the Nigerian Communications Commission (NCC) to first conduct a specified inquiry on the proposed code

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[2] See Sections 130-134 of the Nigerian Communications Act *Cap N97 Law of the Federation of Nigeria 2004.*

[3] See Sections 90-95 of the Nigerian Communications Act.

or specifications.[4] However, such inquiry may not be necessary with regard to technical code and specifications that are mandatorily prescribed by international organisations to which Nigeria belongs.[5]

The use of technical equipment or systems must meet global standards and no use of same must hinder network interoperability or compromise public safety.[6]

## Guidelines on Technical Specifications for the Installation of Masts and Tower

Pursuant to the powers conferred on it, the NCC has specified and issued guidelines on technical specifications for the installation of telecommunications masts and tower.[7] The guidelines provide standards to be adhered to by telecommunications services providers/operators, designer, fabrications and installers of telecommunications towers towards ensuring environmental safety and sound engineering practices. They take cognizance of types and constituents of tower structures and also provide a comprehensive data on wind speeds in Nigeria which may be used as reference material for engineers in the design of masts and towers[8].

The siting of mast and tower must take cognisance of the provisions of the law and be guided by the provisions of the collocation and infrastructure sharing guidelines of NCC in such a way as to minimise their number, protect and promote public safety, and mitigate adverse visual impacts on the community. Telecommunications towers above twenty-five metres in height may not be permitted within places designated as residential, and where they are permitted by NCC, they should be placed at

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[4] Section 130 (3), Nigerian Communications Act.
[5] Such as the International Telecommunications Union (ITU).
[6] Section 131, Nigerian Communications Act.
[7] See Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers Issued by the NCC on 9th day of April, 2009. See www.ncc.gov.ng accessed on 24 July 2010.
[8] Ibid, section 1.

a minimum set back of five metres distance to the nearest demise property, excluding the fence,[9] and all towers sited within residential areas must conform to the set back stipulated in the guidelines[10] to mitigate the effect of heat, smoke and noise pollution arising from generating sets.[11]

Where towers and masts are sited without conforming to the set back and height as stipulated by the guidelines, such towers or masts would be removed and the owner of the tower would bear the cost of such removal.[12]

## Telecommunications Installations and Environmental Regulation

Whether telecommunications service providers, operators, designers or installers are really complying with the provisions of guidelines on Technical Specifications for the Installation of Masts and Towers has been a very serious issue. And again, in case of contravention, or non-compliance with the provisions of the guidelines, the issue of which body, among the relevant regulatory bodies, has powers and competence to enquire or sanction the non-compliance has generated a lot of debates bearing in mind that the installation and provision of masts and towers have environmental implications. And bearing in mind that while the NCC is a general regulatory body of Nigerian telecommunications, the National Environmental Standards Regulation and enforcement Agency (NESREA) is a statutory body established specifically as enforcement Agency for environmental standards, regulations, rules, laws, policies and guidelines.[13]

There are regulatory overlaps in the functions of both the NCC and NESREA in relation to environmental implications of the installation of telecommunications masts and towers. The NCC and NESREA had clashed over issues relating to regulatory boundaries with regard to environmental impacts of some telecommunications infrastructures.[14] NESREA had shutdown

base stations of some telecommunications operators for failure to abide by environmental regulations of the country. According to a Deputy Director, Inspection and Enforcement of NESREA, the base stations were too close to residential buildings and posed great dangers to residents and buildings in the vicinity. It was further posited that:

> The emission from the base stations is dangerous. Also the sound of the generating set which work 24 hours nonstop is a source of noise pollution to the residents. The vibration of the equipment can make building structures collapse, as you can see the enclosing fence of the base station is already cracking, the same thing can happen to the buildings in the area.[15]

On its own side, the NCC has maintained that there cannot be telecommunications without having telecommunications masts because there is no infrastructure in place in Nigeria like other countries that have fibres. The then Acting Executive Vice-Chairman of NCC, Dr. Bashir Gwandu, had posited that:

> Without mast and towers there will not be good quality of service and if we do not allow mast and towers in

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[9] Ibid, Section 3 (4) & (5).

[10] That is, where towers in excess of 25 metres in height are permitted, they should be placed at a minimum setback of 5 metres distance to the nearest demised property excluding the fence.

[11] Guideline on Technical Specifications, Section 3(3).

[12] Ibid, section 3(6).

[13] See Section 1(2), National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

[14] See Dayo Oketola, 'NCC, NESREA to set Regulatory Boundaries' The Punch Newspaper (Nigeria 05 July 2010) 36.

[15] Ibid. The NESREA shut down Globacom base station located at OAU Quarters, Maitama Abuja. It also shut down a base station belonging to Etisalat in Abuja on the ground that no Environmental Impact was acquired by the company before erecting the mast. NESREA also shut down MTN base station in Abuja over environmental breaches at MTN base station located at 27, Ashick Jaima Street, Jabi. See Emeka Ezekiel, FG Shuts MTN Base Stations on Environmental Breaches, *The Punch* Newspaper (Nigeria 24 August, 2010) 17.

> these places, we will continue to have drop call in the country. It will not work unless every house in the country is connected to fibres. You will need antennas and once our power stabilises the towers will go.[16]

Fear of likely adverse effects of exposure to base stations for wireless communications devices has continued to be made an issue as penetration grows in the telecommunications industry, yet it has been observed that there have been no proven cases of side effect emanating from exposure to base station or building base stations close to residential buildings.[17]

It has been argued that without base stations in the vicinity, it would be impossible to make or receive calls and maintain the call. The absence of base stations in a vicinity means that subscribers cannot be connected, and that underscores the need for telecommunications installations for mobile connectivity.[18]

In connection with installation of their respective network facilities, all licensees are duty-bound to take all reasonable steps to act in accordance with good engineering practice, protect the safety of persons and property, protect the environment and ensure that the activity interferes as little as practicable with the operation of public utility, public roads and paths, traffic movement and the use of land.[19]

It is humbly submitted that whatever the arguments and regulatory overlap, the codes, rules and regulations guiding the operators within the environment and set-up should be

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[16] See Aminah Mohammed, 'Nigerian Communications Commission, NESREA Clash over Regulation of Telecoms'< www.allafrica.com/stories/201007150188.html> accessed on 20 July 2010.

[17] *IT & Telecom Digest* (Nigeria September 2009) 66. To further allay the fear of the people, stakeholders in the ICT industry had met and concluded that there is no known conclusive scientific evidence to indicate that radiation from mobile phones and telecom masts could cause such dangerous disease such as cancer and other infections. See *IT & Telecom Digest*.

[18] Ibid.

[19] See Patrick Osadebamwen Telecoms Revolution and Environmental Sustainability *Summit* Newspaper (Nigeria 21 July 2010) 20.

sustainable and environmental friendly, while both NCC and NESREA should work out harmonised procedures and practices to ensure that all interests are accommodated for a peaceful roll-on of quality communications services,[20] without necessarily adversely affecting the health of the people.

Instead of fight over statutory responsibilities, and regulatory overlap, NCC and NESREA should endeavour to take hint from what obtains as international practices.[21] Since Nigeria has specific law on telecommunications and generic law on environmental law, both NCC and NESREA should reach a compromise and enter into a memorandum of understanding on the issues or co-author publications, guidelines or codes and set up a joint industry-oversight team.[22]

On competition issues in the Nigerian telecommunications industry, the NCC has the exclusive competence to determine and enforce competition law in the industry. Thus, Section 90 of the Nigerian Communications Act provides:

> Notwithstanding the provision of any other written law, the commission shall have exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general or specific nature, as it relates to the Nigerian communications markets.[23]

Above shows that the introduction of competition in the market place does not mean that regulation is unnecessary. The roles of

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[20] Nigerian Communications Act, Section 136.

[21] In OECD Countries, the regulatory agency and competition authority have explicit coordination and co-operation agreement. See Reliance on competition Law to regulate Telecommunications in OECD Countries http://www.ictregulationtookit.org/en/practicenote.aspx7id=2631 accessed on 28 August 2010.

[22] Just like the NCC and the Consumer Protection Council entered into memorandum of understanding as a result of regulatory overlaps between the Consumer Protection Council and the Nigerian Communications Commission. See http://www.ncc.gov.ng/RegulatorFramework/MOUBETWEENNCCANDCPC.pdfaccessed on 18 August 2010.

[23] Section 90 of the Nigerian Communications Act.

the regulator actually increase once the government authorises competition, particularly during the early stages of transition from the former model of monopoly provision to one of effective competition.

In order to transit to an effective competitive environment regulators must establish a regulatory framework that can resolve disputes, address anti-competitive abuses, protect consumers and attain national goals such as universal access, industrial competitiveness or economic productivity and growth.

While regulations of telecommunications sector ensure stability and accountability, it is not an end in itself. Rather, it is the vehicle to attain, and subsequently sustain, widespread access for effective competition and consumer protection. The liberalisation and introduction of competition in the telecoms market requires strategic policies and regulations that establish an effective regulator, remove explicit barriers[24] to entry and dismantle implicit barriers.[25]

In effect, therefore, regulatory reforms in the telecommunications sector of any economy must include measures aimed at:

- creating independent entities to oversee the introduction of competition in the market and establish regulatory mechanisms for issues such as interconnection, licensing and tariff rebalancing;
- preparing the incumbent telecommunications operators to face competition, including timetables setting deadlines for the termination of market exclusivities;
- allocating and managing nearest resources such as numbers and spectrum resources in a non-discriminating way within the liberalised markets;

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[24] For example, the inability to interconnect with the incumbent.

[25] Such as the potential influence of the incumbent telecommunications operator over the regulator.

- expanding and enhancing access to telecommunications and ICT networks and services; and
- promoting and protecting consumer interests, including universal service and privacy.[26]

In a fully competitive environment, there may be a more limited need for regulations. However, regulatory authorities still have a critical role to play, particularly given the dynamic role of the sector and the unsettled issues that new technologies may introduce into the regulatory environment. Moreover, in certain areas, regulators need to maintain a prominent role because market forces often fall short of creating the conditions necessary to satisfy public interest and objectives such as universal access and service.[27]

## Preventive of Anti-Competition Practices

Unlike in Nigeria where there is no generic competition law, in all Organisation for Economic Co-operation and Development (OECD) countries, the generic competition law applies fully to the telecommunications sector. However, in Nigeria, like most of OECD countries which have telecommunications sector specific laws enforced by a separate national regulatory agency, the Nigerian telecommunications sector specific law is enforced by the NCC.[28]

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[26] See generally Legal and Institutional Framework; Regulation in Transition to Competitive Market<www.ictregulationtoolkit.org/en/Section.1254.html> accessed on 20 July 2010.

[27] Legal and Institutional Framework; Regulation in a Fully Competitive Environment www.ictregulationtoolkit.org/en/Section.1687.html accessed on 20 July 2010.

[28] In virtually all OECD countries, both the national regulatory agency and the competition authority have some responsibility for controlling anti-competitive behaviours in the telecommunications industry. However, both regulatory agency and competition authority have explicit co-ordination and co-operation agreements. Such countries include Netherlands, Korea, the Czech Republic and Norway. See Reliance on Competition Law to Regulate Telecommunications in OECD Countries <http://www.ictregulationtoolkit.org/en/PracticeNote.aspx?id=2631> accessed on 28 August 2010.

Although there is yet no generic competition law, as far Nigerian telecommunications sector is concerned, the Niger Communications Act with statutory instruments made thereun makes fair and adequate provision for general competition a anti-competition practices in the telecommunications sect Thus, a licensee must not engage in any conduct which has t purpose or effect of substantially lessening competition in a aspect of the Nigerian telecommunications market,[29] and sin the NCC has exclusive competence to determine and enfor compliance with competition laws and regulations in Niger telecoms market, the NCC in exercise of its powers, has publish guidelines and regulations concerning competition practices the Nigerian telecommunications sector.[30]

As a statutory measure to avoid anti-competition practice licensees are prohibited from entering into any understandi agreement or arrangement which provides for rate fixing, mark sharing, boycott of another competitor, boycott of a supplier apparatus or equipment or boycott of any other licensee. licensee must also not make it a condition for the provision supply of a product or service in the telecommunications mark that the person acquiring such product or service is also give an option, as a requirement, to either acquire or not to acqui any other product or service either from himself or from anoth person.[31]

As part of the functions of the NCC in Section 4 of t Nigerian Communications Act, the NCC promotes fa competition in the communications industry and protec communications service and facilities providers from misuse market power or anti-competitive and unfair practices by oth service or facilities providers or equipment suppliers.

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[29] Section 91(1) of the Nigerian Communications Act.

[30] See the Competition Practices Regulation 2007 <http://www.ncc.gov..ng/> acces on 30 August 2010.

[31] Section 91 (30 and (4) of the Nigerian Communications Act.

The function of the NCC as paraphrased above shows that competition practice is permitted in telecommunications market, though in qualified terms. This is even manifest from the provision of section 91(1) of the Act itself which provides that:

> A licensee shall not engage in any conduct which has the purpose or effect of substantially lessening competition[32] in any aspect of the Nigerian communications market.[33]

What this connotes is that competition practices are allowed once they do not have the effect of substantially lessening competition. It suffices to say, therefore, that the regulatory framework in place promotes fair competition and protect against misuse of market power or other anti-competitive practices.

In the eyes of the law, the following conducts or practices have been highlighted to be deemed to result in a substantially lessening of competition:

(a) failing to supply interconnection or other essential facilities to a competing licensee in accordance with any interconnection agreement between the parties or any direction, rule or order issued by the commission, pursuant to the Act or the Interconnection Regulation, except under circumstances that are objectively justified based on supply conditions, such as failure to supply, based on a shortage of available facilities;

(b) discriminating in the provision of interconnection or other communications services or facilities to competing Licensees, except under circumstances that are objectively justified based on supply conditions, such as discrimination based on differences in the costs of supply;

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[32] Underlining mine for emphasis.

[33] Section 91 (1) of the Nigerian Communications Act.

(c) bundling of communications services, whereby th licensee in question requires, as a condition of supplyin a service to a competing licensee, that the competin licensee acquire another service that it does not require

(d) offering a competing licensee more favourable terms o conditions that are not justified by cost differences, if acquires another service that it does not require;

(e) pre-emptively acquiring or securing scarce facilities o resources, including rights of way, required by another licensee for the operation of its business, with the effect of denying the use of the facilities or resources to the other service provider;

(f) supplying communications services, at prices below long run average incremental costs or such other cost standard as is adopted by the commission;

(g) using revenues or the allocation of costs from one communications service to cross-subsidise another communications service, except where such cross subsidy is specifically approved of tariffs or charges for the relevant communications services;

(h) failing to comply with interconnection or facilities access obligations, including the Telecommunications Networks Interconnection Regulations 2007, any other interconnection or access terms specified or approved by the Commission, or any interconnection or access related decisions, directions or guidelines of the Commission;

(i) performing any of the following actions, where such actions have the effect of impeding or preventing a competing licensee's entry into, or expansion in, a communications market:

(i) deliberately reducing the margin of profit available to a competing licensee that requires wholesale communications services from the licensee in question, by increasing the prices for the wholesale

communications services required by that competing licensee, or decreasing the prices of communications services in retail markets where they compete, or both;

(ii) requiring or inducing a supplier to refrain from selling to a competing licensee;

(iii) adopting technical specifications for networks or systems to deliberately prevent interconnection or interoperability with a network or system of a competing licensee;

(iv) failing to make available to competing licensees on a timely basis, technical specifications, information about essential facilities, or other commercially relevant information which is required by such competing licensees to provide communications services and which is not available from other sources; and

(v) using information obtained from competing Licensees, for purposes related to interconnection or the supply of communications facilities or services by the licensee in question, to compete with such competing licensees; and

(j) any failure by a licensee to comply with any decision, rule, direction or guideline issued by the Commission, regarding either prohibited or required competitive practices.[34]

spite the anti-competition measures being put in place, the CC still has the power to authorise conducts or practice which y be construed to have the purpose or effect of substantially sening competition if satisfied that the authorisation is in the ional interest.[35] The position in Nigeria is, however, clear

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e Regulation 8, Competition Practices Regulation, 2007.
e section 93 of the Nigerian Communications Act.

and unambiguous that the NCC has the power to regulate competition in telecommunications industry.[36]

## Impact of Competition on the Nigerian Telecommunications Market

The importance of competition guidelines and regulations as instruments in the liberalisation of telecommunications market have consistently called for the introduction and institution of such a legal regime for the generic competition law, having regards to the impact of competition on the telecoms market. Prior to Glomobile's launch in August 2003, MTN and AirTel (then Econet Wireless Nigeria) dominated GSM sector. Both operators charged subscribers fifty naira per minute for calls despite complaints of poor services. They also dismissed pressure to introduce per second billing (PSB), saying it was not immediately feasible. However, the entrance of Glomobile changed the competition landscape. It entered the market place with per second billing from the outset.[37] Now, the telecommunications market is awash with attractive packages that are slowly lowering tariffs and the price of starter packs have crashed tremendously for basic prepaid. The primary result of competition is, therefore, the increase in the national subscriber base.[38]

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[36] Unlike in Mauritius in *Emtel (Mauritius) Ltd v. Ministry of Telecommunications & Others* (2005) 2 CLR, 50, where the issue arose whether the telecom regulatory authority has power to regulate competition. It was held that if the telecoms regulator has authority to license competitors, it plainly has power to impose what it considered to be appropriate conditions to regulate competition between licensees.

[37] See Nigerian Communications Commission, 'Trends in Telecommunications Market in Nigeria 2003-2004'.

[38] Ibid.

With the crash in the price of Subscriber Identity Module (SIM) cards, the number of subscribers is increasing with greater income available to many operators through the sale of recharge cards.[39] Competition has also provided thousands of new jobs and improved the depth and professionalism in the industry.[40]

# 9 Authorisation and Licensing

f the entire primary instruments for the actualisation of the igerian Communications Commission's twin mandate of gulating and promoting private sector participation in the regulated aspects of the telecommunications industry, thorisation and licensing of existing as well as intending private erators of telecommunications services take prominent roles. l telecommunications service operators must be authorised and are required to apply to, the Nigerian Communication mmission for necessary and pre-requisite authorisation and ensing.

## sponsibility of Granting Licences

e Nigerian Communications Commission (NCC) has the tutory responsibility of granting and renewing mmunications licences whether or not the licences themselves vide for renewal in accordance with the provision of the erian Communication Act and monitoring and enforcing pliance with licence terms and conditions by the licensees. so has the function of proposing and effecting amendments cence conditions in accordance with the law.[1]

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n 4 (1) (e) & (f) of Nigerian Communications Act, *Cap N97 Laws of the Federation geria 2004.*

The Commission also has the power to shut down operators who operate and transmit signals without licence.[2] Thus, no person can operate a telecommunications system or facility nor provide a telecommunications service in Nigeria unless authorised to do so under a communications licence or exempted under regulations made by NCC, otherwise, such a person commits an offence and liable to be convicted. Upon conviction of such a person, the property, facilities installation and equipment used by him for the provision and operation of the unlicensed services stand automatically forfeited.[3]

Licences grantable by the NCC are in two categories. It could be class licence or individual licence. Individual licence is further sub-classed as basic licences and major licences.[4]

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[2] Thus, the Commission shut down Cobranet, a telecommunications company based in Lagos, Nigeria and its equipment was disconnected with all its transmission equipment confiscated. See 'NCC Shuts down Illegal Operator' *Nigerian Telecoms News Weekly* (Nigeria 10 (6), 2011) p. 19.

[3] Section 31 of Nigerian Communications Act.

[4] Section 32 of Nigerian Communications Act. See also Licensing, Licence Requirements and Procedures <http://www.ncc.gov.ng> accessed on 25 August 2010. Class licences are granted in respect of sales and installation of Terminal Equipment (including Mobile Cellular Phones and HF/VHF/UHF Radio etc.); Repairs and Maintenance of Telecom facilities; Cabling Tele-Centre/cyber cafe and Public Payphone. Individual licenses in the category of basis licences are granted in respect of Community telephony, internet services, prepaid card calling services, public payphone service, sales and installation and voice mail while individual licences for major licences are in respect of Unified Access Service Licence; Digital Mobile Licence (GSM); Electronic Directory Information Services; Fixed Wireless Access (FWA); Internet Exchange; Interconnect Exchange; Collocation services; National Carrier; National Long Distance Communication (NLDC); Global Mobile Personal Communications by Satellite (GMPCS), Private Network Links e.t.c. See generally, Licensing. List of Licensees <http://www.ncc.gov.ng> accessed on 25 August 2010.

mber of licences have been granted telecommunications tors in respect of the various classes of licences,[5] either for ommunications products or service, and each operator is ced for a specific period of time.[6]

## nsing Requirements and Procedure

icensing requirement process is as follows:

obtain application form for each licence required at a prescribed cost and payable in bank draft to the NCC;
complete the original application form and produce copies (where applicable);
submit the completed application form with the following documents:

i Certificate of incorporation
ii Certified True Copy of Articles and Memorandum of Association
iii Tax Clearance Certificate
iv Feasibility reports on the proposed service
v Passport photograph of authorised representative
vi non-Refundable prescribed administrative fee.

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of the licenced operators include: Nigerian Telecommunications Limited (NITEL); Mobile Limited (Globacom); MTN Nigeria Communications Limited, Celtel ted (now Zain); Nigerian Moblic Telecommunications Limited (MTEL); Multilink communications Limited; Mobile Telecommunications Limited (M-Tel); cellular Nigeria Limited, Starcomms Limited; Bourdex Telecomms; 21st Century nologies Limited; VGC Communications Limited; MTS First Wireless; Startech nections Limited; Swift Networks; Rainbownet; Odua Telecom Limited (Oduatel). generally, Trends in Telecommunications Market in Nigeria 2003-2004.

instance, MTN Nigeria Communication Limited has its operative date as 9th uary, 2001 and expiry date as 8th February, 2016; Celtel Limited with operative 9th February, 2001 and expiry date 8th February, 2016; M-Tel's operative date is 9th February, 2001 while its expiry date is also 8th February, 2016 and Globacom operative date of 1st September, 2002 and expiry date of 31st August, 2017. See erian Communications Commission Digital Mobile Licence <http://.ncc.gov.ng> accessed on 22nd August, 2010.

The licensing procedure leading to the award of licences a permits are as follows:

**Step one:** Obtain application form.

**Step two:** Receipt and acknowledgment of receipt application.

**Step three:** Evaluation of application, and this inclu legal check,[7] licence check,[8] service check business plan,[10] technical plan[11] and organisatio Plan.[12]

**Step Four:** Presentation of project Implementation plans and status report.[13]

**Step Five**: Recommendation.[14]

For a meaningful and effective telecommunications syste telecommunications operators are of necessity required to comp with authorisation and licensing regulation and procedures. Th

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[7] This is to check the *bona fide* status of the applicant in terms of company incorpora and other required/prescribed documents. A search will be undertaken

[8] This is to check and confirm if the applicant holds any licence or permit, or if there previously refused licence anywhere or if application has been granted in the past, to access circumstances as applicable.

[9] To check to confirm that the service for which the licence is sought is available could be licenced.

[10] Note that basic licences and permits may not require the submission of a busin plan. However, submission of business plan is a consideration of all major licence

[11] This is basically to examine technical information given in relation to viability system technology; equipment/apparatus compatibility with existing systems equipm apparatus, previous existence in Nigeria; equipment/apparatus approval elsewh location and coverage of operation etc.

[12] This is necessary to examine organisational structure relative to staffing investme expatriates, as well as training programmes for staff and to examine Organisati capability and competence in terms of experiences of key personnel.

[13] This is to demonstrate the applicant's understanding of the service, ascertain stat project implementation, equipment type-setting, frequency approval, techn partnership etc.

[14] To present the applicant's suitability, or otherwise, for licensing. For the lic requirements and procedure, see generally Licencing License Requirements Procedures <http://www.ncc.gov.ng> accessed on 25 August 2010.

telecommunications regulator also is to ensure that procedure and requirements for licensing and authorisation are updated to ensure global telecommunications standardisation in the sector.

## Revocation of Licence

Without prejudice to any provision of the Nigerian Communications Act, regulations or license conditions and notwithstanding any contrary provision in any license contained, the NCC has the power to revoke any license by giving 3 (three) months notice in writing to the licensee in any of the following circumstances:

(a) If the licensee ceases for a continuous period of 30 (thirty) days at any time after Commercial Launch Date, to provide, in the Licensed Area or any part or location thereof, the service for which the License was granted;

(b) If any amount payable under any License Condition remains unpaid after it became due and remains unpaid for a period of 21 (twenty-one) days after the Commission notifies the licensee in writing that the payment is due;

(c) If the licensee fails to ensure that its equipment is type approved by the Commission pursuant to Section 132 of the Act;

(d) If within 12 (twelve) months of the effective date of the license, the licensee has not commenced full licensed operations to the satisfaction of the Commission **provided** that the Commission would have given prior notice to the licensee specifying the details of the default by the licensee and requiring that remedial steps be taken within 30 (thirty) days of the notice.

(e) If the licensee makes any statement of a material nature in the course of applying for a license which statement is subsequently established to be false or misleading howsoever.[15]

[15] See Regulation 17(1) of the Nigerian Communications Act Enforcement Regulations 2004.

The Nigerian Communications Commission may also, as an alternative to license revocation, impose administrative fines or require that the licensee makes such changes in its management as the commission may consider necessary and within such time as the commission may specify.[16]

[16] Ibid, Regulation 17(2). at the Corporate Affairs Commission, as well as confirmation of the shareholding and board structure of the company.

# 10 Mobile Number Portability

The Nigerian telecommunications sector was liberalised in 2001 by the commercial roll-out of mobile telecommunications services. Since then, the industry has witnessed series of trends and developments. Many statutory instruments in the form of regulations and guidelines have been issued by the regulatory authority, the Nigerian Communications Commission, pursuant to the powers conferred on it by the Nigerian Communications Act. These regulations and guidelines have been made for effective and efficient telecommunications regime and to strengthen the relationships among the service providers on one hand and between the service providers and subscribers of telecommunications services on the other hand. One such area where regulations have been made is in the area of number portability. As a result of the economic effect of mobile telephony which has surpassed its fixed counterpart, the scope of this chapter shall cover only mobile number portability as an emerging trend in the development of mobile telecommunications. This chapter, therefore, shall focus on the definition of number portability, the regulatory framework of mobile number portability, porting process, types of number portability and effects of mobile number portability, among others.

## Mobile Number Portability: A Definitional Perspective

Mobile Number Portability (MNP) is a service that enables a telecommunicationssubscriber to keep his mobile phone number when changing from one mobile service provider to another. This implies that if a subscriber switches between service providers, he does not have to go through the trouble of informing his contacts because his number remains the same.[1] Number portability allows a subscriber to move from one operator to another without changing their numbers. With number portability, subscribers can migrate to a new operator with a supposedly better quality service delivery without changing numbers and without informing their contracts of the change.[2]

Number portability is the facility that enables the subscriber to change his operator, geographical position and/or service type without changing subscriber number.[3] Through process of number portability, subscribers are allowed to choose their preferred network based on such aspects as consumer care, quality of service, value added services and the cost of communicating on the network while retaining their telephone numbers.[4] The process of number portability is called porting and continues to grow in popularity, creating more competitive markets and greater choice for subscribers.

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1 Nigerian Communications Commission,

' Mobile Number Portability Coming Your Way Soon' www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=359&Itemid= accessed on 13 January 2015.

2 'Number Portability'<http//www.telecomsinnigeria.com/2011/06/number-portability.html> accessed on 17 March 2015.

3 Mobile Number Portability Regulations, 2013.

4 Dominic Ooko, *et al*, 'Determinants of Consumer Switching Behaviour in Mobile TelephonyIndustry in Kenya' (2014) 3(5) International Journal of Business and Commerce. Also available at <www. ijbcnet.com/3-5/IJBC-14-3512.pdf> accessed on 19 April 2015.

## Legal Regulation of Mobile Number Portability

The Nigerian Communication Act[5] is the principal legislation regulating telecommunications generally. It suffices to say that the concept of mobile portability is primarily sourced from the same Act. MNP scheme was launched in Nigeria in April 2013. Pursuant to section 70 of the Act, the Nigerian Communication Commission is empowered to make and publish regulations for quality of service standards. The Commission is also vested with the control, planning, administration and management and assignment of the numbering and electronic addressing plan of network services and application services. The numbering and electronic addressing plan may set out rules for the portability of assigned numbers and electronic addresses.[6] It is in this regard that in exercise of the powers conferred on the commission by sections 70 and 128 of the Act that the commission made the Mobile Number Portability Regulations 2013 and the Nigeria Mobile Number Portability Business Rules & Port Order Processes 2013. These regulations were made for effective and efficient implementation of mobile number portability in Nigeria. The Mobile Number Portability Regulations provide a regulatory framework for the operation of Mobile Number Portability in Nigeria. The regulations guide the administration of the Mobile Number Portability system throughout Nigeria and applies to the Number Portability Clearing House Administrator, all licensed telecommunications service provider, other authorised

parties and the subscribers of the various Mobile Service Providers.[7] The objectives of the MNP regulations are:

(a) to ensure an effective and efficient porting regime;
(b) to foster and strengthen the relationships between Mobile Service providers and other authorised parties and to create a harmonious level playing field for all operators;
(c) to safeguard subscribers rights and ensure subscribers' satisfaction with the MNP process;
(d) to sustain quality service delivery by mobile service providers and other authorised parties in order to ensure a seamless launch and continued improvement in the MNP process and by extension, the telecommunications sector in Nigeria; and
(e) to stipulate penalties for non-compliance with the provisions of the regulations in addition or in the alternative to any other penalties that may be contained in the Act or the Enforcement Regulations.[8]

The Mobile Number Portability Business Rules & Port Order Processes 2013[9] is incorporated into the MNP Regulations and always operate in strict compliance with the regulations. Hence, where there is a conflict in the application of the respective provisions of the MNP Regulations and the MNP Business Rules in the implementation of the Mobile Number Portability Service, the provisions of the MNP Regulations shall prevail.[10]

## Types of Number Portability

Number Portability is one of three important mechanisms to enhance fair competition among telecommunications operators and to improve customer service quality, the other two

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[7] Mobile Number Portability Regulations, 2013, Regulations 1 and 2.
[8] Ibid, Regulation 3.
[9] Otherwise known as and called MNP Business Rules.
[10] Mobile Number Portability Regulations, 2013, Regulation 5.

mechanisms being equal access and network unbundling.[11] There are three main types of number portability and these are location number portability, service number portability and operator number portability.[12] With location number portability, a subscriber may move from one location to another without changing his or her telephone number. This type of portability is already implied in mobile phone service.[13] In essence, in location portability, subscribers can change their service location while keeping the same telephone number.[14] With service number portability, a subscriber may keep the same telephone number when changing telecommunications services. Service portability allows the subscribers to enjoy the subscribed service in the same way when they roam outside their home networks.[15] With operator portability, a subscriber may switch telecommunications operators without changing his or her telephone number.[16] This type of number portability is also known as provider number portability. Operator number portability is further subdivided into local number portability in which the subscriber retains his number when changing from one operator to another;[17] mobile number portability, where porting of mobile telephone numbers between wireless operators exists; and non-geographical number

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[11] Yi-Bing Lin, 'Mobile Number Portability' www.cricte2004.electrica.ufpr.br/edu/anterior/cd04/trabI/01233913.pdf accessed on 20 April 2015.

[12] Ibid. See also Er. Neeraj Jindal, 'Mobile Number Portability' (2013) 1 (1), International Journal of Open Scientific Research Kindy Publications www.kindipublication.com/Archives/IJOSR/volInumI/IJOSR-0513-3pdf accessed on 20 April 2015 and Atiya Faiz Khan, 'Mobile Number Portability: Challenges and Solutions' Vol 2, Journal of Emerging Trends in Computing and Information Sciences. Also available at www.cisjournal.org/archive/vol2sl_27.pdf accessed on 20 April 2015.

[13] Yi-Bing Lin,'Mobile Number Portability'.

[14] Atiya Faiz Khan. 'Mobile Number Portability: Challenges and Solutions'.

[15] Ibid.

[16] Yi-Bing Lin, 'Mobile Number Portability'.

[17] For instance, the porting of existing directory number between fixed operators.

portability for porting of service numbers e.g. 080 numbers.[18] In most countries, location portability and service portability are not enforced and only operator portability is implemented. The reason for this is in two fold. First, operator portability is considered essential for fair competition among operators while location portability and service portability are typically treated as value-added services. Secondly, implementation and operation costs can be significantly reduced if service portability and location portability are not considered.[19]

## Porting Processes in Mobile Number Portability

The provision of the mobile number portability service to all subscribers is the collective responsibility of all mobile service providers and the Number Portability Clearinghouse Administrator on a non-discriminatory basis, within the timelines set out in the business rules.[20] The porting process is "Recipient-led" and shall be initiated by the subscriber upon a visit to the recipient operator's representative office, customer care shop or retail point of sale. Only porting request from eligible subscribers shall be processed by the recipient operator.[21] The implication of the above is that porting cannot be done through telephone calls, text messages, online or other electronic means. Every mobile service provider must ensure that its network enables a subscriber to send the porting approval Short Message Service (SMS) at no charge even where the subscriber has zero credit balance.[22] However, the donor operator may not deliver the SMS if the subscriber is already barred or suspended from making outbound calls or sending SMS.[23] Every subscriber is eligible to

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[18] Atiya Faiz Khan, 'Mobile Number Portability: Challenges and Solutions'.
[19] Yi-Bing Lin, 'Mobile Number Portability'.
[20] MNP Regulations, Regulation 15(1).
[21] Ibid, Regulation 15(2).
[22] Ibid, Regulation 15(3).
[23] Ibid, Regulation 15(4).

request for porting his mobile number subject to the following conditions:

(a) in the case of a mobile number which has been ported earlier, a period of ninety (90) days has expired from the date of activation of his mobile number after its last porting;
(b) the mobile number has been registered on the subscriber information database and the subscriber's identity details match those held by the donor operator and the subscriber information database, in accordance with the MNP process requirements determined by the commission in the business rules;
(c) the mobile number is not blocked or subject to restricted service provisions by the current mobile service provider at the time the porting request is submitted;
(d) there is no pending request for change of ownership of the mobile number; and
(e) porting of the concerned mobile number has not been prohibited by a court of law.[24]

Porting may be rejected on the following circumstances:

- where the number being ported is not included within the numbering plan;
- where the number is already a subject of a pending port order from a service provider;
- where the number has been ported within the last 90 days and so cannot be ported again within the 90 days;
- where the number is not associated with the donor nominated in the Porting Approval Request;
- where the number specified for the SMS is not one of the number to be ported;
- where the number being ported is not registered in the subscriber information database;

[24] Ibid, Regulation 16.

- where the mandatory porting data included in the Porting Approval Request does not match with the data held by the subscriber information database;
- where the recipient operator has not confirmed that the customer's identity has been verified;
- where the service has been suspended under instructions from the customer;
- where the customer has reported the handset (and by implication the service, including the number) lost or stolen;
- where the number being ported is not in service or has restricted outgoing service for reasons of debt recovery with the customer;
- where the port request is for a list of numbers, but the primary number given is not recognised;
- where the number being ported is no longer with the customer, such as where the number is ceased and is in quarantine or being reallocated.[25]

## Number Portability Clearinghouse (NPC)

The overall success of mobile number portability in Nigeria depends largely on the technical and consultative support from Number Portability Clearinghouse Administrator. The Nigerian Number Portability Clearinghouse serves as a central point and number repository that ensures that numbers can easily be ported among the telecommunications operators. The Number Portability Clearinghouse was set up to be administered by the Number Portability Clearinghouse Administrator. The NPC

[25] See Appendix A to the Nigerian Mobile Number Portability Business Rules and Port Order Processes, 2013. See generally also Section 24 of the Business Rules and Port Order Process.

administrator shall use the Number Portability Clearinghouse for the performance of the following functions:

(a) relaying of messages between the donor and recipient operators and maintaining of status information for each individual and bulk porting transaction;
(b) management of the porting process to monitor the compliance with target porting timelines by the Mobile Service provider;
(c) verification of the validity of porting transactions;
(d) interworking with the Subscriber Information Database to verify subscriber registration status and mandatory data matches to validate subscriber porting transactions;
(e) reception and checking of SMS messages from subscribers confirming the request to port;
(f) communicating with the subscribers and advising them by SMS on the status of their porting request;
(g) real-time broadcasting of information to all mobile service operators of the identity of the recipient operator serving a number after porting for the purpose of updating routing arrangements;
(h) updating of the SIM Registration Database to reflect the migration of successfully ported numbers from Donor Operators to Recipient Mobile Service providers;
(i) collection of logs on all port activities;
(j) collection of statistics on porting;
(k) maintenance of the servicing operator status for every mobile number in Nigeria in real-time to reflect change effected through the completion of porting transactions;
(l) storage of information of the history of each porting transaction excluding any personal subscriber data, which should be deleted once a porting has been completed;
(m) managing daily or weekly porting quotas between the mobile service providers in the interest of ensuring

consistent porting performance and timescales between all Mobile Service Providers at all times;

(n) Maintaining a Reference Data Base of all ported numbers and the provision of download of this information to any mobile service provider, especially new entrants; and management of ancillary porting functions as required, including return to Number Range Holder, cooling off and emergency repatriation process etc.[26]

## Effects of Mobile Number Portability

The effect of mobile number portability is bi-dimensional – it has effects on both service providers and consumers. Mobile number portability has motivated service providers to increase the efficiency of their services in order to retain their existing customers and attract new ones from other service providers. It has equally mounted pressure on service providers to distinguish themselves in the market through continuous introduction of new and attractive products and service packages.[27] In effect, operators with existing pool of strong customer base will be able to retain customers by providing competitive service while new telecoms service providers can survive by providing competitive tariffs. Similarly, MNP increases competition among telecoms service providers.[28] On the part of consumers, consumers no longer have to pay the various costs that accompany change of numbers, such as cost of informing others about the change of number through calls or messages, the cost of having cards, stationery and signs that display the number reprinted and the cost of lost business resulting from lost calls to the old number. Similarly, MNP has engendered drastic reduction in the various charges and costs of other value added services offered by the telecoms

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[26] Mobile Number Portability Regulations 2013, Regulation 6.

[27] 'Effects of Mobile Number Portability on Telecoms Service and Usage in Nigeria' <http://www.nigerianfinder.com/mobile-number-portability-in-nigeria-mtn-airtel-etisalat-glo/>accessed on 20 April 2015.

[28] Er. Neeraj Jindal, 'Mobile Number Portability'.

service providers. Consumers can now easily switch to other providers without the fear of losing their original phone numbers.[29]

It has been shown that the concept of mobile number portability is part of developments in the Nigerian telecommunications industry. MNP has a great potential to increase competition among service providers and offers the consumer the ease of transfer from one operator to another without the inconvenience of losing his mobile number. Despite the huge benefits of MNP to the consumers and telecoms market, however, the acceptance of the scheme by consumers is still very low due to lack of awareness, the need for consumer to wait for 90 days after porting before another porting can be processed, inability to determine the perfect service provider, the time factor within which to complete the process, loss of outstanding call credits and data balances while porting and the involvement of customer service agent in the whole process, among other factors.

# 11 Disputes Resolution in the Nigerian Telecommunications Industry

The Nigerian Communications Act makes provisions for dispute resolutions in the Nigerian telecommunications sector. Disputes resolution mechanism in this section shall be discussed under three headings viz: dispute resolutions by negotiation by disputing parties; dispute resolution by the Nigerian Communications Communication (NCC) through arbitration and conciliation and dispute resolution by the court.

## Basis of Telecommunications Disputes

Disputes could ensue between two or more telecommunications operators such as dispute arising for failure to pay interconnect indebtedness,[1] refusal to allow interconnection,[2] interconnection charges disputes, sharing of interconnect charges or failure to respect interconnect agreements. It could be between consumers

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[1] The Economic and Financial Crimes Commission sometime questioned some operators over billions interconnect fees allegedly owed to Nigerian Telecommunications Plc (NITEL) by other telecommunications operators while other telecommunications operators also alleged that NITEL owed them for interconnection to their respective networks. See *The Punch* Newspaper (Nigeria, 05 July, 2005) p.36 and *The Punch* Newspaper (Nigeria,16 June, 2005) back page.

[2] By the Cumulative effect of Section 96 of the Nigerian Communications Act and Regulation 1(1) of the Telecommunications Networks Interconnection Regulations 2007, a licensed telecommunications operator is obliged to allow Interconnection with other telecommunications operators on terms and agreements.

and operators such as disputes arising from drop calls, inability to recharge, network congestion, billing and rate, defamatory letter demanding for payment bill, illegal use of telephone line,[3] failure to connect, mast related issues, misleading advertisement, detective equipment, SIM card number blockage as exemplified in *Anyaeji Mary Andrew v MTN Nigeria Communications Ltd*[4] where the appellant (as claimant) had cause to remove her SIM card from her phone in 2007 when her phone was faulty. When she replaced the SIM card in 2008 she could not activate the line and upon complaint to the respondent's office, she was told that the line was blocked when it was inactive. The appellant subscribed to another line. In 2009, someone impersonating her, using the old line called and demanded monies and airtime from her family and friends who had no knowledge of the impersonation. She reported the matter to the police, and the police wrote a letter to the respondent requesting information about the user's identity. The respondent denied receipt of the letter. The appellant instituted an action when the respondent neglected to supply the information to the police to aid its investigation. The trial court found for the claimant but refused the general damages sought on the ground that she failed to specifically prove entitlement to it. Her appeal to the Court of Appeal was allowed and a sum of N5, 000, 000.00 (Five Million Naira) general damages was awarded. Other instances abound in the Telecommunications Consumers Inquiry and Complaints published by the Nigerian Communications Commission.[5] This case can be compared with *Dapo Davies v. MTN Nig Communications Ltd.*[6], where the claimant (a subscriber to the

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[3] See *NITEL v. Prof. Emmanuel Akande Tugbiyele* (2005) 2 CLR, 87.

[4] (2017) All FWLR (Pt. 900) 518. See also *Taiwo Kupolati v. MTN Nigeria Communications Limited* (2016) All FWLR (Pt. 847) 465.

[5] See Consumer Inquiries and Complaints, published by NCC <htpp://www.ncc.gov.ng accessed on 30 August, 2010.

[6] (Unreported) Suit No. i/720/08 delivered on 30th January 2014, per M. F. Oladeinde See also *OlagokeKolawoleSaheed v. MTN Nigeria Communications Ltd* (Unreported Suit No. I/117/10 delivered on 2nd day of November 2015, per O. I. Aiki J.

defendant's telecommunications services) complained of illegal retrieval of his line by the defendant as a result of which he could not make calls with the line, an act which he said was in contravention of his service guide terms and conditions. He, therefore, claimed a declaration that the retrieval of his MTN line by the defendant was illegal and a breach of contract. He equally sought an order of specific performance for restoration and refund of the line and general damages for breach of contract and unlawful retrieval of his line. It was, however, found as a fact that the claimant did not utilise the line for a period more than 90 days before the retrieval in clear breach of the conditions that will make a customer's line liable to be deactivated or disconnected. The retrieval was, therefore, held lawful and did not constitute a breach of contract.

Dispute could also be between the operators and regulatory authority, such as disputes arising out of interconnect rate determination,[7] fixing of interconnection pricing in interconnection between dominant operator and competing operators,[8] propriety of issuance of particular licences,[9] determination of compensation payable to subscribers for poor quality of service,[10] failure to comply with regulator's directives,[11] contravention of the provision of the law, rules and guidelines, whether a wholly owned subsidiary of a licensee is

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[7] See *NCC v. MTN* (unreported) Appeal No. CA/A/25/2004; *Econet Wireless Nigeria Ltd v. NCC* (2004) 1 TLR,42, *Econet Wireless Nigeria Ltd v. NCC* (unreported) Appeal NO. CA/A/83/2004, *Econet Wireless Nigeria Limited v NCC* (2004) 1 TLR, 17, *Econet Wireless Nigeria Limited v NCC* (NO.2) (2004) 1 TLR, 24.

[8] See *Telecom Corporation of New Zealand Ltd v Clear Communications Ltd* (2004) 1 TLR, 54.

[9] See *Bluechip Communications Co. Ltd v. NCC* (unreported) Appeal No. CA/108/M/ 2004, *Bluechip Communications Ltd v. NCC* (2004) 1 TLR,23.

[10] See *Celtel & Anor v. NCC* (unreported) Suit No: FAC/L/CS/909.

[11] See schedule to Nigerian Communications Commission Enforcement Regulations 2004 http://www.ictregulationtoolkit.org/en/Publication.1354.html accessed on 20 July, 2010.

bound to obtain separate licence[12] *et cetera*.[13] Disputes could also be between government and operators such as enacting laws which are *ultra vires* or unconstitutional.[14] And of course, there could be dispute with respect to acquisition of landed property by the operators for their operations, especially in the erection and installation of telecommunications mast and towers[15] or between the operator and other contractors such as can be seen in *MTN Nigeria Communications Ltd. v. Wigatap Trade and Investment Ltd*[16] where the plaintiff/respondent claimed, *inter alia*, an order of specific performance compelling the defendant/appellant to comply with and implement its contract entered into with it by computing, rendering an account to the plaintiff and crediting all the lines warehoused by the plaintiff with all charges paid in excess of the agreement, paying the agreed commission on the airtime generated monthly by the defendant on the lines and the unpaid expenses and passage costs outstanding incurred by the plaintiff, payment of the commission recovered by the plaintiff on behalf of the defendant under another contract and the anticipated income on the contract, general damages for libel and pre-interest and post judgement interest on the sums. Although the trial court entered judgement in favour of the plaintiff in the sum allegedly admitted by the

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[12] See *Emtel (Mauritius) Ltd v Ministry of Telecommunications & Ors* (2005) 2 CLR 50

[13] A person may be liable for fine for non-compliance with the NCC's directives or guidelines.

[14] See *Lagos State Government & 4 Ors v. Registered Trustees of Association of Licensed Telecoms Operators of Nigeria (ALTON)* (unreported) Appeal No: CA/L/769/2007.

[15] This is exemplified in the case of *Abel Anene Ughamadu v. Hajia Inoh Ibrahim & MTN Nigeria Communications Ltd.* (Unreported) Suit No. KGS/AJ/01/2012 delivered on 22nd February, 2013, per F. Ajayi J. where the claimant sought, among other reliefs, a declaration that the defendants trespassed unto his property by erecting mast on it and therefore the court should give an order directing the defendants to remove the 2nd defendant's mast from the claimant's property. The court granted the claimant's reliefs. See also *Alhaji Salami Adebisi v. MTN Nigeria Communications Ltd & Anor* (Unreported) Suit Ni. KWS/OF/32/2011and *Mr. Adetunji Adeniran & Anor v. MTN Nigeria Communications Ltd* (Unreported) Suit No. KWS/424/2014.

[16] (2013) All FWLR (Pt. 684) 123.

defendant, the judgement was upturned on appeal on the ground that the alleged admission made by the appellant cannot be said to be full, clear and unambiguous and, therefore, the case ought to have proceeded to trial.

## Dispute Resolution by Negotiation

Negotiation is any form of effort adopted with the sole purpose of arriving at a compromise. Negotiation involves some form of bargaining by parties to a dispute whereby one party concedes a particular position in return for certain actions or forbearance on the part of another party. Realistic options are evaluated in order to arrive at a mutually agreed resolution of a dispute.[17]

Although NCC has the powers to resolve disputes arising out of telecommunications services, the law provides that an attempt shall first be made by the parties to resolve any dispute between them through negotiation before the involvement of the commission.[18] Where disputing parties are able to settle their dispute amicably, the matter does not go to NCC. However, where parties could not settle, the matter is taken to NCC.

Where a complaint is first lodged with NCC and without initial contact with the operator, the NCC will forward the complaint to the operator concerned for resolution.[19]

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Chief Bayo Ojo SAN, 'Dispute Resolution Mechanism in the Telecom Sector' (2006) Journal on Communications Law and Policy, p. 2 pursuant to Sections 70 and 120 of the Act, the Nigerian Communications (Enforcement Processes, Etc.) Regulations of 2005 pursuant to Section 70 of the Act; the Interconnection Rate Determination made on 2nd December, 2003 with commencement date as 1st January, 2004 and the Competition Practices Regulations 2007 pursuant to Sections 70 and 100 of the Act Section 74(1) of the Nigerian Communications Act.

See Code 53, General Consumer Code of Practice. This is otherwise known as consumer complaint. It could be industry complaint where the complaint is made by one licensee against another licensee for an alleged breach of a Consumer Code or complaints by a group representing consumer interests against a licensee. See Code 54 of the General Consumer Code. See also Section 105 (2) of the Nigerian Communications Act.

## Dispute Resolution by Arbitration and Conciliation

The Nigerian Communications Act is the principal law regulating the telecommunications industry in Nigeria. Other statutory instruments, regulations and guidelines on telecommunications derive their validity from the Act which empowers the commission to make and enforce subsidiary legislations as may be necessary to give full effect to the provisions of the Act.[20] The Act also empowers the commission to issue directions in writing to any person regarding the compliance or non-compliance with any licence conditions or provisions of the Act or its subsidiary legislations.[21] Thus, by Section 73 of the Act:

> The Commission shall have powers to resolve disputes between persons who are subject to this Act (**"the parties"**) regarding any matter under this Act or its subsidiary legislation.

The above quoted provision is in the nature of administrative remedy which must first be exhausted before a party can approach a court of law. In the exercise of its powers to resolve disputes between persons who are subject to the Act, it is strongly observed that the commission has the unfettered discretion to resort to arbitration or conciliation in resolving disputes connected with telecommunications. The commission has the function of:

> examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the

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[20] See the combined effect of Sections 4(1), 70, 99 and 120 of the Act. Thus, in exercise of its powers under the Act of the commission has issued the Telecommunications Network Interconnection Regulations 2003 which was later repealed by the Telecommunications Networks Interconnection Regulations of 2007, pursuant to Section 99 of the Act; the Universal Access and Universal Service Regulations 2007,

[21] Section 4(1) of the Nigerian Communications Act.

> communication industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration.[22]

The above provision is clear that arbitration and conciliation as dispute resolution mechanisms are viable mechanisms in resolving disputes connected with telecommunications. The qualification, however, is that before disputes can be resolved by the commission, the parties must have made an attempt to resolve the dispute between themselves through negotiation.[23]This, no doubt, is a statutory intention to have disputes resolved by Alternative Dispute Resolution rather than a court of law.

In a bid to protect the subscribers to telecommunications network service and ensure good quality of service, the commission also welcomes complaints from subscribers regarding the conduct or operations of licensed telecommunications service providers, and in order to achieve this purpose, the commission has the power to:

> establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees and may, in its discretion, institute alternative dispute resolution process for the resolution of the complaints or disputes provided that the license's dispute resolution procedures shall first have been exhausted by the consumer without resolution of the complaint before presentation of the complaint to the commission.[24]

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[22]Sections 4(1) and 76 (1) of the Nigerian Communications Act.
[23]Section 74(1) of the Nigerian Communications Act.
[24] Section 105(2) of the Nigerian Communications Act.

As a complement to the above, the commission may designate an industry body to be a consumer code for the purpose of consumer affairs (that is, consumer protection and quality of service).[25]

From the foregoing, it appears the powers of the commission are too enormous. This is because an aggrieved party to any dispute arising out of telecommunications can only approach the commission for resolution of the dispute after he might have attempted to settle same between the disputing parties to no avail.

To further buttress this point, even if a party is still disgruntled by the decision of the commission, the party may still apply to the same commission for review of its decision.[26]

The crucial issue is: if the commission commits a wrong against a telecommunications operator or a subscriber, how can the same commission make a fair and just decision?

It is humbly submitted that the principle of nemo judex in causa sua[27] is applicable in all its ramifications in dispute resolution process. Hence, this appears to be a shortfall in the legislative process which needs urgent legislative attention as the commission cannot be a judge in its own cause.

The position is as captured in Nationwide Action against Corruption & Anor v NITEL Ltd & 3 Ors[28] as follows:

The issue as it appears to me is whether a person can seek judicial remedy before seeking the resolution of the dispute by the commission? The NC Act as I had ruled in the Econet case and the MTN cases (citation to be supplied) envisages only judicial review as the form that litigation concerning communication matters would take. This is clear from provision (sic) 86 of the Act.

The procedure to be followed before a matter is due for judicial review includes those set down in section 73-78 of the

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[25] Section 106(1) of the Nigerian Communications Act.

[26] Sections 86-88 of the Nigerian Communications Act.

[27] That is, no one can be a judge in his own cause.

[28] (2005) 2 CLR 76, 85-86.

Act, section 73 is very clear that the commission has the resolving power. The wording in section 75(1) "-and requested by either or both parties to intervene therein" appears to be the issue. To my mind, this bit cannot be read in isolation.

The first thing the law requires to disputing parties is to trying (sic) resolving the dispute before first involving the commission section 74(1). It is only when this fails that section 75 (1) will come into play.

There is no ambiguity in these provisions. An aggrieved person has only judicial review as his remedy before the court and by virtue of section 138 only the Federal High Court has jurisdiction to entertain this. However, before a party can approach the court for judicial review, they must have first attempted to resolve the dispute between themselves when this fails, they could then either both or one of the parties request the commission to intervene and if still dissatisfied, then the decision of the commission could be subject to judicial review.[29]

In Nigeria, therefore, the law allows parties to ventilate their grievances through arbitration or conciliation for resolution of disputes connected with telecommunications.

As part of its efforts at enhancing and achieving its set aims and objectives, and pursuant to its powers to make and publish regulations and guidelines necessary to give full effect to the provisions of the Nigerian Communications Act, the NCC made Dispute Resolution Guidelines in September 2004 which provides for procedure for arbitration and conciliation in resolving telecommunications disputes. Parties may also decide to ventilate their grievances before an arbitral panel or a sole arbitrator. Thus, in MTN Nig. Communications Ltd. V. Mr. Etuk Hanson,[30] there was thunderstorm which struck on the Appellant's cell site installation. The blast affected the installation

[29] See also the following cases: *Blue-Chip Communications Co. Ltd v Nigerian Communications Commission* (2004) 1 CLR 23, 44; *Econet Wireless Nig. Ltd v NCC* (No 2) (2004) 1 TLR 42 ,52.

[30] (2017) 6 SC (Pt VI) 1.

on the Respondent's property causing damages to the said property. Realising the damages caused to his property, the Respondent decided to sue the Appellant before the Akwa Ibom State High Court. However, at the instance of the Appellant, the suit was withdrawn from the trial High Court for reference to a sole arbitral panel as jointly agreed by both parties.

## Court's Jurisdiction in Telecommunications Disputes Resolution

Aside dispute resolution by negotiation, arbitration and conciliation, parties to telecommunications disputes can also approach a court of law for redress. Section 138 of the Nigerian Communications Act provides:

> The Federal High Court shall have exclusive jurisdiction over all matters, suits and cases howsoever arising out of or pursuant to or consequent upon this Act or its subsidiary legislation and all references to "Court" or "Judge" in this Act shall be understood and deemed to refer to the Federal High Court or a judge of the said court.

The foregoing has shown that redress and action by disputed parties may be ventilated through resolution by a court of law. However, it appears that all the enforcement procedures and modes cannot be proceeded with simultaneously; parties must first exploit the possibility of settling the dispute within themselves and if this fails, they proceed to the NCC and ultimately to the court, but not otherwise. This is to ensure that administrative remedy is exhausted before disputing parties can

approach the court otherwise the suit would be incompetent and the court lacks the jurisdictional competence to entertain it.[31]

The crucial issue of court's jurisdiction to entertain matters of telecommunications has always been a subject of controversy. The position of our courts appears unsettled; while it is considered legally right that in view of Section 138 of the Nigerian Communications Act, the Federal High Court has exclusive jurisdiction over all matters, suits and cases howsoever arising out of or pursuant to or consequent upon the Nigerian Communications Act or its subsidiary legislation, it is equally arguable that since issues relating to telecommunications such as drop calls, poor service delivery, network failure, inability to recharge, Subscriber Identification Module (SIM) card number blockade,*et cetera*[32] cannot be divorced of the contract between the consumer and the licensee, the issue is more of contract than mere matters consequent upon the Nigerian Communications Act.

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[31] See the following cases: *MTN Nigeria Communications Ltd v. Nigerian Communications Commission* (2004) 1 TLR 5, 15-16; *Lawal v. Oke* (2001) 1 NWLR (pt 711) 88, 106-107; *Faloye v. Omoseni* (2001) 9 NWLR (Pt 717) 190, 200-201; *Kasunmu v. Shitta-Bay &Ors* (2007) All FWLR (Pt 356) 714, 783; *Ojegbede v. Ogundipe* (2008) All FWLR (Pt 399) 589, 599. See also Section 88 of the Nigerian Communications Act. Following the procedure stated by statutes for dispute resolution is a condition precedent to the jurisdiction of the court before which the matter is brought and if the procedure is not followed the court lacks the prerequisite competence and jurisdiction to entertain the matter.

[32] Other types of complaints usually filed by consumers relate to network congestion, service interruption, billing and rate, airtime, bonus related issue, connection complaint, misleading advert, defective equipment disappearance of credit, mast related issue, sending and charging for multiple Short Message Service (SMS) in place of one, false billing, arbitrary disconnection of service, nonchalant attitude towards genuine complaints, supply and installation of sub-standard equipment and devices, deceptive advertisement, credit depletion, inability to check credit balance, to mention but a few. See Consumer Inquiries and Complaint <http://www.ncc.gov.ng/> accessc, SIM card number blockage and the likes are not matters of simple contract but of telecommunications serviced on 30 August 2010.

The unsettled position of the law in this regard has been exhibited in a number of conflicting decisions of courts. In *Barrister Mike Nkwocha & 2 Ors v. MTN Nigeria Limited & 4 Ors*,[33] the plaintiffs were consumers of telecommunications services provided by the defendants. The plaintiffs claim a refund from the defendants for dropped/uncompleted calls resulting from network failures. They approached the Federal High Court for redress and the issue arose whether the Federal High Court has jurisdiction to entertain the case which dealt with contractual relations between the parties. Relying on Section 138 of the Nigerian Communications Act, 2003, it was held that the Federal High Court has exclusive jurisdiction.

However, in *Jeph O. Njikonye Esq. v. MTN Nig Communications Ltd*[34] where a similar issue arose, it was held that since the dispute is founded on contract, it is the State High Court that has jurisdiction.

In *MTN Communications Ltd. v. Sidney C. Amadi Esq*,[35] the issue before the trial Rivers State High Court relates to illegal blockade of the claimant/respondent's SIM card's number by the defendant/appellant. The appellant tried to exonerate itself from liability by relying on exclusion clause. The court, however, held that the appellant was in fundamental breach of contract and, therefore, exclusion clause cannot avail it. The award of damages of ₦1,000,000.00 by the trial High Court was affirmed by the Court of Appeal. In this case, however, the jurisdiction of the State High Court was not challenged.

It is submitted that since issue of dropped or uncompleted calls, SIM card number blockage and the likes are connected with telecommunications services which apparently are matters arising from, and provided for in the Nigerian Communications Act and its subsidiary legislations, the Federal High Court has exclusive jurisdiction to entertain the claims, notwithstanding the fact that it also relates to issue of contract.[36]

# 12 Challenges of Telecommunications

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. In recent years, 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 organisation of the industry. Thus, a lot of challenges are being faced by the regulation of telecommunications.

Since the liberalisation 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 8.4 billion dollars in overall telecommunications services revenue, which was 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] Despite the bright outlook, the industry has been confronted with a lot of challenges including erratic power supply, acts of vandalism and insecurity of 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.[2] Other challenges facing Nigerian Telecommunications include multiple regulatory regime and regulatory overlap, problem of interconnectivity and price tag regime. The challenges facing the Nigerian telecommunication regulatory regime are too many to mention but the major challenges shall be examined.

## 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

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[1] Dayo Oketola, 'Telecoms Growth: Experts Seek Urgent Harmonisation of Multiple Illegal Taxes', *The Punch* Newspaper (Nigeria 05 July 2010) <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 2010).

[2] Ifeanyi Onuba, 'Multiple Taxation: Imperative for Codification' http://www.nigerianbestforum.com/generaltopics/?p=43096accessed 27 January 2011.

of multi-nefarious telecommunications services. However, multiple regulation and government interference could hinder the sustenance of the growth in the telecommunications sector.[3]

The Nigerian Communications Commission (NCC) is the sector-specific 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.[4] Its functions also include the general responsibility for economic and technical regulation of the communications industry.[5] 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 on the basis of technical specifications and standards prescribed by the commission from time to time.[6]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.[7] 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

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[3] Emma Okonji, 'Nigeria: Challenges of a Telecom Sector despite Achievement' <http://www.allafrica.com/stories/200909290704.html> accessed on 28 July 2010.

[4] Nigerian Communication Act, Section 4 (h).

[5] Ibid, Section 4 (w).

[6] Ibid, Section 4 (l) and (n).

[7] See Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers issued by NCC on 9th April, 2009.

Agency (NESREA) also has statutory duties in the general environmental conducts.[8] NESREA is responsible for the protection and development of the environment, biodiversity conservation and sustainable development in Nigeria's natural resources in general.[9] 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.[10]

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.[11] NESREA has also posited that it will crack down on more telecommunications companies for flouting Environmental Impact Assessment Regulations.[12]

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

[9] NESREA Act, section 2.

[10] See Standard Organisation of Nigeria<http://www.nigeriafirst.org/printer792.shtml>accessed on 17 August, 2011.

[11] Patrick Osadebamiren, 'Telecoms Revolution and Environmental Sustainability' Sun Newspaper (Nigeria, 21 July 2011) p. 20; Emeka Ezekiel, 'FG Shuts MTN Base Stations over Environmental Breaches' The Punch Newspaper (Nigeria, 24 august 2010) p. 17; Aminah Mohammed, 'Nigerian Communications Commission, NESREA Clash over Regulation of Telecoms' <http://www.allafrica.com/stories/201007150188.html> accessed on 20 July 2010.

[12] Emeka Ezekiel, 'Erection of Masts: NESREA Goes Tough on More Telecoms Companies' <http://www.nigeriabestforum.com/generaltopic1?p=52892> accessed on 03 August 2011.

While the Association of Licenced 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.[13]

There is, therefore, the need to work out harmonised 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.[14]

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[13] The Association of Licensed Telecommunications Operators of Nigeria < http://www.altoning.com/docs/Alton%20Comments%20on&20NESREA%20Regulations%20ofor%20Telecoms%20facilitiesl.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.

[14] See Ariyoosu D. A., Legal Regulation and Environmental Impacts of Telecommunications Installations: The Nigerian Experience (Paper presented at the 13 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).

## Inadequate Power Supply

Due to unreliable power supply across the country, telecommunications operators rely on generating plants to power sites and back-end switches.[15] Operators, therefore, have to manage their services. Price fluctuations of gas to fuel generating plants have also always caused hike in the price of telecommunication 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 fuelling is enormous. It is submitted that if the power supply system is stable, the huge amount being spent by operators on fuelling could have been used in upgrading and optimising 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.[16] 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.[17]

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[15] 'Managed Services: Problems, Solutions' <http://www.telecomsinnigeria.com/2010/09/managed-services-problems-solutions.html> accessed on 07 July 2011.

[16] 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. pp. 437-438 <http://www.akamaiuniversity.us/PJST/-2-436.pdf> accessed on 03 August 2011.

[17] Isiaka 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.unilorin.edu.ng/publications/babaita/subscribers%27%20complaints%20and%20Response%20of%20the%20GSM%20Operators%20in%20Nigeria... 03 August 2011.

The situation of power supply has gone worse that further deregulation of the power sector became an urgent necessity. Monopoly of Power Holding Company of Nigeria Plc was broken and Public Private Partnership (PPP) was considered as a measure for the sector.[18] 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.

## Insecurity of Infrastructure

The regulation of telecommunications in Nigeria is being hampered by acts of vandalism of telecommunications equipment and facilities and insecurity of infrastructure generally. 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.[19] 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.[20] The alarming aspect of the issue of security guards at base stations is that their presence has not totally prevented armed robbers, thugs and hoodlums from vandalising and stealing generators and telecommunications equipments. In addition, some base stations have been shut down

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In line with the suggestion of Prof. Bolaji Owasanoye in his paper, '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.

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 (at least, two personnel guide every base station). See Adegoke A.S., Babalola I.T. and Balogun W.A. 'Performance Evaluation of GSM Mobile System in Nigeria' p. 437.

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

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.[21]

Aside addressing issue of vandalism and theft of telecommunications facilities and equipment which hinder quality of telecommunications services, 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.[22]

## Challenges of 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 dialled that will respond. In this

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[21] Ibid.

[22] 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 the facilities and equipment are installed. This will ultimately affect the quality of services, adversely.

situation, the connecting party is often embarrassed to hear 'wrong number' from the other end of the call.[23] In some cases, an established call is abruptly terminated while conversation is still ongoing. 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.[24] 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.[25]

Without interconnectivity and access to network, there cannot be telecommunications. The delay to interconnect to another operator or within the same operator 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.[26]

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degoke A.S., Babalola I.T. and Balogun W.A., 'Performance Evaluation of GSM *Mobile System in Nigeria' p. 438.*

id, 439.

ational Policy on Telecommunications' <http://www.ncc.gov.ng/ionalTelecomsPolicyonTelecommunications.pdf>accessed on 12 September 2010.

r. Ernest Ndukwe, 'Telecommunications Challenges for Nigeria in the 21st Century' ttp://www.ncc.gov.ng/speeches-presentation/EVCS%20prsntaion/nici-rammeEVCSpeech.pdf> accessed on 21 July, 2011.

## 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 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.[27]

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.[28]

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 subsidise 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

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[27] Afeikhena Jerome, 'Public Enterprise Reform in Nigeria: Evidence from the Telecommunications Industry'< www.aercafrica.org/documents/RP129.pdf>accessed on 18 August 2011.

[28] Alubi G.A., 'Telecommunications in Nigeria' <http://www.africaupenn.edu/ECA/alsi_inftl.html> accessed on 07 July 2011.

projects, for evaluating them, for predicting accurately what they will cost and for determining priorities for their execution.[29] The telecommunications tariff should be as low as what an ordinary man can afford.

The National Telecommunications Policy (NTP)[30] has already established the policy direction for tariff regulation in the telecommunications industry.[31] 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 revenue 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.[32]

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blished by the Federal Government in September 2000. See National Policy on lecommunications<http://www.ncc.gov.ng/National Telecoms Policy on ecommunications.pdf> accessed on 12 September 2010.

d, Chapter Six.

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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 always publishing pricing and tariffs 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 the industry regulator.[33]

## Liberalisation Challenge

Telecommunication is at the forefront of the current economic and social affairs. The digitalisation 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.[34]

Today, the challenge of meeting the large and rising demand is being met by moving towards a sector structure that is plural and competitive, with a mix of service providers – private and

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[33] Paul T. Oki, Regulating the Pricing of Mobile Telecommunications Services - The Role of the NigerianTelecommunicationsCommission'<http://www.geplaw.com/media/Publications/Regulating%20the%20Pricing%20of%20Mobile%20Telecommunications%20Services.pdf?phpMyAdmin=17c4d67d23et18bb5773r72bc>accessed 12 August 2011.

[34] Alabi G.A., 'Telecommunications in Nigeria' <http://www.africaupenn.edu/ECA/alabi_inftl.html> accessed on 07 July 2010.

public, using various technologies and offering services tailored to different user needs.[35]

Though liberalisation of the Nigerian telecommunications appears to be the best thing that has ever happened to the country's telecommunication sector, it was long overdue. The pre-liberalisation era was characterised by government monopoly in the provision of telecommunications services, low capacity utilisation, poor telecommunications infrastructure, inability to meet consumers' demands, poor network, over-billing and general lack of innovativeness. But with the full liberalisation of the telecommunications 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.[36]

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) have now responded to this liberalisation

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[35] Ibid.

[36] Mohammed 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 2011.

challenge by becoming corporatised and in some cases also privatised. In order to respond to global competition, joint ventures and other 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.[37]

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. The decrease in communication costs eliminates the barrier that distance used to represent for many businesses. As a result, corporations have many opportunities to locate their businesses anywhere in the world.

## High and Multiple Taxation

Operators in the telecommunications sector of the country's economy 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 telecommunications 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 they are multiple regulation and taxation.[38]

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[37] Alabi G.A., 'Telecommunications in Nigeria.'

[38] 'Multiple Regulation, Taxation and Telecom Development' The Nigerian Telecommunications Weekly Magazine (Nigeria, 06 August 2011)<http://www.nigeriacommunicationsweek.com.ng/details.php?category=telecom&id=3038>accessed on 12 August 2011.

Heavy taxes imposed on telecommunications companies at the Federal, State and Local Government levels have been a major obstacle to the telecommunications operators. It also limits profits, compromises quality of telecommunications services and retards network expansion. Globally, telecommunications industry is one of the most taxed economic sectors.

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.[39] 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.[40] There is an emerging school of thought that the huge opportunities that abound in Information and Communications Technologies (ICTs) in 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)[41] has posited that mobile telephony taxation in sub-Saharan Africa accounts for 35 per cent of revenue of mobile operators in

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[39] Ibid.

[40] Ibid.

[41] An organisation of more than 700 mobile phone operators in more than 220 countries, supported by over 178 equipment manufacturers.

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.[42]

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.[43] 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.[44]

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.[45] In addition to the statutory taxes levied on

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[42] 'Nigerian Telecommunications Sector and the Tax Regime' <http://www.scribed.com doc/14876315/Nigerian-Telecommunications-Law-newsletter-> accessed 27 January 2011.

[43] Ibid.

[44] 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.

[45] 'We expect an End to Multiple Taxation, Power Failure' <http:www.firs.gov.ng/News/We-expect-an-end-to-multiple-taxation,-power-failure.aspx> accessed on 27 January 2011.

operators,[46] telecommunications operators pay Annual Operating Levy (AOL) of certain percentage of earnings to the Nigerian Communications Commission (NCC). They are also required to pay various rates and charges to other Federal Government Agencies,[47] 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 sector 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 alleged refusal to pay taxes and levies.[48] Thus, multiple taxation has been identified as a major threat to manufacturers and investors.[49]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

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Such as Companies Income Tax and Value Added Tax.

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

Nigeria Communications Week's Editorial, 'Multiple Taxations Choking Telecom Companies' <http://www.nigeriacommunicationsweek.com.ng/print.pht?category=editorials&id=3240> accessed on 27 January 2011. See also Emeka Eginam, 'Multiple Taxation Remains Disincentive, Says ALTON http://www.vanguardngr.com/2010/09/multiple-taxation-remains-disincentive-says-alton/> accessed on 27 January 2011.

Multiple Taxation: A Big Threat to Investment' Compass Newspaper (Nigeria, 01 March 2010) <http:www.compassnewspaper.com/NG/index.php?option=com-content&view=articleBid=42302:multiple-taxation-a-big-threat-to-investment&catid=649:industry&Itemid=715> accessed on 27 January 2011.

enhance economic growth and development, especially in the telecommunications sector.

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. It is not only the states and local governments that impose multiple or frivolous taxation; non-governmental organisations are also involved. The area boys are example of non-governmental groups. They are government on their own because if one does not play ball (pay the tax), they can destroy the system.

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.[50]

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 as a challenge is addressed as a matter of urgency.[51]

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[50] Omo-Ettu, 'Multiple Taxation Destroys Telecom Business<http://allafrica.com/stories/201101130769.html> accessed on 13 August 2011.' <

[51] 'Telecom Operators Decry Multiple Taxation' <http://allafrica.com/stories/201004230680.html>accessed on 13 August 2011.

# 13 Conclusion

With the emergence of Global System for Mobile Communications (GSM) in Nigeria in commercial roll-out in 2001, a new regime of telecommunications has been created. Licences have been granted to many telecommunications operators by the regulatory authority. The provision of telecommunications services which hitherto was the monopolistic affairs of the Nigerian Telecommunications Plc (NITEL) has now been liberalised by force of privatisation and deregulation processes. This, in effect, has created an atmosphere requiring an effective and efficient legal framework for telecommunications market. While the available institutional and regulatory structures in the Nigerian telecommunications industry are laced with prospects, the need to look outwardly into international environment cannot be jettisoned; the roles of international regulatory bodies cannot be overemphasised.

Despite the encouraging current market and economic structures of the Nigerian telecommunications sector, the overlapping functions of government agencies and regulatory bodies in the telecommunications industry have left more questions than answers. The way out probably is for the concerned agencies and bodies[1] to reach a compromise by

[1] Such as the Nigerian Communications Commission, National Consumer Council and National Environmental Standards and Regulations Enforcement Agency.

entering into memorandum of understanding to determine wh functions should be performed by which agency or body. better still, amendment of related laws that create concer agencies and bodies on telecommunications matters may needed.

Although Nigerian Telecommunications sector has be deregulated and this has enhanced and generated competiti environment, there should be certain level of strong regulatio guiding the operations of the service providers so as to avoid reversal of the current trend of competitive market instead creating monopolistic atmosphere of few 'giant' servic providers.

The several rights of consumers of telecommunicatio services must be respected by all stakeholders in the industry, i order to attain minimum international standards Telecommunications culture should be imbibed an telecommunicationally disadvantaged areas of the economy mus be reached by the service providers for universal service an access.

In order to have appropriate institutional framework tha will meet minimum international standards, there is a need to always have regulatory reforms in the telecommunicationssecto without necessarily losing focus on the importance and essence of telecommunications policy of having effective and efficient telecommunications service provisions. With the creation of Ministry of Communications and Technology[2] as a tool for regulatory reforms in the telecommunications sector, the sector would be adequately monitored. There is still a need to have a

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[2] The agencies under the Ministry include: Nigeria Communications Satellite Limited, Galaxy Backbone, Nigeria Postal Service (NIPOST), Nigeria Communications Commission and the National Information Technology Development Agency of Nigeria. See Adekunle Adekoya, 'As the Communications & Technology Ministry Takes Off' <http://www.vanguardngr.com/2011/08/as-the-communications-technology-ministry-takes-off/> accessed on 27 August 2011.

separate ministry for telecommunications industry in view of the enormous contribution telecommunication is making in the nation's economic growth and development. However, any reform in the industry must be transparent, coherent and comprehensive to ensure competitive policy in the sector.

Strong effective mechanisms for the enforcement of the law and regulations of telecommunications must be put in place in the fight against violations of telecommunications laws and regulations.

Without prejudice to the roles of the international telecommunications environment, the eventual launch of the National Telecommunications Policy in 2000, which crystallised 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 over 90 million, rising from 400,000 active lines even since 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 years 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.[3]

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[3] Mrs Omobola Johnson (Nigerian Minister of Communications and Technology), 'Telecoms Outpaced Other Sectors in One Decade' (Speech delivered at the 10th edition of Nigeria Telecoms Anniversary Award Night Organised by Publishers of Nigerian Telecomnews 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.

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 organisations to benefit from the enormous advantages of the programmes of such organisations as they affect regulation of telecommunications.[4]

Despite the encouraging current market and economic structures of the Nigerian telecommunications sector, the overlapping functions of government agencies and regulatory bodies such as the Nigerian Communications Commission and the National Environmental Standards and Regulations Enforcement Agency have left more questions than answers. This has resulted in face-off between the two regulatory bodies over their respective statutory functions. 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 know-how and has full understanding of the issues to be addressed as it concerns the telecommunications industry.

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[4] That is why Nigeria has not become a member.

The several rights of consumers of telecommunications services must be respected by the telecommunications operators in the industry, in order to attain minimum international standards. Telecommunications culture should be imbibed and telecommunicationally disadvantaged areas of the economy must be reached by the service providers for universal service and access. The law and several guidelines and regulations published by the NCC should be respected by the operators as well as the teeming subscribers with appropriate sanctions against violation of laid down rules. There must be a contract specifying the quality that the provider must promise to deliver to the consumer. Anything below that promised standard must attract sanctions, regardless of what the cause or causes of failure has been. However, such sanction must be proportional and adequate. If the sanction is proportional and adequate, poor quality of service will be chased out of the field.

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 reduced because the money expended on fuelling 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 liberalisation of electricity power supply and the liberalisation must be embraced with absolute honesty and seen as a change policy. There is, therefore, the urgent need for the Nigerian government to address the epileptic power supply.

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 installations especially in urban areas and other 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 and operational efficiency.

The NCC and the service providers should work in concert to ensure that existing subscribers, who have not registered their Subscriber Identification Module (SIM) and intending subscribers partake in the registration of SIM.

This has become necessary in view of the rising criminality that GSM phones are deployed to in recent times including the upsurge in kidnapping, armed robbery and terrorism. In fact, such negative application of GSM phones is deplorable and can only be curtailed if the NCC and all the service providers insist on SIM registration at the point of purchase.[5]

Operators should upgrade and optimise all existing base stations. If this is done, it will stem call set up failures due to increase in traffic volumes. Upgrading and optimising existing base stations across the country would create room for the network to handle more traffic. If a particular base station is to be taken 'off-line' (either for schedule maintenance, repairs, upgrades, etc.), all neighbouring base stations should have their communication power levels increased. This will increase the coverage area, thereby reducing congestion and dropped calls. When necessary, the facilities in the base stations should be replaced.

In mounting and installing telecommunications facilities and equipment, operators must comply with best engineering practices. This will prevent unnecessary breakdown and collapse

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[5] **10 Years of GSM Revolution in Nigeria** http://www.sunnewsonline.com/webpages/opinion/editorial/2011/aug/10/editorial-10-08-2011-001.html>accessed on 27 August 2011.

of the facilities and equipment. Similarly, appropriate Environmental Impact Assessment[6] 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 specific level of quality of service to be attained by all to avoid harmful effects on other operators and the public being served

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[6] Under the Environmental Impact Assessment Act, *Cap E12 Laws of the Federation of Nigeria 2004.*

at large. There is, therefore, need for an effective monitor and enforcement mechanism in the structural framework managing telecommunications. Furthermore, penalties applica to violation of rules must be commensurate and promptly appl to deter violators.

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