TELECOMMUNICATIONS LAW AND REGULATIONS

Presented by Paul Usoro, SAN
Nigerian Institute of Advanced Legal Studies
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Outline

• History of the laws regulating telecommunications in Nigeria
• Overview
• Scope
• How the telecommunications industry is regulated in Nigeria
• Current laws/regulations/guidelines
• Future trends
• Conclusion
Overview

• Communication as a tool of societal interaction.

• Every basic human right is dependent on communication.

• Distinction between ‘communications’ and ‘telecommunications’. And the gradual global shift from telecommunications to communications.

• This paper will attempt to analyse the regulatory framework of the Telecommunications Industry in Nigeria.
History of Telecoms Law and Regulation

- **1886**: British colonial administration introduced the public telegraphy services.

- **1904**: Wireless telegraphy was governed by the Wireless Telegraph Proclamation No.3 of 1904.

- **1960**: Department of Post and Telecommunications (P&T) under the Ministry of Communications regulated network operation and provisioning.

- **1961**: All earlier laws were repealed by the Wireless Telegraphy Act of 1961.

- **1984/85**:
  - Commercialization of telecoms services.
  - NITEL, the government-owned monopoly operator
History of Telecoms Law and Regulation (Contd.)

• **1992**: Government initiated partial liberalization reforms.
  - NCC Decree 75 of 1992
  - Separation of policy-making, regulatory and operator functions
  - Establishment of NRA, NCC
  - NITEL continued to retain monopoly over voice telephony


• **1999**: Heralded democracy and new policy direction towards liberalization of the telecoms market.

• **2000**: In year 2000 the National Telecommunications Policy was officially launched with the objective of establishing a long term telecommunications market structure in Nigeria in which multiple operators provide services on a competitive basis.
History of Telecoms Law and Regulation (Contd.)

To liberalize the market, the government in its implementation of the Policy encouraged foreign investment and the inflow of capital by:

- eliminating the restriction level of foreign equity participation,
- reduction of import duties on telecommunications equipment from 25% to 5% for two years,
- grant of pioneer status to qualified investors and fiscal incentives to local manufacture of telecommunications facilities.

**2001:** Formal Licensing of NITEL by the NCC
- Issuing of Licenses to four new GSM operators; FWA operators
- NITEL and M-TEL merged in preparation for privatization
- Privatization of NITEL failed. [Privatized in 2006 and reversed in 2009]

**2002:** Licensing of Second National Carrier, Globacom.
2003: Nigerian Communications Act
– The Act repealed all previous legislations including the Nigerian Communications Act.
– established the NCC as the independent regulator.
– The NCC by this Act was also given powers to formulate a proper regulatory framework and the necessary mechanisms to issue licenses.

2003- Publication of Regulations
International Telecommunications bodies to which Nigeria belongs

• **West African Telecommunications Regulatory Authority (WATRA)**
  Nigeria is a member of WATRA whose aim is to develop harmonized ICT policy and regulatory guidelines for use by the ECOWAS countries.

• **International Telecommunication Union (ITU)**
  ITU is the leading United Nations agency for information and communication technology issues, and the global focal point for governments and the private sector in developing networks and services.

  ITU has coordinated the shared global use of the radio spectrum, promoted international cooperation in assigning satellite orbits, worked to improve telecommunication infrastructure in the developing world, established the worldwide standards that foster seamless interconnection of a vast range of communications systems and addressed the global challenges of our times, such as mitigating climate change and strengthening cyber-security.
Wireless Telegraphy Act

• Wireless Telegraphy under the Act encapsulates any means of conveying messages, sounds or visual images or any form of communication from vessels, aircraft or ships. It also covers radio programme.

• License must be granted before any use of wireless telegraphy can be undertaken. A license is also required for any dealing in wireless telegraphy apparatus.

• The WTA also provides for the interception of communication and forfeiture. There are penalties stipulated for non-compliance with the provisions of the Act and as with many outdated Nigerian legislation, the fines are not sufficient in light of today’s realities.

• The duration of licenses granted under the WTA is one year.
Nigerian Communications Act, 2003

• Reforms necessitated independent and effective regulator to aid the transition to competition.

  - Repeal of Nigerian Communications Commission Act [Decree 1991]
  - Establishment of independent NCC with increased regulatory powers; Ministerial responsibility restricted to policy making
  - Spectrum Management vested on NCC
  - Universal Access Service Provision
  - Dispute resolution
  - Interconnection regulation
  - Competition
  - Consumer Protection – Consumer Affairs Bureau
  - Publication of various Regulations by NCC
Nigerian Communications Act, 2003

• The scope of the NCA includes the use of all communication services and networks in whole or in part within Nigeria or on a ship or aircraft registered in Nigeria.

• The provisions of the WTA as regards telecommunications have been transposed to the NCA in section 121(2) and the powers of the Minister as stated in the WTA now vests in and are to be exercised by the NCC.

• NCC is empowered by section 70 of the NCA to make regulations and guidelines to enable it meet the objectives of the Act.

• Regulation is the best way to ensure universal service, through the development and implementation of effective policies which has proven to be fundamental in regulating sectors.

• By section 112, the NCC is to determine a system which shall promote the widespread availability and usage of network services and applications services throughout Nigeria.
Aspects regulated by the NCC

**Licensing**
- By section 31 of the NCA, no person shall operate a communications system or facility nor provide a communications service in Nigeria unless authorised to do so under a communications license or exempted under regulations made by the NCC. The NCC is to be guided by section 33(3) in the issuance of licenses.

**Interconnection**
- Telecommunications operators are by section 96 of the Act mandated to oblige interconnectivity requests by other licensees/operators. This is to be done accordance with the principles specified in section 97 and terms and conditions between the parties in good faith.

- All Interconnection Agreements are to be filed with the NCC within 30 days of execution.
Dispute Resolution

• The NCC in section 73 has the power to resolve disputes between persons who are subject to the Act regarding any matter under the Act or its subsidiary legislation. Further in section 78, the decision of the NCC shall be binding on the parties.

• Decisions reached by the NCC may be enforced by the Court as if the decision is a judgement of such Court provided that the NCC has issued a certificate to the complainant for leave to proceed to the Court for the enforcement of the decision.

• The relevant court is the Federal High Court.

Competition

• The NCC has exclusive competence to determiner and enforce compliance of all persons with competition laws and regulations as it relates to the Nigerian communications market.
Aspects regulated by the NCC (Contd.)

**Competition (Contd.)**

- The Act sets out conduct that may qualify as unfair practices or anti-competitive behaviour in sections 91 and 92.
- Furthermore a licensee shall not, at any time or in any circumstance, make it a condition for the provision or supply of a product or service in a communications market that the person acquiring such product or service in the communications market is also required to acquire or not to acquire any other product or service either from himself or from another person.
- The Act also states that a licensee shall not exploit a dominant position and the NCC may determine that a licensee is in a dominant position in any aspect of the Nigerian communications market. The NCC is empowered to publish guidelines and regulations which clarify how it shall apply the test of “dominant position” to licensees. The guidelines and regulations may specify the matters which the NCC may take into account.
Future trends

The following are suggestions which the NCC should consider providing for:

**Inclusion of Disabled People**
- Other jurisdiction particularly the USA recognise the importance of access to telecommunications for people with disabilities.
- The NCA, as part of its objectives, makes provision for this in section 1(h) by ensuring that the needs of the disabled and elderly persons are taken into consideration in the provision of communication services. So far, there has been no attempt to have special products and services dedicated to the needs of the blind or deaf and the aged.

**Telemarketing**
- The NCC should put the consumers in charge of the telemarketing calls and text messages they receive as has been done by the USA in implementing the Federal Trade Commission’s (FTC) Telemarketing Sales Rule (TSR) which puts consumers in charge of the number of telemarketing calls they receive.
- This is necessary in light of the number of businesses springing up selling telephone number bundles to marketing companies.
Future trends (Contd.)

Required Application Services

• Other jurisdictions have designated application services for emergency services, directory assistance, operator assistance etc.
• The NCA in section 107(1) provides that NCC may determine a list of required application services.
• The NCC is directed by the NCA to take steps to promote and enhance public safety through the use of a particular number. And also to facilitate prompt deployment of seamless and reliable infrastructure for emergency communication needs.

Interception Capabilities

• Section 147 empowers the NCC to determine that a licensee or class of licensee shall implement the capability to allow authorised interception of communications and such determination may specify the technical requirements for authorised interception capability.
Future trends (Contd.)

- **Disaster Plan**
- The NCA in section 149 provides that the NCC may direct a licensee or class of licensees to develop, in consultation with the authorities specified by the NCC, a disaster plan for the survivability and recovery of any services or network facilities in case of a disaster, crisis or civil emergency. This provision is laudable as the rate of natural disasters in the world is increasing and the crisis generated by political violence in Nigeria shows no signs of abating.
CONCLUSION

- The NCA is premised on a good foundation and has salient provisions for the development of the telecommunications industry of a growing country like Nigeria however, much of the implementation of its provisions is vested in the NCC who even though is taking giant strides to realise the objectives of the Act, needs to do more in order to effectively regulate the industry. It has been argued that as the industry develops and the market becomes more competitive, there will be less need for telecoms specific legislation but an increasing reliance on competition legislation for effective regulation of the industry.

- Reform of the telecommunications law in Nigeria has brought about substantial private sector investment, and unprecedented growth in the networks and expanded geographical coverage.

- Regulatory framework must follow the rest of the developed world if Nigeria is not to be left behind the next generation of telecommunications.