



PaulUsoro&Co
LEGAL PRACTITIONERS

LEGAL FRAMEWORK FOR TELECOMMUNICATIONS INFRASTRUCTURE ROLLOUT

Paul Usoro, SAN, FCI Arb.

Delivered at

The Communications Sector Stakeholders Forum

Bristol Palace Hotel

52 Guda Abdullahi Street Farm Center

Kano, Nigeria

13 December 2018



OUTLINE

- Introduction
- Extant Legal Framework for Telecoms Infrastructure Rollout
- Challenges plaguing Telecoms Infrastructure Rollout: Multiple Taxation/Duplicate Legislations
- Role of Stakeholders in resolving the Issues
- Conclusion



INTRODUCTION

- Telecommunications infrastructure refer to the technologies, devices, equipment, facilities, networks, and applications that support communication.
- With privatization, there have been major investments in the telecommunications industry, which till date continue to be utilized by the citizenry.
- Private participation in the telecoms industry came with its attendant consequences, such as activities of GSM service providers some of which are suggestive of customer exploitation.
- This necessitates continual government intervention in the area of licensing, operation and telecoms infrastructure roll out.
- We shall be considering the laws that make these interventions and monitoring possible and how they work in practical terms.



EXTANT LEGAL FRAMEWORK FOR TELECOMMS INFRASTRUCTURE ROLLOUT

- Nigerian legislations on telecoms infrastructure rollout include:
 - Nigerian Communications Act, 2003 – *Chapter IX* has provisions on installation of, and access to network facilities.
 - Telecommunications Networks Interconnection Regulations 2007 also have provisions that impact on telecoms infrastructure rollout and expansion.
 - National Information Technology Development Agency (“NITDA”) Act, 2007 – NITDA is charged, amongst others, with the provision of guidelines to facilitate establishment and maintenance of information technology, and systems application and development in Nigeria: *Sec. 6 of the NITDA Act*.
 - The Cybercrimes (Prohibition, Prevention ETC) Act, 2015 provides for the protection of certain computer systems or networks as critical national information infrastructure.



EXTANT LEGAL FRAMEWORK FOR TELECOMMS INFRASTRUCTURE ROLLOUT

- The Federal Ministry of Communications has midwived policies benchmarked against Nigeria's Vision 2020, which aim to place Nigeria among the top twenty World Economies:
 - The National Information and Communication Technology Policy, 2012 strategizes on pervasive roll out of ICT infrastructure.
 - The Nigerian National Broadband Plan 2013-2018 devotes an entire section to targets, strategies and roadmaps to promote pervasive broadband deployment, adoption, usage and affordability.
- The Critical Infrastructure Protection Bill seeks to establish the Critical Infrastructure Protection Coordinating Committee and the Critical Infrastructure Task Force charged with the responsibility of protecting critical infrastructure; that is people, assets, communications systems that are necessary for national security, economic stability and public safety.
- Perhaps, the Critical Infrastructure Protection Bill was inspired by the Infrastructure Maintenance and Regulatory Agency Law of Lagos State, which regulate utility infrastructure in Lagos State.

CHALLENGES PLAGUING TELECOMS INFRASTRUCTURE ROLLOUT

- Multiple taxation and duplicated regulation are major hindrances to telecoms infrastructure rollout and broadband penetration.
- Other militating factors include –
 - Lack of requisite investment and funding for massive roll out;
 - Land tenure system and procurement of Governor's consent;
 - Lack of adequate security of the infrastructure, manifesting in vandalism and theft;
 - Disruption by communities;
 - Destruction during other infrastructural developments, especially engineering constructions; and
 - Low technical expertise, etc.
- However, we have been asked to focus on multiple taxation and duplicated regulation.



INCIDENCE OF MULTIPLE TAXATION AND DUPLICATED LEGISLATION

- Multiple levies by government is a major disincentive to investors and threatens investment opportunities. It stifles telecoms infrastructure rollout and expansion.
- Taxation in Nigeria is statutory. So, any tax due to be paid by an individual or corporate entity must be authorized and governed by a written statute.
- Incidence of multiple taxation occurs either from -
 - The Federal and State Government
 - Different agencies of the Federal Government
 - Agencies of different states where the infrastructure sits on the boundary of 2 states
 - Taxes under different regulatory and legal framework
- Example of these multiple levies/tariffs in the telecom sector are discussed shortly.



INCIDENCE OF MULTIPLE TAXATION AND DUPLICATED LEGISLATIONS

- The Taxes and Levies (Approved List for Collection) Act Cap T2 LFN 2004, as amended by S.I. No. 25 of 2015 grants the Federal government power to collect National Information Technology Developmental Levy.
- The Act also grants the State Governments power to collect Infrastructure Maintenance Charge or Levy. These levies arguably are only different in names, but not in substance.
- Other incidences of multiple taxation and duplicate legislation include
 -
 - Charge of **Environmental** and **Ecological** levies as separate taxes under the Taxes and Levies Act (as amended, 2015);
 - Payment of Value Added tax and Sales Tax over the same transaction; and
 - Payment of company income tax, education tax and technology tax over the same income, *etc.*



INCIDENCE OF MULTIPLE TAXATION AND DUPLICATE LEGISLATIONS

- Example: to erect a telecoms mast and towers in Lagos, one needs -
 - To pay the Local Government, where the infrastructure site is situate, Tenement Rate/Land Use Charge;
 - To get clearance from the Town Planning office of the Local Government;
 - To procure an Aviation Height Clearance Permit from the Nigerian Civil Aviation Authority;
 - Environmental Impact Assessment (“EIA”) clearance from the Federal Ministry of Environment (“FMoE”);
 - Environmental Audit Report clearance from the National Environmental Standards and Regulations Enforcement Agency.
 - Building Permit (with associated costs) from Lagos State Infrastructure Maintenance and Regulatory Agency (LASIMRA).
- These bodies require payment of prescribed fees, which in most cases, are high. Incidentally too, some of the documentary requirements at the institutions are similar.
- Sometimes, state/local environmental MDAs reject an EIA issued by the FMoE and insist instead it should be obtained from them.⁹



INCIDENCE OF MULTIPLE TAXATION AND DUPLICATE LEGISLATIONS

- The bureaucracy experienced at these institutions are stressful and demotivating.
- Compared to other states, there is reasonable progress in Lagos in view of the role of LASIMRA.
- LASIMRA has put in place a structure by which telecoms operators in the state now deal largely with LASIMRA, for obtainment of permits, in setting up telecoms infrastructure.
- Already, in *Registered Trustees of Association of the Licensed Telecommunications Operators of Nigeria v. Lagos State Government and Ors.* (unreported suit No. FHC/L/CS/517/06). Some telecommunication companies successfully challenged certain sections of the Lagos State Infrastructure Maintenance and Regulatory Agency Law, 2004 on the basis that the law amounted to imposition of tax on their operations.
- Similar actions will follow if government does not rise to address this issue of double taxation.



ROLE OF STAKEHOLDERS IN RESOLVING THE ISSUES

- Firstly, efforts of the NCC in setting up an Industry Working Group on multiple taxation in 2016 is commendable.
- Stakeholders should champion the cause for review and harmonization of all information technology and telecommunication laws in order to ensure that they are streamlined to wholly support and facilitate telecommunications infrastructure rollout.
- A sector-focused legal framework for taxation similar to the Petroleum Profit Tax under the Petroleum Profit Tax Act should be adopted for telecommunications.
- Beyond the measures proposed to eradicate multiplicity of levies/tariffs, Government should also improve on measures to protect/secure telecommunications infrastructure as well as eliminate all barriers to telecom operations and development.



ROLE OF STAKEHOLDERS IN RESOLVING THE ISSUES

- Government should stimulate rollout expansion to the rural and underserved areas, particularly those areas that may not be considered profit-centers by private sector service providers. Incentives and pilot schemes should be promoted.
- Host state and local governments should maintain cordial and mutually beneficial relationships with telecoms operators, especially in relation to permits and approvals for building telecommunications infrastructures.
- Nigerians should be educated on the need to co-operate with government and other stakeholders in eradicating hindrances to telecoms infrastructure roll out and expansion.



CONCLUSION

- Telecoms infrastructure is the platform on which ICT networks and services rest.
- Stakeholders should be more proactive towards taking necessary steps to protect telecoms infrastructure.
- Government should be conscious of the roles telecommunication play in socio-economic growth and development of the nation and therefore encourage telecoms infrastructure expansion by, *inter alia*, doing away with all manners of detrimental multiple taxation and duplicate legislations.
- Also, government should develop incentives for investors that will encourage rapid expansion of telecommunication infrastructure across the nation.



THANK YOU!