AN APPRAISAL OF THE LEGAL FRAMEWORKS FOR BROADCASTING, TELECOMMUNICATION AND SPECTRUM MANAGEMENT IN NIGERIA

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Abstract

The legal frameworks governing broadcasting, telecommunications, and spectrum management in Nigeria play a crucial role in shaping the country's information and communication landscape. This paper provides an overview of the legal foundations and regulatory structures that underpin these sectors in Nigeria. Spectrum management is a critical component of the telecommunications sector, and the NCC is responsible for its allocation and regulation. The legal framework for spectrum management includes provisions for spectrum licensing, monitoring, and interference resolution. Ensuring efficient and fair allocation of spectrum resources is vital for the development of wireless communication technologies and services. This paper provides a concise overview of the legal foundations governing broadcasting, telecommunications, and spectrum management in Nigeria. The legal frameworks have evolved to accommodate changing technological landscapes, foster competition, and protect consumer interest in the overall interest of the Nigerian economy.

Keywords: Broadcasting, Spectrum Management, Telecommunication, Nigerian Communications Commission

1.0 Introduction

Broadcasting, telecommunication and spectrum management are all related to mass communication which is essential to the socio-economic development of any society. The three concepts represent various aspects of the same thing which is the provision of platforms for the exchange of information, ideas, and knowledge among others. Broadcasting refers to the

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distribution of audio or video content, such as television or radio programs, to a wide audience. It involves transmitting signals over the airwaves or through cable or satellite networks[4]. Broadcasting can be done by both public and private entities and serves as a means of disseminating news, entertainment, education, and various forms of media to a broad and often diverse audience.

Furthermore, telecommunication is the transmission of information, data, or voice over long distances using electronic and electrical systems. It encompasses a wide range of technologies, including telephone networks, mobile communication, internet services, and more. Telecommunication systems enable people to communicate with one another, access information, and exchange data across various devices and platforms. Both broadcasting and telecommunication are based on particular frequencies assigned by a designated authority[5]. The process or activities involved in assigning spectrums is referred to as spectrum management.

Spectrum management refers to the regulation, allocation, and assignment of radio frequency spectrum, which is the range of frequencies used for wireless communication. It involves overseeing the use of limited spectrum resources to prevent interference between different users, such as telecommunications operators, broadcasters, and government agencies[6]. Effective spectrum management is critical for ensuring efficient and interference-free wireless communication[7].

Electromagnetic spectrum is not an infinite resource, so it must be properly managed to ensure a country reaps the maximum benefits from this 'shared global resource'[8]. Spectrum relates to the radio frequencies allocated to the mobile industry and other sectors for communication over the airwaves.

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[4]Frieden R, 'The Evolving 5G Case Study in Spectrum Management and Industrial Policy' (2019) 43 Telecommunications Policy 549

[5]Matthew UO, Kazaure JS, John O, Haruna K. Telecommunication Business Information System and Investment Ecosystem in a Growing Economy: A Review of Telecom Investment in Nigeria. International Journal of Information Communication Technologies and Human Development (IJICTHD). 2021 Apr 1;13(2):1-20.

[6]GSMA. What is Spectrum? https://www.gsma.com/spectrum/what-is-spectrum

[7]Umar KI, Adamu I, Bello MI, Bunu AS. Spectrum utilization and business performance of telecommunication companies in Nigeria. International Journal of Scientific and Engineering Research. (2019) Jul 10;10(7):694-707.

[8]Frieden R, 'The Evolving 5G Case Study in Spectrum Management and Industrial Policy' (2019) 43 Telecommunications Policy 549

Spectrum is a sovereign asset. That is, use of the airwaves in each country is overseen by the government or the designated national regulatory authority, which manages it and issues the needed licenses. The management of spectrum is of utmost importance due to the distinct features exhibited by various spectrum bands, rendering them appropriate for diverse applications. Typically, low-frequency transmissions exhibit the ability to traverse longer distances without significant degradation and possess enhanced penetration capabilities through thick objects. However, the transmission capacity of these radio waves is reduced. Transmissions with higher frequencies possess a greater capacity for data transfer, although have less ability to penetrate obstacles. National regulatory agencies face significant challenges in effectively allocating and licensing resources to the services and sectors that can maximize their utilization.

This article aims to analyse the legal frameworks for broadcasting, communication and spectrum management in Nigeria. It also seeks to identify key issues, challenges, and advancements in broadcasting, telecommunication, and spectrum management as it relates to Nigeria.

2.0 The Nigerian Broadcasting Sector

The Nigerian broadcast sector is highly dynamic industry which serves tens of millions of households in Africa's largest country. Today, economic growth, competition and technological developments are driving rapid change in every value chain of the broadcasting industry[9]. For regulators, this presents a set of emerging issues that need to be addressed through the modernisation of existing frame works. Before the advent of digital broadcasting and its subsequent adoption by enterprising media outfit in Nigeria, the country had 155 analogue stations mostly operating on a regional state basis.

In that era, there was no truly national television to speak of as no media house could broadcast to the entire nation. It was said that 70 percent of the population have access to 4 or fewer TV channels. This is mainly because analogue TV content is relatively weak and the pay DTT platforms offer a

[9]Endong, F. P. C. Digitization of media broadcast in Nigeria: The journey so far and challenges.(2015). *International Journal of Computer Science and Innovation*, *1*, 19-28.

few new digital -only Nigerian channels primarily in entertainment[10]. Today, technological advancement has led to the replacement of analogue broadcasting with digital broadcasting.

Digital broadcasting is the practice of using digital signals rather than analogue signals for broadcasting over radio frequency bands. Digital television broadcasting (especially satellite television) is widespread. Digital audio broadcasting is being adopted more slowly for radio broadcasting where it is mainly used in Satellite radio[11]. Digital television uses digital compression to convert digital signals into digital packets of data, which are then transmitted over the air or via cable or satellite. The digital signal can be received by a digital TV antenna, cable box or satellite receiver, depending on the type of service being used.

Unlike classic analog television, which uses continuous analog waves, digital television converts audio and video data into discrete binary (0s and 1s). The move from analog to digital broadcasting has resulted in several benefits and improvements in the delivery and reception of television programs.

2.1 Telecommunications

Telecommunication in Nigeria started as an administrative, rather than economic tool. According to a report, the British colonialists paid more attention to the external services linking Lagos with England and other British West African Colonies received than internal services. However, after independence, Nigeria developed its own telecommunications systems and maintained it as an integral tool for national development[12].

The earlier stage of telecommunication in Nigeria was based on the analogue signaling. In this period, access to telephone was greatly limited and services can often be frustrating. For instance, the external services linking Lagos with England along with other British West African Colonies received greater attention than internal services. At the domestic scene, only 18,724 telephone lines were available for an estimated population of 40 million in

[10]Ilori AO, Amusa KA, Erinosho TC. Digital terrestrial television in Nigeria: A technical review of path loss modeling and optimization techniques. (2022 Sep) Int J Adv Appl Sci. 11(3):277-86.

[11]Davis, A B and Lundgren, L, *Global Broadcasting in the Digital Age. Global Communication: A Multicultural Perspective* (2019)

[12]Englama, A and Bamidele, A, 'Telecommunication and Nigeria's Economic Development: Challenges, Prospects and Policy Suggestions.' (2002) 40 Economic and Financial Review, 40(1), 2

1960 resulting in a teledensity of 0.4 telephones per 1,000 people. This situation did not improve until Nigeria leveraged digital technology in 1999 by the decision of the government to auction the Global System of Mobile Telephone (GSM) and to liberalize the operation of the telecommunication sub-sector is encouraging. This market liberalisation was made possible by the revamping of the existing legislative frameworks.

3.0 Regulation of Broadcasting, Telecommunication and Spectrum Management in Nigeria

Broadcasting, telecommunication, and spectrum management have been around for a long period but the advent of digital technology has revolutionized how these activities are carried out and necessitated the need to review or revamp the legal frameworks guiding them[13]. This is evident in various legal framework that have been developed by global, regional, and national agencies The international telecommunication union (ITU) is a UN agency tasked with developing global guidelines for spectrum allocation but it is often unable to carry out this task due to difference of opinion among members[14].

In the West African subregion where Nigeria belongs, the Economic Community of West Africa (ECOWAS) has an act regulating spectrum allocation in the subregion. Article three of the Supplementary Act A/SA.5/01/07 on the Management of the Radio Frequency Spectrum clearly stated the objectives of frequency management which is to ensure economic and technical efficiency as well as ensuring that the allocation of spectrum does not jeopardise national security as well as the ability of member states to provide emergencies and other public services[15].

Spectrum management laws in Nigeria has benefited greatly from transplantation which he defined as the adopting of law from other sources and domesticating it to meet the needs of a particular country. The author rightly observed that the liberalisation of the telecommunication and broadcasting sectors in Nigeria was mainly a response to global trends. Today, there are four main bodies involved in the regulation of broadcasting, telecommunication and spectrum management in Nigeria. These are the

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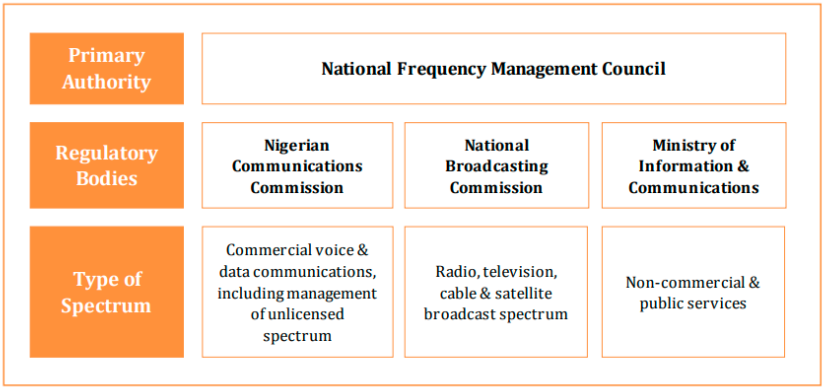
[13] Opata CB, 'Contextual Transplants in the Regulation of Nigerian Telecommunications Sector' [2012] *SSRN Electronic Journal*

[14]Frieden R, 'The Evolving 5G Case Study in Spectrum Management and Industrial Policy' (2019) 43 Telecommunications Policy 549

[15]Opata CB, 'Contextual Transplants in the Regulation of Nigerian Telecommunications Sector' [2012] SSRN Electronic Journal

Federal Ministry of Communications, Innovation and Digital Economy, the National Broadcasting Commission (NBC), the National Communication Commission (NBC), and the National Frequency Management Communication (NFMC)[16].

The National Frequency Management Council (NMFC) is the 'primary authority' when it comes to spectrum management in Nigeria (Fig 1)[17]. The
Figure 1: Chain of command in spectrum management in Nigeria
Others such as the NCC, NBC and the Ministry play other roles as assigned the National Communication Act, 2003. However, this seems improbable as



the NCA puts all other bodies in the figure under the federal ministry of Communications, Innovation and Digital Economy (The Ministry). In addition, the NFMC indicates on its websites that it is under the Ministry. However, what is clear that the NFMC is the custodia of spectrums in Nigeria and it is empowered under law to allocate it to other bodies such as the NCC and the NBC[18].

3.1 The National Frequency Management Council (NFMC)

The NFMC serves as the highest governing body responsible for the management of radio frequency spectrum in Nigeria. It was established in accordance with Section 26 of the Nigerian Communications Act 2003. It

[16]Ibid

[17]Odufuwa, Fola. "Open spectrum for development Nigeria case study." *Association for Progressive Communication* (2010).

[18]Adegbite, O. Legal and Institutional Regulation of Mobile Telecommunication in Nigeria: A Comparative Analysis between Nigeria and South Africa. (2015)*Journal of Contemporary Legal and Allied Issues*,16(1).

operates under the Ministry of Information & Communications and serves as the principal entity responsible for shaping and guiding the government's policies and regulations pertaining to the frequency spectrum. The Council assumes the responsibility of planning, coordinating, and allocating radio spectrum across various sectors to regulatory bodies such as the National Communications Commission, the National Broadcasting Commission, and the Ministry.

Among the mandates of the NFMC include;

1. Representing Nigeria at international and regional spectrum allocation bodies such as the International Telecommunications Union (ITU);
2. Serving as technical consultant to the government in issues relating to spectrum allocation agreements with other countries;
3. Contributing to government work on spectrum coordination agreements regarding trans-border spectrum utilization[19];
4. prepare, update and publish a national frequency allocation table and establish a data bank to facilitate effective management of the national spectrum;
5. allocate spectrum to the NCC and other authorized bodies in Nigeria who will then allocate same to end-users; (National frequency management council)

3.2 National Broadcasting Commission

Broadcasting in Nigeria was once the exclusive responsibility of the government. The ownership, control, and operation of broadcasting in Nigeria were entirely reserved for the several levels of government, including the Federal, Regional, and State governments[20]. The first reform occurred during the administration of General Ibrahim Babangida who adopted the Deregulation of Broadcasting Decree No.38 in 1992. The establishment of the National Broadcasting Commission (NBC) through the presidential ipse dixit introduced a novel framework for ownership and control, while simultaneously fostering competition within the broadcast business.

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[19]National frequency management council (Nfmc). (n.d.). FMCDE – Federal Ministry of Communications and Digital Economy. https://fmcde.gov. ng/ index.php/national-frequency-management-council-nfmc

[20]Ihechu IP, Okugo UC. Broadcasting regulation and broadcasting in Nigeria: An overview of the approaches. (2013) Research on Humanities and Social Sciences.;3(2):12-9.

The National Broadcasting Commission Act of 1992 established the NBC as the regulatory authority for broadcasting in Nigeria. The NBC is responsible for issuing licenses, regulating content, ensuring fair competition, and promoting the growth of the broadcasting industry. According to NBC (2009), there has been an increase in the number of broadcasting stations in Nigeria as a consequence of the revolution in the country's broadcast business. Prior to deregulation, there were fewer than 30 broadcasting stations, but this number has since climbed to 394.

The NBC issues a Broadcasting Code that sets the standards for broadcast content, including rules regarding decency, ethics, and advertising. The code aims to maintain professionalism and protect the public interest. The NBC also regulates the licensing of broadcast stations, including radio and television stations, ensuring that license holders comply with relevant regulations. The NBC also enforces rules on media ownership and control to prevent monopolies and promote diversity in the broadcasting sector.

The criteria for the grant of a broadcast license, as outlined in Section 9(1) of the NBC Act, requires that the applicant be a legally registered corporate entity in Nigeria or a broadcasting station that is owned, established, or controlled by the federal, state, or local government. The National Broadcasting Corporation (NBC) is additionally obligated to ensure that the applicant is not representing any foreign interest. In the event that the National Broadcasting Commission (NBC) deems the application satisfactory, it will proceed to provide a recommendation to the President for the issuance of a license, via the Minister of Information[21].

3.3 Nigerian Communications Commission (NCC)

Nigerian Communications Commission (NCC) is the regulatory authority for the telecommunications sector in Nigeria. The NCC Act of 1992 establishes the NCC's role in regulating and promoting the industry. In addition, the Nigerian Communications Act, Cap. N97 of the Laws of the Federation of Nigeria, 2004 provides the legal framework for telecommunications in Nigeria. According to Section 4(1)(e) of the Act, the NCC is the only entity authorised to issue or renew communications licenses in Nigeria. It covers a

[21]Onyiaji, J., & Eucharia, O. O. Digital broadcasting in Nigeria by the eyes of its users: History of development and current state. (2019). *Skhid*, 2 (160), 75-81.

wide range of issues, including licensing, competition, consumer protection, and infrastructure development[22].

Accordingly, Section 32(1) of the Act clarifies and expands the NCC's authority by stating that it shall issue communications licenses for the operation and provision of communications services or facilities on such terms and conditions as the it may determine from time to time taking into consideration the objectives of the Act and the provisions of section 33(3) of the Act. The provision of this act means that the NCC is responsible for licensing telecommunications operators and managing the allocation and use of radio frequency spectrum, a finite and valuable resource for wireless communication. In addition, the NCC ensures consumer protection by setting standards for quality of service, addressing disputes, and enforcing rules for fair competition.

Both the Nigerian Communications Commission (NCC) and the National Broadcasting Commission (NBC) are given the power in Nigeria to investigate and rule on competition issues in the country's telecommunications and broadcasting industries. This is to ensure that there is fair competition and the consumers are protected[23].

4.0 Regulatory Laws and Frameworks for Broadcasting, Communication and Spectrum Management in Nigeria

4.1 The National Radio Frequency Management Policy.

This policy was issued by the National Frequency Management Council. It provides an overview of the fundamental structure and overarching principles that will regulate the allocation and use of radio frequency spectrum in Nigeria. This document outlines the overarching principles that will govern the distribution of radio frequencies, encompassing many aspects such as assignment procedures, fees, eligibility criteria, access to records, renewals, and delineates the range of penalties for improper utilisation of frequency allocations.

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[22]Umar, K. I., Adamu, I., Bello, M. I., and Bunu, A. S. Spectrum utilization and business performance of telecommunication companies in Nigeria. (2019). *International Journal of Scientific and Engineering Research*, *10* (7), 694-707.

[23]Global Legal Group. *International comparative legal guide - Telecoms,media& internet 2022*.(2018).

4.2 The Nigerian Communications Act of 2003

This is the principal legislation that supersedes and replaces the NCC Act No 19 of 1992. This act is responsible for regulating the distribution of frequency spectrum to telecommunications operators with the intention of facilitating commercial activities in the industry. The Nigerian Communications Commission was granted the authority to exclusively license and oversee the management of frequency spectrum for the telecommunications industry. The Act also granted full autonomy to the National Communications Commission (NCC) and delegated to the Commission all the authorities previously held by the Minister of Information & Communications in relation to the sector, such as the ability to grant licenses and allocate frequencies[24].

Through the act, the NCC now possesses significant and autonomous regulatory powers within the industry. Leveraging this expansive authority, the NCC establishes licenses and establishes conditions pertaining to many aspects, such as the allocation and utilisation of frequencies, interconnection, rates, access to facilities, and safeguarding consumer interests. The Act acknowledges additional governmental entities, namely the Ministry of Information & Communications and the National Frequency Management Council. According to the Act, the assignment of frequencies is designated to be carried out by NCC, which is recognised as acting on behalf of the Council.

4.3 The National Broadcasting Commission Act 38 1992 (as amended by Act 55 of 1999).

The act led to the establishment of the National Broadcasting Commission; a governmental regulatory body tasked with overseeing broadcasting activities in Nigeria. These responsibilities encompass licensing, policy formulation, spectrum allocation, as well as the establishment and enforcement of ethical and technical standards within the broadcast industry. The legislation effectively terminated the federal government's longstanding monopoly over broadcasting, thereby enabling private enterprises, organisations, and communities to establish radio and television stations. The regulatory supervision of the National Broadcasting Commission (NBC) was extended to encompass radio and television stations owned by the Government through the 1999 amendment. The National Broadcasting Corporation (NBC)

[24]Federal Ministry of Communications, Innovation & Digital Economy. http://fmcde.gov.ng/index.php/spectrum-management-sm/

has the authority to impose fines, including as the revocation of licences for non-compliant stations, when it deems that the preservation of the "public interest" is not being adequately protected.

In contrast to the National Communications Commission (NCC), the National Broadcasting Commission (NBC) operates under the dependence of the Ministry. According to Section 6 of the Act, the Minister is explicitly granted the authority to issue directions to the Commission. These directives pertain to specific subjects relating to the Commission's exercise of its responsibilities, and it is mandatory for the Commission to adhere to them. Furthermore, in accordance with the Act, the Commission is authorised to provide licenses solely upon the Minister's suggestion to the President, who possesses ultimate authority for approval. The approval of technical and editorial guidelines governing the activities of licenced broadcast stations is under the purview of the Minister.

4.4 The Wireless Telegraphy Act of 1990, with further amendments in 2004,

Until 1992, the primary legislation governing the provision of telecommunications services in Nigeria was the Telegraphy Act. During this period, the provision of telecommunications services was exclusively controlled by the state-owned operator, NITEL. The Act additionally granted the Ministry the authority to oversee the administration of the country's national radio frequency spectrum. The granting of licences for services and frequencies was solely at the discretion of the Minister, with private operations of communications services being severely prohibited. The regulatory control in the broadcasting and telecommunications sectors was moved from government agencies to the National Broadcasting Commission (NBC) and the Nigerian Communications Commission (NCC) by the NBC Act 38 of 1992 and the NCC Act 19 of 1992, with subsequent amendments.

4.5 Commercial Frequency Management Policy, Administrative Procedures and Technical Guidelines.

This is a policy document formulated by the NCC. It is heavily influenced by the National Radio Frequency Management Policy. It provides an overview of comprehensive guidelines, administrative procedures, and technical guidelines pertaining to the management of the national frequency spectrum. It encompasses various aspects such as the criteria and qualifications for frequency assignment, restrictions, pricing, transfer of assigned frequencies, as well as administrative procedures and technical guidelines, among other relevant considerations**.**

4.6 National Frequency Management Council (NFMC): Duplication of Duty of Oversight?

The establishment of the NFMC and its assigned functions is a duplication of duties and avenue for crisis. The NFMC readily admits that it is not authorized by law to auction spectrums to end-users. However, it claims to be the 'clearing house' for authorized commissions such as the NBC and NCC. What being a clearing house of spectrum allocation entails is unclear. The ambiguity created by the department was outline by an author who analysed the fallout of a spectrum actioning exercise by the NCC in 2009 which was resulted in a face-off between the NCC and its supervisory ministry; the ministry of Communications[25]. This encroachment on the powers of the NCCs led to a review of the enabling laws that empowers the NCC to determine the auctioning of spectrum in Nigeria.

The Nigerian Communications Act (NCA) Cap N97 guides the activities of the telecommunication and broadcasting sectors in Nigeria. according to section 4(1)(e) of this Act, the NCC has the sole responsibility of licensing communication companies in Nigeria. The NCC is empowered by law to grant licenses and ensure compliance to the rules and regulations under which the licenses were granted. In addition, section 32(1) of the Act empowers expressly empowers the NCC to regulates the issuance and use of telecommunication licenses in Nigeria

Section 4(1)(j)also stated that the NCC is responsible for the **"**management and administration of frequency spectrum for the communications sector and assisting the National Frequency Management (NFM) Council in developing a national frequency plan"

5.0 Conclusion

Broadcasting, telecommunications, and spectrum management are technological innovations that have implications for not only the socio-economic development of Nigeria as a country, they also have implication for national security and peaceful coexistence of all citizens. This is why appropriate legal frameworks must be in place to regulate them. These legal frameworks are critical for ensuring that broadcasting, telecommunications, and spectrum management in Nigeria operate effectively, promote competition, and protect the interests of consumers. Additionally, they play a

[25]Usoro, P. *What the law says about NCC's 2.3MHz frequency spectrum licensing*.(2009,July7). https://www.vanguardngr.com/2009/07/what-the-law-says-about-ncc

pivotal role in regulating and governing these sectors to foster economic growth, technological advancement, and the development of a vibrant media and communications industry in the country.

However, there are certain issues relating to the regulation of broadcasting, communication, and spectrum management in Nigeria. One, there are several areas of task overlap which has created some unnecessary bureaucracy in the management of spectrum in Nigeria. Although, this has not had a major impact on spectrum management in Nigeria, a more streamlined administrative structure can only be of benefit to the country.

Two, the national communication act was enacted in 2003, ten years ago, and it has not seen any significant amendment since then. One would have thought that with the rapid changes in the world of technology, the act may not be responsive to emerging issue in the broadcasting sector. In addition to this, there are certain overlapping functions between the NFMC and the NCC which can cause friction or cause 'overregulation' these need to be reviewed and realigned to reflect global best practices.