AN EXAMINATION OF THE ROLE OF NIGERIAN COMMUNICATIONS COMMISSION (NCC) IN REGULATING THE TELECOMMUNICATIONS SECTOR

BY

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DEPARTMENT OF PUBLIC LAW

FACULTY OF LAW

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AUGUST, 2017

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CERTIFICATION

This dissertation entitled ‘An Examination of the Role of the Nigerian Communications Commission (NCC) in regulating the Telecommunications Sector’’ by Ahmad Abdullahi has been read, approved and found to meet the requirements governing the award of a Masters Degree in Law (LLM) of the Faculty of Law, Ahmadu Bello University Zaria, and it is approved for its contribution to knowledge and literary presentation.

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DECLARATION

I declares that the work in this dissertation entitled "An Examination of the Role of the Nigerian Communications Commission (NCC) in regulating the Telecommunication Sector'' has been carried out by me in the Department of public law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any institution.

....

Ahmad Abdullahi Date

DEDICATION

This dissertation is dedicated to Almighty Allah (SWT) for the gift of life bestowed on me, who also furnished me with all the paraphernalia needed for the actualization of this research work.

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Without reservation or misgiving a blueprint of this magnitude ought not to have caught a glimpse of light of the day but for the reinforcement and inspiration of incalculable involvement of different personalities.

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ABSTRACT

This research sets out to examine the role of the Nigerian communication commission in regulating the Nigerian telecommunication sector. It further scrutinizes the legal and regulatory framework surrounding the business of telecom industry in Nigeria. It predominantly scrutinizes the provision of the law establishing the National regulator vis a vis other laws establishing the institutional framework, the service providers and the consumers of these telecom services. Such laws as the company Act, Nigeria communication Act, National environmental standards and regulation enforcement agency (NESREA) Act, Consumer protection Act, Criminal law, law of tort, planning Laws, Land Use Act and other regulations tangential to/with the provision of telecom services in the country. The research identifies certain inherent problems and challenges that has militated the commission in its application of its power as provided in the statute. It further examined the lacunas, drawbacks and limitations existing in the telecom regulations and proceeds to advance reform and recommendations towards the efficient administration and implementation of telecom laws in Nigeria in the overall benefit of the telecom business in Nigeria. Findings from the research shows that the Nigerian Communication Commission is the national regulator of the Nigerian telecommunication industry and it plays a major role more than any other agency/institution in the telecommunication sector. Nonetheless, this study observed that the approach of the NCC toward the protection of telecommunication consumers, poor quality of services provided by the telecommunication providers, and the centrality of the telecommunication services, etc. has posed a major challenge to telecommunication regulation in Nigeria. This quandary has been compounded particularly by the incessant impact of convergence in the telecommunication atmosphere. Currently, different regulatory frameworks for telecommunication in Nigeria have not created ample instrument to warrant synergy and build an enabling environment for the adequate implementation of telecommunication regulations. In this regard, it is the recommendation of this research work that a comprehensive legal framework need to be re-structured in this area so as to allow a hitch-free and unlimited range of telecommunication services.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The world has become a global village with Telecommunication being an indispensable tool in the entire process of globalization[1]. However, it is not in dispute that Telecommunication industries play essential roles in this process. This is obviously why development process in this vital sector over the years has been phenomenal all over the world. In fact, this is why emerging trend in socio – economic growth shows high premium being placed on Information and Communication Technology (ICT), by nations, organizations and homes[2]. Unlike in the past, government consider Telecommunications service to be so vital to national interest and economic development that it was placed directly under their control in most countries until fairly recently, when deregulation and competition were introduced[3].

The emergence of Telecommunication has brought a new era in Telecommunication industry. The internet, mobile phone and computer, have brought about a fundamental shift in patterns of communication and human relationships. Communication revolution has also brought about amazing social, economic, cultural and psychological transformation. It has reduced the globe into a village through deduction of time and space. The recent advances in telecommunications technology have been an important vehicle in permitting information exchange to develop at a valuable commodity for moving the country into post industrial and information based economic growth. In this present world, a modern telecommunication infrastructural development is not only essential for domestic economic growth, but is a

[1] Asogwa, F.O. et al ''The Impact of Telecommunication Expenditure on Economic Growth in Nigeria'' (2013) *Journal of Economic and Sustainable Development,* Vol. 4, No. 13, (2013) Also available online @ http://www.iiste.org
[2] Ibid.
[3] Ibid.

prerequisite for participation in increasingly competitive world, markets and for attracting new investment[4].

Nigeria at the moment has not been left out of rapid development of telecommunication industry in the world. The nation's telecommunication industry was liberated with the return of democracy in 1999. This led to the granting of Global System for Mobile Telecommunication (GSM) license by the Nigerian Communication Commission (NCC) to three providers: Econet, MTN, and MTEL. This was followed by the licensing of the Second National Operator (SNO), in 2003; that is, Globacom and Universal Access Service Licenses of 2006 which include fixed telephony, VSAT and internet service providers. Also, in March 2008, the NCC gave license to another GSM operator known as Etisalat. And presently NCC has issued more than 200 licenses to intending telecommunication operators[5].

According to NCC 57.8 million telecommunication subscribers in Nigeria use internet data as at October 2013. As at June 2012, Nigeria had 28.4% of internet penetration and 48.3 million populations as internet users, 113 million mobile subscribers and 69.01% mobile penetration out of 167 million total African internet users[6]. Nigeria is reported to be number 1 in African in terms of internet users out of the continent's 1 billion total population estimate in 2012, with a 15.6 % of internet penetration rate and 51.6 million facebook subscribers as well as 4.8 of penetration rate[7].

According to International Telecommunication Union (ITU) – world in 2014 ICT facts and figures, the new figures shows that, by the end of 2014, there was almost 3 billion internet users, two-third of them coming from the developing world, and the number of mobile broad

[4] Ibid
[5] Ijewere, A.A, ''Telecommunication in Nigeria: The Marketing Challenges'' (2012) *Journal of Research In Development* (2012) Vol. 10 No.2 ISSN 1596-8308. Also available online @ http://www.transcampus.org/journals, http://www.ajol.info/journal/jorind
[6] Ladan, M.T. *Cyberlaw and Policy on Information and Communications Technology in Nigeria and Ecowas*, Ahmadu Bello University Press Ltd. Zaria, Kaduna State, Nigeria, (2014)
[7] Ibid,

band subscription will reach 2.3 billion globally. Fifty-five % of these subscriptions are expected to be in the developing world. Mobile broadband remains the fastest growing market segment with continuous double digit growth rates in 2014. Mobile broadband is growing fastest in the developing countries, where 2013/2014 growth rates are expected to be twice as higher as developed countries (26% compared with11.5 %). By end of 2014, the number of mobile broadband subscription had reach 2.3 billion globally almost 5 times as many as just as just six years earlier in (2008).mobile broadband penetration in Africa reaches close to 20% in 2014. By end of 2014, 55% of all broadband subscriptions are expected to be in the developing world compared with only 20% in 2008. Mobile cellular growth rates have reaches their lowest ever level (of 26% globally), indicating that the market reaches its saturation level. The continuous increase in mobile cellular subscription is mostly due to growth in the developing world, penetration in developing countries continuous to growth twice as much as in developed countries (3.1% compared with 1.5% respectively in 2014). 44% of all fixed broadband subscription in Asia-pacific compared with only 0.5% in Africa. Fixed broadband penetration continuous to grow at albeit slowly (at 4.4% globally) mostly due to slowdown in developing countries, where fixed broadband penetration rates are expected to drop from 18% in 2011 to 6% in 2014.In developed countries, fixed broadband penetration will grow at around 3.5% in 2014 compared with 4.8% in 2011. The number of household with internet access in developing countries surpassed those in developed countries in 2013, and doubled between 2010 and 2014.[8]

Around 40% of the world population has an internet connection as at July 1st 2014. In 1995 it was less than 1%. The number of internet users has increased tenfold from 1995-2013. The first billion was reached in 2005, the second billion in 2010 and the third billion will be reaching by the end of 2014. In 2014, nearly 75% (2.1 billion) of all internet users in the

[8] Ibid,

world (2.8 billion) live in the top 20 countries. The remaining 25% (0.7 billion) of all internet users is distributed among the other 178 countries, each representing less than 1% of the total users. China, the country with most users (642 million in 2014), represent nearly 22% of total and has more users than the next three countries combined (US, India and Japan). Among the top 20 countries, India is the one with the lowest penetration: 19% and the highest yearly growth. At the opposite end of the rage, US, Germany, France, UK and Canada have the highest penetration: over 80% population in these countries has an internet connection. In Africa, Nigeria top the list with 67.1 million users; 16 % of growth rate, 37.59% of penetration rate and 9.36 million users' growth rate.[9]

In 2011, at least 2.3 billion people, the equivalent or more than one third of the world's total population, had access to the internet. Over 60% of all internet users are in developing countries, with 45% of all internet users below the age 25 years. By the year 2017, it is estimated that mobile broadband subscription will approach 70% of the world's population. By the year 2020, the number of network devices (the 'internet of things') will outnumber people by six to one, transforming current conception of the internet. In the hyper connected world of tomorrow, it will become hard to imagine a 'computer crime' and perhaps any crime that does not involve electronic evidence linked with the internet protocol (IP) connectivity.[10]

1.2 Background to the study

Telecommunications[11] refers to the convergence of audio-visual and telephone networks with computer networks, and the technology encompasses a wide range of activities, ranging from office data processing to remote control and monitoring of manufacturing robots[12]. It also covers the enabling infrastructures e.g. fibre optic cables, which carry voice, data and video

[9] Ibid,
[10] Ibid.
[11] The term which is largely synonymous with information and communication technology (ICT)-See Edwards C. and Savage N., *Information Technology and the Law,* 2nd Ed. (Macmillan 1990), p.1.
[12] Ibid.

communications[13]. A major offshoot of the convergence of telecommunication is the emergence of the internet, which is a content distribution network comprising of a global system of interconnected computer networks through which data is interchanged. The technology consists of millions of private and public academic, business and government networks of both local and global scope which facilitates the dissemination and exchange of information, and makes diverse other forms of non-physical interaction the new reality.

Due to its many possibilities, telecommunications constitute veritable tools for socio-economic development, which makes the legal and regulatory environment for their application in developing countries critical. Among other impacts, telecommunication have brought about significant changes in business practices with respect to banking transaction and, to some extent, the buying and selling of goods and services, through the possibilities of the medium to promote trade and commerce through wider access to prospective customers from anywhere in the globe for products and services. Telecommunications have therefore transformed the business world, including the banking, trading and entertainment sectors, making the sector more efficient and less limited by barriers of time, space, distance and costs. Telecommunications also have the potential to contribute to poverty alleviation through websites promoting local products in international markets, and facilitating access to market information for competitive prices for locally produced crafts, clothing and farm produce[14]. The technology further offers an opportunity for the exploitation of foreign markets for cultural products, a market which continue to expand in line with increases in the African Diaspora eager for means to access local food, clothes, music, films and other aspects of their cultural identity and heritage.

[13] Ibid.
[14] See for example, http://www.alibaba.com/country search/NG/craft-supplier.html, http://www.jumiaonline.com.ng, http://www.jiji.ng where diverse local and international businesses promote and market their artwork, craft, African textiles, beads and other wares.

Conversely, the technology has been accompanied by the emergence of new dimensions of crimes by those who, rather than exploiting the opportunities presented by ICT in legitimate ways for positive activities, rather do so for dubious or out rightly fraudulent acts. Thus, cybercrimes[15] like child pornography, fraudulent electronic fund transfers and unauthorised access to computer systems has become widespread. Tackling the problem of cybercrimes and the attendant image nightmare to Nigeria poses legal and policy challenges, which result in efforts to stretch the laws in a bid to accommodate the new challenges.

The fact however, is that there is a limit to which laws, which were promulgated in a different technological and socio-economic context, can adequately carter for the new technological realities presented by ICTs. It thus becomes necessary for legal rules to be develop to tackle the issues and challenges brought about by ICTs, in order to promote public confide006Ece, maximise the benefits of the technology and encourage wider acceptance and use by individuals as well as private and public organisations.

With particular reference to the role of Nigeria Communication Commission (NCC) in regulating the telecommunication sector, the commission has been facing certain constraints over the years which has militated the commission in application of its power as provided under statute.

1.3 Statement of the research problems

The Nigerian Communication Commission as the independent regulator is one of the agencies out of the several agencies saddled with the responsibility of regulating the Nigeria telecommunications sector. It also issue licenses to intending telecommunication operators and facilitate private sector participation and investment in the telecommunication sector etc. In the discharge of these duties, the Commission alongside the other national regulators have

[15] It also includes computer-related offences, fraud and computer-related fraud like online auction fraud, advance fee fraud, computer related forgery, identity theft and misuse of devices

being facing certain constraint over the years. This is by virtue of certain inherent problems and challenges that has militated the commission and its sister agencies in the application of their powers as provided in their respective statutes. Some of these problems are:

A. Regulatory overlap

The tussle between National Environmental Standard Regulation and Enforcement Agency (NESREA) And Nigerian Communication Commission (NCC) over which of the two is the appropriate agency responsible for regulating the operation of base stations of telecommunications company in Nigeria came as a result of NESREA's shut down of MTN's Base Transceiver Station which was thereafter re-opened by NCC insisting that it has the sole mandate to regulate the telecom industry and not NESREA. Although, the supervising ministries of the two agencies[16] have met and they seem to have resolved the entanglement, the solutions proffered arguably remain temporary one. One of the solution arrived at is that telecom facilities that were erected before NESREA's Regulation[17] came into being and which complied with NCC's Guideline[18] of five meters set back should not be sealed while new facilities that are to be set after the law came into force will have to comply with NESREA's provision of ten meters set back. This truce is meant to last until the Regulations of both agencies are harmonized. NESREA predicated its actions on the need to protect the environment in line with its mandate in NESREA Act of 2007. While NCC contends that it has the sole mandate to regulate the telecom industry and that NESREA has encroached upon its operational boundary. In view of this conflict, it becomes imperative that a permanent solution is proffered for the sake of stakeholders. Consequently, we submit that of the two positions, NESREA's Regulation of ten meters set back is more favoured as it will make it

[16] Ministry of Communication Technology and the Ministry of Environment
[17] National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations 2011 (NESREA Regulations 2011) s.5(4)
[18] The Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers 2009 (NCC's Guidelines 2009) s.9(9)(c)

easier for the operators to comply with the provisions of the two agencies with respect to heat, smoke and noise emitted by generators powering the telecom masts. It is further submitted that the NESREA and NCC regulations must be reviewed, and other relevant laws in tandem with telecom regulations harmonized, otherwise after the NESREA and NCC the operators may still be confronted with another overlapping jurisdiction. Such a situation will engender difficulty in the enforcement of those regulations thereby defeating the purpose of their review.

B. Cybercrime

As ICT access and use began to grow, so also did the menace of cyber crime. Cyber crime consists of a variety of criminal acts perpetrated through the Internet, and includes e-mail scams, child pornography, hacking, theft of data, identity theft, extortion and a wide array of other nefarious activities. Other ICT–related crimes include the counterfeit cashier's cheque scheme, which relies on the issuance of fraudulent cheques, and targets individuals that use Internet advertisements to sell merchandise. Another is the advance fee fraud, also known as the "419 scam", after the section of the Nigerian Criminal Code dealing with the crime of obtaining property by false pretences.[19] The 419 scam combines impersonation fraud with a variation of an advance fee scheme, and relies on letters, emails, or faxes to potential victims from individuals representing themselves as government officials, offering the recipient the "opportunity" to share in a percentage of millions of dollars, while soliciting for help in placing large sums of money in overseas bank accounts.[20]

[19] Section 419 of the Nigerian Criminal Code, Cap C38, Laws of the Federation of Nigeria, 2004, which provides: "Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony, and is liable to imprisonment for three years..."

[20] See the International Crime Complaint (IC3) Centre, online at http://www.ic3.gov/crimeschemes.aspx#item-13, last accessed 15th October, 2014

The problem of cybercrime is a global one whose extent, magnitude and impact reverberate throughout various walks of life, leaving hitherto unimaginable damage in its wake.[21] Popularly referred to as the "yahoo yahoo syndrome" in Nigeria, these fraudulent activities are carried on by a recalcitrant few, but the impact is far reaching due to the world wide reach of the Internet. Cybercrime is not only an embarrassment; it also has negative implications for the positive deployment of ICT for socio-economic growth and development.

With a view to dealing with some of the problems occasioned by cybercrime, the Nigerian government has deployed some legal and enforcement tools, including the enlistment of the Economic and Financial Crimes Commission (EFCC)[22], the Nigerian Police Force, and other crime fighting bodies to tackle the problem. Unfortunately however, initial attempts to deal with the problem did not utilise a refined and technology savvy approach to detect and arrest perpetrators. Rather, law enforcement officers largely descended on cyber cafes, carrying out frequent raids, arrests, ban of overnight browsing and other activities. However, resort to cyber cafes for internet access has waned considerably, with more possibilities to access the internet through mobile phones and personal computers. This may be attributed to the deregulation of the telecommunications sector, which has afforded the public the benefit of competitive internet access options by telecommunications companies, thus making private internet more accessible and affordable. This modification in the location of use from cyber cafes to private offices and homes means that physical raids of cyber cafes and other public venues for internet access can no longer constitute a valid approach to tackling online criminal activities. Rather, use of technological means and seeking of relevant information from, and collaboration with Internet Service Providers (ISPS) have become inevitable. This

[21] ibid

[22] See the Economic and Financial Crimes Commission (Establishment) Act (No 1) of 2004, Cap E1, LFN 2004. Among other functions, the EFCC is responsible for the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc. See generally, Section 6 of the EFCC Act. The EFCC is the Nigerian equivalent of the Serious Fraud Office in the UK, (see http://www.sfo.gov.uk/)

on its part raises the need for proper training and adequate deployment of specialised police and other enforcement authorities.[23] Additionally, there is the issue of the security of stored customer data, which has been a concern in many developed countries, where servers holding millions of customer data have been hacked, and storage media such as compact discs holding data on millions of customers have been carelessly misplaced or lost in the post.[24]

Beyond these however, more effort should be made to refocus on the promotion of positive uses of ICT. In this regard, it is encouraging that Microsoft has partnered with an NGO (Paradigm Initiative Nigeria (PIN)) to tackle cyber crime through its Internet Safety, Security and Privacy Initiative for Nigeria (ISSPIN).[25] The programme essentially focuses on redirecting the energy of young Nigerians away from cyber crime and towards positive utilisation of cyber space for legitimate purposes.[26] Microsoft also aims at addressing the need for adequate training in information technology among young Nigerians by distributing free compact discs containing Microsoft's Digital Literacy Curriculum.[27] There is also the practical aspect of empowerment through training programmes designed to arm youths with marketable skills for legitimate business activities in the online environment. As awareness continues to rise about the potentials of the technology, there is a corresponding need for the creation of local content online, establishment of websites for businesses, as well as online advertisements and marketing. Expertise and skills in these areas are therefore increasingly becoming more valuable, and a legal framework that deals with protection of creativity,

[23] Already, some training is being provided for the Economic and Financial Crimes Commission (EFCC), to equip it with skills to curb the menace of cybercrime, through the government itself, as well as through the efforts of some ICT companies like Microsoft, which is collaborating with these agencies with a view to sharing technical knowledge and best practices. Such collaborative efforts will contribute positively to the creation of a legal environment that encourages ICT business development in the country.

[24] See for e.g. http://www.timesonline.co.uk/tol/news/uk/article2907495.ece, and Bruce Schneier , Inside Risks, 179, Communications of the ACM, Vol. 48, No. 5, May 2005 online at http://www.schneier.com/essay-128.html

[25] See Report titled "Curbing Cybercrime in Nigeria: Microsoft Enlists Nigeria's Youth to Tackle Cybercrime," online at Microsoft Africa website at http://www.microsoft.com/africa/stories/curbing_cybercrime.mspx, last accessed December 15 2015.

[26] ibid

[27] ibid

prevention of misrepresentations and fraudulent acts become relevant. Hopefully, skill acquisition in these areas will not only reduce the tendency towards commission of cyber crimes, but also contribute to a reduction in the number of the unemployed in the country.

C. Cyber Squatting

Another area of impact of ICT in Nigeria is the intersection between domain names, which are the titles with which websites are identified and located, and trade mark law. A domain name is the internet equivalent of an online telephone directory,[28] and comprises different elements. These elements include a Top Level Domain (TLD), which appears as a suffix to the name of the site,[29] and Second Level Domains (SLD), which usually include or even mirror the trademark or business name of the registrant, thus facilitating the functioning of domain names as business identifiers in a manner similar to trademarks.[30] Domain names therefore, adequately identify the user, and enable consumers to perceive the requisite nexus between the enterprise and the site. The use of such trademarks as SLDs for entities other than the trade mark owner may therefore result in free riding and other forms of unfair competition, thus giving rise to the need for protection of trademarks in the ICT environment.[31]

Beyond free riding, such use may also border on public deception and fraud, as may be seen in the WIPO arbitration case of *Shell International Petroleum Co. v Allen Jones.*[32] Here, the domain name www.shell-nigeria.com was falsely registered in respect of a website. The false site copied information from the website of the well known Shell Oil Company and was sufficiently similar to the legitimate Shell Company's website as to be likely to cause

[28] See Carolina R & Stokes S, *Encyclopaedia of E-Commerce Law*, (Thompson, Sweet & Maxwell, 2006) at par. 8-41
[29] Examples include "uk", "ng" or .com, which are often generally used by a large number of registrants
[30] Encyclopedia of E-Commerce Law, op. cit.
[31] See generally, Halpern M & Mehrotra A, "From International Treaties to Internet Norms: The Evolution of International Trademark Disputes in the Internet Age", 21(2000), *Journal of International Economics.*
[32] WIPO Arbitration Case No D2003-0821, available online at http://www.wipo.int/amc/en/domains/decisions/html/2003/d2003-0821.html,

confusion. Likewise, the domain name was deceptively similar to the legitimate www.shellnigeria.com. The WIPO panel had no difficulty deciding that the registered domain www.shell-nigeria.com infringed the trade name of the genuine Shell Company.

Even the educational sector is not immune from this misuse. A case in point is that of a fraudulent website purporting to be the web site of the University of Nigeria, Nsukka, falsely inviting applications into fake degrees with prospects of scholarships, and unlawfully soliciting for payments to secure admission into the University. The website used was www.universityofnigeria.com, while the genuine web address of the university is www.unn.edu.ng. A public disclaimer had to be issued to warn the public of the fraud.[33] A related issue is the problem of cyber squatting, whereby domain name speculators, in bad faith, intentionally register domain names corresponding to famous personalities, trademarks or other identifiers, with a view to selling them off at a profit to the person or company with legitimate claim to the name at a later date.

These issues give rise to a need for law reform to protect the rights of trademarks and business name owners from unauthorised use of the name or mark as a domain name, and to prohibit cyber squatting.[34] This is imperative given the increasingly popular practice of creating web sites for individuals, businesses and government agencies and departments, and the need to protect unsuspecting members of the public from the fraudulent antics of tricksters. Additionally, the establishment of a registration authority within the country for the assignment and management of domain names within the country code top-level domain, and rules for dispute resolution, revocation, assignment and other issues need to be promptly addressed.

D. E-Contracts, E-Commerce and E-Banking

The ICT revolution also presents possibilities for the carrying on of commercial transactions, including buying and selling of goods and services, promotion of businesses and other related activities online. The new issues arising in this regard cut across the formation and validity of

[33] See the disclaimer of the Nigerian Consulate _General in New York, online at http://www.nigeria-consulate-ny.org/News/re-fraudulent.htm.

[34] The US responded through the Anti-Cyber squatting Consumer Protection Act, 15 U.S.C., S1125 (d) which was promulgated in 1999 to provide relief from these negative acts.

contracts, where questions may be raised about whether, for contracts which are in writing, e-mails and other means of electronic communication satisfy the requirements of writing and signing. Thus, the validity of ICT-related commercial transactions, their admissibility in evidence and options for dealing with conflict of laws issues arising where, as is often the case, these transactions are carried out between persons who are connected to different countries have been severally identified as some of the challenges posed by ICT.[35]

With regard to the buying and selling of goods, the law sets out the obligations of sellers and buyers in such contracts.[36] However, these legal provisions inadequately address concerns arising in the online environment. For example, under the law, the place of delivery of goods is deemed to be the seller's place of business.[37] However, in the case of e-commerce, the existence of a physical place of business cannot be assumed. Furthermore, even where such exists, it can no longer be presumed to be the place of delivery. Thus, there is a need for legislation which addresses concerns of buyers and consumers generally by specifying obligations of sellers in e-commerce, including the indication of a geographical address of the seller's place of business where complaints may be addressed, and terms of exercise of withdrawal options.[38] This is to preserve the buyer's right of examining the goods, and the presumption against acceptance of goods until the opportunity to examine has been given.[39]

Other consumer protection provisions which ought to be put in place include disclosure of the full identity of the seller and cost of delivery. Options for achieving these objectives include the promulgation of a new law or the amendment of existing laws, such as the sale of goods law and the consumer protection law.[40]

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[35] See Bamodu G, " Information and Communications Technology and E-Commerce: Challenges and Opportunities for the Nigerian legal System and Judiciary", 2 (2004) *The Journal of Information, Law and Technology*, online at http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2004_2/bamodu/,

[36] See for example, the Sales of Goods Law, Cap S2, Laws of Lagos State of Nigeria, 2005

[37] See Section 30 Ibid.

[38] Another alternative is to upgrade the existing consumer protection law, i.e. the Consumer Protection Council Act, Cap C23, LFN 2004, to deal with these concerns.

[39] See Section 35 of the Sale of Goods Law, Lagos State.

[40] See the Consumer Protection Council Act, Cap C23, LFN 2004

On its part, in the banking sector, the replacement of the age-old ledger system with computers linked to internet facilities has brought about a revolution in the sector. Online/e-banking allows customers to carry out a wide variety of banking and other financial activities online, through a website operated by the bank. A major benefit of internet banking is the ease and convenience of managing one's finances from a place and time of one's choosing. Thus, financial transactions including checking of account balance, monitoring transactions, payment of utility bills, transfer of funds and monitoring, confirmation and stoppage of cheques can be conveniently carried out from any location. A related development is the use of electronic devices such as magnetically encoded plastic cards that permit customers to make cash withdrawals and pay for transactions without visiting banking halls, through ATMs (Automated Teller Machines), POS (Point of Sale) and other online channels. The possibilities provided by e-banking, which reduces the need to carry cash on personal and business trips, while also affording ready 24-hour access and convenience for users represents one of the most obvious and potent impacts of ICT in Nigeria.[41]

However, despite the progress in the sector, there are certain challenges which need to be addressed to facilitate the carrying on of e-commerce and other on-line activities. In particular, the availability of effective payment mechanisms which enjoy acceptance in international circles to support cross-border online transactions need to be strengthened. This is mainly through addressing the negative perception of Nigeria as a haven where cybercrime thrives, and which is therefore a risky country to carry out online commercial and financial transactions in. At the heart of this challenge is the need for suitable legal and regulatory framework to address the emergence of e-banking. This is with a view to promoting public trust and confidence in e-banking by providing mechanisms which effectively protect

[41] Recently, the Central Bank of Nigeria (CBN) issued a circular banning cash withdrawals exceeding N150,000 for individuals, and N1million for corporate bodies. See This day Newspapers of 29th April, 2011, online at http://www.thisdaylive.com/articles/cbn-limits-daily-cash-withdrawals-to-n150-000/90464/. See also the CBN websiteathttp://www.cenbank.org/Out/2011/pressrelease/gvd/Revised%20QnA%20on%20CBN%20POLICY%20ON%2 0CASH%20WITHDRAWAL%20LIMIT.pdf,

customers from the risk of hackers, fraudsters and other criminal acts in the online environment.

E. The challenge of broadband deployment

Despite the rolling out of the National Broadband Internet Plan 2013-2018 by the federal government of Nigeria in order to promote pervasive broadband deployment, increase broadband adoption and usage; and ensure availability of broadband services at affordable prices, the deployment of broadband infrastructure in Nigeria has been critical. Thus, ineffective distribution and transmission of the available bandwidth inland have continued to make accelerated expansion of broadband internet at more affordable end-user prices, a major challenge and a barrier to faster realisation to the desired broadband boom in Nigeria. Likewise the common challenges of the broadband operators in the telecommunication sector have been further identified as, the high cost of right of way resulting in the high cost of leasing transmission infrastructure, long delays in processing of permits[42], multiple taxation at Federal State and Local Government level, multiple regulatory bodies[43], damage to existing infrastructure as a result of cable theft, road works and operations, and the lack of reliable, clean grid electricity supply

1.4 Aim and objectives of the research

The aim and objectives of this research work is:

a. To provide conceptual framework of the Nigerian telecommunication industry.
b. To examine the role of the Nigerian Communications Commission (NCC) in regulating the telecommunication sector.

[42] See *Blue-chip Communications Company v. Nigerian Communications Commission* Suit No: CA/A/108/04 – Suit instituted in the lower Court challenging NCC's refusal to grant the plaintiff a 3G license during the 5 year exclusivity period granted the four DML operators.
[43] See NESREA v NCC struggling over regulation of installing telecommunication mast.

c. To appraise the legal, policy, codes, administrative guidelines and institutional mechanisms in response to telecommunication regulation in Nigeria.

d. To appraise the issues, challenges and prospects in regulating the telecommunication industry in Nigeria.

e. To proffer practical solution for the regulation of telecommunications industry in Nigeria.

1.5 Significance of the research

The significance of this research work cannot be over emphasized. It analyses the role of Nigerian Communication Commission and other regulatory agencies in regulating the Nigerian telecommunication sector in order to give the public a clearer views on the their regulatory powers.

Also, the research is necessitated to show case the inadequacies of the commission and its sister agencies in regulating the telecommunication industry and the gross increase of poor quality of service in the country.

With the above issues, this research will be of immense benefit in the field of telecommunication/ICT. First, it benefits the telecommunication specialist, those engaged in telecommunication activities. It also provide relevant suggestions on how best to regulate the telecommunication industry; it is also of enormous benefit to policy makers on how to provide a comprehensive framework for telecommunications sector, lawmakers on how to address the shortcoming in the extant laws that regulate the telecommunication sector, government officials on how to handle telecommunication issues, academicians/students for its contribution to knowledge and literary presentation and anyone interested in the field of telecommunication industry.

1.6 Scope of the research

This research examined the role of the Nigerian Communication Commission and its sister agencies in regulating the Nigerian telecommunication sector. It further examined the issues of regulatory framework and mechanisms for the regulation of the telecommunication industry. However, reference was made to other laws regulating telecommunication sector in Nigeria. Analysis was also made to other agencies regulating the telecommunication sector to enhance more knowledge on this area.

1.7 Methodology of the research

The research methodology adopted in this research work is essentially doctrinal. Both primary and secondary source were employed such as the examination of statutes, case laws, law reports, textbooks by renounced scholars, other library materials such as articles in journals, newspapers, technical reports were made reference to. In addition, internet sources were considered for current trends on telecommunication analyses. Encyclopaedia, thesaurus and other dictionaries were made reference to.

1.8 Literature review

This work examines an industry of great historical and economic interest and significance. Together with the public/private corporations and the civil services, the Nigerian Communication Commission constitutes one of the key institutions of a modern state. In particular, the origin and development of the Nigerian Communication Commission have not only transformed the telecommunication industry in line with the international best practice but have also succeeded in providing a legal and regulatory frame work for the operation of the telecommunication industry.

Ajakpovi, O. in his article "Formulating a Tariff Policy for Nigerian Telecommunication"[44] Analysed tariff regime in Nigerian Telecommunication industry by making a comparative analysis of the Tariff structure from different jurisdiction vis-à-vis Nigeria jurisdiction. The study argued that the global perception of tariff for telecom services is that it should be fair and reasonable and non discriminatory. It further suggested that tariff should be transparent and cost orientated i.e. derived from actual cost including reasonable rate of return in investment.

The study in its class recognized the fact that the National Regulatory (NCC) has wide powers under the law to determine the basis for tariff for Telecom services in Nigeria. However it makes little or no relevance to other laws that complement the functions of the NCC as regards tariff regulation such as Consumer Protection Counsel Act[45].

We submit in line with the above review that reference ought to have been made to other extant laws that sought to protect other rights of the telecom consumers apart from tariff regulation such as quality standard, health hazard of telecommunication infrastructure, etc.

Ajakpovi, M. in his article "The Law & Status of Telecomm Licenses" [46] made a comprehensive analysis of the pioneer principal legislations which regulate telecommunications in Nigeria particularly the Wireless Telegraphy Act 1961/ Wireless Telegraphy Amendment Decree. 31 1998 and the Nigerian Communication Decree No 75 of 1992 alongside the National Policy on Telecommunication. The study focuses on the authority of the NCC to grant licenses, the power of the institution in relation thereto, the geographical traffic limit of certain licenses granted by the Commission and the role of the National Council on Privatization and Bureau of Public Enterprise in the grant of telecom

[44] Ajakpovi, O. "Formulating a Tariff Policy for Nigerian Telecommunication'' (2002) Vol.6 No 1-2, *Modern Practice Journal of Finance and Investment Law.*
[45] Cap C23, LFN, 2004
[46] Ajakpovi, M. "The law & Status of Telecom Licenses" (2000) Vol. 4 No. 3 *Modern Practice Journal of Finance & Investment Law*

licenses. Although the study is relevant in this research in that, it gives the antecedent of the total deregulation and privatization of telecommunication industry in Nigeria, it focuses much more on GSM & VSAT licenses but failed to analyze in details the role of the Commission in frequency licenses, management, and co-ordination/allocation as it affects Satellite Communication.

In view of the foregoing, it is submitted therefore that the NCC had final authority to the exclusive of any other body as it relates to the grant of telecom licenses in all ramification inclusive of frequency licenses / management.

Soyela, O. in his article "The Internet and Emergent Regulatory Legal Framework: A selective Appraisal"[47] assess the emergent trends in internet law from the selected perspectives of defamation, obscenity and copyright infringement generally.

The study analyzes some remarkable judicial decision and legislations from foreign jurisdiction as it relates to the internet legal regime with particular reference to the United States of America. The study is relevant in this research albeit it failed to make reference to our domestic judicial decision and legislations.

It is the submission of this research that while not generally opposed to the above study it would have been more relevance should the author have done a comparative study of the judicial decision and legislations of the foreign jurisdiction vis-à-vis our domestic jurisdiction.

Ariyoosu, D.A. in his article "An Examination of Legal Regulations and Environmental Impacts of Telecommunication Installations in Nigeria" [48] examined the legal regulation of

[47] Soyela, O. "The Internet and Emergent Regulatory Framework: A Selective Appraisal" (2000) Vol.4 No 3, *Modern Practice Journal of Finance & Investment Law.*

telecommunication installations, the environmental impact of telecommunication installations, the roles of concerned regulatory authorities' vis-à-vis their regulatory function in the provisions of effective telecommunications services through telecommunications installations and provision of healthy environment.

It further discussed the lingering face-off between the duo of NCC and NESREA on whose responsibility it is to regulate telecommunication installation which has adversely affects investment and the economy.

The study in its class is very much relevance in this research and has contributed immensely and positively towards the compilation of this research work.

Ogboru, T. In his article "NESREA and NCC Regulations on Telecommunication Masts: Implementing the Precautionary Principle"[49] discussed the need for regulatory agencies and the legislature to adopt the precautionary principle as they review and harmonizes the two overlapping regulations. The study further enhances the richness of this research positively.

Ayinmode, B.O. et al in their article "Evaluation of GSM Radiation Power Density in Three Major Cities of Nigeria''[50] assessed the level of exposure to radio frequency radiation from Base Transceiver Stations (BTS) in Lagos, Abuja, and Ibadan concluded that radio frequency exposure due to GSM Signals cannot contribute to health laggards.

However, researchers assured that some of the surveyed base stations have power densities within the range that has been confirmed by previous researchers to be link with cases of fatigue, headache, sleep disturbances and loss of memory.

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[48] Ariyoosu, D. A. "An Examination of Legal Regulation and Environmental Impacts of Telecommunication Installations in Nigeria" (2014) Vol.30, ISSN 2224 – 3240 (paper) ISSN 2224 – 3259 (online) *Journal of Law, Policy and Globalization*

[49] Ogboru, T. "NESREA and NCC Regulations on Telecommunication Masts: Implementing the Precautionary Principe" (2015) Vol. 5. 155.1 *Journal of Sustainable Development Law and Policy.*

[50] Ayinmode, B. O. et al "Evaluation of GSM Radiation Power Density in Three Major Cities of Nigeria" (2014) Vol. 8, *Internet Journal of Environment, Ecological, Geological, and Geophysical Engineering*

In line with the above, it is submitted that the regulatory agencies need to adopt the precautionary principle of international law to prevent irreversible illness and environmental degradation that may result from Electronic Magnetics Radiation (EMR) emitted by telecommunication masts. The study as it were enhances the richness of this research.

Obayemi, O.K. In his article "Competition in the Nigerian Telecommunication Industry''[51] appraised the rules and regulations that have been instituted to encourage healthy competition and forestall anti-trust practices among Nigerian businesses. It further reviews the efficacy of rules promoting competition within the context of the Nigeria Telecommunication sector and argues for harmonization of all legislations prohibiting anti-trust acts,

The research discussed the regulatory framework in the telecommunication sector and the larger Nigeria economic/ business regime as a whole and it adequately contributes to the compilation of this research.

Obutte, P. C. in his article "ICT Laws in Nigeria: Planning and Regulating, a Societal Journey into the Future"[52] examines the laws on information and communications technology in Nigeria, and the institutional regulatory framework for enforcing the relevant laws. It further appraises selected concepts associated with ICT regulation and some contemporary issues as they relate to the challenges of ICT in Nigeria. The research further enhances the quality of this research.

Oki, P.T. in his article "Regulating the Pricing of Mobile Telecommunication Services–The Role of the Nigeria Telecommunications Commission''[53] examines the price regulation under

[51] Obayemi, O. k. "Competition in the Nigeria Telecommunication Industry" (2014) V01.5, 283 -297, *Beijing Law Reform Journal,* available @ http://www.dx.doi.Org/10.4236/b/v.2014.54027
[52] Obutte, P. C. "ICT Laws in Nigeria: Planning and Regulating a Societal Journey into the Future" (2014) Vol.17, ISSN 1727–3781, *Potchefstroom Electronic Law Journal* http://dx.org/10.4314/pelj.V17i1,102014
[53] Oki, P.T."Regulating the Pricing of Mobile Telecommunication Services – The Role of the Nigerian TelecommunicationsCommunication"(2014)availableonline@geplaw.com/wpcontent/uploads/2014/II/regulating–the–pricing–of– mobile.Pdf.

the Nigerian telecommunication policy and the Nigeria Communication Commission Decree No. 75 of 1992 (as amended) against internationally accepted principles of competition in the telecommunication industry. The researched also contribute to the research work.

Lawal, T. in his article "Challenges of Regulatory and Intervention Agencies in National Economic Development - The Role of Nigeria Communication Commission in National Economic Development"[54] discussed the challenges facing the regulatory agencies in national economic development with particular reference to the role of NCC in national economic transformation as it relates to telecommunication sector.

It is observed that the research is scanty in literature and it is humbly submitted that it ought to have been detailed enough to do justice to the scope of the research. That notwithstanding, the research in its own way contributed to this research work.

Ndukwe, E. C. In his write ups ''Telecommunication Challenges for Nigeria in the 21st Century"[55] discussed the current state of telecommunication industry in Nigeria vis-à-vis the economic sector. His work is in-depth on the economic side in tune with contemporary issues as they obtain in Nigeria but failed to address to the minute the political and social subdivision of the telecommunication industry.

Fink, C. et al, in their study "An Assessment of Telecommunication Reforms in Developing countries" [56]used a panel data set for 86 developing countries across Africa, Asia the Middle East and Latin America and the Caribbean over the period 1985-1999 to analyse the effect of policy reform in basic telecommunications on sectoral performance. They find that

[54] Lawal T. "Challenges of Regulatory and Intervention Agencies in National Economic Development: The Role of Nigerian Communication Commission in National Economic Development" (2014) available online @ http://www.ssvn.com/abstract/pdf=2485081.
[55] Ndukwe, E. C., ''Telecommunication Challenges for Nigeria in the 21st Century'' (2000) (online @ http://www.ncc.gov.ng/speeches-presentations/EVC's presentation, accessed 29/9/2014)
[56] Fink, C., Mattoo, A. & Rathindran, R., "An Assessment of Telecommunication Reforms in Developing Countries'' (2002), *Policy Research Working paper* 2909, The World Bank Development Research Group

privatisation & competition lead to significant improvement in performance, which they agree is partly driven by fast technological progress and legal reform in telecommunication. According to the study, a comprehensive legal reform, involving privatisation and competition as well as support of an independent regulator, produce the largest gained compared to years of partial and no legal reform. The study further argues that the sequence of legal reform matters, as mainline penetration is lower if competition is introduced after privatization, rather that at the same time. The study, in its class enhanced the richness of this research.

Wallsten, S. J. In his study "An Econometric analysis of Telecom Competition, Privatisation and Regulation in Africa and Latin America"[57] examined the effects of privatization, competition and regulation on telecommunication performance in 30 African and Latin American countries from 1984 through 1997 using fixed effect regression, the study finds that competition is correlated with increases in the per capita number of mainlines, payphones, and connection capacity, and with decreases in the price of local calls. Privatizing an incumbent, according to the study, is negatively correlated with mainline penetration and connection capacity. Thus, Privatization combined with an independent regulator[58], however, is positively correlated with connection capacity and substantially mitigate the negative effect on mainline penetration. This stresses the importance of regulation in reforming the telecommunication industry.

Omowunmi, H. et al, also wrote on "Evaluation of Nigeria's Telecommunication Policy[59]" where they statistically determined the level of implementation of the current National Policy on Telecommunication Industry by the four different bodies that comprises the Nigeria's

[57] Wallsten, S. J., "An Econometric analysis of Telecom Competition, Privatisation and Regulation in Africa and Latin America (2001), 49(1), 1 – 19, *Journal of Industrial Economics.*
[58] Like Nigerian Communication Commission (NCC)
[59] Omowunmi, H. et al, "Evaluation of Nigeria's Telecommunication Policy'' (2003) 3 (1) *Journal of Mobile Communication*

telecommunication industry structure – the Government, Ministry of Communications, Nigerian Communication Commission and the Telecommunications Services providers. Their study find that Nigeria telecommunication policy has been implemented to an appreciable extent as many of its objectives have been achieved, yet their work has its short coming as it does not address the level of implementation of other telecommunication legislations or even make reference to it.

Isabona, J. In his Article "Harnessing Telecommunications Revolution in Nigeria: A case study[60]" raised a valuable issue on the impact of the use of mobile phone technology on human health care services in suburban areas of Nigeria. Though he addressed the health issue holistically in his article, there are certain grey areas he failed to enunciate and analyse, such as the legal regime on telecommunication revolution as it relates to regulatory framework on the regulation of the Nigerian telecommunication sector.

Ijewere, A.A. and Gbandi E.C., in their Article, "Telecommunication Reform in Nigeria: The Marketing Challenges[61]" discussed the telecommunication reforms process, the role of the regulatory body (NCC) & current state of affairs of the telecommunication sector. Though, their article focused much on the marketing challenges in the telecommunication industry, it as well enhanced the richness of this research.

Asogwa, F.O. et al, in their Article "The Impact of Telecommunication Expenditure on Economic Growth in Nigeria[62]" seek to indentify the impact of telecommunication on Economic Growth in Nigeria. The study further analyse the relationship between telecommunication infrastructure investment & economic growth by taking a sample of data

[60] Isabona, J., "Harnessing Telecommunications Revolution in Nigeria: A case study'' Wireless and Mobile Technologies 1, no. 1 (2013) : 20 – 24 (online @ http://www.purs.scipub.com/wmt/1/14)
[61] Ijewere, A.A. and Gbandi E.C, "Telecommunication Reform in Nigeria: The Marketing Challenges'' (2012) 10 *Journal of Research in Development,* pp 193 – 197. Also available online @ http://www.ajol.info/journal/jorind
[62] Asogwa, F.O. et al, "The Impact of Telecommunication Expenditure on Economic Growth in Nigeria'' (2013) Vol. 4 No. 13, *Journal of Economics and Sustainable Development* also available @ http://www.iiste.org

from 1970-2010. The study in its class shows mutual causality between telecommunication investment and real economic growth at the aggregate level. However, it made little or no relevance to the legal establishment on neither the telecommunication sector nor the economic growth.

Li, W. & Xu, L. C., in their case study "The Impact of Privatisation and Competition in the Telecommunication Sector Around the World[63]" using a comprehensive country-level data set of 177 countries covering the period from 1990 to 2001 investigate the impact of privatization and competition around the world. Their study argues that optimal policies/legislations require bundling competition policies/legislations with privatization. Thus, their study emphasise the need of a structured legal frame work in regulating the telecommunication sector.

Li, Y. & Lyons, B, in a closely related study "An Empirical Analyses of Market Structure, Privatisation & Independent Regulation on Mobile Network Penetration[64]" Investigate the effect of competition, privatization and the existence of independent regulation on mobile network penetration in 30 national mobile markets, comprising 29 OECD countries and china, over the time period 1991-2006. In agreement with wallsten (1990) supra, the study also positively correlates independent industry regulator (like NCC) with Mobile penetration, arguing that the role of an independent regulator is particularly crucial in privatised mobile market. Accordingly, their study is relevant for this research & in tune with contemporary issues as they obtain in Nigeria.

[63] Li, W. & Xu, L. C., "The Impact of Privatisation and Competition in the Telecommunication Sector Around the World'' (2004) 47 (2), 1 – 36 *The Journal of Law and Economics*
[64] Li, Y. & Lyons, B, "An Empirical Analyses of Market Structure, Privatisation & Independent Regulation on Mobile Network Penetration" (2010) *paper presented at the CRSSE conference, Crete, 2nd – 4th July, 2010*

Babalola, C., et al, in their study ''Development in Nigeria's Telecommunications Sector[65]'' describe the changes in the telecommunication sector as phenomenal considering the impressive growth recorded in the mobile telecommunication market. The study attributed the positive achievement in the telecommunication industry to the goodwill inhibited by the government in Nigerian and the enabling and conducive environment with respect to government policies, legislations and the regulatory regime. The study further argues that, there is no doubt that the ongoing growth and development in the telecommunications sector will continue to demand review of government policies and the legal and regulatory frame work. The work, in its class has addressed succinctly the role of the NCC in transforming the Nigerian's telecommunication sector and thus, relevant for this research.

Johnson, O., in her paper presentation "The Information and Communication Technology (ICT) Industry in Nigeria: A Road Map'' outlined the mandate of the federal ministry of communication technology on policy direction and intervention as regards the Nigerian digital economy in the Nigeria ICT Industry. She further buttressed the role of private sector in enhancing the ICT Industry growth. The paper further outlined the role of other government agencies[66] in regulating the Telecommunication Industry.

Alabi, G. A., in his work ''Telecommunications in Nigeria[67]'' gave a historical background information on the evolution of the Nigerian telecommunication sector. His work is relevant only in this research, in that it gives a chronological backdrop of the Nigerian telecommunication industry

[65] Babalola, C. et al, ''Development in Nigeria's Telecommunications Sector'' (online @ http://www.giwa-osagie.com, accessed 29/9/2014) also available @ http://www.werksman.co.za

[66] Such as NCC for ICT industry regulation, NITDA for IT industry support and development, NIPOST for postal delivery and access infrastructure, Galaxy backbone for ICT infrastructure provision for federal government, NIGCOMSAT for commercialization of government's satellite resources, USPF/NITDF for managed fund to incentive universal access, NFMC for prudent and coordinated allocation of frequency resources and ministry of communication technology for policy formulation, policy impact assessment, supervision & oversight of all MDA ICT related projects & initiatives

[67] Alibi, G.A., (1996) ''Telecommunications in Nigeria'' University of Pennsylvania – African Study Centre, pp 1- 75

Mowete, A.I., in his study "Telecommunications Sector Performance Review: A Supply Side Analysis of Policy Outcomes[68]" gave a comprehensive review of the performance of the post-reform telecommunications and ICT sector in Nigeria, using the performance indices specified and adopted by the International Telecommunications Union (ITU). In particular, the review examines the effectiveness of the country's ICT-telecommunications policies[69] & regulatory instruments[70] by weighing the goals & objectives set forth therein against actual performance, as reflected by the conventional performance indicators. The study is also relevant in this research.

Nwaulune, A.K., in his work "The Role of Nigerian Communications Commission in Frequency Management, Co-ordination/Allocation as it Affects Satellite Communication[71]" discussed the objectives, scope & functions of the NCC as it affects satellite communication in a skeletal form, however, the study failed to analyse in detail the role of the NCC as it affects the mobile telephony which is the fastest growing limb of the telecommunication sector. Thus, it is submitted in line with the above review that detailed reference ought to have been made to the mobile telephony considering its critical nature in the telecommunication industry.

1.9 Organizational Layout

Chapter one dealt with General Introduction where telecommunications was considered to be an indispensable tool in the entire process of globalisation and its impact on economic growth in Nigeria, the revolution brought about by telecommunication in the area of social,

[68] Mowete, A.I., (2007) "Telecommunications Sector Performance Review: A supply Side Analysis of Policy Outcomes'' (online @ http://www.research ICTafrica.net, accessed 24/8/2014)
[69] Such as National Telecommunication Policy and National Information Technology Policy
[70] Such as NC Act 2003, NITDA Act 2007, & the NBC Act 1992 (as repealed by Decree 55 of 1999) etc
[71] Nwaulune, A.K., "The Role of Nigerian Communications Commission in Frequency Management, Co-ordination/Allocation as it Affects Satellite Communication" *paper presented at the NASRDA'S stakeholders meeting by head spectrum administration NCC* (online @ http://www.nasrda.gov.ng/stakeholdersmeeting/satellite, accessed 20/8/14)

economic, cultural and psychological transformation was further discussed. The statement of the research problems such as Regulatory overlap, Cyber Crime, Cyber squatting, E-commerce, E-contract & E-banking and the challenge of broadband deployment was recounted. The aims and objectives of the research which is to Provide the conceptual framework of the Nigerian telecommunication industry, Examine the role of the Nigerian Communications Commission (NCC) in regulating the telecommunication sector, Appraise the legal, policy, codes, administrative guidelines and institutional mechanisms in response to telecommunication regulation in Nigeria, Appraise the issues, challenges and prospects in regulating the telecommunication industry in Nigeria and to Proffer practical solution for the regulation of telecommunications industry in Nigeria was also narrated. The Significance and Justification of the Research was further discussed where it was stated that the research work will be of benefit to academicians/students for its contribution to knowledge and literary presentation and anyone interested in the field of telecommunication industry. The Scope of the research which is restricted to Nigerian jurisdiction and the Methodology of the Research that is essentially doctrinal was as well analysed. The Chapter finally reviewed 23 related literatures.

Chapter two discussed the Conceptual framework where clarification of the relevant key terms i.e. Role, Communications, Commission, Regulating & Telecommunications was made. The chapter further discussed the history and overview of the Nigerian telecommunications environment right from the pre-colonial era, colonial-era and post colonial-era. Telecommunications in a liberalised economy in Nigeria and the General Services for Mobile Telecommunication (GSM) network structure in Nigeria was further discussed in the chapter.

Chapter three dealt with the legal framework in the Nigerian telecommunication sector where the nature and scope of the legal regime in the telecommunication sector was examined. Thus

the chapter went ahead and analysed the following regulations i.e. The Nigerian Communication Act, 2003 together with the 15 Regulations and the 15 Guidelines issued thereof by the NCC, The National Information Technology Development Agency Act, 2007, Freedom of Information Act, 2011, Wireless Telegraphy Act, 1960, National Broadcasting Commission Act, 1992, National Office for Technology Acquisition and Promotion Act, 2004, National Identity Management commission Act, 2007, Personal Information Data Protection Bill, 2013 and other laws regulating telecommunications sector in Nigeria such as The Companies and Allied Matters Act, Tort law, Criminal law and Planning law.

Chapter four discussed the Issues, Challenges and Prospects in regulating the Nigerian telecommunication industry where policy, legal and regulatory framework was extensively discussed.

Chapter five finally anchored on Conclusion, Findings and Recommendations where the research finds out the issue of regulatory overlap and recommend for the review of all telecommunication laws and policies in order to ensure that they support and facilitate telecommunications development and give legal substance to the ICT policy and National broadband plan. The research also finds out that as telecommunications access and usage began to grow, so also did the menace of cyber crime and thus recommended for the deployment of some legal/enforcement tools and other crime fighting bodies by the government to tackle the problem. The research further finds a related issue of cyber squatting whereby domain name speculators, in bad faith, intentionally register domain names corresponding to famous personalities, trademarks or other identifiers, with a view to selling them off at a profit to the person or company with legitimate claim to the name at a later date and therefore recommend for a law reform that will protect the rights of trademark sand business name owners from unauthorised use of the name or mark as a domain name and to prohibit cyber squatting. It is also the finding of the research that issues arises as to the

validity of ICT-related commercial transactions particularly in the area of e-contracts, e-commerce and e-banking and recommended for the promulgation of new laws and the amendment of the existing laws such as the sale of goods law and the consumer protection law. Lastly, the research observed that despite the rolling out of the National broadband 2013-2018 there is still ineffective distribution and transmission of the available bandwidth which constitute a major challenge and a barrier to faster realisation to the desired broadband boom in Nigeria.

CHAPTER TWO

CONCEPTUAL CLARIFICATION, HISTORY AND OVERVIEW OF THE NIGERIAN TELECOMMUNICATION ENVIRONMENT

2.1 Conceptual clarification

'Role' is literally defined as the degree to which somebody or something is involved in a situation or activity and the effect they have on it[1]. However, neither the Nigerian Communication Act[2], 2003 nor any of the regulations or guidelines promulgated by the commission gives the definition of the word Role. Nonetheless, the word Role in relation to the research under reference refers to the effect the Nigerian Communication Commission has over telecommunications regulations in rule making process.

'Nigeria' means the entire geographical land area, the territorial waters and air; limits of Nigeria and any area to which the provisions of the Act[3] applies.

'Communications' is literally defined as the methods of sending information, especially telephones, radio, computers, etc or roads and railways[4]. On the other hand the Consultation Guidelines on the Nigerian Communication Commission 2007[5], defined the concept of communication to means any communication, whether between persons & persons, things & things, or person and things, in the form of sound, data, text, visual images, signals or any other form or any form of those forms.

'Commission' is defined as an official group of people who have been given responsibility to control something, or to find out about something usually for the government[6]. With particular reference to our research, the word Commission is construed to mean the Nigerian

[1] E-Oxford Advanced Learner's Dictionary, Oxford University Press, (2010)
[2] Cap N97 LFN, 2004
[3] Ibid, Section 157
[4] E-Oxford Advanced Learner's Dictionary, Oxford University Press, (2010)
[5] Part 8 of the Guidelines
[6] E-Oxford Advanced Learner's Dictionary, op.cit

Communication Commission as defined in both the Nigerian Communication Act, 2003[7] and Consultation Guidelines on the Nigerian Communication Commission, 2007[8].

'Regulating' is defined as to control something by means of rules[9], and none of the telecommunications regulatory instruments define the concept; but on the other hand the word 'Regulating' is synonymous with 'Rule making' which is defined to mean the procedure of the commission (NCC) in making, amending or repealing regulations[10]. Hence, it is submitted that the latter definition should be adopted to suit the research under reference.

'Telecommunication' is the technology of sending signals, images and messages over long distances by radio, telephone, television, satellite etc[11]. Meanwhile, the Nigerian Communication Act, 2003[12] defined Telecommunications to mean any transmission, emission or reception of signs signals, writing, images, sounds or intelligence of any nature by wire, radio, visual or other electro-magnetic systems.

Telecommunications also known as Information and Technology[13] (IT) is the means of electronic transmission of information over significance distances by electric means and refers to all types of voice, data and video transmission. This is a broad term that includes a wide range of information transmitting technologies such as telephone (wired and wireless), microwave communication, fibre optics, satellites, radio and television broadcasting, the internet and telegraphs. A complete single telecommunication circuits consist of two stations, each equipped with a transmitter and a receiver. The transmitter and a receiver at any station may be combining into a single device called transceiver. The medium of signal transmission

[7] Cap N97, op. cit.
[8] Part 8, op. cit.
[9] E-Oxford Advanced Learner's Dictionary, op.cit
[10] Part 8, op. cit.
[11] E-Oxford Advanced Learner's Dictionary, op.cit
[12] Cap N97 op. cit.
[13] Information Technology is any equipment or interconnected system or sub system of equipments that is used in the acquisition, storage manipulation, management, management transmission or reception of data or information.

can be via electrical wire or cable (also known as 'copper'), optical fibre, electromagnetic fields or light. The free space transmission and reception of data by electromagnetic field is called wireless communications[14]. Telecommunications and broadcasting are administered worldwide by the International Telecommunications Union (I.T.U.). Most countries have their own agencies for enforcing telecommunication regulations.[15]

In view of the forgoing discussion one can safely conclude that the term Telecommunication is largely synonymous with Information Technology (IT) and this refers to the information processing of the software applications on operating systems or hardware applications that includes computers, videos, telephones and related equipments of telecommunications, tapes, CDs etc

2.2 Meaning of telecommunications system

A telecommunication system is a collection of nodes and links to enable telecommunication.[16] It spans a wide variety of areas that include but are not limited to things such as processes, computer software, computer hardware, programming languages and data constructs. In short anything that renders data, information or perceived knowledge in any visual format whatsoever, via any multimedia distribution mechanism, is considered part of the domains space known as Telecommunication.[17] Example of telecommunication systems are the telephone network, the radio broadcasting system, computer networks and the internet. The nodes in the system are the device we use to communicate with, such as telephony or a computer network.

[14] http://www.searchtelecom.techtarget.com accessed 15/7/15
[15] In Nigeria for example, we have the Nigerian Communication Commission, Nigerian Broadcasting Commission and other sister agencies like NESREA, NITDA etc.
[16] http://www.study.com/academy/lesson/components accessed 15/7/15
[17] Ladan, M.T. op cit.

Telecommunication system consists of two words Telecommunication and System. The term ‘’Telecommunication’’ is the means of electronic transmission of information over a distance in form of voice telephone calls, data, text, images or video[18].

‘’System refers to the instrumentality that combines independent but interrelated interacting elements comprising a unified whole’’[19]

From the above discussion we can conclude that telecommunication system refers to any equipment or interconnected system or sub system of equipment that is used in the acquisition, storage manipulation, management transmission or reception of data or information.

Component of telecommunication system

The component of telecommunication system in its fundamental form includes a transmitter to take information and convert it to a signal, a transmission medium to carry the signal and a receiver to take the signal and convert it back into usable information.[20] This applies to any telecommunication system, whether it uses computer network or not.

Most modern telecommunication systems are best described in terms of a network. This includes not only the basic elements listed above but also the infrastructure and controls needed to support the system. There are six components to a telecommunication system[21].

a) Input and output devices, also referred to as “terminals”

[18] See e-Advance English Dictionary and Thesaurus
[19] Ibid.
[20] http://www.study.com/academy/lesson/components accessed 15/7/15
[21] Ibid.

These provide the starting and stopping point of all telecommunication system. A telephone is an example of terminal. In computer networks, these devices are commonly referred to as nodes and consist of computer and peripheral devices.

b) Telecommunication channels, which transmit and receive data.

This includes various types of cables and wireless radio frequencies.

c) Telecommunication processor, which provide a number of controls and support functions.

d) Control software, which is responsible for controlling the functionality and activities of the network.

e) Messages represent the actual data that is being transmitted. In the case of telephone network, the messages would consist of audio as well as data.

f) Protocols specify how each type of telecommunication system handled the messages, for example, GSM and 3G are protocols for mobile phone communications, and TCP/IP is a protocol for communication over the internet.

While early telecommunication system were built without components, almost all telecommunication system we used today are computerized in a way

2.3 Concept of telecommunications sector

The telecommunications sector comprises of companies that make communication possible on a global scale whether through phone or internet. These companies created the infrastructure that allows data to be sent anywhere in the world.[22] The largest companies in

[22] http://www.investopedia.com/ask/answers/070815/what-telecommunications-sector.asp#ixzz4GmzF1c4 Accessed 10/5/15

the sector are wireless operators, satellite companies, cable companies and internet service providers.[23]

The telecommunication sector evolved from the telegraph where communication took days, to modern mobile technology, and they change how people live and do business. At one time telecommunication requires physical wires connecting home and business. In modern society, this is changing with mobile technology and wireless technology becoming the primary form of communication.

The sector structure has also changed from a few players to a more decentralised system with decrease regulation and barriers to entry. Other than the service providers, small companies in the telecommunication sector sell and service the equipment, such as routers, switches and infrastructure which enable this communication. For growth investors, these companies provide the best opportunities for share price appreciation. In contrast, larger companies tend to be haven conservatives, income-focused investors.[24]

The major segments within the telecommunication sector are wireless communications, communication equipments, processing systems and products, long distance carriers, domestic telecom services, foreign telecom services and diversified communication services. The fastest growing area within the sector is wireless communications, as more and more communications and computing shift to mobile devices. Looking forward, the sector biggest challenge is to keep up with people's demand for faster connections as they consume and create content, which requires significant capital expenditures. Companies that can meet these needs thrive.

[23] Ibid.
[24] Ibid.

2.4 Meaning of telecommunication network

Telecommunications network refers to the provision of a set up for communication between two or more spatially-separated users by electronic means, wherein the users might send/receive a broadband variety of information in the form of voice, video or data.[25] Since the end of 19th century, the various concept and technology used for telecommunication networking have matured through various innovation and developments, starting from the telegraphy demonstrated in 1875 by Samuel Morse.

Thereafter, the 20th century, following the invention of telephony by Graham Bell in 1886; witnessed phenomenal progress in science and technology leading to the unprecedented development in the field of telecommunications. The synergy of electronics with telecommunication and computing brought in novel networking technologies offering wide range of services for the common people and the corporate sectors as well.[26] Today, the needs of information-hungry society, driven by the potential of this synergy are being ceaselessly served by the ever increasing variety of telecommunications technologies all over the world. In particular, the arrival of internet with its unprecedented penetration, this wireless connectivity to the users in the last mile of a mobile communication network, the vast footprints of satellites and, the enormous wired-bandwidth of optical fibres in long-haul backbone networks have significantly changed the ways one can communicate in our society and live one's life today both in personal as well as professional fronts.[27]

[25] Datta, D. "Telecommunication Networking" (2015) *Journal of Information Technology and Communication Resources for Sustainable Development*, available online @ http://www.eolss.net/sample-chapters/c15/e1-25-01-18pdf accessed on 29th September, 2016
[26] Ibid.
[27] Ibid.

"Telecommunications network is a collection of terminal nodes, links are connected so as to enable telecommunication between the terminals."[28] The transmission link connect the nodes together, the nodes use circuit switching, message switching or packet switching to pass the signal through the correct links and nodes to reach the correct destination terminal[29].

"Telecommunications network is a system of computer, transmission channels, and related resources which are interconnected to exchange information."[30] A Telecommunications network may be comparatively small, in which case it can be a LAN[31] or relatively large, in which case it could be a WAN.[32] A LAN may be confined, for instance, to a single building while a WAN may cover an entire country. The communication channel in a network may be temporary or permanent.[33]

"Telecommunications network refers to electronic system of links and switches, and the controls that govern their operation, that allows for data transfer and exchange among multiple users."[34]

"Telecommunications network is an organisation of stations capable of intercommunication, but not necessarily on the same channel."[35]

"Telecommunications network refers to high speed, high capacity, long-distance communications system comprising of computers, electronic switches, cables, wireless transmitters and antennas etc. which link multiple remote sites."[36]

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[28] Wikipedia, the free encyclopedia available at http://www.en.wikipedia.org.wiki/telecommunication Accessed 10/5/15
[29] Ibid.
[30] http://www.dictionaryofengineering.com/definition Accessed 10/5/15
[31] Local Area Network
[32] Wide Area Network
[33] Also called network (1) or communication network
[34] http://www.britannica.com/technology/telecommunication Accessed 15/7/15
[35] http://www.thefreedictionary.com/telecommunication Accessed 15/7/15
[36] http://www.businessdictionary.com/definition Accessed 15/7/15

From the above discussions we can conclude that telecommunications network serve as an essential platform in our society for exchange of information in its various forms, viz, voice, data and videos and therefore help us in living the life of this modern era. Networking practices have evolved almost over two centuries with an unbelievable range of technologies, services and standards, calling for accommodation of heterogeneous networking equipments and transmission media of different times, region and standards.

2.5 Meaning of universal access/universal service

The concepts of Universal Access and Universal Service to telecommunication/ICT are distinct. Universal Access refers to publicly shared level of service e.g. through public pay phones or internet telecentres while Universal Service refers to service at the individual or household level, e.g. typically a telephone in each home. However, they are also intrinsically linked to each other as Universal Access is the pre-cursor for Universal Service.[37]

In the past, developing countries focussed mostly on Universal Access, meaning community and publicly shared access as universal access was the appropriate and most feasible target. However, since the maturation of mobile communications which extended services further and lowered access barriers to take up, many developing countries might realistically target Universal Service for telephony in urban areas. And also, in addition to setting Universal Access target for rural areas, the objective of increasing rural penetration can be set.[38]

Telecommunications include both telephony and internet and some countries are at the stage where they have achieved Universal Access to telephony and their goal is to achieve Universal Service while in the internet realm their goal is to Universal Access[39]. Therefore,

[37] http://www.ITUtoolkit Accessed 15/7/15
[38] Ibid.
[39] Ibid.

their policy is no longer focussed on universal access but both on Universal Access and Universal Service.

In the more developed world which previously had universal service policy goals the onset of broadband has led re-used of the term Universal Access. It is often recognised universal availability of broadband services may not necessarily yield service-like household penetration for many reasons, though the provision of affordable access is an important goal. As the reality in more and more relates to both Universal Access and Universal Service it makes sense to use the generic term Universal Access and Service

In view of the foregoing discussion, it is submitted that Universal Access and Universal Service can largely be characterised by the availability, accessibility and affordability of telephony and the internet with increasing consideration of the inclusion of broadband and broadcasting.

Scope of universal access and service

While Universal Service was once reserved for basic communications, Universal Access Service policies and strategies go beyond telephony and include at least data and internet communication. Traditionally, broadcasting has not been part of Universal Access Service, but is now regarded as part of ICT's, in particular as the underlying technologies and delivery mechanism. Telecommunications and broadcasting are converging; first models of how to include broadcasting in Universal Access Service policies are explored.[40] However, media laws and policies have fundamentally different requirements which go beyond affordable access and service. Their focus is on a diversify of content providers, quality content development, plurality and independent news reporting, choice and media freedom, and

[40] Ibid.

media ethics and control against illegal and harmful media content. These content elements have traditionally not been part of Universal Access Service for telecommunications. As a consequence, developing Universal Access Service requirement for broadcasting is breaking new ground.[41]

Increasingly, Universal Access Service policy needs to be as forward looking as possible and include broadband development, the move toward a next generation network environment and address issues of convergence. The future challenges for lawmakers are how to address the increased requirement and complexity of Universal Access Service while at the same time having Universal Access Service policies and programme that achieve their goals quickly and differently.

2.6 Historical evolution of Nigerian telecommunications environment

Since its inception a little over a century ago, Nigeria's Telecommunications system has progressed through various stages of development from the primitive communications equipment in its colonial days to the enormous variety of technologies available today.[42]
There is no gainsaying the fact that telecommunications has become one of the most important aspect of the growth of human society and culture. Without it so many things would not get done, people would be divided, and the world would not be as we know it today[43]. Our need for information is almost as great as our need for energy. Telecommunications provides a lot for the world. It provides business, money and market stability; development in telecommunications has provided the foundation for other technologies and major 21st century developments in different sectors of society. For

[41] Ibid.
[42] Ajayi, G.O., et al, ''A Century of Telecommunications Development in Nigeria: What next?'' (online @ http://www.vii.org/paper/nigeria.htm accessed on 8/10/2014)
[43] Anthony, F.K., ''Telecommunications Installations and Environmental Pollution in Nigeria: A Case for Taming a Growing Monster in an Emerging Economy'' (online @ http://www.vii/org/paper/nigeria.htm accessed on 8/10/2014)

instance, with the development of radio wave technology, air travel has become one of the major benefits of telecommunications. Space and sea exploration, health care delivery, distance learning education, administration and security management have all come from strong developments in telecommunications. The concept of globalization has been driven and made possible largely due to telecommunications. Therefore, the availability of a functional and efficient telecommunications infrastructure as well as potent legal framework is a sine-qua-non for any country that wants to competes in today's global economy

The ground work and effort to deregulate and liberalize the Nigerian Telecommunications sector commenced with the promulgation of the Nigerian Communications Commission Decree No. 75 of November 1992 and the subsequent inauguration of the first board of the Nigerian Communications Commission (NCC) in 1993. This effort did not bear much fruit as the law had a limiting effect on the liberalization of the sector. For instance, Decree 75 still allowed NITEL to retain its monopoly over the Fixed Wire Line Systems, Long Distance Transmission Services and International Gateway services, thereby retaining its status as national carrier status. However due to the fact that the nation was under a military government during the first seven years of its life, the NCC did not have the necessary freedom and powers to carry out its functions. This is partly due to the fact that the rules of the game were not clear and partly because the regulatory body that was to act as referees neither had the autonomy nor the resources to guarantee a predictable market place for potential investors and of course the investors kept away.

On assumption of office on May 29, 1999 the Olusegun Obasanjo administration deregulated the telecom sector, most especially the much touted granting of licenses to GSM service providers and setting in motion the privatization of NITEL. This proactive approach by the government to the telecom sector marked the singular landmark achievement on the development of the sector as well as on citizens' access to telephony services.

In order to properly appraise the historical evolution of the telecommunications industry in Nigeria, it will be apposite to sub-divide the developments into the pre and post colonial era.

2.6.2 Telecommunications in the Pre-colonial Era

The development of Telecommunications in Nigeria began in 1886 when a cable connection was established between Lagos and the colonial office in London. By 1893, government offices in Lagos were provided with telephone service, which was later extended to Ilorin and Jebba in the hinterland. A slow but steady process of development in the years that followed led to the gradual formation of the nucleus of a national telecommunications network.

In 1923, the first commercial trunk telephone service between Itu and Calabar was established. Between 1946 and 1952, a three-channel line carrier system was commissioned between Lagos and Ibadan and was later extended to Oshogbo, Kaduna, Kano, Benin, and Enugu; thus connecting the colonial office in London with Lagos and the commercial centres in the country with local authority offices.

The main transmission medium during the pre-independence era was unshielded twisted pair. This evolved later from rural carrier systems on high gauge lines to line carrier systems of twelve-channel capacity. Small- to medium-capacity systems employing VHF and UHF radio were introduced around 1955. The first serious attempt at planning telecommunications services in the country was the 1955-62 Development Programme. It provided for the expansion of the trunk using a VHF Multichannel Radio System on a nationwide basis and a short microwave link between Lagos and Ibadan.

In the early days, the primitive coordinate pegboard switching system was used. This progressed through manual switchboards of different sizes, shapes, and capacities until Strowger exchanges were installed into the national network at Lagos Island, Ikeja, Ebute

Metta, Apapa, and Port Harcourt around 1955-60 along with 116 manual exchanges. The installation of the Strowger exchanges marked the beginning of automatic telephone switching in Nigeria. By the time of independence, automatic exchanges were established at the main centres and a subscriber trunk dialling system (STD) was introduced between Lagos and Ibadan.

The telegraph service also witnessed a parallel development, from telegraph delivery by way of manual coordinate pegboard switching to the use of Morse code for telex switching. By about 1960, a manual telex exchange of sixty subscriber lines was in service in Lagos. While all the above efforts were essentially aimed at improving internal telephone services in Nigeria, external telephone services in the pre-independence period were wholly owned by Cable and Wireless of the United Kingdom, which was a colonial private company[44].

2.6.3 Telecommunication in the Postcolonial Era

With the attainment of independence in 1960, Nigeria embarked on a periodic national development plan. Telecommunications development was featured in each of these plans, which were usually of a five-year duration. It is more meaningful, however, to discuss the development of Nigeria's telecommunications since independence--its objectives, achievements, and features--on a decade-by-decade basis.

A. The 1960's

The focus of attention in this period was the expansion of the network to meet the needs of the fledging commercial and industrial sector. The specific objectives include:

[44] Ajayi, G.O., et al, ''A Century of Telecommunications Development in Nigeria: What next?'' (online @ http://www.vii.org/paper/nigeria.htm accessed on 8/10/2014)

(a) installation of additional 60,000 telephone lines to bring the total number of lines to 90,000 by the end of the decade;

(b) expansion of trunk dialling facilities to link the major urban centres that were then springing up; and establishment of the Nigerian External Telecommunications (NET) Limited.

Unfortunately, these objectives could not be completely realized by the end of the plan period. For example, only about 26,000 lines (just over 40% of the planned target) could be added to the existing network, partly because of underfunding and partly because of the disruption caused to the economy by the Nigerian Civil War (1967-70). Nevertheless, some of the decade's major achievements included the installation of a microwave radio transmission system to link the cities of Lagos, Ibadan, Enugu, Benin, and Port Harcourt, all of which are in the southern part of Nigeria's transmission system. Preparatory work toward the establishment of NET as a limited liability company started during this period as well.

B. The 1970s

The second decade of independence incorporated two five-year plan periods --Nigeria's second and third development plans.

The 1970-75 Plan Period

During the first half of the decade efforts were concentrated on the reconstruction and rehabilitation of the telephone equipment and other infrastructure damaged during the civil war. In order to achieve the objectives of the second plan period, developments in five major areas were considered. In telephony, new automatic exchanges were to be constructed and existing automatic exchanges expanded. New manual telephone exchanges were considered for construction as well. In telegraph communication, the torn-tape system was to be replaced

with tele-printer automatic switching systems, and key and sounder circuits were to be converted to tele-printers.

For Nigeria's transmission system, the plan considered construction of subsidiary radio routes to provide trunk services from toll centres to end offices, construction of twisted pair carrier systems to provide links to rural areas, and provision of additional coaxial routes for Lagos-Ibadan-Ilorin-Kaduna. The plans for Nigeria's external line plant included construction of a local line plant network for new subscribers and an increase in existing line plant to achieve the objectives of the expansion. Finally, the 1970-75 plan stipulated the establishment of a Nigerian Satellite Communications earth station at Lanlate in the south-western part of Nigeria.

Due to underfunding, however, the only objective of the 1970-75 plan period that was completed was the national telex network.

The 1975-80 Plan Period

The third National Development Plan period (1975-80), was the most ambitious. It aimed at increasing the telephone facilities from 50,000 lines to 750,000 lines--an increase of about 1,400%. In the area of switching, three contracts were awarded to add over 340,000 lines to Nigeria's networks. In the first contract--for the contingency plan --forty-five locations were to receive exchanges with a total installation capacity of 162,000 lines and twelve other exchanges were to be expanded by 48,000 lines. In the second contract, covering turnkey projects, 147 locations were to receive external line plant and switching equipment to add an additional 121,000 lines. The third contract, covering mobile exchange, provided for installation of 29 mobile exchanges with 11,300 lines.

In the area of transmission, the following projects were considered: introduction of the Nigerian Domestic Satellite (DOMSAT) to provide television and sound broadcasting (later modified to accommodate telephony and teletype services between the states); introduction of the aerostat (balloon) system, which was intended for television and sound broadcasting and telex and telephone services; provision of coaxial cable between Lagos and Kaduna; expansion of the existing microwave radio link system intended for telephone services as part of the contingency plan exchanges; and provision of new transmission links for the exchanges in the contingency plan not covered by existing radio links.

There were at least six achievements associated with the 1975-80 plans. First, 177 locations were provided with telephone exchanges as well as twenty-nine mobile exchanges, increasing the number of lines in the network from 52,000 to 241,000 and the number of telex lines from 874 to 4,950. Second, the DOMSAT earth station project was completed. Third, work started on the aerostat balloon (which turned out to be a disaster). Fourth, a second satellite antenna was built at Lanlate, and this increased the global coverage of the external services. Fifth, an International Telephone Switching Centre (ITSC) was installed at the Nigerian External Communications (NECOM) house in Lagos. And finally, a new microwave link was provided between Lagos and Cotonou (Benin Republic) and computerized telex, telegraph, and data switching centres were provided at NECOM House.

The 1975-80 plan period was not a complete success, however. The disastrous aerostat balloon project, which was abandoned, was a colossal waste of money. The proliferation of different technologies in the network made spare parts procurement difficult and complicated manpower training by limiting the number of personnel who could be switched from one part of the network to another. There was also a shortage of technical manpower to operate and

maintain the additional facilities and a lack of adequate levels of finance to execute the projects.

The most serious problem, however, was bad planning. There was not adequate coordination between project management and implementation. Buildings were not available for the installation of purchased equipment, and vital links -- such as external line plants -- were omitted in the contract awarded.

C. The 1980s

The first half of the decade covered the fourth National Development Plan period (1980-85), which was essentially aimed at completing all outstanding projects from the previous plans. In addition to the primary objective, the development plan was designed to provide a total of 370,550 additional telephone lines, a terrestrial toll and trunk transmission network to link all switching centres throughout the country, and Telex/Gentex exchanges for about 9,000 telex lines with external line plant and tele-printer machines. It was envisaged that the total number of installed telephone lines in Nigeria at the end of the plan period would increase to 612,000.

During this period, the telecommunications arm of the Department of Posts and Telecommunications was merged with the Nigerian External Telecommunications (NET) to form, in 1985, the Nigerian Telecommunications Ltd. (NITEL), a limited liability company that administers both internal and external telecommunications services in Nigeria.

2.6.4 The GSM Boom and the Nigerian Telecommunications Revolution

The Nigerian National Telecommunications Network of the mid-1990s is made up of the following elements:

I. Telephone Services

Total capacity has risen to 780,000 lines (1993)

Other services include: 10,000 cellular Mobile Telephones and 15,000 voicemail lines. Digital exchanges were provided in 47 Local Government Headquarters.

II. Telex Services

There are 14 Telex exchanges with total installed capacity of 12,800 and 20 voice frequency telegraph terminals.

III. Transmission Systems

A. Microwave

There are 264 terminal stations and 172 unmanned repeater stations. The channel capacities range from 300 to 1800 channels with capability to accommodate one colour TV on the 960 and 1800 channel systems.

B. Coaxial

This was to provide 960 channels between Lagos and Kaduna but the system has problems due to lightning along some parts of the route.

C. Optical Fibre Cable

Optical fibre cables were developed to link Primary/Secondary Exchanges in Lagos zone.

D. Domsat

This system consists of 19 standard `B' earth stations and operates on the three leased transponders from INTELSAT. The 36 MH2 bandmidth transponders were initially

grossly underutilised. They were originally mainly used for television transmission for only a few hours daily. However, they are now utilised for both television and telephone.

IV. International Services

A. International Satellite System

This originally had two gateways at Lanlate and Kujama linked to switching centres at Lagos (NECOM) and Kaduna respectively. In 1992 two new gateways were commissioned - one at Victoria Island, Lagos to cater for the ever increasing traffic in the South West and the other in Enugu to cater for the traffic in the Eastern part of the country.

B. Submarine Cable

This provides a transmission system from Lagos through Abidjan, Dakar, and Casablanca to Europe.

2.6.4 (a) Extent of Telecommunication Services offered by NITEL

As has been noted above, the existing services offered by NITEL are telephony, telex and telex delivery services, telegraphy and registered telegraphic addresses, pay phones and public coin telephones, transmission and reception of real-time television for network services, private leased telephone and telex service, private wire, leased telephone and telegraph services, alternate voice data (AVD) circuits, voice cast and press reception, international public counter services, NIFAX service (facsimile), a data switching system, electronic mail (national service only) and cellular.

A. Maritime Services

Nigeria’s shore-to-shore and ship-to-shore maritime communication services are provided via High Frequency Radio System. The limitations of the present system are poor transmission quality, low reliability, and lack of automatic access to the national telecommunications network. In 1988, Nigeria joined the International Maritime Satellite Organization (INMARSAT), which operates a system of satellites to provide mobile communications for the world's shipping and off-shore industries. Through the INMARSAT system, NITEL offers Maritime Mobile Service (MMS) as well as satellite mobile communication.

B. International Services

The international services provided by Nigeria's telecommunications system include telephony with international direct dialling in some cities, telex and telex delivery, telegraph and registered telegraph addresses, leased telephone and telegraph services, television transmission and reception with system conversion facilities, alternate voice and data, voice cast, press reception, high-speed data transmission, and facsimile transmission facilities.

2.6.4 (b) Scope of Telecommunication Services covered by NITEL

Nigeria's telephone penetration rate was still low, in 1994, at about 8 direct exchange lines (DELs) per thousand inhabitants. Its major challenge in extending its facilities continued to be the provision of telecommunication services in the rural areas, where there is little or no penetration. In the mid-1990s, however, the telecommunications facilities in the urban areas continued to be inadequate as well. Nigeria's telecommunications services--especially telephony--are not sufficient to meet the needs of all those who require them, especially in the big cities like Lagos, Ibadan, Enugu, Kano, and so on. This has led to long waiting periods for obtaining facilities (which was above 10 years in 1993) and congestion of existing

exchanges. Finally, new telecommunications facilities such as facsimile, international business services and high-rate data transmission are not readily available.

Nevertheless, in early 1990's, attempts were made by the Nigerian authorities to spread the telecommunications facilities throughout the country, and in the mid-1990s all the state capitals as well as Abuja and many of the local government headquarters were connected to the national network. The major obstacle hampering the extension of the system was lack of funds and absence of the engineering infrastructure needed for the development and production of spares and components.

A. Cellular Telephony

Cellular telephony was first introduced in 1992 with the formation of Mobile Telecommunications Service (MTS). MTS is a joint-venture between NITEL and Digital Telecommunications of Atlanta; in 1994, MTS had a nation-wide monopoly over cellular service. MTS began with a capacity of 10,000 lines; and due to the high level of unmet telecommunications demand, the system was filled to capacity within one year. Subsequently, in February 1994, MTS added an additional 20,000 lines and had plans to add an additional 25, 000 lines. Even with this additional capacity, it is common to receive a fast busy signal during peak hours due to network congestion.

Nigeria's cellular market is expected to grow at a rate of 25% annually through 1997. The major markets are in Lagos (among the young urban elite), the oil-based communities of Port Harcourt and Warri; and the cities of Kano and Abuja. In 1992, the market for cellular equipment was US $5 million. In 1993, over half of the cellular equipment was supplied by U.S. companies; and over half of the equipment purchased was produced by Motorola.

CHAPTER THREE

LEGAL FRAMEWORK ON TELECOMMUNICATION SECTOR IN NIGERIA

3.1. Nature and scope of the legal regime in the Nigerian telecommunication sector.

Traditionally the world telecommunication services were provided in each country by one monopoly carrier. Such carriers were almost always owned by the government and operators as state agencies often as part of the postal service.[1]

Beginning in the 1980's and continuing into the 1990's, the telecommunication industry in almost all countries around the world started to experience privatization thereby exposing the newly privatized companies to market forces and forces them to become more efficient and competitive. Even so, it was recognized that without efficient entry and growth of new rivals, competitive discipline on the newly privatized incumbent telecommunication firms would not be exerted and hence these firms would continue to exploit their dominant position at the expense of consumers, as well as engage in strategic games to deter new entrants.[2]

The effect of this has been to create an increasing international element to telecommunications laws and policies. This is best demonstrated by the conspicuous role afforded to the telecommunications sector within the World Trade Organization (WTO) and the increasingly prominent work of the International Telecommunication Union (ITU). In Nigeria, for example, prior to the liberalization of the telecommunication sector by the federal government in 1992, the sector had been completely dominated by publicly owned Nigerian Telecommunications, Ltd. (NITEL) with 100 per cent control of customers, and yet the service had been grossly inadequate. Private telecoms carriers in the country include: MTN Nigeria Communications (brand name: MTN); Globacom (brand name: Glo Mobile);

[1] http://www.lawrepository.com.ng/2014/09/telecommunications-laws-in-nigeria.html Accessed 15/7/15
[2] Ibid.

Bharti Airtel (brand name: Airtel Nigeria); EMTS Limited (brand name: Etisalat); Multilinks (brand name: Multilinks), Starcomms Ltd. (brand name: Starcomms).

Although historically the telecommunications sector was concerned with technical matters, rather than content, this is now changing with convergence and the fact that increasingly content is being transported through telecommunications lines. So, with advance in technology, telecommunications network platforms around the world are merging with other platforms such as computer and digital media equipment. Presently, there is a wide and fast-growing range of what is called "telematics" (transmission of computerized information) networks and services. This continuing dynamic nature of the telecommunications sector within the global economy, nonetheless, raises a number of legal issues such as the regulation and licensing of telecommunication services.

3.2. The Nigerian Communication Act (NCA) 2003.

The Nigerian telecommunications sector was grossly under-developed before the sector was deregulated under the military regime in 1992[3] and placed under the jurisdiction of the Nigerian Communication Commission (NCC). This is the regulatory authority for the telecommunications industry in Nigeria. Its major role is to facilitate private sector participation in communication services delivery, co-ordinate and regulate the activities of the operators to ensure consistency in availability of service delivery and fair pricing. Since then, the NCC has issued various licenses to private telephone operators. These licenses allow private telephone operators (PTOS) to roll out both fixed wireless telephone lines and analogue mobile phones.[4] However the full weight of deregulation of the sector came to fore with the coming of democratic government in 1999. The Nigerian Communications Act 2003

[3] Cap N97 op. cit.
[4] Wojuade, J.I. Impact of global system for mobile telecommunication on Nigerian Economy: A case of some selected local government areas in Oyo State, Nigeria. A Med Thesis. University of Ibadan, Nigeria. (2005).

was signed into law by President Olusegun Obasanjo on the 8th of July 2003 after being passed by both Houses of the National Assembly. The Act strengthens the capacity of the Nigerian Communications Commission to properly carry out its activities as the independent regulator of the telecommunications industry in Nigeria. The 158 sections Act repealed the 1992 Decree and all previous enactments.

The Act created the Nigerian Communication Commission (NCC)[5] headed by an executive vice Chairman[6] and saddled with the responsibility of overseeing the regulation of the telecommunication sector in the country. It provides an elaborate and comprehensive legal regime for the establishment control and management of telecommunication services in the Country. The commission composed of technocrats and professionals amongst others whom are given the power to make regulations in furtherance of the objectives of the Act.[7] The rule making powers of the commission is wide and enormous, the objective of which is to enamor the commission in the performance of its objectives without unnecessary bureaucracy and civil service red-tapism.

However it is this rule making powers of the commission that ought to be subject of control in the interest of the citizens, consumers and investors in this sector. Section 71 of the Act empowers the commission to make rules on so many subject-heads; enjoins it to hold a public enquiry on the subject-matter of rule making and to take into consideration the findings of the inquiry in the making of the regulation. Under section 72 the Commission may review, ***as at when it deems necessary***,[8] any rules, guidelines and regulations made under this Act that are

[5] See: section 3 of the Act
[6] Ibid: s. 5
[7] Ibid: s. 70
[8] Emphasis to bring out the wide discretionary rule making powers of the Commission

in effect at the time of the review and may in the process modify or vary, or repeal any such rules or regulations; though such review is also subject to public enquiry procedure.[9]

The provision requiring the commission to hold a public enquiry and take cognizance of its outcome in rule making is ordinarily meant to curb the wide discretionary powers of the commission by subjecting it to public participation. However there is no supervisory power to ensure that the recommendation of the public enquiry is considered and reflected in the regulations and guidelines so made. Ordinarily, this lacuna would have been obliterated had there being a National legislation on rule making procedure which would have ensured a parliamentary censorship of the regulation before its implementation; unfortunately there is none.[10] While it is good and desirable to give rule making powers to the commission in the discharge of its obligations under the Act, it is an act of legislative abandonment for the National Assembly not to exercise some supervisory powers over the exercise. In fact we think is high time for the national assembly to enact a law on procedures and powers of Statutory Instrument in the Country.

Another area for review of this Act is to be found in part XII on notification and resolution of disputes. Section 73 of the Act provides that '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. This provision is typically excellent as its spirit is to foster the intensification of alternative dispute mechanism through consultation, mediation, arbitration and conciliation. It is conversely saddening that the Act did not advocate the use of professionally qualified personnel in this exercise; though it provides that the decision of the commission shall be enforceable before the court without more.[11]

[9] Section 72(2)

[10] This is unlike the situation in Lagos State where there is a legislation regulating the procedure for the making and validation of Statutory Instruments.

[11] Section 78

The incommodious component of this provision is that the commission; ordinarily an administrative outfit, is circuitously turned into a judicial organ ranking *parri-passu* with the Federal High Court since reference to court under the Act means the federal high court.[12] In as much as it is considered good to incorporate alternative dispute resolution scheme into the Act to fast track dispute resolution; it amounts to negation of the doctrine of separation of powers if such quasi judicial function of the administrative organ is not subject to judicial review of the superior courts *a-priori.* In fact the golden rule of administrative law is that quasi judicial powers of the administration are subject to judicial review espoused in the twin judicial control mechanism: prohibition and certiorari.[13] Furthermore the Act provides that a decision made by the Commission under this Part may be enforced by the Court as if the decision is a judgment of such Court provided that the Commission has issued a certificate to the complainant for leave to proceed to the Court for the enforcement of the decision. However, no certificate is required if the action is taken by the Commission under this section.[14] The import of this provision is to make the commission a judge in its own cause contrary to the consecrated principle of law: *Nemo judex in causa sua,* which is you shall not be a judge in your own cause.

Section 88 of the Act seems to have addressed the problem of judicial review of the commission's actions as it permits a party to seek for judicial review of the commission's action. However the exercise of the powers of judicial review under the Act is circumvented with a lot of qualifications, which qualifications may eventually defeat the essence of the exercise of the powers. For example, it is mandatory for a complainant against the decision of the commission to appeal to the commission for review of its decision, a process that could

[12] Section 157 on interpretation
[13] See generally Iluyomade & Eka: Administrative Law in Nigeria. A.A Borokini, Olong Adefi, Administrative Law in Nigeria Malthouse Press 2007, Oluyede, P.A., "Nigerian Administrative Law", Ibadan: University Press
[14] Section 78(2) & (3)

take 90days to complete.[15] Meanwhile the initial decision of the commission remains valid and subsisting. The Act sought to introduce the doctrine of exhaustion and ripeness via the provision that the aggrieved party must exhaust all remedies provided under the Act before seeking for judicial review of the commission's action.[16] On the other hand, the essence of seeking judicial review may have been defeated if there is no way for quick judicial intervention. In fact the fundamental rights of a party may have been on the brink and good business opportunity lost while waiting to exhaust all the internal remedies provided by the Act. Given the current provision under the Act a party cannot anticipate the commission and pray the court for an order of prohibition precluding the commission from taking a decision on a dispute placed before it. It is necessary to eliminate all inhibitions in the Act militating against the exercise of the powers of judicial review by the courts.

The Act in trying to empower the commission uses some subjectively worded expressions which cannot be empirically determined and or objectively construed. The use of these expressions gives so much latitude and leverage to the commission which can be easily abused and used to subvert the interest of a party. Such expression as '*as the commission deems fi*t', *as the Commission thinks fit,*[17] '*at the discretion of the commission*' are subjectively worded and may be used to impugn on rights of others if not checked. Save for these observed lapses the Act remain a vibrant legislation in the regulation of telecommunication industry in Nigeria.

It is also observed that the compliance level of the service providers to the commission's regulations is on the low ebb. The commission has mostly turned lukewarm attitude towards monitoring and enforcement of its regulations. This present posture is not unconnected with the commission's perceived harsh business environment within which these companies operate. It would therefore appear that the service providers have taken this soft approach

[15] Section 87
[16] Section 88(3)
[17] Section 63(6)d

towards enforcement and compliance to regulations for granted in the discharge of their responsibilities to the nation, the Commission and the consumers.[18] A lot of consumer issues prevalent in the industry today are as a result of tardy compliance to regulations instituted by the regulator. There is therefore the need for all the stakeholders in the industry to inject a new corporate governance approach towards compliance to existing regulations and directions. To give impetus to this aspiration, the monitoring and compliance department recently set up by the Commission should be equipped with the human and material resources needed for effective performance of their jobs in line with the new focus of the Commission.

In terms of rationale the Act to establish the National Frequency Management Council and the Universal Access Fund and to reform the Nigerian Communications Commission and Repeal the Nigerian Communications Commission Act, 1992; and for related matters. The primary object of the Act is to create and provide a regulatory framework for the Nigerian Communications Industry and all matters related to that purpose.

In terms of structure and content, the Act is divided into 10 chapters of 158 sections and 2 schedules as follows:-Chapter 1 provides for the objectives of the Act; application and scope. Chapter 2 deals with the following:- establishment and functions of the Nigerian Communications Commission with responsibility for the regulation of the communications sector in Nigeria; establishment of the Governing Board of the commission and its membership; and financial provisions relating to the Commission. Chapter 3 deals with the following matter related to the functions of the Minister of Communications and the National Frequency Management Council (NFM Council) including: formulation of policy; relationship with the Commission; the establishment, membership, functions, meeting, funding and staffing of the NFM Council. Chapter 4 provides for licenses; licenses conditions; individual licenses class license. Chapter 5 provides comprehensively for the

[18] Tooki. A. A New Dimension to Nigeria's Telecom Revolution Published in IT World Newspapers April 11th, 2011

powers and procedures of the Commission including: directions; inquiry; investigation for purposes of administration, inquiry, etc information-gathering power; register; regulations and guidelines; notification and resolution of disputes; registration; and monitoring and reporting.

Under Section 70 the Commission may make and publish regulations for the following: written authorizations, permits, assignments and licenses granted or issued under the Act; assignment of rights to the spectrum or numbers under chapter 8 including mechanisms for rate-based assignment; any fees, charges, rates or fines to be issued pursuant to the Act or its subsidiary legislation; a system of universal service provision under Chapter 7, including but not limited to the quality of service standards; communications and related offences and penalties; any matter for which the Act makes express provision; and such other matters as are necessary for giving full effect to the provisions of the Act and for their due administration. The Commission may also make and publish guidelines on matter related to the Act.

Chapter 6 of the Act deals with matters touching on economic regulation including the following issues – general competition practices; interconnection; and access. Chapter 7 provides for consumer affairs-consumer protection and quality of service; required applications services; tariff rate regulation; to technical regulation including the following – spectrum assignment; numbering and electronic addressing; and technical standards while Chapter 9 provides for the following issues – installation of network facilities and access to network facilities, jurisdiction, offences, powers of entry, etc; action against the commission; national interest matters such as emergency provisions, disaster plan, general duty of licenses and network interception capability. Chapter 10 covers the following – repeal and savings; transitional provisions or licenses; definitions; and short title.

Section 157 provides for the definition of the following selected key terms:-

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

"Assignment" means the assignment by the Commission of rights to use the spectrum, numbers or electronic address and may include conditions to which the exercise of those rights shall be subject.

"Class license" means licenses for any or all persons to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject;

"Communication" means any communication, whether between persons and persons, things and things, or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms.

"Communications" means any communication, whether between persons and persons, things and things, or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms;

"Communications license" or *"license"* means either an individual license or a class license issued by the Commission under Chapter IV;

"Communications sector" or *"market"* means an economic sector or market for a network service, or an applications service, or for goods or services used in conjunction with a

network service or an applications service, or for access to facilities used in conjunction with either a network service or an applications services;

"Consumer", "Consumer", or *"Subscriber"* means any person who subscribes to and uses a communication service.

"Content" means any sound; text, still picture, moving picture or other audiovisual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically;

"Intercept" means the aural or other acquisition of the contents of any communications through the use of any electronic, mechanical or other equipment, device or apparatus;

"Interception Capability" means the capability of any network facilities or network service or applications service to intercept communications under section 147 of this Act;

"Interconnection" means the physical and logical linking and connection of communications systems used or operated by the same or different licenses in order to convey messages to and from the respective systems for the provision of services;

"Licensee" means a person who either holds an individual license or undertakes activities which are subject to a license granted under this Act.

"National Frequency Plan" means the frequency plan prepared under Part II of Chapter III and Part I of Chapter VIII for the management of any part or all of the national spectrum;

"Network facilities" means 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;

"Network service" means a service "for carrying communications by means of guided or unguided electromagnetic radiation;

"Network Service Provider" means a person who provides network services.

"Publication" of any information by a licensee pursuant to this Act or its subsidiary legislation, except otherwise specified in any particular section of this Act, shall be deemed as sufficiently effected if it is –(a) officially sent to the Commission; (b) published at the licensee's website; (c) made publicly and readily available to any member of the public at the licensee's offices that deal with or relate howsoever with its consumers; and (d) if the Commission so directs, published in at least one national newspaper;

"Spectrum" means the continues range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz;

"Telecommunication" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, visual or other electro-magnetic systems;

"Transmit" or *"transmission"* means to cause any emission of unguided electromagnetic energy in any part of the spectrum;

The Structure of the Nigerian Communication Commission

The Nigerian Communication Commission's administrative composition is divided into four[19], while its organizational structure is comprised of fifteen (15) departments, including four (4) departments under human capital and infrastructure group[20].

[19] i.e. (i) The Governing Board of Commissioners, (ii) The Executive Vice Chairman (EVC), (iii) The Executive Commissioner – Technical Services (ECTS), and (iv) The Executive Commissioner – Stakeholders Management (ECSM)

[20] The departments are:

The Executive Vice chairman (EVC) is the chief executive and accounting Officer of the Commission and directly oversees nine (9) departments[21] including the human infrastructure group and independent internal audit.

The Executive Commissioner - Technical Services (ECTS) directly supervise the departments charged with oversight of Technical Standards, Spectrum and Engineering issues governing the Nigerian Telecommunications Industry.

The Executive Commissioner - Stakeholders Management (ECSM) directly supervises the departments charged with addressing the needs of telecommunication Industry stakeholders including vendors, service providers and consumers.

The Board of Commissioners, of which the EVC and the two executive commissioners are members is charged with the governance of the Nigeria Communication Commission and has oversight functions over all the Commission's activities.

Qualification for Appointment as Commissioners

Commissioners of the commission shall be persons of recognized standings, qualification and experience in one or more of the field of financing or accounting, law, consumer affair, telecommunications engineering, information technology generally and public administration[22]. A person shall not be appointed or remain in office as a commissioner, however; in the following circumstances:

(i) If he is not a Nigerian citizen

(ii) If he is not ordinarily resident in Nigeria

(a) Human Capital Department, (b) Administration Department, (c) IT Department, and (d) Procurement Department

[21] (a) Commission Secretariat, (b) Internal audit department, (c) Public affairs department, (d) Policy competition and analyses department, (e) Universal services provision secretariat, (f) Project department (g) New Media and information security department, (h) Finance department, (i) Corporate planning and strategy department

[22] Section 7 (1) of the Nigerian Communications Act, CapN97 Laws of the Federation of Nigeria 2004

(iii) If he is a serving member of the National Assembly, state House of Assembly or any local government Council

(iv) If he is incapacitated by any physical illness

(v) If he has been certified to be of unsound mind

(vi) If he has been convicted in Nigeria or elsewhere of a criminal offence, being a misdemeanor or felony

(vii) If he has at any time been removed from an office of trust on account of misconduct[23]

Subject to the provision relating to disqualifications of the commission, all commissioners are appointed by the President of the Federal Republic of Nigeria from the six (6) geo-political zones of Nigeria, subject however to the confirmation of the senate[24].

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[25]. The chief executive and the executive commissioners shall be person possessing sound knowledge of and ability in the organization and management of communication matters and holds office for a term of five years, renewable for another term and no more[26]. 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 professionals' qualification with or less than 10 years post-qualification experience[27]. It is the duty of the secretary to keep the corporate records of the commission and perform such other

[23] Ibid Section 7 (2)
[24] Ibid Section 8 (1)
[25] Ibid Section 12 (1)
[26] Ibid Section 12 (2) &
[27] Ibid Section 14 (1)

duties and functions as the chairman or the chief executive may from time to time direct[28]. The commission has powers to appoint such number of other persons as it deems necessary as staff of the commission[29]

a) Universal Access and Universal Service Regulations, 2007

In terms of rationale the Regulations are made to provide a framework for the design and implementation of a system of universal access and universal service provision pursuant of Chapter 7 of the Act. The ultimate objectives of the system of universal access and universal service provision are to promote greater social equity and inclusion for the people of Nigeria; and to contribute to national economic, social and cultural development of Nigeria.

In terms of structure and content, these Regulations are divided into 12 parts of 85 regulations. Part 1 deals with the objective, application and scope of the Regulations while Part 2 provides for the establishment, functions and administration of the Universal Service provision Board (USP Board). Part 3 provides for the establishment and administration of the USP Secretariat while part 4 deals with matters relating to the appointment and administration of USP Fund Managers. Part 5 relates to coordination between the USP Board and the Nigerian Communications Commission (the Commission).

Part 6 of the Regulations covers the USP Operating plans while part 7 provides for competitive selection processes in the award of USP Projects as follows –requirement to use competitive selection processes; use of minimum subsidy auction, eligibility to bid; publicity; criteria for evaluation; development of specific qualification criteria; evidentiary requirements, evaluation, award and notification; disqualification; termination and revocation of USP License without compensation; declaration of a bidder as ineligible; written notice to

[28] Ibid Section 14 (2)
[29] Ibid Section 15 (1)

be sent to the bidder by the USP Board before disqualification; and cancellation of competitive selection process.

Part 8 provides for the competitive selection process documents while Part 9 deals with matter relating to financing of the USP Fund. Part 10 deals with the following matters – financial year; records and audit; annual report; and USP Fund website. Part 11 to 12 provide for transitional provisions; offences and penalties, interpretation and citation.

Regulation 84 provides for the definition of the following selected key terms:

"Commercially Profitable USP Project" means USP Projects that are estimated by the USP Secretariat to be commercially profitable without any subsidy.

"Commercially Unprofitable USP Project" means USP Projects that, to be commercially profitable, the USP Secretariat estimates a subsidy requirement of less than 50% of the estimated USP capital costs.

"Operating Plan" means the plan to direct the operations of the USB Board, USP Secretariat and USP Fund Managers in implementing the specific USP Program and USP Projects included in the plan, prepared in accordance with regulation 37.

"Public Notice" means a public notice to announce the competition for a USP Project and alert potential bidders.

"Universal access" means that 100% of a designated population can obtain, at a minimum, public access to a particular service at a specified quality, through reasonably available and affordable public or community facilities.

"USP Project Agreement" means an agreement to be executed between the USP Board's obligation to implement a USP Project, the USP Board's obligation to pay the corresponding subsidy and all related necessary matters.

b) Quality of Service Regulations, 2012

The objectives of the regulations as provided in Regulation 2 are to: ensure the protection and promotion of the interests of consumers against unfair practices including matter relating to tariffs and charges, equipment and facilities; improve service quality by identifying service de3ficiencies and by encouraging, enforcing, effecting or requiring appropriate changes and solutions; maintain service quality, while recognizing environmental and operating conditions; make available information that will help customers make an informed choice of services and service provider; improve the operation and performance of interconnected networks; and assist the development of related telecommunications markets. The Regulations stipulate the minimum quality and standards of service associated measurements, reporting and record keeping tasks.

In terms of scope and content, the Regulations have 6 parts and 18 sections with part 1 providing for interpretation; objectives; and scope. Part 2 covers matters relating to measurement, reporting and record keeping and includes the following: use of parameters; reporting periods; combined Reporting Areas; measurement, reporting and record keeping tasks; and consumer complaint resolution. Part 3 provides for; explanatory remarks. Part 4 is on investigation while part 5 deals with matters relating to contraventions and enforcement. Part 6 covers miscellaneous matters such as review of the regulations, directives and the citation.

The Regulations give the Nigerian Communications Commission discretionary powers to audit Licensee under sub-regulation (2) of Regulation 5 or data retained by Licensees; to vary

the frequency of the audits, data collection, the Licensees services, parameters; Reporting Areas, network segments and Reporting Periods that require audits; and to investigate the quality of service measurement, reporting and record keeping procedure of a Licensee.

Regulation provides for the definitions of the following selected key terms:

"Access Service" means a service that is provided for communications pass through more than one public network.

"Call Attempt" means an attempt to achieve a connection to one or more devices attached to a telecommunication network.

"Commercial Launch Date" means the date when a Licensee commences commercial provision of a service in a Reporting Area.

"Contravention" means any failure to comply with the requirements identified in the Regulations.

"Internet Access Service" means an Access service that is an Internet Service.

"Internet Service" means a service that is provided substantially for data communications to or from Network Termination Points that have IP addresses that are assigned through delegation from the Internet Assigned Numbers Authority.

"Licensee" means a person or incorporated company granted a communications license by the Commission to provide fixed or mobile telephony services within Nigeria.

"Parameter" means a measureable characterization of the quality of an aspect of a service.

"Quality of Service Standards" means –

(a) Parameters defining the applicable quality of service standards for specific services;

(b) The methods of taking measurements that measure service performance against prescribed parameters described as "Measurement Method" in sub-regulation (2) of Regulation 5 of these Regulations; and

(c) Any applicable targets for the prescribed parameters identified in Schedule 1 to these Regulations.

"Reporting Area" means a geographical area for which Measurements are taken and recorded, determined in accordance with regulation 6 of these Regulations.

"Reporting Period" means the period of time over which Measurements are taken and recorded when a Licensee performs quality of service measurement, reporting and record keeping tasks once for each Reporting Area, parameter and service, determined in accordance with sub-regulation (1) of Regulation 5 or as may be specified in other parts of these Regulations or as determined by the Commission from, time to time.

"Service" means application, current, network or facilities service or any combinati0on of these services, that is provided substantially for communications between Network Termination Points.

"Target" means a value that is reached by a given parameter where the relevant service identified in these Regulations or its Schedules is satisfactory.

c) Type Approval Regulations, 2008

The objectives of the Regulations are to: promote interpretability between communications networks is safe; ensure that communications equipment used in communications networks is subject to limits on causing or being affected by electromagnetic radiation; promoted the development of communications networks, including the supply of communications equipment by qualified suppliers; define processes for the Type Approval of communications

equipment; and identify applicable technical standards, including those promulgated by international bodies.

In terms of structure and content, the Regulations are divided into 10 parts of 33 regulations. Part 1 deals with the scope, operation and objectives of the Regulations while part 2 deals with matters and objectives of the Regulations while Part 2 deals with matters related to guidelines, standards and lists of approved equipment. The Nigerian Communications Commission (The Commission) is required to maintain and publish in the Type Approval Guidelines up-to-date versions of the Type Approval processes. The commission shall maintain and publish in the Type Approval Standards up-to-date versions of the technical standards and specifications applicable to identified Equipment Types; and shall maintain and publish an up-to-date list of approved Equipment Types, Part 3 provides for the modifications to the guidelines and standards by the Commission while Part 4 relates to type approval obligations and covers the following matters: conditions for using or supplying communications equipment; limitations on claims about Type Approvals; retention and supply of supporting documentation; and labeling for approved equipment Types.

Part 5 deals with approving equipment while part 6 provides for revoking type approvals and exemption from the approvals. Part 7 covers investigations and provides for the following: validation of tests on communications equipment; equipment use and supply practices. Part 8 deals with fees for type approval while part 9 deals with contravention and enforcement. Part 10 covers miscellaneous matters involving changes to the Regulations; further directions; interpretation; and citation.

Regulation 32 provides definitions of the following selected key terms:

"Declaration of conformity" means a declaration, meeting the requirements identified in these Regulations and the Type Approval guidelines, that an Equipment Type complies with applicable Type Approval Standards.

"Equipment Holder" means a provider of communications services or a supplier of communications equipment.

"Equipment Type" means a type of communications equipment specified in terms of its manufacturing brand name, trade name, model number, version number and function.

"Type Approval" means an authorization by the Commission to use or supply an Equipment Type.

"Type Approval Guidelines" ("Guidelines") means any guidelines published by the Commission pursuant to Section 70 (2) of the Act and these Regulations, identified applicable Type Approval processes, including the initial Guideline published with these Regulations.

"Type Approval Standards" ("Standards") means any standards published by the commission pursuant to Section 70(2) of the Act and these Regulations, which shall be the applicable technical standards and specifications for identified Equipment Types, including the initial standards set out in schedule 1 to the Guidelines.

d) Frequency Spectrum (Fees and Pricing, etc.) Regulations, 2004

The Regulation cover the determination of all frequency spectrum fees for commercial activities in the telecommunications sector in Nigeria and is aimed at establishing transparent, fair, competitive and non-discriminatory pricing structure that include, but not limited to auctions, beauty contest and other internationally accepted methods of bidding for the acquisition of frequency spectrum; standardizing frequency spectrum fees and pricing system

in order to promote uniformity, consistency and efficiency in spectrum management in Nigeria in conformity with international standards; ensuring that the prices reflect the spectrum size; promoting efficiency and competition in the usage of frequency spectrum; facilitating access to frequency magnetic wave spectrum pricing process; and the achievement of government policy objectives of even development of telecommunications infrastructure across Nigeria and the universal service goals.

In terms of structure and contents, the Regulations are divided into 5 parts and 19 regulations. Part 1 provides for the scope and objectives of the Regulations and for categorization of the frequency spectrum. Part 2 provides for the following; determination of frequency spectrum according to licensing areas and tiers; and State by State pricing of frequency spectrum. Part 3 provides for matters related to frequency spectrum licenses and permits as follows: classification of frequency spectrum licenses; terms and conditions of frequency spectrum license; renewal of licenses; assignees of frequency spectrum; fees payable by operators; annual report on the use of frequency spectrum; validity and revocation of frequency spectrum. Part 4 provides formula while Part 5 deals with miscellaneous matters of amendment, interpretation and citation.

Regulation 18 provides definition of the selected key terms:

"Frequency Spectrum" means a wide range of frequencies with different characteristics and applications.

"Nigeria" means the entire geographical land area, the territorial waters and air; limits of Nigeria and any area to which the provisions of the Act applies.

"Operator" means a provider of telecommunication service duly licensed by the Commission and includes but not limited to a licensed carrier.

"Person" includes any individual or natural person, any firm, corporation, partnership, trust, limited liability company, joint venture, government entity o other entity recognized under any law for the time being in force.

"Radio Regulations" means the publication of the International Telecommunication Union (ITU) that delineates radio frequencies into bands and stipulates the services applicable.

"Telecommunications network Infrastructure" includes any form of installation which ensures either the transmission or the transmission and routing telecommunications signals and the associate exchange of the control and operational information between network termination points.

e) Numbering Regulations, 2008

In terms of rationale, the Regulations are made to provide a regulatory framework for the control, planning, administration, management and assignment of Numbers, pursuant to section 128(1) of the Act. In particular, they set out the rules for the assignment, transfer, porting and use of numbers under the national numbering and electronic addressing plan, pursuant to section 128(3) of the Nigerian Communications Act, 2003. The Regulations have the following objectives, to promote investment, facilitate competition and protect customers by ensuring that – numbers are understood to be national resources that are not owned by customers or licensees; numbers can be assigned efficiently, quickly, transparently and fairly, without undue discrimination against particular customer classes, licensee types and communications technologies; shortages of numbers can be predicted and prevented in timely ways; and uses of numbers can be monitored and controlled to avoid detriment to the interests of customers.

In terms of structure and content, the Regulations are divided into 14 parts of 54 Regulations. Part 1 covers the scope and objectives of the Regulations while Part 2 provides for the contents of the National Numbering plan. Part 3 deals with the following matters: modifications to the National Numbering Plan; factors in modifying the National Numbering Plan content of modifications to the National Numbering Plan; timing of modifications to the National Numbering Plan; and implementation of modifications. Part 4 provides for the utilization of numbers while part 5 provides for assignment of numbers. Part 6 provides for returning numbering. Part 7 provides for withdrawing numbers and part 8 covers bringing numbers into service. Part 9 covers matters relating to porting numbering including the following: factors in introducing Service Provider Number Portability; conditions for exporting Numbers; limitations on importing Numbers; and conditions for transferring Assignments. Part 10 provides for transferring numbers and limitations on rights of licenses to use numbers. Part 11 provides for rights of end-users relating to numbers as follows: conditions for changing end users or numbers limitations on changing Network Termination Points compensation to End Users; conditions for supply information about holders of numbers; limitations on presentation of calling line identities; and limitations on presentation of called line identities. While Part 23 provides for fees and assignments. Part 13 deals with contravention and enforcement. Part 14 covers miscellaneous matters of changes to the Regulations, further directions, interpretations and citation.

Regulation 53 provides definitions of the following selected key terms:

"Assignment" includes a set of Blocks that consist of Number that are defined by the National Numbering Plan.

"Contravention" means any failure to comply with the requirements identified in Regulation 49.

"End User" means a Customer that is not an Interconnecting Licensee or provider or an international route to or from the Federal Republic of Nigeria.

"IP" means Internetwork Protocol that is defined by the Internet Engineering Task Force and that is often known as the Internet Protocol.

"National Numbering Plan" means the numbering and electronic addressing plan developed under section 128(2) of the Act excluding these Regulations.

"Network Termination Point" means a point at which a customer has physical access through customer equipment to a network of a Licensee.

"Number" as illustrated by the examples in the Schedule to these Regulations means a sequence of digits preceded by * or # if necessary and followed by * or # if necessary that might be used to identify customers the Network Termination points that are associated with a particular service of an End User.

"Service Provider Number Portability" means letting an End User take service from one License through a Number assigned to another Licensee.

f) Nigerian Communications (Enforcement Processes, etc.) Regulations, 2005

The Regulations provides the processes or procedures for the exercise by the Nigerian Communications Commission (the Commission) of its monitoring and enforcement powers. In terms of structure and content, the regulations comprises of 6 parts and 19 regulations. Part 1 contains preliminary provisions on monitoring and enforcement processes and procedures, while Part 2 provides for general processes and procedures for exercising and monitoring and enforcement powers as follows: general principles for monitoring and enforcement powers; civil enforcement procedures; procedure for exercising powers to seal off premises or seize

and detain equipment; obstruction of monitoring and enforcement duties; and provision of information relating to license.

Part 3 provides for matters relating to consumer affairs and technical regulations as follows: guidelines for promotion and advertisement of services; type approval processes and procedures; provisions relating to spectrum frequency interference; acts constituting contravention; quality of service; and administrative sanctions for contravention of technical regulations. Part 4 provides for administrative fines while Part 5 provides the grounds and procedures for revocation of license. The Commission may, in addition to the circumstances for suspension or revocation of license ceases for a continues period of 30 days at any time after commercial launch date, to service for which the license was granted; if any amount payable under any condition of a license remains unpaid after it has become due and remains unpaid for a period of 21 days after the Commission notifies the licensee in writing that the payment is due; if the license fails to comply with the type approval of equipment or facilities granted by the Commission pursuant to section 132 of the Act; if within 12 months of the effective date of the license, the licensee ha not commenced full licensed operations to the satisfaction of the Commission; provided that the Commission shall give prior notice to the licensee specifying the details of the default by the licensee and requiring that remedial steps be taken within 30 days of such notice. An additional ground for revocation of a license is if the licensee makes any statement in the course of applying for a license and the statement is subsequently discovered to be false or misleading in any material particular. The Commission may, as an alternative to revocation of a license pursuant to the Act. Any regulations made thereunder, and wherever necessary –impose the administrative fines stipulated in the Second Schedule to these Second Regulations in respect of the contravention specified in paragraph (1) of this Schedule regulation; or require that the licensee makes such changes in this

management as the Commission may consider necessary and within such rime as the Commission may specify. Part 6 contains the interpretation and citation.

Regulation 18 provides definitions of the following selected key terms:

"Basic Information" means subscriber account information or details; call data which, in the context of this definition, shall include the data of any communication service subscribed to or used a consumer; and such other information as the Commission may, from time to time, determine.

"Commercial launch date" means the date on which a licensee commences in provision of commercial services.

"Contravention" includes non-compliance with or the infringement of any of the provisions of the Act, any regulations made thereunder or of any license.

"Enforcement" means any action or processes for securing compliance with any of the provisions of the Act, any regulations made thereunder or of any license including but not limited to suspension or revocation of license, criminal or civil proceedings against any person who committed the contravention and any administrative action by the Commission.

"License" means any license that has been granted by the Commission pursuant to the Act and includes subsisting licenses that were granted by the Commission prior to the commencement of the Act.

"Licensed Area" means the geographical area covered by the license and within which area the licensee is authorized to provide the service.

"Monitoring" refers to the powers of the Commission to monitor compliance with or infringement of any of the provisions of the Act, any regulations made thereunder or any license.

"Non-Basic Information" means any information required by a relevant authority which is not basic information under these Regulations.

"Relevant Authority" means the Nigeria Police Force, National Intelligence Agency, State Security Services, Economic and Financial Crime Commission, National Drug Law Enforcement Agency and any other organization or agency as the Commission may from time to time specify and publish.

g) Consumer Code of Practice Regulations, 2007

In terms of rationale, the Regulations provide a further definition of the procedures and substantive requirements for developing consumer codes to govern the provision of services by licensed telecommunications operators in Nigeria and related consumer practice. The Regulations aim to confirm and clarify the procedures to be followed by Licensees in preparing approved consumer codes of practice in accordance with section 106 of the Nigerian Communications Act; and to determine and describe the required contents and features of any consumer code prepared by by, or otherwise applicable to, Licensees.

In terms of structure and content, the Regulations are divided into 4 parts of `12 regulations with a Schedule containing a General Consumer Code of Practice (the "General Code, which the Commission published to provide direction on the required terms of any consumer code to be approved by the Commission or otherwise applicable to Licensees. Part 1 provides for the scope, objectives, and application of the Regulations while Part 2 deals with matters relating to the following: preparation and submission of License Codes; General Code as

minimum set of requirements and standard for the provision of services; approval by the Commission; and publication of approved individual consumer code. Part 3 provides for compliance and enforcement to give directive; amendment of the General Code; and citation.

The General Code of Practice attached to Schedule 1 of the Regulations has 8 parts and 57 sections and covers the following matter: introduction; provision of information to consumers; advertising and representation of services; consumer billing, charging, collection and credit practices; consumer obligations; protection of consumer information; complaints handling; and code compliance.

h) Nigerian Communications Act – Competition Practices Regulations, 2007

In terms of rationale, these Regulations seek to provide a regulatory framework for the promotion of fair competition in the communications sector, and protection against the misuse of market power or other anti-competitive practices. The Regulations apply to all Licensees and any other providers of communications services in Nigerian and Licensees shall remain subject to any condition regarding anti-competitive conduct set out in their licenses.

In terms of structure and content, the Regulations are divided into 7 parts of 37 regulations with Part 1 providing for the scope and objectives of the Regulations. Regulation 2 provides for substantial lessening of competition as follows: applicable provisions of the Act; guidance on substantial lessening of competition; considerations used in determining whether conduct constitute substantial lessening of competition; power of the Commission to add to conduct or practices that constitute substantial lessening of competition; and application of procedures in the Schedule to the Regulations. Part 3 deals with matters relating to anti-competitive agreements and practices while Part 4 on following: guidance on dominant position; criteria for determination of joint dominant position; and procedures for determining dominant

position. Part 5 deals with the abuse of dominant position. Under this Part the commission is empowered to the provision of section 92(4) of the Act, empowers the Commission to direct a Licensee in a dominant position, to cease conduct which has or may have the effect of substantially lessening competition in one or more communications markets, and to implement appropriate remedies. Part 6 provides for the review by the Communication of merge, acquisitions and takeover part 7 contains miscellaneous provisions relating to the following matters penalty for contravention; power of the Commission to give directions; power of the Commission to issue further directions; interpretation; and citation. The Schedule contains the laid down procedures for determining whether conduct constitutes a substantial lessening of competition, or a Licensee contrary to the regulations. The procedures are intended to supplement, but are subject to the procedural requirements of Chapter V of the Act.

Regulation 36 provides definitions of the following selected key terms:

"Consumer" means any subscriber, customer or other consumer of communications services, whether an individual, corporation or other legal entity.

"Enforcement Processes Regulations 2005" means the Nigerian Communications (Enforcement Process, etc.) Regulations 2005, S. I. No. 7 of 2005 and as those regulations may be amended from time to time.

"Interconnection Regulations" means the Telecommunications Networks Interconnection Regulations 2003, S. I. No. 13 and as those regulations may be amended from time to time.

i) Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations, 2011

The objectives of the Regulation are to provide a regulatory framework for the registration of subscribers to Mobile Telephone Services utilizing subscription medium in the Federal Republic of Nigeria; and for the establishment, control, administration and management of the Central Database.

In terms of structure and contents, the Regulations have 5 parts of 23 regulations. Part 1 provides for the interpretation, objectives and scope of the Regulations. Part 2 provides for the following matters: establishment and maintenance of a Central Database; ownership and management of the Central Database; operations of the Central Database; licensees' right to use subscriber information; access to subscriber information of the Central Database by security agencies,data protection and confidentiality; and release of personal information of a subscriber. Part 3 deals with matters relating to: registration of new subscribers; activation of new subscribers; registration of new subscribers; activation of new subscribers; registration of existing subscriber; registration of foreign subscribers; reactivation and deregistration of a Subscription Medium; prohibition of proxy registration; number of registrable Subscription Mediums; and liability for Subscription Mediums. Part 4 provides penalties for offences under the Regulations. These include: failure to capture, deregister or transmit subscriber information; non-compliance with activation and deactivation requirements; and dealing with subscriber information in manner inconsistent with the provisions of the Regulations. Part 5 provides for application of the Business Rules and Registration Specification of the Commission and the citation.

Regulation 1 provides definitions of the following selected key terms:

"Activate" means to allow full access to a Licensee's Network Service, including the ability to make and receive calls, to send and receive short message services and other range of services usually provided by Mobile Telecommunication Service providers and words

"activated", "activation", "deactivate" and "deactivation" shall be read and construed accordingly;

"Activation window" means the period of one month from the day a subscriber acquires a new line on the network of a licensee, within which a new subscriber is required to register with the relevant licensee and during which, the new subscriber will be granted limited Access;

"Biometric Information" refers to finger prints and facial image of a subscriber in accordance with the Registration Specifications (as may be amended from time to time) provided by the Commission for the registration of subscribers;

"Central Database" means subscriber information database, containing the biometric and other registration information of all Subscribers;

"Independent Registration Agent" means a company contracted by the Commission for the registration of existing subscribers on such terms as may be agreed upon between the Commission and the company;

"Licensee" means a provider of Mobile Telephone Services that utilizes a subscription Medium in the Federal Republic of Nigeria;

"Limited Access" means the limitation by a licensee of services available to a subscriber to receive calls and short message services and making of calls to emergency center numbers and the licensee's call center only;

:Personal Information" refers to the full names (including mother's maiden name), gender, date of birth, residential address, nationality, state of origin, occupation and such other personal information and contact details of subscribers specified in the Registration Specifications;

"Mobile Telephone Services" mean telephone services that utilize a subscription medium;

"security Agency" or *"Security Agencies"* refers to any or all of the following law enforcement and security agencies: (a) Nigerian Police Force (b) the Economic and Financial Crimes Commission (c) the State Security Service (d) the Federal Road Safety Corps (e) the National Intelligence Agency (f) the Office of the National Security Adviser; and (g) any other law enforcement or Security Agency established by the Federal Government;

"Subscription Medium" means a Subscriber Identity Module (SIM) smart card, a Removable User Identity Module (R-UIM) smart card, a CDMA Subscriber Identity Module (CSIM) smart card, a Universal Subscriber Identity Module (USIM) smart card or any other mobile phone subscription medium marketed from time to time by licensees, containing the telephone number of a subscriber, encoded network identification details, the personal identification number and other user data normally provided by a licensee for the provision of Network Services;

"Subscribers Registration Solution Provider" refers to a company contracted by the Commission for the conceptualization, design, development and delivery of Registration Solutions covering all Licensees and providing detailed Subscriber Information in a manner facilitating seamless integration into the Central Database;

"Subscriber" means a person who subscribes to Mobile Telecommunication Services by purchasing a subscription medium or entering into a subscription contract with a Licensee;

j) Telecommunications Networks Interconnection Regulations, 2007

In terms of structure and contents, the regulations are divided into 6 parts of 21 regulations. Part 1 provides for; a licensed telecommunications operator's rights and obligations for interconnection; powers and functions of the Commission with regard to interconnection;

agreements on interconnection; and amendment and termination of interconnection agreements. Part 2 provides for matters related to interconnection procedures as follows: interconnection requests; interconnection links; telecommunication network specification; and requests for new services and system. While part 3 deals with interconnection obligations imposed on dominant telecommunications operators. Part 4 provides for the interconnection obligations imposed on dominant telecommunications operators. Part 5 provides for the interconnection dispute resolution and part 6 deals with miscellaneous issues of penalties, interpretation, repeal and citation. The Schedule provides the list of issues to be covered in telecommunications interconnection agreements.

Regulation 19 provides definitions of the following selected key terms:

"Dominant Operator" means a licensed telecommunications operator determined by the Commission under the Act and the [Competition Practices Regulations 2006] to have a dominant position in one or more communications markets relating to interconnection;

"Fixed call termination" means termination by the receiving operator of a call intended for a number within a range ascribed to fixed services in the national numbering plan and allocated to the receiving operator which call has been delivered to that operator by an interconnected operator (which operator may be the originating operator or another operator, including an operator providing transit of the call through its telecommunications network) at a point of interconnection and routed by the terminating operator through its telecommunications network;

"Licensed telecommunications operator" means a network services provider or a network facilities provider licensed under section 32 of the Act and for the avoidance of doubt, *"licensed telecommunications operator"* shall include interconnect exchange operators;

"Public telecommunications network" means a telecommunications network used in whole or in part for the provision of publicly available telecommunications services provided either by the operator of that telecommunications network or a third party;

"Requested party" means a licensed telecommunications operator who has been asked by another licensed telecommunications operator;

"Requesting Party" means a licensed telecommunications operator who desires to interconnect its telecommunications network with the telecommunications network of another licensed telecommunications operator;

"Telecommunications network" means any form of installation or group of installations which ensure either the transmission or the transmission and routing of telecommunications signals and the associated exchange of the control and operational information between network terminations points;

k) Frequency Spectrum (Fees and Pricing etc.) (Amendment) Regulations, 2009

The brief Regulations cover the determination of all frequency spectrum fees of commercial activities in the communications sector in Nigeria. Its objective is to review the Frequency Spectrum (Fee and Pricing) Regulation 2004 by amending the Band Factor under PART A of the Second amendment. The Band Factor 0.8 for 10.5GHz is substituted with 0.33 for 10.5 GHz.

l) (Draft) Lawful Interception of Communications Regulations

The draft Regulations are made to provide a legal and regulatory framework for the lawful interception of Communications in Nigeria and the collection and disclosure of intercepted Communications. These Regulations also specify the nature and types of Communications to be intercepted; prescribe penalties for non-compliance with these Regulations; provide a

notification procedure to the Commission of all Warrants issued, amended renew or cancelled under these Regulations; and ensure the privacy of subscribers as contained in the Constitution of Federal Republic of Nigeria is preserved.

In terms of structure and content, the Regulations are divided into 7 parts of 24 regulations. Part 1 provides for the scope and objectives of the Regulations while Part 2 provides for the commencement and application of the Regulations. Part 3 deals with matters related to interception of communications as follows: unlawful interception of communications; interception without a warrant; and interception with a warrant. Part 4 provides for the administration of lawful interception of communication and covers the following issues: power to lawfully intercept communication; application for a warrant; issue and content of a warrant; duration, amendment, cancellation and renewal of a warrant; and implementation of a warrant. Part 5 covers interception capabilities while Part 6 deals with protected or encrypted communications. Part 7 provides for miscellaneous issues related to: use of information obtained under these Regulations; secrecy; Log book; complaints; storage of archived communication; storage of intercepted communication; Penalties for Contravention; amendment of Regulation; power of the commission to issue further Directions; interpretation; and citation.

Regulation 23 provides of the following selected key terms:

"Archived Communication" means Communication data stored as a back-up in the communication system of a Licensee.

"Communications data" means any of the following:

(a) Any traffic data comprised in or attached to a Communication (whether by the sender or otherwise) for the purposes of any Communication system by means of which it is being or may be transmitted;

(b) Any information which includes none of the contents of a Communication (apart from any information falling within paragraph (a) and is about the use made by any person: (i) of any Communications service; or (ii) in connection with the provision to or use by any person of any Communications service, of any part of a Communication system;

(c) Any information not falling within paragraph (a) or (b) that is held or obtained, in relation to persons to whom he provides the service, by a Licensee.

"Law Enforcement Agency" means the National Security, the State Security Service and the Nigerian Police Force; and any other agency as the Commission may from time to time specify;

"interception" and cognate expressions shall be constructed (so far as it is applicable) in accordance with these Regulations and shall include an interception of archived Communication or Communication in the course of its transmission, by means of a Communication system if, and only if, another person: (a) so monitor by means of aural or other acquisition of the contents of any Communication; (b) so modifies or interferes with the system, or its operation; (c) so monitoring device, (d) retrieves Communication data on a Communication system; or (d) so monitors transmission or stored data made by wireless telegraphy to ot from Apparatus comprised in the system, as to make some or all of the contents of the Communication available, while being transmitted, to a person other than the sender or intended recipient of the Communication.

"Judge" means a Judge of the Federal High Court;

"Monitor" includes the recording of Communications by means of a monitoring device.

"Monitoring device" means any instrument, device or equipment which is used or can be used, whether by itself or in combination with any other instrument, device or equipment, to listen to or record any Communication;

"Protected or Encrypted Communication" means Communication which requires access by way of a key, password, codes, etc. from a person in possession of such Communication;

"Warrant" means a warrant issued or granted by a Judge for the interception of Communications;

m) (Draft) Licensing Regulations, 2013

The objectives of the Regulations are to provide a regulatory framework for effective and efficient licensing processes and procedures in the communications industry; the operation of communications systems and facilities; and the operation of communications services. In terms of structure and content, the Regulations are divided into 10 chapters of 61 regulations with Chapter 1 providing for the scope, objective and application. Chapter 2 deals with licensing process and examinations and covers the following issues: pre-condition for Communications Services; non-discrimination provision; exceptions from licensing; exemptions for non-radio telecommunications equipment; scope of license; license application conditions; licensing procedure for pre-existing licenses; limitation on issue of license; and quality of service. While Chapter 3 deals with Individual License, Chapter 4 provides for Class License and Chapter 5 provides for Frequency License.

Chapter 6 provides the procedures for transfer of license and shares while Chapter 7 deals with the Register of Licenses. Chapter 8 provides for the following issues related to sanctions: notice to vary, suspend or revoke; confirmation of withdrawal or modification of

proposal; suspension and revocation; grounds for suspension and revocation; and enforcement. Chapter 9 contains miscellaneous provisions on application forms; payment of fees; Spectrum Fees; other fees; terms and conditions; general duties of a Licensee resolution of conflicts between Regulations and License; and general and undertakings. Chapter 10 provides for interpretation and citation.

Regulation 60 provides for the definition of the following selected key terms:

"Class License" means a license for any or all persons to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject;

"Individual license" means a license for a specified person to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject;

"Non – Radio Communications" means Telecommunications other than by means of Radio waves.

"Radio Telecommunications" include telecommunications by means of Radio waves.

"Telecommunications network" means any form of installation or group of installations which ensure either the transmission nor the transmission and routing of telecommunications signals and associated exchange of the control and operational information between network termination points.

"Telecommunications system" means a system for the conveyance through the agency of electric, magnetic, electromagnetic, electro-chemical, electro-mechanical or light energy of – (a) Speech, music and other sound; (b) Visual image; (c) Signal serving for the importance of any matter otherwise than in the form of sound, visual image; or (d) Signal serving for the acutuation or control of machinery or equipment, including telecommunications equipment situated in the Republic of Nigeria.

n) (Draft) Mobile Number Portability Regulation, 2013

In terms of rationale, the Regulations seek to provide a regulatory framework for the operation of Mobile Number Portability (MNP) in Nigeria, the objectives of the Regulations are to ensure an effective and efficient porting regime; to foster and strengthen the relationship between Mobile Service Providers and other Authorized Parties; to create a harmonious level playing field for all operators; and to safeguard Subscribers' rights and ensure Subscribers' satisfaction with the MNP Process.

In terms of structure and contents, the Regulations have 8 parts and 30 regulations. Part 1 provides for the scope, objectives and application of the Regulations while Part 2 provides for matter relating to incorporation of MNP Business Rules and resolution of conflict between the provision of the Regulations and Business Rules. Part 3 deals with matters relating to establishment, administration and use of the number Portability Clearing House (NPC); Number Portability Clearing Help Desk; Mobile Service Provider's obligations to set up Operations' MNP Help Desk; and privacy of data. Under Part 4 dealing with Relationship of Mobile Service Providers Regulations 10 to 14 provide for the following: compliance of Operators with Inter Operator Code of Practice and MNP Business Rules; rights and obligations of Donor Operator; rights and obligations of Recipient Mobile Service Provider; rights and obligations of NPC Administrator; and dispute resolution.

While Part 5 provides for General Porting Guidelines, Part 6 deals with transaction charges and reporting requirement. Part 7 provides for sanctions and penalties; penalties against the NPC Administrator; and penalties against the Mobile Service providers. Part 8 provides for the power of the Commission to issue directions for specifying time limits for various activities for implementing number portability and interpretation.

Regulation 29 provides definitions of the following selected key terms:

"Cooling Off" occurs where upon the Subscriber's request, the Recipient Mobile Service Provider agrees to arrange a second porting in the reverse direction after an initial porting has been completed. Cooling Off is granted at the discretion of the Recipient Operator and should be granted where it is proved that porting has either impacted the Subscriber's ability to enjoy the services.

"Subscriber" means a real or legal person having acquired mobile telecommunications service.

"Donor Operator" means the operator from whom the number is being ported;

"Emergency Repatriation" occurs where upon the Recipient Operator arranges a second porting in the reverse direction after an initial porting has been completed. Emergency Repatriation is granted where it is proved that porting was not authorized by the Subscriber or is deemed to be fraudulent or inappropriate.

"Local Number Portability Database" means the database of all ported mobile numbers maintained by a Mobile, Fixed, Clearinghouse and International Gateway Operator. This Local Number Portability Database is maintained by each Operator and updated in real-time by the NP Clearinghouse as porting transactions are completed;

"Number Portability Clearinghouse or *NPC"* means the centralized clearinghouse established to carry out NP Administrative Services in Nigeria;

"NPC Administrator" means the Mobile NPC Administrator licensed by the NCC to establish the NPC implement and manage the MNP System in Nigeria;

"Number Portability" means a facility that enables the Subscriber in the public telephone network to change its operator, geographical position and/or service type without changing Subscriber number;

"Number Portability Database" means the database maintained by the MNP Service Provider in electronic form, holding the details of all ported numbers, along with complete history of all transactions relating to the porting of such numbers;

"Porting" means the act of initiating a request to the NP Clearinghouse and Donor Operator for approval to transfer a number from its network to the Recipient Service Provider, the subsequent receipt of answers from the NP Clearinghouse and donor network, the provisioning of a number on the recipient network, the deactivation of a number from the donor network and, and the act of informing all operators that a number has been successfully transferred and is now active on the recipient network;

"Recipient Operator" means the operator to whom the number is being ported;

o) (Draft) Annual Operating Levy Regulations, 2012

In terms of rationale the draft Regulations seeks to create and provide a regulatory framework for the effective and efficient administration by the Commission of the Annual Operating Levy regime and for all related matters.

In terms of structure and content the Regulations are divided into 4 chapters with 12 regulations with Chapter 1 providing for the scope and introductory provisions. Chapter 2 deals with matters relating to the assessments and payments of annual operating levies. Chapter 3 provides for –maintenance of accounting records by licensees; submission of financial statements to the Commission b: Licensees; accounting standards for Communication industry; verification of financial statements, review by the Commission of Licensees Annual Operating Levies' self-assessments, request for additional information, etc. Chapter 4 provides for sanctions and penalties while Chapter 5 provides for definitions and short title.

Regulation 11 provides definitions of the following selected key terms:

"Annual Operating Levy" means the levy that is payable by eligible Licensees pursuant to this Regulations and the Licenses.

"Commercial Launch Date" means the deadline specified in a License for the commencement of commercial services provision by the Licensee.

"Financial Statement" means and includes (a) Disclosure of Accounting Policies; (b) Balance Sheet; (c) Profit and Loss Accounts; (d) Statement of Cash Flow; (e)Historical Financial Summary, (f) Directors' Report; (g) Notes to the accounts; which must include the breakdown of Turnover and Cost of Sales; and (h) such other documents and materials as the Commission may specify and publish from time to time and/or is contained in the Licenses.

"Gross Revenue" means the Licensee's total amount of sales recorded during the relevant period.

"License" means any License that has been granted by the Commission pursuant to the Act and includes subsisting Licenses that were granted by the Commission prior to the commencement date of the Act.

"Licensee" is as defined in the Act and includes Network Operators and Non-Network Operators.

"Interconnect Cost" means the costs occurred, payment made (or invoices payable) by the Licensee for the settlement of interconnection obligations to interconnecting partners during the relevant period.

"Net Revenue" means the Licensee's Gross Revenue less its Interconnect Cost for the relevant period.

p) Nigerian Communications Commission Guidelines on Advertisements and Promotions

In terms rationale the Guidelines are developed to set minimum requirements and standards for advertisements and promotions by licensed telecommunications operators in Nigeria. In terms of structure and contents, the Guidelines is divided into 9 parts. Part 1 provides for introduction while Part 2 provides the definitions of terms. Part 3 deals with Minimum Standards and Requirements for advertisements and provides for matter relating to pricing; advertorial medium; comparative advertising; and internet connections. As part of the legal requirement, no advertisement or advertisement for a promotion shall contain any obscenities or profanities unsuitable for young persons and children or contain any racial or prejudicial content relating to national origin, religion, sex, gender or age. Part 4 provides for application for promotions, with Regulation 4 stipulating that every licensee shall prior to the release of any promotion of its products and services; make an application to the Commission for approval of such promotion. The application must be filed in the stipulated application form as provided in Schedule 1 and submitted to the Commission after paying the relevant application fees as stated in schedule 2 of these Guidelines. Part 5 deals with denial of approval. Part 7 provides for the withdrawal of approval, Part 8 is on appeals, and Part 9 provides for sanctions.

Part 2 of the Guidelines provide definitions of the following selected key terms:

"Advertisement" means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence their choice, opinion or behaviour.

"Commission" means the Nigerian Communication Commission

"Licensee" means any person who holds an operating license issued by the Commission.

"Promotion" means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence their choice, opinion or behaviour in order to receive a reward or benefit.

q) Guidelines on Collocation and Infrastructure Sharing

In terms of rationale the Guidelines aim to promote fair competition in the communications industry, encourage and promote infrastructure sharing among its licensees; and to develop guidelines for Collocation and Infrastructure Sharing ("C/IS"). The primary object of these Guidelines is to establish a framework within which operators can negotiate C/IF arrangements, and for that purpose, specifically to –ensure that the incidence unnecessary duplication of infrastructure is minimized or completely avoided; protect the environment by reducing the proliferation of infrastructure and facilities installations; promote fair competition through equal access being granted to the installations and facilities of operators on mutually agreed terms; ensure that the economic advantages derivable from the sharing of facilities are harnessed for the overall benefit of all telecommunications stakeholders; minimize capital expenditure on supporting infrastructures and to free more funds for investment in core network equipment; and encourage operators to pursue a cost-oriented policy with the added effect of a reduction in the tariffs chargeable to consumers.

In terms of structure the Guidelines has 5 parts with part 1 providing for the background, status and objectives of infrastructure sharing and covers the following issues; types of infrastructures amendable to sharing; procedure for negotiating C/IS; and terms and conditions for infrastructure sharing. Part 3 provides for matter related to Collocation while Part 4 lays down general Rules for Collocation/Infrastructure Sharing (C/IF). Part 5 provides for the role of the Commission, collocation and supportive action. The Commission has the

power to intervene to resolve disputes at the request of either party and to impose facility sharing or collocation arrangements between operators after consultation with the parties. The power of the Commission to intervene in disputes shall include the right to request for and receive all such necessary information as may be required to reach a decision. The decision of the Commission which shall be final, save for the right of appeal to a court of competent jurisdiction will be notified to the parties and published.

Guideline 18 provides definitions of the following selected key terms:

"Collocation" – Means the placement of transmission equipment owned by the interconnection demanding operator in the premises of the interconnection providing operator for interconnection to that operator's network;

"Infrastructure sharing" – Means the joint use of network facilities by two or more operators subject to agreement specifying relevant technical and commercial conditions. The term "infrastructure sharing" is ore general than the term "collocation" and unless explicitly stated otherwise, infrastructure sharing refers for the purposes of these Guidelines to the sharing of facilities that are not feasible for collocation;

"Operator" – Means an undertaking holding a license granted under the Act to operate a communications system or facility and to provide communications services;

"Physical Collocation"- Means collocation where equipment is placed in a separate room within the premises of the interconnection providing operator and remains under the control of the interconnecting demanding operator;

"Remote Collocation" – Means collocation where the equipment of the interconnecting demanding operator is installed in a location near the premises of the interconnection providing operator and a transmission medium is used to realize the physical interconnection;

"Virtual Collocation" – Means collocation where equipment is placed in the equipment line-up of the interconnection providing operator and is maintained by that operator

r) Commercial Satellite Communications Guidelines

The objectives of the Guidelines are, inter alia, to ensure a well-developed and organized satellite communications market in Nigeria with appropriate legal framework that meets international best practices, encourages invocation and guarantee public safety in the rendering of commercial satellite services; to manage scare frequency resources, especially in bands where satellite shares frequency with terrestrial systems and to encourage the use of satellite connectivity to un-served areas that lack terrestrial transmission infrastructure backbone; to encourage the use of satellite communication infrastructure in Nigeria as a means of providing long-haul transmission facilities and ensure that investors are adequately protected; to ensure that satellite space segment providers reliable, cost effective and secured service to users in Nigeria under fair and favourable general public and workers in telecom companies are well protected from possible health hazards that can arise from over exposure to high level electric fields at high frequency.

In terms of structure and content, the Guideline has 24 sections that provide for the following: objectives and scope; license selection criteria; license process; authorization for landing rights; international satellite operation; eligibility criteria; licensee's obligations; specific license conditions; license categories; various licenses; consumer issues; serve outage; health and safety; suspension of services to a customer and quality of service; ground segment; fees and charges; and definitions.

Section 24 provides definitions for the following key terms:

"Commercial Satellite" means a satellite launched for profit making or business purpose.

"Space segment" means any satellite station in orbit.

"Space segment provider" means an owner of a satellite in space.

"Bandwidth reseller" means a vendor who sells satellite capacity.

"VSAT" stands for "Very Small Aperture Terminal" and means any small fixed earth station used to link to satellites operating in C, Ku and Ka bands.

"GMPCS" stands for "Global Mobile Personal Communications Systems".

"GSO" stands for "Geo-Stationary Orbit" and means a satellite location at 36,000km above sea level.

s) Consultation Guidelines of the Nigerian Communications Commission (2007)

In terms of rationale, the Guidelines are intended to stipulate the method for the Commission's interaction with stakeholders in regard to rulemaking, and other subjects that the Commission may wish to consult upon.

In terms of structure, the Guidelines are divided into 8 parts as follows: Par 1 deals with preliminary issues of interpretation, scope and application of the guidelines. Part 2 deals with General Matters relating to the objectives of the Commission's consultation processes. Part 4 lays down Instructions, Directions and Procedures while Part 5 provides for the Consultation and Procedures of Consultation Documents. Part 6 provide for Formal Responses while Part 7 deals with matters related to confidentiality. Part 8 provides for Decisions on Consultation.

Part 1 of the Guidelines provides definitions of the following selected key terms:

"Commission" means the Nigerian Communication Commission;

"Consultation" refers to all procedures of the Commission for interaction with stakeholders before a decision is reached on issues affecting the industry but shall not include Dispute Resolution, directions or other procedures already provided for under the Act.

"Ex parte" in regard to a meeting or response or presentation is any meeting or response or presentation which is restricted and which, in the case of written response or presentation (including electronic mail), is nor served on the parties to the proceeding, or, if oral, is made without advance notice to the parties or without opportunity for them to be present.

"Notice" means written or printed announcement of the consultation.

"Stakeholder" means any person or entity that has a vested interest in the communications sector, and includes service/facility providers and affiliates, investors, consumers/consumer groups, government and regulatory agencies.

"Respondent" means any person who provides comments to a consultation document.

"Response" includes comments and written presentations.

"Regulatory instruments" means rules and regulations issued by the Commission.

"Rulemaking" means the procedure of the Commission in making, amending or repealing regulations.

t) Regulatory Guidelines for Deployment of Broadband Services on the 5.2 – 5.9GHz Band

In terms of rationale, the Guidelines seek to harmonize use of frequency bands, set up technical and operational parameters, specific national procedures for deployment and market access for broadband wireless possibilities in the stated frequency band; and to ensure easy entry, interference free operation, and guaranteed quality and grade of service.

In terms of structure and contents, the Guideline has 7 major heading that deal with matter related to the following: introduction; purpose of guidelines; operational guidelines; types of services permitted; technical conditions' licensing conditions; and quality of service.

u) Guidelines on Procedure for Granting Approval to Disconnect Telecommunication Operators

In terms of rationale, the guidelines seek to ensure that the procedure for granting approval by the Commission for the disconnection of a licensee is founded on a predetermined framework to engender transparency, certainty and fairness.

In terms of structure and contents, the Guidelines are divided into 2 parts with 16 sections. Part 1 provides for introduction; Guiding Principles; request for approval to disconnect; additional information from the applicant; and conditions for the grant of approval to disconnect for indebtedness. Part 2 deals with matters related to decisions of the Commission as follows: preliminaries and time for taking decisions; pre-disconnection notice; notice to the parties; partial disconnection; other remedial steps for non-payment of interconnect debts; application of guidelines to interconnect exchange licensees; reconnection; miscellaneous and definitions.

Section 16 provides definitions of the following selected key terms:

"Applicant" means a licensee bringing an application for disconnection;

"Application" means the documentation of a request for approval for disconnection.

"CDR" means Call Data Record;

"Disconnection" means not only the mere absence of physical connection between operators previously interconnected, but also the reduction of bandwidth in both directions; party bit

marking to deny access or flow; allowing only uni-directional flow as against bi-directional flow and the general restriction of traffic however called.

"Licensee" means anyone who holds an individual license under the Act;

"Undertaking" means a signed commitment by the respondent to settle its interconnect obligations by a definite date and according to a specified schedule;

"Respondent" means a licensee against whom an application for disconnection is made.

v) Dispute Resolution Guidelines 2004 (NCC Short Form Consumer Dispute Resolution Guidelines)

In terms of rationale, the Guideline is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means of resolving consumer-related disputes in the telecommunications sector. The guideline does not apply to claims in which the amount in dispute or compensation claimed exceeds ₦1, 000,000 (One Million Naira) or that which involved complicated issues of law or where there is likely to be examination of witnesses.

In terms of structure and contents, the Guidelines has 8 sections providing for the following issues: introduction; commencement of arbitration; appointment of arbitrator; form of procedure; powers of the arbiter; communication between parties and the arbitrator; costs; and miscellaneous. Arbitration proceedings must be concluded within sixty days (60) from the date of commencement and awards made under the procedure are final and binding on the parties until set aside by a competent court of law.

w) Arbitration Scheme, Mediation Rules and Interconnection Dispute Resolution 2003

In terms of rationale, the Guideline is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means of resolving consumer-related disputes in the telecommunications sector.

The guideline does not apply to claims in which the amount in dispute or compensation claimed exceeds ₦1, 000,000 (One Million Naira) or that which involved complicated issues of law or where there is likely to be examination of witnesses.

In terms of structure and contents, the Guidelines has 8 sections providing for the following issues: introduction; commencement of arbitration; appointment of arbitrator; form of procedure; powers of the arbiter; communication between parties and the arbitrator; costs; and miscellaneous. The rules provide for a "documents only" determination with provision for the submission of any other required additional evidence. Any documentation submitted by either party to the Arbitrator shall remain confidential. The Nigerian Communications Commission administers arbitrations under the procedure independently and arbitrators are selected by appointment from the Commission's panel of experienced arbitrators. Awards made under the procedure are final and binding on the parties, however nothing in the rules shall preclude the Executive Vice Chairman of the Commission from attempting to use his good offices to resolve the dispute.

x) Guidelines on International Gateway Access and Voice over Internet Protocol (VoIP)

The Nigerian Communications Commission has issued these guidelines in order that the networks of licensees operating under Full Gateway and International Data Access (IDA) Licenses may convey data, voice and video signals, either in their natural forms or in digitized formats. Operators of these gateways may also inter-work and exchange information by using appropriate protocol and signaling conversion devices.

In terms of structure, the guidelines has 9 sections providing for the following; background, the IDA Gateway license; condition precedent to the issuance of IDA Licenses; full Gateway license; cost of licenses; status of existing operators; Interconnection of Gateway to PSTN; special IDA Permits; and definitions.

Section 9 provides definition of the following selected key terms:

"Full Gateway" – is an interface switch with its associated equipment with capability for protocol conversion and which can be used to link a telecommunication network in Nigeria with those of other countries. Information exchange is based on circuit-switched technology and makes use of international signaling point code as a means of identification in the SS7 - based global signaling network.

"International Data Access Gateway" – is a soft switch that performs interface functions for the purpose of linking data networks in Nigeria to the global Internet highway or other managed IP-based international networks. Information exchange is based on packet – switching (IP) technology while making use of IP address as a means of identification.

"VoIP (Voice Over Internet Protocol)" –any reference to Voice over IP includes the carriage of Voice signal by means of any packet-oriented transport protocol or data circuits such as Voice over Frame Relay, Voiceover WiFi, Voice over Wimax, Voice over ATM. Etc.

y) Guidelines for the provision of Internet Service

The Guidelines apply to all Licensees providing Internet access services or any other Internet protocol based telecommunication service (hereinafter, "ISPs").

In terms of structure and contents, the Guideline has 6 parts and 19 sections. Part 1 provides for compliance with the General Consumer Code of Practice Regulations 2006. Part 2 provides for matter relating to investigation and enforcement including Section 5 which

provides that ISPs must ensure that users are informed of any statements of cybercrime prevention or acceptable Internet use published by the Commission or any other authority, and that failure to comply with these acceptable use requirements may lead to criminal prosecution, including with respect to: unlawful access or fraudulent use of a computer; identity theft, impersonation or unauthorized disclosure of access codes; unlawful interception, or any form of system interference; violation of intellectual property rights; any other use for unlawful purposes, including terrorism, promoting racial, religious or other hatred or any unlawful sexual purposes, section 6 mandates all ISPs to cooperate with cybercrime or other illegal activity, while section 7 and 8 provide for termination of service agreements and records of data retention.

Part 3 provides for content-related activities with sections 9 to 12 providing for protecting of end users additional protection of minors; liability of ISPs as content intermediaries; and Takedown Notices. Part 4 deals with unsolicited commercial communications ("spam") while Part 5 deals with supply of internet access services for resale. Part 6 contains miscellaneous provisions relating to powers of the Commission.

z) Regulatory Guidelines for the use of 2.4 GHz ISM Band for Commercial Telecom Services

In terms of rationale, the Guidelines seek to ensure interference-free operation by all users if the band and to ensure that a guaranteed grade of service is available to the subscribers through established quality of service benchmarks, and consumer code of practice.

In terms of structure and content, the Guidelines are divided into 7 parts. Part 1 lays down operational guidelines. One of which is that wide area deployment will not be allowed on the ISM bands, and coverage or transmission distance from a single hotspot must be within the distance stipulated in the technical specification. Part 4 provides for quality of service and

covers; interference; availability of connection; security; after-sale support and maintenance; service agreement; bill error rate; and hotspots. Part 5 deals with Type Approval while Part 6 provides for backhaul frequencies. Part 7 provides for applicable industry standards.

aa) Guidelines on Short Operation in Nigeria

In terms of rationale, these Guidelines are principally intended to prescribe a standard of practice for providers of short code services and to provide a framework for the provision of these services. Under these Guidelines the Commission shall issue in bulk, the short codes in 3, 4 or 5 digit numbers to Network Operators and Content Aggregators.

In terms of structure and contents, the Guidelines are divided into 8 sections. Section 1 is the introductory section while section 2 provides for the objectives. Section 3 provides for the scope and operation of the guidelines. Under this section, short codes assigned for emergency services to the Nigerian Police, Fire Service Brigade, and Hospitals or any other agency for Government dealing with security and intelligence matters shall be common to all operators and will not attract any fees or charge usage by the consumer. All other categories of short codes shall be classified as premium and the operator in conjunction with the service provider will determine applicable fees and charges. Sections 4 0 6 provide for application process; Code of Practice/Operational Guidelines; and advertising and promotions. Section 7 provides for dispute resolution and section 8 is the interpretation section.

Section 8 provides definitions of the following selected key terms:

"Content Aggregator" means a person or a business that gathers Web content (and/or sometimes applications) from different sources for reuse or resale and who holds a license issued by the Commission.

"Licensee" means a person who either holds an individual license or undertakes activities which are subject to a class license granted by the Commission under Chapter IV of the Nigerian Communications Act 2003.

"Service Provider" means a person or a business that provides some kind of communications service, storage service or processing service or any combination of the three.

"Network Operators" means a person or a business that provides carrier services (network services) in the wired or wireless arena or a person who monitors and maintain the operation of a communications service.

"Application Service Provider" means a person or a business that provides an application service.

"Content Provider" means a person or a business that provides content.

"Content" means any sound, text, still picture, moving picture or other audiovisual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically.

bb) Guidelines on Technical Specification for the Installation of Telecommunications Masts and Towers, 2009

In terms of rationale, the Guidelines provide standards to be adhered to be telecommunications services providers/operators, designers, fabrications and installers of telecommunications towers towards ensuring environmental safety and sound engineering practices.

In terms of structure, the Guidelines are divided into 7 chapters and 31 sections. Chapter 1 provides for General Introduction; types of towers and masts; and sitting of towers and masts.

Section 1 provides that non-compliance with the mandatory provisions of these guidelines shall be deemed to be an offence punishable under relevant provisions of the Nigerian Communication Act 2003 (the Act); the Nigerian Communications (Enforcement Processes, etc.) Regulations 2005 and other applicable laws. Chapter 2 provides for design and construction while Chapter 3 provides for specifications. Chapter 4 provides for maintenance and testing while Chapter 5 deals with environmental requirements. Chapter 6 provides for the following matters: applications to the Commission for Permit; License and Certifications; and Structural Certification. Chapter 7 contains general provisions related to the Terrain; basic wind; insurance and compensation, service life; and interpretation.

Section 31 provides definitions of the following selected key terms:

"Antenna" Means structure or device or device used to collect used to collect or radiate electromagnetic waves, including directional antennas, such as panels, wireless cable and satellite dishes, and Omni directional antennas, such as whips, but not including satellite earth stations.

"*Climbing Facilities"* mean the components specifically designed or provided to permit access, such as fixed ladders step bolts, or structural members.

"Climbing Safety Devices" Means the equipment devices other than cages, designed to minimize accidental falls, or to limit the distance of such falls. The devices permit the person to ascend or descend the structure without having to continually manipulate the device or any part of the device. The climbing safety device usually consists of a carrier, safety sleeves, and safety belts.

"Collocation" Means the use of a single telecommunications tower and/or site by more than one telecommunications service provider.

"Grounding" Means establishing an electrical connection between the structure and the earth, adequate for lighting, high voltage, or static discharges.

"Telecommunications Antenna" Means an antenna used to provide a telecommunication service.

"Telecommunication Tower" Means a self – supporting or guyed structure more than 5 metres in height, built to support one or more telecommunications antennas.

"Tower Height" Means the distance measured form ground level to the highest point of any and all components of the structure, including antennas, hazard lighting, and other appurtenances.

cc) Technical Standards for Interconnectivity of Networks

Interconnection refers to the establishment of electronic linkages between service providers so that they can exchange traffic. It is the physical and logical linking of telecommunications networks used by the same or different service providers in order to allow the users on one service provider's network to communicate with the users on the same or another service provider's networks, or to access services provided by another undertaking. It comprises the commercial and technical arrangements under which service providers connect their equipment, networks and services to enable customers, services and networks of other service providers. The standards deals only with technical issues in interconnections, that is, the physical connection of separate networks to allow users of those networks communicate with each other.

In terms of structure and content, the standards are divided into 3 chapters of 27 sections. Chapter 1 provides for introduction; objectives; scope; interconnection principples; and interconnection issues. Chapter 2 deals with technical and operational issues; interconnection

provisioning procedures; interconnection facilities; Points; Interconnection of interconnection (POI); Peer interconnections Points; interconnection links; provisioning, testing and commissioning of Interconnect facilities; and disputes. Chapter 3 provides comprehensively for network and systems specifications as follows: network and transmission requirements for interconnection; calling line identification; interconnection in Wireless Mobile Networks; conformity to technical standards; network management; network integrity; network safety and protection; maintenance ; fault reporting and clearance procedures; redundancy of interconnection provisioning; architecture of interconnect link; internal traffic; interconnection service providers; collocation and infrastructure sharing; and supplementary services.

The Glossary provides definitions of the following selected key terms:

"Call Attempt" An attempt to achieve a connection to one or more devices attached to a Telecommunications Service.

"Interconnection" means physical and logical linking of telecommunications networks to permit movement of intelligence between both networks.

"Interconnection Services" means services that may flow between interconnected parties in accordance with the interconnection agreement between the parties.

Requested party" The service provider into whose network and interconnection is sought.

"Originating Network" A network to which an originator offers telecommunication traffic is connected to.

"Party" A legal person licensed by the Commission to offer telecommunications services.

"PSTN" Public Switched Telephone Network.

Point of Interconnection (POI)" Point of demarcation where the exchange of traffic between the two networks takes place.

"IGO" International Gateway Operator – a service provider licensed by the Commission to provide in – bound and outbound facilities for international telecommunications traffic.

dd) Type Approval Guidelines

In terms of rationale, the Guidelines are intended to identify the procedures to be followed before communications equipment (also referred to as "products") is used or supplied. The Guidelines apply to all Equipment Holders.

In terms of structure and contents, the Guidelines have 11 sections and a Schedule. Sections 1 to 3 provide for introduction; definitions; and application of the guidelines. The guidelines are to be read in conjunction with the Type Approval Regulations 2007 and all terms used in the Guidelines have the meanings defined in the Nigerian Communications Act 2003 and the Approval Regulations. Section 4 to 7 deal with how to apply for type approval fees, tests results; and type approval for changes to equipment. Section 8 provides for Declaration of Conformity. A Declaration of Conformity (DoC) is a document that is normally prepared by the manufacturer or supplier (wherever located) on company letterhead or stationery, signed by an authorized representative of that company, confirming that the product complies with the product standards identified in the DoC. Section 9 provides for supporting documentation; while section 10 provides for labeling. Section 11 deals with matters relating to product investigation. The Schedule lays out the Type Approval standards.

3.3 National Information Technology Development Agency Act, 2007

This Act established the National Information Technology Development Agency to plan, develop and promote the use of Information technology in Nigeria.

It is structured into 8 parts, 31 sections and 3 schedules as follows:- Part 1: Establishment of the Agency: Establishment of the Agency. Part 2: Composition of the Governing Board Powers and Functions: Establishment and membership of the Government Board; Tenure of Office; Cessation of Membership; Emoluments, etc. of members; Functions of the Agency; Power of the Board. Part3: Staff and structure of the Agency: Director General, Secretary and other staff of the Agency; Pension Reform Act 2004 No. 4; Staff Regulations; Removal from the office of the Director General etc. Part 4: Establishment of the National Information Technology Development Fund: Establishment etc., of the National Information Technology Development Fund; Exempted from Tax; Investments Cap. 449 LFN; Accounts and report of the Fund; Federal Inland Revenue Service to collect levy and pay into the Fund; Offences; Offences relating to corporate bodies. Part 5: Information Technology Parks: Information Technology Parks. Part 6: Financial Provisions: Accounts of the Agency; Expenditure of the Board. Part 7: Legal Proceedings: Limitations of suits against the Agency Cap. 379 LFN, Service of Documents; Restriction on execution against property of the Agency and Indemnity. Part 8: Miscellaneous: Directives by the Minister etc; Regulations by the Board; Transitional provisions; Interpretation; Short Title. Schedules: First Schedule: Section 2(4): Supplementary Provision Relating to the Board, etc.: Proceedings of the Board. Second Schedule: Section 6 (m): Supplementary Provisions Relating to the Supervision of the Management of the Country Code Top Level Domain (.ng) on the Internet. Third Schedule: Section 12 (2) (a).

Section 6 provides for the functions of the Agency as follows: (a) Create a frame work for the Planning, research, development, standardization, application, coordination, monitoring, evaluation and regulation of Information Technology practices, activities and systems in Nigeria and all matters related thereto and for that purpose, and which without detracting from the generality of the foregoing shall include providing universal access for Information

Technology and systems penetration including rural, urban and underserved areas. (b) Provide guidelines to facilitate the establishment and maintenance of appropriate for information technology and systems application and development in Nigeria for public and private sectors, urban-rural development, the economy and the government. (c) Develop guidelines for electronic governance and monitor the use of electronic governance and monitor the use of electronic data interchange and other forms of electronic communication transactions as an alternative to paper-based methods in government, commerce, education, the private and public sectors, labour and other fields, where the use of electronic communication may improve the exchange of data and information. (d) Develop guidelines for the networking of public and private sector establishment. (e)Develop guidelines for the standardization and certification of Information Technology Escrow Source Code and Object Code Domiciliation, Application and Delivery Systems in Nigeria. (f) Render advisory services in all information technology matters to the public and private sectors. (g) Create incentives to promote the use of information technology in all spheres of life in Nigeria including the setting up information technology parks. (h) Create incentives to promote the use of information technology in all spheres of life in Nigeria including the development of guidelines for setting up information technology systems and knowledge parks. (i) Introduce appropriate regulatory policies and incentives to encourage private sector investment in the information technology industry. (j) Collaborate with any local or state Government, company, firm, or person in any activity, which in the opinion of the agency is intended to facilitate the attainment of the objective of this act. (k) Determine critical areas in Information Technology requiring research intervention and Development in those areas. (l) Advice the government on ways of promoting the development of information technology in Nigeria including introducing appropriate information technology legislation, to enhance national security and vibrancy of the industry. (m) Accelerate internet Governance by giving

effect to the Second Schedule of this Act; and (n) Perform such other duties, which in the opinion of the Agency are necessary or expedient to ensure the efficient performance of the functions of the Agency under this act.

Section 34 provides for some selected key terms as follows:

"Computer" Means any electronic devices of computational machinery using programmed instructions which has one or more of the capabilities of storage, retrieval, memory, logic, arithmetic or communication and includes all input, output processing, storage, software, or communication facilities which are connected or related to such a device in a system or network or control function by the manipulation of signals, including electronic, magnetic or optical and shall include any input, output, data related to or operating in conjunction with any such device or system or computer network.

"Computer Network" Means the interconnection of one or more computers through;

"Computer system" Means a device or collection of devices including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data output data, that performs logic arithmetic, data storage and retrieval, communication control and other functions;

"Data" Means representation of information, knowledge, facts concepts or instructions, which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printout, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computers;

"Electronic form" With reference to information means any information generated, sent, received or stored in media magnetic, optical, computer memory, micro film, computer generated, micro fiche or similar device;

"Electronic record" means data, record or data generated image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

"Information Technology" Encompasses all forms of technology used to create, store, exchange and use information in its various forms (business data, voice, conversation, still images, motion pictures, multimedia presentations and other forms including those not yet conceived);

"Software" Includes any program, procedure and associated documentation concerned with the operation of a computer system.

3.4 Freedom of Information Act, 2011

This act makes public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes.

It is structured into 32 sections as follows:- Rights of access to records; Information about public institution; Request for access to records; Time for granting or refusing application; transfer of application; Extension of time limit for granting or refusing application; extension of time limit for granting or refusing application; where access is refused; Destruction or falsification of records; Exemption of international affairs and defence; Exemption of law enforcement and investigation; Training of officials on the right to information and on the

effective implementation of this Act; Exemption of personal information; Exemption of third party information; Exemption of personal or other privileges conferred by law; Exemption of course or research material; Severability; Denial by a public institution to disclose records; Judicial review; Hearing in a summary way; Access to information by the Court; Court to take precautions against disclosing information; Burden of proof; Order to disclose information; exempted materials; Protection of public officers; Documents under classification; Submission of reports; Complimentary procedures; Interpretation; Citation.

3.5 Wireless Telegraphy Act

An Act to make provision for the regulation of wireless telegraphy.

It is structured into 5 parts, 30 sections as follows:- Part 1: Preliminary: Short title; Meaning of wireless telegraphy; General Interpretation. Part 2: Regulation of wireless telegraphy: Licence required for use of wireless telegraphy apparatus; Licence required; fees and charges for licenses; Experimental licences; Regulations as to wireless telegraphy; Misleading messages and interception and disclosure of messages; Territorial extent of proceeding provisions; Powers of Commission as to wireless personnel. Part 3: Provisions as to interference: Regulations as to radiation of electro-magnetic energy, etc.; Enforcement of regulations as to the use of apparatus; Enforcement of regulations as to sales, etc., by manufacturers and others; deliberate interference. Part 4: General: Penalties; Offences by bodies corporate; Forfeiture; Offences continued after conviction; Civil proceedings, entry and search of premises, etc.; Provisions applicable on an occasion of emergency: Onus of proof; Saving as regards distress signals and electrical apparatus; Protection by post; Miscellaneous regulations; Government sound and television broadcasting services; Validity of previous licenses.

3.6 National Broadcasting Commission Act, 1992

An act to establish the National Broadcasting Commission and for matters connected therewith.

It is structured into 27 sections and 3 schedules as follows:- Establishment of the National Broadcasting Commission; Tenure of office, etc.; Director-General and other staff of the Commission; Power of the minister to give directives; Conditions of service; Service in the Commission to be pensionable; Power of the Commission to grant licence; Persons disqualified from the grant of a licence; Method of application for a licence; Terms and conditions for a licence; Power of the Commission with respect to licences; Fund of the Commission; Power to accept gifts; Borrowing power; Annual estimates, accounts and audit, Annual reports; Liability to code of sanctions; Indemnity, etc., of Commission and certain enactments; Interpretation; short title. Schedules: First Schedule: *Supplementary Provisions relating to the Commission.* Second Schedule: *Form for application for a grant of licence.* Third Schedule: *Terms of a Licence.*

Draft Nigeria Broadcasting Code (5th Edition, 2010)

The Code represents the minimum standard for broadcasting in the Federal Republic of Nigeria. The code shall be applied in the spirit as well as in the letter, in accordance with the professional ideals of broadcasting.

General Principles: Character of Broadcasting:- Broadcasting is a creative medium, characterized by professionalism, choice and innovation, to serve the interest of the general public. Its utilization of audio and vedio technology makes it capable of reaching the audience simultaneously, availing mankind with the best means of information dissemination and reception. It also enables the individual to share in and contribute, to the best of his ability, to the world around him.

Broadcasting shall influence society positively, setting the agenda for the social, cultural, economic, political and technological development of a nation, for the public good. By mean of broadcasting, every Nigerian is expected to partake in sharing of ideas and experiences that will enrich his or her life and help him or her live in a complex, dynamic and humane society, as envisaged in Chapter two of the 1999 Constitution of the Federal Republic of Nigeria (hereinafter referred to as the Constitution).

Nigeria broadcasting shall essentially match the best in the profession anywhere in the world, yet be distinctly Nigerian, projecting the best and discouraging the worst in the society. In other words, the cardinal responsibility of broadcasting to inform, educate and entertain shall not be at the expense of national interest, unity and cohesion of Nigeria's diverse social, cultural, economic, political and religious configurations.

Therefore, no broadcast shall intentionally encourage of incite to crime, lead to public disorder, be repugnant to public feeling or contain an offensive reference to any person, alive or dead, or generally, be disrespectful to human dignity.

Objectives of Broadcasting:-a) Broadcasting shall be guided by the following broad objectives, which are in line with the fundamental Objectives and Directive Principles of State Policy, as set out in chapter two of the 1999 Constitution. b) Broadcasting shall provide an efficient, professional and comprehensive of Nigeria based on national objectives and aspirations.

Social Objectives: a) To provide a functional level of enlightenment for the Nigerian populace, irrespective of their educational background. Specifically, broadcasting is to: i) promote generally accepted social values and norms especially civic and social responsibilities; ii)promote the acquisition or pursuit of knowledge; iii) disseminate, impartially, news and opinions in a manner encouraging meaningful and articulate dialogue

and discussion of issues of public interest; iv) promote the physical, mental and social well-being of the people; v) foster the spirit of self-discipline, self-sacrifice and self-reliance; and vi) encourage respect for the dignity of man. A) Broadcasting organizations shall recognize that they exercise freedom of expression as agents of society, not for any personal or sectional rights, privileges and needs of their one or of their proprietors, relatives, friends or supporters. B) Broadcasting shall proprietors, relatives, friends or supporters. b) Broadcasting shall promote values and norms, which foster the wellbeing and co-operation of the several of the Nigerian society.

Cultural Objectives: The cultural objectives of broadcasting shall encompass various aspects of community life including aesthetics, religion, ethics, philosophy, language, history and the arts. Therefore, broadcasting shall: a) provide, through programming, a service essential to the maintenance and enhancement of national identity and cultural sovereignty; b) serve to safe guard, enrich and strengthen the cultural, political, social and economic fabrics of Nigeria; c) Seek, identify, preserve and promote Nigeria's diverse cultures; d) select critically, the positive aspects of foreign cultures for the purpose of enriching the Nigerian culture; e) develop and promote the application of indigenous aesthetic values; f) promote the development of a high level of intellectual and artistic creativity; and g) foster generally acceptable moral, ennobling and spiritual values.

Economic Objectives:- a) The economic objectives of broadcasting shall be consistent with the nation's economic goals, which include the building of i) a united, strong and self-reliant nation; ii) a just and egalitarian society; iii) a great and dynamic economy; and iv) a land bright and full of opportunities for all citizens. b) Broadcasting shall, therefore: i) monitor trends and developments in production processes; ii) promote knowledge of available products and services through programmes and advertisements; iii) foster the spirit of hard-

work and productivity to improve the quality of life of the people; and iv) encourage the production and consumption of local product to achieve self-sufficiency and self-reliance.

Political Objectives: Broadcasting shall contribute to the development of national unity and participatory democracy. Therefore, the political objectives of broadcasting shall be to: a) create and promote political awareness amongst the people in order to achieve a democratic society; b) inculcate in the people the spirit of tolerance of all shades of opinion; and c) promote social justice based on the responsibilities and rights of the individuals in society.

Technological Objectives: The nation's abundant natural and human resources shall be exploited to the advantage of the people. Broadcasting shall therefore: a) keep the people abreast of technological developments; b) promote and encourage the study of science and technology; c) promote the spirit of self-reliance and engender the development of indigenous technology; and d) promote a scientific and rational attitude to life by encouraging research.

Professional Objectives: Broadcasting as a specialized section of the media industry, with its own mode of professionalism, demands a level of specialization and professional skills, some of which are as set out by the Code. Broadcasting, therefore, is to ensure: a) development of professionalism through recruitment and training of personnel, who at the point of entry into cadre shall, possess at least, Higher National Diploma (HND) or its equivalent in broadcast related fields; b) that only professionals with at least 10 years cognate experience shall head core departments, divisions or directorates; c) that only a professional broadcaster, with at least 15 years cognate experience in broadcasting, shall be made Chief Operations Officer of a broadcasting, shall be made Chief Operations Officer shall be used as much as possible in the production of programmes, including advertisements; and e) meaningful investment in research and development is guaranteed. Therefore, the commission shall intercede in instances where unjust removal of broadcasting is established.

The Objectives of Broadcasting Regulations: This regulation is to ensure that broadcasting plays a pivotal role on the social, cultural, technological, economic, and political lives of the people of Nigeria. To attain this: a) broadcasting shall adhere to the general principles of legality, decency, truth, integrity and respect for human dignity as well as the cultural, moral and social values of the people within a the provisions of the Constitution; b) Nigerian broadcasting shall meet the best in professional standards; c) the framework for the regulation of broadcasting in Nigeria shall meet local needs without compromising in international standards; d) broadcasting in Nigeria shall provide the entire range of sound and vision services that cater to, and reflect the diverse range of Nigerian cultures and communities through effective distribution of public, commercial and community broadcasting services; e) broadcasting in Nigeria shall be substantially owned and operated by Nigerians; f) broadcasting shall ensure the protection and the development of children and other persons requiring special care and consideration; g) broadcasting shall be mindful of the degree of harm and offence likely to be caused by the inclusion of any material in programming in general or in specific terms; h) broadcast frequency bands, a scare resource, shall be efficiently utilized in line with the international best standards in the planning, co-ordination, assignment, registration, and monitoring of the broadcast spectrum; i) universal access to broadcasting, including technologies, content and services shall be promoted; j) providers of broadcasting services shall respect community standards in the provision of programme materials; k) the mechanism for addressing complaints as well as feedback shall be established; i) broadcasters and their employees shall uphold the rights and obligations of the mass media as provided in the Constitution; m) fir and sustained competition shall be the hallmark of the broadcast industry in Nigeria; n) self-regulation shall be employed within the framework of professional standards.

Challenges to the Industry: The challenges to the industry are to ensure a free competitive and responsive broadcasting service in Nigeria, and to stimulate the contribution expected to broadcasting in a truly democratic society. Thus broadcasting must satisfy, amongst others, the following needs of society: a) a truthful, comprehensive and intelligent account of each day's local, regional, national and international events that have significant impact on the Nigerian community; b) an impartial access to the nation's daily intelligence, made equally available to everyone; c) a forum for the exchange of comment and criticism representing every stratum of the society, as required in a federal state like Nigeria, in which the views and opinions of everyone are included in the national consensus; d) a means of projecting the opinions and attitudes of the groups in the society to one another, such as the balancing of information flow between the rural and urban, government and the governed, as well as the presentation and clarification of the goals and values of the society; e) and efficient, professional and comprehensive broadcasting service to the entire people of the Federal Republic of Nigeria, based on national objectives and aspirations; f) an effective coverage and reach of the entire nation; g) the guaranteed right of practitioners to have control over editorial and programme content in the media; h) the development of Nigerian artistic creativity and talent in entertainment programming, and offering information and analyses from the Nigerian point of view; i) programming that promotes employment opportunities to serve the needs and interest, and reflect the circumstances and aspirations of all Nigerians; j) programming that promotes excellence and high moral and ethical standards acceptable to a substantial group of the viewing and listening public; k) development of human resources and training, and capacity building within broadcasting; l) ready adaption to scientific and technological changes; m) maximum use of predominantly Nigerian creative resources in the presentation of programming, be is news. Programme, musical entertainment, advertising or sponsorships; n) greater emphasis on the broadcast of news and programmes in Nigerian

languages so as to ensure direct relevance to local communities; o) programmes of high professional standard; p) reasonable opportunity for the public to be exposed to all views on matters of public concern; and q) the development and growth of the independent production sector.

Deregulation of Broadcasting in Nigeria: Historically, on August 24, 1992, the Federal Military Government promulgated the National Broadcasting Commission Decree No. 38 (Now deemed an Act of the National Assembly) deregulating the broadcast industry and establishing the National Broadcasting Commission to regulate the entire industry. This ended over 50 years of sole government ownership of broadcasting in the country. The responsibilities of the Commission were further expanded by (Amendment) Decree No. 55 of 1999.

Legal Framework: The National Broadcasting Commission (herein referred to as the Commission) was established by section 1 of the National Broadcasting Commission Act No. 38 of 1992 (as amended).

Responsibility of the Commission: The responsibility of the National Broadcasting Commission is as stated in Section 2(1) of NBC Act No. 38 of 1992 (as amended).

Declaration: The National Broadcasting Commission affirms that is shall cooperate with, encourage and protect stations but would firmly ensure that they adhere to all provisions of the law and the Code governing broadcasting in Nigeria.

3.7 National Office for Technology Acquisition and Promotion Act, 2004[30]

[30] Cap N62 Laws of the Federation of Nigeria 2004

An Act to establish the National Office for Technology Acquisition and Promotion to monitor, on a continuity basis, the transfer of foreign technology to Nigeria and to provide for other related matters.

It is structured into 4 parts, 23 sections and a schedules as follows:- Part 1: Establishment, Power and Functions: Establishment of National Office for Technology Acquisition and Promotion; Governing Council; Power of the Minister to give directions; Functions of the National Office. Part 2: Registration of Contract, etc.; Application for registration of contracts and agreements; Registration; Effect of registration; Cancellation of registration; Appeals, etc. Part 3: Provisions as to staff and finances: Director and other staff of the National Office; Service in the National Office to be pensionable; Financial provisions; Annual estimates, accounts and audit. Part 4: Miscellaneous and Supplementary: Power to obtain information; Penalties for false returns, obstruction, etc.; Restriction on disclosure of information by staff and penalty thereof; Offences by bodies corporate and unincorporated; Annual reports; staff regulations; Fees; Savings and transfer of liabilities, staff regulations; fees savings and transfer of liabilities, staff etc; Interpretation; short title. Schedules: Supplementary Provisions Relating to the Council.

3.8 National Identity Management Commission Act, 2007: Privacy and Data Protection

An Act to provide for the establishment of a National Identity Database and the National Identity Management Commission to be charged with the responsibilities for maintenance of the national database, the registration of individuals, and the issuance of general Multi-purpose identity cards and for related matters.

It is structured into 7 parts, 37 sections and 2 schedules as follows:- Part 1:Establishment, etc. of the National Identity Management Commission; Membership of the Commission; Tenure

of Office of the Chairman and members of the Board; Emoluments, etc. Part 2: Functions and powers of the Commission: Part 3: Staff of the Commission; The Director-General; Appointment, dismissal, etc. of other staff of the Commission; staff regulations. Part 4: Financial Provisions: Fund of the Commission; Power to accept gifts ;Annual estimate and accounts; Annual reports. Part 5: Establishment of a National Identity Database, etc.: Establishment of a National Identity Data base; Objectives of the Database; Registrable persons; Contents of the Database; Registration and issuance of Multi-purpose Identity Cards; Assignment of National Identity Cards; Provision of information by third parties; contents of the Multi-purpose Identity Cards; Change of circumstances and errors; Security of the Multi-purpose Identity Card; Production of a Multi-purpose Identity card; Cancellation and withdrawal of Multi-purpose identity cards; Disclosure of registered information; Mandatory use of the National Identification Number for transactions. Part 6: Offences and penalties: Unauthorised access, refusal to give information, etc; Transactions without a National Identification Number; Miscellaneous offences, etc. Part 7: Miscellaneous Provisions: Power to make regulations; Repeal, savings, etc.; Interpretation; Short title. Schedules: First schedule: Supplementary Provisions relating to the Commission. Second Schedules: Contents of the Database.

3.9 Personal Information and Data Protection Bill, 2013

An Bill to provide for regulations governing the processing of personal information of individuals, including the collection, holding, use or disclosure of such information by persons and organizations other than government institutions in a manner that recognizes and protects the personal information and data of individuals.

It is structure into 4 parts, 34 sections and a schedules as follows:- Part – 1: Purpose; Application; Compliance with obligations; Effect of designation of individual; Establishment

of the Office of the Privacy Commissioner; Commissioner to hold no other office; Filling of temporary vacancy; Functions and powers of the Commissioner; Security requirements; Collection without knowledge or consent; Definitions under S.6; Written request; When access prohibited; Sensory disability. Part 2: Contravention; Examination of complaint by Commissioner; Powers of Commissioner; Reasons; Contents of Commissioner's Report; Application to Court; Commissioner may apply or appear; Remedies; Summary hearings; Part 3: Audits to ensure compliance; Report of findings and recommendations. Part 4: Confidentiality; Commissioner not Competent witness; protection of commissioner; consultations with states; Disclosure of information to foreign state; Promoting the purpose of this Act; Annual and Special reports; Regulations; Whistle blowing; Prohibition; Offence and punishment; Review of act by National Assembly; Definitions; Citation. Schedule: Privacy Principles.

Under section 1, the purpose of this Act is to establish rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

Sections 2 provides for the application of the Bill as follows: (1) This Act applies to every organization in respect of personal information that (a) the organization collects, uses or discloses in the course of the organizations's commercial activities; or (b) is about an employee of the organization and that the organization collects, uses of discloses in connection with the operation of a federal work, undertaking or business. (2) This Act does not apply to (a) any government institution; (b) any individual in respect of personal information that the individuals collects, uses or discloses for personal or domestic purposes and does not collect, use or disclose for any other purpose; or (c) any organization is respect

of personal information that the organization collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose.

Section 34 provides for some selected key terms as follows:

"Personal health information", with respect to an individual, whether living or deceased, means: (a) information concerning the physical or mental health of the individual; (b) information concerning any health service provided to the individual; (c) information concerning the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual; (d) Information that is collected in the course of providing health services to the individual; or € information that is collected incidentally to the provision of health services to the individual.

"Personal Information" Means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record and any other documentary materials, regardless of physical form or characteristics, and any copy of any of those things.

3.10 Other Laws Regulating Telecommunications Sector in Nigeria

A. The Companies and Allied Matters Act[31]

Whereas the Nigerian Communication Act sets the standards for the operation of the telecommunication industry in Nigeria, there are other relevant legislations and regulations

[31] Cap C20 LFN 2004

that must be complied with by any would be service provider in the Country. One of such relevant legislation is the companies and allied matters Act.

Any operator of telecommunication services or service provider must be a corporate entity registered as such under Nigerian law. The Nigerian law provides that a corporate body or a partnership of such is the recognized entity to hold communication license.[32] Such entity must be incorporated and registered in Nigeria under the Companies and Allied Matters Act.[33] A non-Nigerian is at liberty, and indeed encouraged to invest and participate in the operation of any enterprise in Nigeria. However, the promoters or investors would have to register a company in Nigeria. This company will be a separate and distinct entity from its parent company. Until so incorporated, a foreign company may not carry on business in Nigeria or exercise any of the powers of a registered company.[34] A foreign investor may incorporate a Nigerian branch or subsidiary of the parent company by giving a Power of Attorney to a qualified solicitor in Nigeria for this purpose. The incorporation documents in this instance would, disclose that the Solicitor is merely acting as an "agent" of a "principal" whose name(s) should also appear in the document. The Power of Attorney should be designed to lapse, thus indicating that the appointed Solicitor shall be cease to function upon the conclusion of all registration formalities. When this is accomplished, the locally

[32] See section 157 Nigerian communication Act 2003

[33] Cap C20 LFN 2004The Companies and Allied Matters Act, 1990 [CAMA] is the principal statute governing the registration of enterprises in Nigeria. The administration of CAMA is the responsibility of the Corporate Affairs Commission (CAC), with headquarters in Abuja, and zonal offices all over the country. The functions of the CAC among other things include the following: -
The regulation and supervision of the formation, incorporation, registration, management and winding up of companies; the establishment and upkeep of a suitable and well equipped Companies Registry; the conduct of investigation into the affairs of any company where the interests of shareholders and the public so demand; etc.

[34] It is worthy to note however that a foreign company may engage in business without registration in Nigeria, if the foreign company applies for exemption from local incorporation in accordance with Section 56 of the Companies Act, to the National Council of Ministers for exemption if such a foreign company belongs to one of the following categories:- "foreign companies invited to Nigeria by or with the approval of the Federal Government of Nigeria to execute any specified individual project; foreign companies which are in Nigeria for the execution of a specific individual loan project on behalf of a donor country or international organization; foreign government-owned companies engaged solely in export promotion activities, and; engineering consultants and technical experts engaged on any individual specialist project under contract with any of the Governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

incorporated branch or subsidiary company must then apply to the Nigerian Investment Promotion Commission[35] ("NIPC") for a Business Permit, Expatriate Quota, and other requisite approvals and licenses. The NIPC is the only legally empowered Federal Government agency in Nigeria established by law to promote, coordinate and monitor all investment in Nigeria. It is therefore a condition precedent for any would be foreign investor to register with the commission after registering the enterprise with the corporate affairs commission. Section 20 of the Act provides that an 'enterprise in which foreign participation is permitted under section 17 of this Act shall, before commencing business, apply to the Commission for registration and the Commission shall, within fourteen working days from the date of receipt of completed registration forms, register the enterprise if it is satisfied that all relevant documents for registration have been duly completed and submitted or otherwise advise the applicant, accordingly.

To assure would be investors of their investments in the country, the NIPC Act also provides[36] that: No enterprise shall be nationalized or expropriated by any government of the Federation, and no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other persons. There will be no acquisition of an enterprise by the Federal Government unless the acquisition is in the national interest or for a public purpose under a law which makes provision for payment of fair and adequate compensation and a right of access to the courts for the determination of the of the investor's interest of right and the amount of compensation to which he is entitled.

It is therefore obvious that the telecommunication companies operating in the country mostly with foreign investment content were subjected to the regulation and procedures as spelt out by the commission.

[35] Provided for under the Nigerian Investment Promotion Commission Act No.16 of 1995
[36] section 25 (1) N.I.P.C. Act

B. Tort Law and Telecommunications

The fear of invasion of privacy lies in the real possibilities and/or occurrences of misuse of advancing technology. The abuse from either a big institution, such as the government, or a private individual can easily deprive unsuspecting victims of privacy. Although the types of intrusion may differ depending on the size, number, and the intention of invaders, the results all point to the common denominator--privacy loss. The large organizations generally focus more on electronic surveillance of individuals. Telecommunication technology allows one to gain more information about an individual for the sake of knowledge or to manipulate private information for the organization's profit. On the other hand, private individuals may simply invade one's privacy for amusement or for the pleasure of manipulating the technology. With the integration of the computer into the telecommunication information highway, more threats to privacy invasions arise.[37]

A veritable law in the regulation and use of telecommunication services viz a viz right to privacy is the law of torts which seeks to regulate the civil relationship among members of the society through the mechanism of payment of compensation for breach of legal duties or infringement on the rights of others.

A tort is a wrongful act not including a breach of contract or trust, that results in injury to another'sperson, property, reputation, etc and for which the injured party is entitled to compensation.[38] It is a branch of the law which covers civil wrongs, such as defamation and trespassing, among many other transgressions. The main purpose of tort law is to compensate the victims of wrongdoing for the injuries they suffer as a result. It is not

[37]Modhabi, D. 'Right to Privacy in the Age of Telecommunication' available at: http://www.tscm.com/full_text.html accessed 23/11/2014
[38]See: http://dictionary.reference.com/browse/tort accessed 23/01/2014

generally concerned with punishing, or casting moral judgment on the wrongdoer - it simply compels the person who caused the harm to compensate the person who suffered the harm.

A tort does not have to cause physical injury or distress. It might cause economic damage, by forcing someone to replace something, interfering with someone's business, or causing someone to miss work. Or it may cause damage to someone's reputation or quality of life. In order for a tort case to succeed in court, the lawyers must generally be able to prove that the accused party had committed the wrong in question, and that the client suffered as a result. Damages may be awarded by a jury or a judge, depending on the case.[39]

The thorny nexus between telecommunications and tort law can be found in the provisions of the Constitution[40] on fundamental rights. On one hand there is the constitutional guaranty of the individual right to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference and every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions.[41] On the other hand there is also the provision of Section 37 of the constitution on right to privacy. The Section provides: The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected. It is however to be noted that whilst the provision of Section 39 is subject to the provisions on derogation of rights and to law regulating telephony, wireless broadcasting, television or the exhibition of cinematograph film; the provision of Section 37 on right to privacy is only subject to the provisions on derogation of rights under Section 45 of the constitution.[42]

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[39] See generally: Deakin, Johnston and Markesinis (2008). *Markesinis & Deakin's Tort Law.* Oxford: Oxford University Press , Williams, G. [1951] "The Aims of the Law of Tort", *Current Legal Problems* 137

[40] Particularly section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

[41] Section 39(1) & (2)

[42] See generally: E. Noam; 'Privacy in Telecommunications: Markets, Rights and Regulations-Policy Approaches; New Telecom Quarterly ; Privacy International, 'Privacy and Human Rights 2003: Threats to

The Nigerian Communications Act remains silent on the role of the Nigerian Communications Commission to deal with privacy issues in communications, although this can be implied from analysing one of its functions. The Commission has a duty to carry on any other functions related to communications services and operations in Nigeria and also ensure compliance with international standards and obligations relating to communications.[43] Save for this omnibus provision the Act is silent on the protection and enforcement of right to privacy; the only other provision bordering on this issue is found in Section 106 which left the issue of protection of consumer information in the hand of service providers. This is unlike the provision of Section 67 of Uganda Communication Act[44] which makes it an offence for an operator of a communications service or system or employer of the same to disclose any information in relation to a communication unless done in accordance with a court order. Or Section 73 which provides that;

'any person who without lawful excuse intercepts and divulges any communication except where permitted by the originator commits an offence and liable on conviction to a penalty'.[45]

The objectives of NCC indicate government's emphasis on developing investment in the sub-sector rather than focus on consumer interests related thereto –it does not give direct focus on consumer interests such as the right to privacy but emphasises competition, network development among others. Save for the provisions in the NCC and licence terms and

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Privacy', available at http://www.privacyinternational.org/survey/phr2003/threats.htm accessed 24/11/2014.; See also Lee. A. Bygrave; 'Privacy Protection in a Global Context-A Comparative Overview', Scandinavian Studies in Law, 2004, Vol. 47, p 319-348, 328. M. Froomkin; "The Death of Privacy?" 52 Stanford Law Review (May 2000) 1501 available at http://personal.law.miami.edu/~froomkin/articles/privacy-deathof.pdf accessed 24/11/2014. Chris J. Hoofnagle, Consumer Privacy In the E-Commerce Marketplace 2002, Third Annual Institute on Privacy Law 1339, Practicing Law Institute G0-00W2 (June 2002), available athttp://www.epic.org/epic/staff/hoofnagle/plidraft2002.pdf accessed 24/11/2014

[43] Section 4

[44] Uganda Communications Act 1997 Contrary to the provision of Section 230 of the Communications Decency Act of 1996 USA which provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by others.

[45] supra

conditions requiring respect for privacy, presently, there are no regulations or guidelines. Operators are expected to respect consumer privacy through the mastermind operator/customer agreement.

However with the constitutional provision guarantee of right to privacy of the individual, an aggrieved party can use the agency of the court and the machinery of the tort law, to control and regulate the activities of the service providers viz a viz the protection and enforcement of right to privacy of the individual. Such tort as defamation, negligence and economic torts of passing off[46] and others can be called upon to redress any infringement of the right to privacy as enshrined in the constitution.

Furthermore the provisions of the Copyright Act,[47] Patent and Design Act[48] and Trademarks Act[49] can also be used to enforce protected rights under our constitution.

C. Criminal Law and Telecommunication

The emergence of low-cost computing, the Internet, and advances in wireless telecommunications has fueled one of the most significant developments of our time - the information age. But, in addition to the numerous advantages of this progress, significant challenges face society today.[50] The impact of telecommunication on the development of economic and social life has had some unwelcomed effect, as some individuals have taken advantage of technology to commit crime. Crime in the Digital Age catalogs current and emerging criminal techniques involving telecommunication systems and the Internet, in

[46] See generally: Winfield & Jollowitc on Tort Sweet & Maxwell
[47] Copyright Act, Cap C28 Laws of the Federation of Nigeria,2004
[48] Patent & Design Act, Cap P2, LFN, 2004. See also: Deji Olatoye : 'Copyright Law & Piracy – Legal Issues in the Information Society' Lecture Delivered at Public Lecture Day of Association of Information Resources Management Students Babcock University Ilishan, Ogun State On Wednesday 7th October, 2009 Available at: www.thelodt.com. Accessed 24/11/2014
[49] Cap T13, LFN, 2004
[50] See generally: Grabosky. P & Smith R. G. *Crime in the Digital Age: Controlling Telecommunications and Cyberspace Illegalities*. Rutgers University press, , Australia, 1998

addition to identifying measures that potentially can mitigate future risk to society.[51] Today there are so many communication related crimes (cyber crimes) including theft of services; communications in furtherance of criminal conspiracies; information piracy; the dissemination of offensive materials (including extortion threats); electronic money laundering; electronic vandalism and terrorism; telemarketing fraud; illegal interception; and electronic funds transfer fraud amongst others.[52]

In Nigeria there are many laws in the area of crime regulation, but the primordial law in this regard is the Criminal/Penal code. Our criminal code provision is grossly inadequate to address the criminal conduct arising from the modern telecommunication system. Chapter 17 of the criminal code[53] on Offences Relating to Posts and Telecommunications failed woefully to address the problem as its provisions is outdated and a relic of past colonial history. The Penal code did not fare better. The NCC Act stipulates no specific provision or penalty for telecommunication offences save that it provides for the immunity of the service providers in cases of disclosure of customers' information in furtherance of national security.[54] Section 146(1) of the Act provides that 'A licensee shall use his best endeavour to prevent the network

facilities that he owns or provides or the network service, applications service or content application service that he provides from being used in, or in relation to, the commission of any offence under any law in operation in Nigeria.' However the pertinent question at this juncture is to ask whether presently there is any law or regulation on telecommunication offences in Nigeria? In all the regulations and guidelines made by the NCC there is none that touches on the issue of telecommunication crimes. The Advance Fee Fraud and other Fraud

[51]Grabosky. P. Computer Crime in a World Without Borders. Available at: http://www.crime-research.org/library/Peter.htm accessed 24/11/2014
[52] Longe, O.B & Chiemeke, S. C: Cyber Crime and Criminality in Nigeria – What Roles are Internet Access Points in Playing? *European Journal of Social Sciences – Volume 6, Number 4(2008) 132-139*
[53] Chapter 77 Laws of the Federation of Nigeria 1990
[54] Section 146 NCC Act

Related Offences Act[55] only provides a tangential provision that bothers on telecommunication offences; in fact it only concerns itself with the fraudulent use of communication device to achieve economic fraud.[56]

Given the present legal framework and the current lacuna in the law, it is our opinion that the provision of the UK law on the subject will be a relevant guide to Nigerian legislators for adaptation and adoption. Sections 125 and of the subsequent sections of the UK Communications Act 2003, provides several sanctions for telecommunication offences ranging from dishonestly obtaining electronic communications services; Possession or supply of apparatus etc. for contravening,[57] cloning, reprogramming to Improper use of public electronic communications network.[58] A person guilty of an offence under section 127 shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine or to both.

D. Planning Law and Telecommunication

Telecommunication masts are ordinarily installed or placed on land or on any structures permanently attached thereto and are therefore subject to the operative land law and land use policy in the federating units/ States in the country, as a residual matter. All transactions in respect of leases, sub-leases and any assignment arising thereon are therefore subject to the provisions of the Land Use Act which is the operative land law in the Country. In line with the provisions of the Land Use Act, telecommunication operators are to obtain the necessary Governor's consent to any lease or sub-lease of land on which to cite telecom mast.[59] They are required to apply for State grant for Land and where their interest in the land pre-dates the Act as a Deemed grantee, their absolute ownership is technically converted to a right of occupancy of a definite period with the promulgation of the Act. They are also subject to the

[55] Advance Fee Fraud and other Fraud Related Offences Act 2006
[56] Sections 6,7,11 of the Act
[57] Section 126 Communication Act (UK) 2003
[58] Ibid Section 127
[59] See Section 21& 22 Land Use act 1978

Governor's power to grant easement and other rights appurtenant to land in respect of passages, right of way and installation of telecom masts and base stations.[60]

The fact that the telecom companies obtained their licenses from the Federal government but have to subject their operation licenses to State Land policy, particularly the operation of the Land Use Act, could engender conflict between the States, Local Governments and the federal agency empowered to regulate the telecommunication industry in Nigeria to the detriment of industry operators and ultimately the consumers of these services. Refusals by the State Governors/Local Government authorities to grant right of occupancy, leases and or consent to subsequent transactions involving assignment, leases or sub-leases for the erection and installation of telecom mast[61] or the revocation of existing right of occupancy over which a mast stands could provoke the failure of the industry in the country. It is therefore imperative to have a synergy of law and administrative process to fine-tune this overlapping functions and responsibilities of the various arms of government in order to untangle the maze into which this area may fall.

Recently the federal High court in Lagos had course to resolve a dispute bordering on this area in Registered Trustees of the Licensed Telecommunications Operators of Nigeria and Others V Lagos State Government and Others.[62] In that case the Lagos State Government promulgated the Infrastructure Maintenance and Regulatory Agency Law to regulate and control the erection and installation of Masts, Towers and for connected purposes.[63] In line with the provisions of Section 16 of the law, the State sought to regulate the construction and installation of telecommunication masts in Lagos State. The Claimant/Applicant challenged the legality and validity of the State legislation on this matter. The Claimant's argument was hinged on the constitutionality of the contending legislation and its duplicity *vis a vis* the

[60] Land use Act

[61] There is no provision in the Land Use Act to compel the Governor/local Government to grant a right of occupancy or give consent to any applicant. The power to grant same is totally at the discretion of the Governor.

[62] Unreported Suit No. FHC/L/CS/517/06

[63] Lagos State of Nigeria Official Gazette No. 23 Vol.37 dated 27th August, 2004.

Nigerian Communications Commission Act. In a well reasoned judgment, the court affirmed the exclusive powers of the Federal government to legislate on telecommunication matters and struck out the Lagos state law to the extent that it sought to impose quality control and environmental standards in the citing of telecomm mast within the State. The court reasoned that 'it will be difficult to do Telecommunication business in Nigeria if every State in the federation, which is not unlikely, if this case succeeds, to enact their own laws, to take a piece of the action.'[64]

There is no doubt that the State law in contention in this case encroached on Federal legislative powers by seeking to regulate matters beyond its legislative competence. It is however incorrect to state that the State has no role to play in the whole exercise. The provision of section 135 of the NCC Act is not meant to be cosmetic or a façade; it is in recognition of the constitutional legislative powers vested in the Federating units exercisable over land and physical planning matters. It is argued hereunder that the State have the legislative right to regulate the indiscriminate citing of mast within its territory using the agency of appropriate law, particularly it's zoning policy. It is therefore outlandish and an over-generalization to argue that the power is at variance with Section 4(2) 0f the constitution and items 46, 66 and 68 of the exclusive list of the constitution.[65]

It is important to put in place a workable administrative mechanism to avert this type of conflict particularly when the regulatory law on the subject ordinarily recognizes the important role of the State in this area. In fact the need to have in place a workable arrangement in this area cannot be over emphasized as it will act as the administrative melting point for all sorts of dispute on the matter. It is therefore recommended that a joint committee of the 3 arms of government in the country be set up to oversee the trouble spots in the whole exercise and set an equitable agenda for all parties and stakeholders concerned.

[64] Page 24 of the judgment.
[65] This is one of the arguments canvassed by counsel to the applicant in the case. See p. 9

The committee should particularly work towards recommending a uniform procedure and administrative levies applicable throughout the country with respect to application and approvals required for the installation of Telecommunication mast and towers. If necessary, a legal framework for the implementation of this recommendation should be put in place by inserting an amendment into the current law.

CHAPTER FOUR

CHALLENGES AND PROSPECTS IN REGULATING THE TELECOMMUNICATION INDUSTRY IN NIGERIA

4.1 Issues: Policy, Legal and Regulatory Framework

In Nigeria, the question of the importance, relevance and purpose of regulation in the Information and Communications industry has not been properly considered. The issuing of licences to operators in the telecommunications industry over 15 years ago and contemporary experiences due to services and regulatory convergence has not changed the situation. However, it does not seem that a decision to purposively regulate the sector has been made by the national regulator, considering the fact that most of the extant policies relating to the telecommunication sector have been surpass by technological advancement and market revolution globally. Therefore, these policies need review and the solution is the development of apposite polices as well as regulatory framework that promote an enabling and responsive environment.

At the moment, there are mixtures of clumsy policies steering diverse component of the telecommunication sector, in the same way several other laws relating to different facet of the sector. There exists gaps and regulatory overlap in these laws and policies which renders them futile and failed to address the rapid expansion in the digital planet particularly in the area of convergence. To address these issues, there is the need to comprehensively harmonise all the extant laws and policies of the telecommunication sector with the object of providing a conscientious legal framework that can prop up convergence and other swift expansion in the ICT sector.

Convergence

Convergence refers to the integration or merging of previously separate services in telecommunications/telephony, media/broadcasting and internet technologies into a single technological unit. The practical consequence is interoperability and the ability to access and operate services through a single device e.g. accessing the internet or a broadcast through a mobile phone. According to the ICT Regulation Toolkit "Convergence" is facilitated by the transition from analogue to digital, voice to data, narrowband to broadband, circuit switched to packet switched, one way to interactive, scarcity to abundance, and the accompanying digitalization of all content. Generally, convergence allows both previously separate sectors and entirely new sectors to compete in the same newly expanded market space.'[1] For example, there are already numerous examples of markets offering IPTV and mobile television. In this new, converged market space, customers can expect the seamless provision from multiple sources on a single device of all electronic communications for one supplier competing with many other suppliers.[2] However, convergence is not complete in most developing countries, such as Nigeria. The implication is that the benefits of a converged ICT environment have been limited by the absence of a converged regulatory environment as well as a binding legal framework. Having the preceding pillars in place would support interoperable technologies that drive convergence and enable consumers to enjoy the benefits of convergence.

The contemporary challenge with convergence in Nigeria in contrast to other experienced market systems such as Europe is the reluctance to embrace regulatory convergence.

Universal access and service

[1] http://www.letregualtionstoolkit.org/en/sections.html.accepted accessed 15/7/15
[2] Ibid.

It is globally that citizen's access to telecommunication networks and services is a desirable national development goal. However in many developing countries including Nigeria, significant portions of the population are either unserved or underserved. Lack of access has obvious consequences for national development as stymied digital literacy, and diminished participation in elections and democratic governance.

A large portion of Nigerians population live in rural areas and most of these rural communities do not have access to basic ICT service. In addition, some Nigerians reside in urban areas that are unserved or underserved. Consequently, urgent intervention is needed to ensure provision of universal access and delivery of quality services through the nationwide development of ICT infrastructure and services. Of prime importance are basic voice / data services. Broadband internet access related facilities and applications.

Nigeria, following international best practices is addressing the challenges through the development of various initiatives in the sector. It is important that the pursuit of the goals of universal access/service be accelerated as indicated in vision 20:20:20. Government shall therefore encourage and promote universal access and services for all citizens of Nigeria through effective public and private partnership.

ICT infrastructure

Globalisation continues to breakdown geographic and other traditional barriers to fast paced economic activity and commerce, making it imperative that Nigeria urgently accelerates the development of its national ICT infrastructure, in order to support national development and global competitiveness.

The relative paucity of ICT infrastructure in the country has greatly hindered the efficient and affordable ICT services to the citizens, and has adversely affected the socio-economic

development of Nigeria. Government shall therefore develop and deploy national information infrastructure for national transformation with a view to attaining its vision 20:20:20. The ICT policy focused should include: i) National ICT backbone and Broadband infrastructure, ii) Infrastructure that will foster digital literacy and Internet Usage; iii) Reasonably priced universal access to ICT; iv) Protection of ICT infrastructure, including national and civil database; v) National physical infrastructure (including power) and vi) Financial system infrastructure.

Electro-magnetic radiation (EMR) and health concerns

There are health dimensions to ICT usage. However, between governments and ICT operators in many jurisdictions, it seems that the attempt is chiefly to discredit claims that there are health hazards rather than to structure an effective legal regime that guarantees best practice. The topic readily provides a platform for controversy due to the possible liability that may attach to some practices. Notwithstanding, there are grounds to conclude that telecommunications equipment such as base stations as well as mobile phones do in fact emit electro-magnetic radiation that is ultimately harmful to the health of human beings.[3] Electro-magnetic radiation consists of waves of electric and magnetic energy moving together through space at the speed of light.[4] Issues regarding the harmful health impact of electro–magnetic radiation from base stations have been the subject of legal disputes in several countries. For example, in 2002 Vodafone, a GSM operator in Britain sought to install mobile telephone antennae in the towers of the churches of St Margaret, Hawes and Holy Trinity, Knaresborough, in Leeds, England. This action resulted in objections from residents who lived within the vicinity of the churches, primarily on the grounds of the risks to their health from living close to the antennae. Vodafone petitioned the court in the combined cases of St.

[3] Turgut, N.Y. 'The Side Effect of Electromagnetic Radiation' (2008) *Journal of Business Law* 269-289.
[4] http://nigeriacommunicationsweek.com.ng/node/263.

Margaret Hawes (No 215 of 2002) and Holy Trinity Knaresborough (No 233 of 2002). The issue for determination before the court was whether or not radiation from a telecommunications base station might affect the health of people in the vicinity of such base stations. The matters were resolved by determining the appropriate base station radiation emission threshold.[5]

In Nigeria, all deployed telecoms equipment, installations, terminal equipment, mobile handsets and equipment in customers' premises sold by all Nigeria telecom operations in their various bundled promotions are required to be type–approved by the telecommunications industry regulator, the Nigeria Communications Commission (NCC). This is in compliance with the electro-magnetic field (EMF) thresholds set by the International Commission on Non-ionising Radiation Protection (ICNIRP) guidelines, the ITU, Institute of Electrical and Electronic Engineers (IEEE), amongst other industry standards-setting bodies.[6] While the debate on whether or not emissions pose health threats for Nigerian users of identified products continues, NESREA has fiercely sustained the task of regulating the related practices and the location of base stations to prevent environmental health hazards.[7]

Cyber Crime

As ICT access and use began to grow, so also did the menace of cyber crime. Cyber crime consists of a variety of criminal acts perpetrated through the Internet, and includes e-mail scams, child pornography, hacking, theft of data, identity theft, extortion and a wide array of other nefarious activities. Other ICT–related crimes include the counterfeit cashier's cheque scheme, which relies on the issuance of fraudulent cheques, and targets individuals that use Internet advertisements to sell merchandise. Another is the advance fee fraud, also known as

[5]Ibid.
[6] Ibid.
[7] http://www.nigerianbestforum.com/generaltopics/nesrea-vs-ncc-raging-battle-overregulationoftelecomsmasts/.

the “419 scam”, after the section of the Nigerian Criminal Code dealing with the crime of obtaining property by false pretences.[8] The 419 scam combines impersonation fraud with a variation of an advance fee scheme, and relies on letters, emails, or faxes to potential victims from individuals representing themselves as government officials, offering the recipient the "opportunity" to share in a percentage of millions of dollars, while soliciting for help in placing large sums of money in overseas bank accounts.[9]

The problem of cybercrime is a global one whose extent, magnitude and impact reverberate throughout various walks of life, leaving hitherto unimaginable damage in its wake. Popularly referred to as the “yahoo yahoo syndrome” in Nigeria, these fraudulent activities are carried on by a recalcitrant few, but the impact is far reaching due to the world wide reach of the Internet. Cybercrime is not only an embarrassment; it also has negative implications for the positive deployment of ICT for socio-economic growth and development.

[8] Section 419 of the Nigerian Criminal Code, Cap C38, Laws of the Federation of Nigeria, 2004, which provides: “Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony, and is liable to imprisonment for three years...”

[9] See the International Crime Complaint (IC3) Centre, online @ http://www.ic3.gov/crimeschemes.aspx#item-13,

With a view to dealing with some of the problems occasioned by cybercrime, the Nigerian government has deployed some legal and enforcement tools, including the enlistment of the Economic and Financial Crimes Commission (EFCC)[10], the Nigerian Police Force, and other crime fighting bodies to tackle the problem. Unfortunately however, initial attempts to deal with the problem did not utilize a refined and technology savvy approach to detect and arrest perpetrators. Rather, law enforcement officers largely descended on cyber cafes, carrying out frequent raids, arrests, ban of overnight browsing and other activities. However, resort to cyber cafes for internet access has waned considerably, with more possibilities to access the internet through mobile phones and personal computers. This may be attributed to the deregulation of the telecommunications sector, which has afforded the public the benefit of competitive internet access options by telecommunications companies, thus making private internet more accessible and affordable. This modification in the location of use from cyber cafes to private offices and homes means that physical raids of cyber cafes and other public venues for internet access can no longer constitute a valid approach to tackling online criminal activities. Rather, use of technological means and seeking of relevant information from and collaboration with Internet Service Providers (ISPS) have become inevitable. This on its part raises the need for proper training and adequate deployment of specialized police and other enforcement authorities.[11] Additionally, there is the issue of the security of stored customer data, which has been a concern in many developed countries, where servers holding millions of customer data have been hacked, and storage media such as compact discs

[10] See the Economic and Financial Crimes Commission (Establishment) Act (No 1) of 2004, Cap E1, LFN 2004. Among other functions, the EFCC is responsible for the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc. See generally, Section 6 of the EFCC Act. The EFCC is the Nigerian equivalent of the Serious Fraud Office in the UK, (see http://www.sfo.gov.uk/),

[11] Already, some training is being provided for the Economic and Financial Crimes Commission (EFCC), to equip it with skills to curb the menace of cybercrime, through the government itself, as well as through the efforts of some ICT companies like Microsoft, which is collaborating with these agencies with a view to sharing technical knowledge and best practices. Such collaborative efforts will contribute positively to the creation of a legal environment that encourages ICT business development in the country.

holding data on millions of customers have been carelessly misplaced or lost in the post.[12] Beyond these however, more effort should be made to refocus on the promotion of positive uses of ICT. In this regard, it is encouraging that Microsoft has partnered with an NGO (Paradigm Initiative Nigeria (PIN)) to tackle cyber crime through its Internet Safety, Security and Privacy Initiative for Nigeria (ISSPIN).[13] The programme essentially focuses on redirecting the energy of young Nigerians away from cyber crime and towards positive utilisation of cyber space for legitimate purposes.[14] Microsoft also aims at addressing the need for adequate training in information technology among young Nigerians by distributing free compact discs containing Microsoft's Digital Literacy Curriculum.[15] There is also the practical aspect of empowerment through training programmes designed to arm youths with marketable skills for legitimate business activities in the online environment. As awareness continues to rise about the potentials of the technology, there is a corresponding need for the creation of local content online, establishment of websites for businesses, as well as online advertisements and marketing. Expertise and skills in these areas are therefore increasingly becoming more valuable, and a legal framework that deals with protection of creativity, prevention of misrepresentations and fraudulent acts become relevant. Hopefully, skill acquisition in these areas will not only reduce the tendency towards commission of cyber crimes, but also contribute to a reduction in the number of the unemployed in the country.

Internet and broadband deployment

Internet and broadband deployment have been internationally recognized as a crucial stronghold for transformation to a knowledge-based economy. It is moreover generally recognize that broadband infrastructure is an enabler for economic and social growth in the digital economy. Broadband has the budding of enabling entire new industries, and

[12] See Report titled "Curbing Cybercrime in Nigeria: Microsoft Enlists Nigeria's Youth to Tackle Cybercrime," online at Microsoft Africa website at http://www.microsoft.com/africa/stories/curbing_cybercrime.mspx,
[13] Ibid
[14] Ibid
[15] Ibid.

introducing significant efficiencies into education delivery, health care provision, energy management, public safety, government/citizen interaction, and the overall organisation and dissemination of knowledge, and distribution of wealth.

Although there are various initiatives meant at deploying broadband in Nigeria, a lot of challenges remain, especially with the deployment of a national fiber optic based network to distribute approximately 10 terabytes of capacity already delivered to landing points in Nigeria. Therefore there is an urgent need to speed up the velocity of ongoing efforts and also to bring in new initiatives to tackle this and other challenges. This is necessary for the actualisation of the developmental goals of vision 20:2020. The government will therefore pursue, by the end of 2017, a fivefold increase in broadband penetration over the 2012 penetration rate.

4.2 Challenges

E-Contracts, E-Commerce and E-Banking

The ICT revolution also presents possibilities for the carrying on of commercial transactions, including buying and selling of goods and services, promotion of businesses and other related activities online. The new issues arising in this regard cut across the formation and validity of contracts, where questions may be raised about whether, for contracts which are in writing, e-mails and other means of electronic communication satisfy the requirements of writing and signing. Thus, the validity of ICT-related commercial transactions, their admissibility in evidence and options for dealing with conflict of laws issues arising where, as is often the case, these transactions are carried out between persons who are connected to different countries have been severally identified as some of the challenges posed by ICT.[16]

[16] See Bamodu G, " Information and Communications Technology and E-Commerce: Challenges and Opportunities for the Nigerian legal System and Judiciary", 2 (2004) *The Journal of Information, Law and Technology*, online at http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2004_2/bamodu/,

With regard to the buying and selling of goods, the law sets out the obligations of sellers and buyers in such contracts.[17] However, these legal provisions inadequately address concerns arising in the online environment. For example, under the law, the place of delivery of goods is deemed to be the seller's place of business.[18] However, in the case of e-commerce, the existence of a physical place of business cannot be assumed. Furthermore, even where such exists, it can no longer be presumed to be the place of delivery. Thus, there is a need for legislation which addresses concerns of buyers and consumers generally by specifying obligations of sellers in e-commerce, including the indication of a geographical address of the seller's place of business where complaints may be addressed, and terms of exercise of withdrawal options.[19] This is to preserve the buyer's right of examining the goods, and the presumption against acceptance of goods until the opportunity to examine has been given.[20] Other consumer protection provisions which ought to be put in place include disclosure of the full identity of the seller and cost of delivery. Options for achieving these objectives include the promulgation of a new law or the amendment of existing laws, such as the sale of goods law and the consumer protection law.[21]

On its part, in the banking sector, the replacement of the age-old ledger system with computers linked to internet facilities has brought about a revolution in the sector. Online/e-banking allows customers to carry out a wide variety of banking and other financial activities online, through a website operated by the bank. A major benefit of internet banking is the ease and convenience of managing one's finances from a place and time of one's choosing. Thus, financial transactions including checking of account balance, monitoring transactions, payment of utility bills, transfer of funds and monitoring, confirmation and stoppage of

[17] See for example, the Sales of Goods Law, Cap S2, Laws of Lagos State of Nigeria, 2005
[18] See Section 30 Ibid.
[19] Another alternative is to upgrade the existing consumer protection law, i.e. the Consumer Protection Council Act, Cap C23, LFN 2004, to deal with these concerns.
[20] See Section 35 of the Sale of Goods Law, Lagos State.
[21] See the Consumer Protection Council Act, Cap C23, LFN 2004

cheques can be conveniently carried out from any location. A related development is the use of electronic devices such as magnetically encoded plastic cards that permit customers to make cash withdrawals and pay for transactions without visiting banking halls, through ATMs (Automated Teller Machines), POS (Point of Sale) and other online channels. The possibilities provided by e-banking, which reduces the need to carry cash on personal and business trips, while also affording ready 24-hour access and convenience for users represents one of the most obvious and potent impacts of ICT in Nigeria.[22]

However, despite the progress in the sector, there are certain challenges which need to be addressed to facilitate the carrying on of e-commerce and other on-line activities. In particular, the availability of effective payment mechanisms which enjoy acceptance in international circles to support cross-border online transactions need to be strengthened. This is mainly through addressing the negative perception of Nigeria as a haven where cybercrime thrives, and which is therefore a risky country to carry out online commercial and financial transactions in. At the heart of this challenge is the need for suitable legal and regulatory framework to address the emergence of e-banking. This is with a view to promoting public trust and confidence in e-banking by providing mechanisms which effectively protect customers from the risk of hackers, fraudsters and other criminal acts in the online environment.

At present, there is a lacuna in the main Nigerian legislation regulating the banking sector, as this does not deal with e-banking.[23] Similarly, neither the Nigerian Criminal Code nor the common law principles which regulate the banker/customer relationship adequately address the problem of cyber crime and other critical issues arising in e-banking. There is therefore a

[22] Recently, the Central Bank of Nigeria (CBN) issued a circular banning cash withdrawals exceeding N150,000 for individuals, and N1million for corporate bodies. See This day Newspapers of 29th April, 2011, online at http://www.thisdaylive.com/articles/cbn-limits-daily-cash-withdrawals-to-n150-000/90464/. See also the CBN websiteathttp://www.cenbank.org/Out/2011/pressrelease/gvd/Revised%20QnA%20on%20CBN%20POLICY%20ON%2 0CASH%20WITHDRAWAL%20LIMIT.pdf,

[23] Banks and other Financial Institutions Act (as amended), Cap B3, LFN 2004

need for legislation to tackle diverse issues such as responsibility for authentication and security, and the allocation of risks for losses arising from the carrying out of unauthorised transactions in e-banking, protection of personal information, jurisdictional issues, admissibility of electronic transactions in evidence and other issues peculiar to the ICT environment. Although to some extent, part of the issues are addressed by the Central Bank of Nigeria (CBN)'s Regulations on Electronic Banking, which deals with licensing, supervision and other regulatory roles of the CBN, the Regulations specifically note the absence of laws dealing with e-banking in Nigeria.[24]

A recent example of legal uncertainty regarding the admissibility of computer generated bank statement may be seen in the case of *Federal Republic of Nigeria V. Femi Fani Kayode*.[25] There, the trial judge had held that the computer generated statement of account of the accused person; Chief Fani-Kayode was inadmissible in evidence, for failure to comply with the provisions of Section 97 of the Evidence Act.[26] The ruling was however, reversed by the Court of Appeal, which held that the computer print out of the statements of transactions was admissible.[27]

Computer-generated documentary evidence

In 2011 a new *Evidence Act* was enacted to authorize the admissibility of "statements contained in a document produced by a computer … as evidence".[28] The fact that computer-generated documents were previously inadmissible had made life difficult for the courts, and had created situations that undermined the activities of government as well as private individuals in Nigeria.[29] For instance, the Nigerian contract laws required that a contract

[24] See Par 3(b) of the CBN Guidelines on Electronic Banking in Nigeria, 2003.
[25] Unreported Suit No FHC/L/523C/08 of the Federal High Court Sitting in Lagos.
[26] Cap E14, Laws of the Federation of Nigeria, 2004.
[27] The newly promulgated Evidence (Amendment) Act, 2011 has however, now clarified the law by providing for admissibility of computer generated evidence.
[28] S 84(1) of the *Nigeria Evidence Act* of 2011.
[29] The concern re crime in cyberspace was recently highlighted in a report that "The United States leads with 65 per cent of cyber-criminal activities, the United Kingdom with 9.9 per cent while Nigeria is the next hub of

should be oral or in writing, and never contemplated the formation of electronic contracts.[30] Under the new regime, however, documents in electronic formats containing electronic signatures as verification, for instance, will freely be processed, thus closing the earlier legal vacuum.[31] The earlier judicial interpretations[32] on the admissibility of electronic documents created juridical confusion as there were conflicting decisions across various courts in the land, including the Supreme Court. Some confusion may still occur in the interpretation of "computer" and "equipment" to include mobile phones for the purposes of admissibility.[33] Construed purposefully, it is should not be difficult to recognise that mobile phones are considered within the contemplation of the *Evidence Act* of 2011.

Jurisdictional questions

A disturbing legal issue has been that of finding the appropriate jurisdiction where valid judicial enforcement could take place in situations where two parties in different jurisdictions enter into a contract or an enforceable agreement over the internet. Private international law,

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cyber criminals in the world with eight per cent". The report particularly noted that "over $557m was lost globally to cyber criminals in 2009 while a 22 per cent increase in cybercrime was recorded globally between 2008 and 2009". See generally Ogunseye *NBF Topics*12.

[30] Udotai "Growth and Challenges of Information Technology" 234.

[31] For some years now the *Nigerian Electronic Transactions Bill*, 2011 has been pending before the National Assembly. The Bill proposes to facilitate the use of information represented in electronic media, regardless of the technologies employed, by giving electronic documents functional recognition. See Udotai "Growth and Challenges of Information Technology"234-233.

[32] See the cases of *Nuba Commercial Farms Limited v NAL Merchant Bank Ltd* 2002 24 WRN 157, 2003 FWLR (Pt 145) 661 CA; and *EFCC v Fani-Kayode* unreported case of 2009, where the Court of Appeal and the High Court respectively held that hard copies of electronic documents could not be admitted as evidence under the *Nigerian Evidence Act*. Contrast this with the position of the Supreme Court in the cases of *Esso West Africa Inc v Oyegbola* 1969 1 NNLR 194and *Anyeabosi v RT Briscoe (Nig) Ltd* 1987 3 NWLR (Pt 59) 84; 2 NSCC (Vol 18 Pt 2) 805, where the Supreme Court held that hard copies of electronic documents were admissible as evidence. See also the case of *Ogolo v IMB (Nig) Ltd* NWLR (Pt 419) 314 CA, where the Court of Appeal held that copies of electronic evidence were admissible for further discussions on the admissibility of electronically generated evidence in Nigeria. See Chukwuemerie 2006 *SCRIPT-ed*; Osibanjo "Electronically Generated Evidence"243; Ohiocheoya and Azuka 2008 *UBLJ* 83;Bamodu 2004 *JILT*.

[33] While mobile phones were not expressly mentioned under the *Evidence Act*, s 84(5)(c) of the Act may have suggested their inclusion. The section provides that "a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment".

although not conclusive, has attempted to provide a traditional solution through the "forum state" and "target state" system.[34]

The forum state system

Under this system, legal obligations in cyberspace are restricted to a particular territorial jurisdiction defined in an online contract. Such jurisdiction will be the forum state, and legal action cannot be brought to enforce any obligations between the parties except in that jurisdiction. The forum state system is generally supported by the business community, which places much emphasis on the risk of having to protect itself against proceedings in a wide range of jurisdictions. This position is strengthened by the realization that it may be difficult on the one hand to restrict the field of such claims to a given jurisdiction because an internet site is published worldwide, and on the other hand, there is a real and "virtual" challenge in identifying the user's location with certainty.[35]

The target state system

Under the target state system, legal obligations in cyberspace are not restricted to a particular territorial jurisdiction, but extend to the jurisdiction where a consumer is located. This system is preferred by consumer advocates because it tends to provide consumers with more extensive protection by allowing them to institute legal proceedings in their own countries and consequently take to advantage of their own national laws on consumer protection.[36]

Trade Marks, Domain Names and Cyber Squatting

Another area of impact of ICT in Nigeria is the intersection between domain names, which are the titles with which websites are identified and located, and trade mark law. A domain

[34] See Benyehlef and Fabien, ‘’*Online Consumer Dispute Resolution: a narrative around and an example of postmodern law*’’ 2005 available @ http://www.lex-electronica.org.
[35]Ibid
[36]Ibid

name is the internet equivalent of an online telephone directory,[37] and comprises different elements. These elements include a Top Level Domain (TLD), which appears as a suffix to the name of the site,[38] and Second Level Domains (SLD), which usually include or even mirror the trademark or business name of the registrant, thus facilitating the functioning of domain names as business identifiers in a manner similar to trademarks.[39] Domain names therefore, adequately identify the user, and enable consumers to perceive the requisite nexus between the enterprise and the site. The use of such trademarks as SLDs for entities other than the trade mark owner may therefore result in free riding and other forms of unfair competition, thus giving rise to the need for protection of trademarks in the ICT environment.[40]

Beyond free riding, such use may also border on public deception and fraud, as may be seen in the WIPO arbitration case of *Shell International Petroleum Co. v Allen Jones.*[41] Here, the domain name www.shell-nigeria.com was falsely registered in respect of a website. The false site copied information from the website of the well known Shell Oil Company and was sufficiently similar to the legitimate Shell Company's website as to be likely to cause confusion. Likewise, the domain name was deceptively similar to the legitimate www.shellnigeria.com. The WIPO panel had no difficulty deciding that the registered domain www.shell-nigeria.com infringed the trade name of the genuine Shell Company.

[37] See Carolina R & Stokes S, *Encyclopaedia of E-Commerce Law*, (Thompson, Sweet & Maxwell, 2006) at par. 8-41

[38] Examples include "uk", "ng" or .com, which are often generally used by a large number of registrants

[39] Encyclopedia of E-Commerce Law, op. cit.

[40] See generally, Halpern M & Mehrotra A, "From International Treaties to Internet Norms: The Evolution of International Trademark Disputes in the Internet Age", 21(2000), *Journal of International Economics.*

[41] WIPO Arbitration Case No D2003-0821, available online at http://www.wipo.int/amc/en/domains/decisions/html/2003/d2003-0821.html,

Even the educational sector is not immune from this misuse. A case in point is that of a fraudulent website purporting to be the web site of the University of Nigeria, Nsukka, falsely inviting applications into fake degrees with prospects of scholarships, and unlawfully soliciting for payments to secure admission into the University. The website used was www.universityofnigeria.com, while the genuine web address of the university is www.unn.edu.ng. A public disclaimer had to be issued to warn the public of the fraud.[42] A related issue is the problem of cyber squatting, whereby domain name speculators, in bad faith, intentionally register domain names corresponding to famous personalities, trademarks or other identifiers, with a view to selling them off at a profit to the person or company with legitimate claim to the name at a later date.

These issues give rise to a need for law reform to protect the rights of trademarks and business name owners from unauthorised use of the name or mark as a domain name, and to prohibit cyber squatting.[43] This is imperative given the increasingly popular practice of creating web sites for individuals, businesses and government agencies and departments, and the need to protect unsuspecting members of the public from the fraudulent antics of tricksters. Additionally, the establishment of a registration authority within the country for the assignment and management of domain names within the country code top-level domain, and rules for dispute resolution, revocation, assignment and other issues need to be promptly addressed.

Regulatory overlap

The tussle between National Environmental Standard Regulation and Enforcement Agency (NESREA) And Nigerian Communication Commission (NCC) over which of the two is the appropriate agency responsible for regulating the operation of base stations of

[42] See the disclaimer of the Nigerian Consulate _General in New York, online at http://www.nigeria-consulate-ny.org/News/re-fraudulent.htm.

[43] The US responded through the Anti-Cyber squatting Consumer Protection Act, 15 U.S.C., S1125 (d) which was promulgated in 1999 to provide relief from these negative acts.

telecommunications company in Nigeria came as a result of NESREA's shut down of MTN's Base Transceiver Station which was thereafter re-opened by NCC insisting that it has the sole mandate to regulate the telecom industry and not NESREA. Although, the supervising ministries of the two agencies[44] have met and they seem to have resolved the entanglement, the solutions proffered arguably remain temporary one. One of the solution arrived at is that telecom facilities that were erected before NESREA's Regulation[45] came into being and which complied with NCC's Guideline[46] of five meters set back should not be sealed while new facilities that are to be set after the law came into force will have to comply with NESREA's provision of ten meters set back. This truce is meant to last until the Regulations of both agencies are harmonized. NESREA predicated its actions on the need to protect the environment in line with its mandate in NESREA Act of 2007. While NCC contends that it has the sole mandate to regulate the telecom industry and that NESREA has encroached upon its operational boundary. In view of this conflict, it becomes imperative that a permanent solution is proffered for the sake of stakeholders. Consequently, we submit that of the two positions, NESREA's Regulation of ten meters set back is more favoured as it will make it easier for the operators to comply with the provisions of the two agencies with respect to heat, smoke and noise emitted by generators powering the telecom masts. It is further submitted that the NESREA and NCC regulations must be reviewed, and other relevant laws in tandem with telecom regulations harmonized, otherwise after the NESREA and NCC the operators may still be confronted with another overlapping jurisdiction. Such a situation will engender difficulty in the enforcement of those regulations thereby defeating the purpose of their review.

[44] Ministry of Communication Technology and the Ministry of Environment
[45] National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations 2011 (NESREA Regulations 2011) s.5(4)
[46] The Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers 2009 (NCC's Guidelines 2009) s.9(9)(c)

4.3 Future prospect

For the future and to sustain the progress made in the industry it will be critical for government to continue to maintain stability in the policy and regulatory space. The high investment levels that have been attained in the sector, was not because Nigeria suddenly became one of the most desired investment destinations for ICT in Africa or because of its large population, but largely because of the stable policy and regulatory regime that the industry enjoyed since 2000. This must therefore be maintained.

It is also important to maintain the political and financial independence of the regulatory institution. Regulators need to be able to regulate the market fairly and earn the confidence of investors, consumers and other stakeholders.

Nigeria must strive to maintain an operating environment that is conducive to attracting investment by avoiding actions that can constitute a disincentive for investment. The telecoms sector is very capital intensive and therefore, to continue to encourage timely network expansion, improve quality of service and ensure national coverage in Nigeria, emphasis must be on ensuring an attractive operating environment.

There is also need for efficient management of national spectrum resources including timely sale of available frequencies to support new technologies. Spectrum is the oxygen that sustains the wireless ecosystem.

Nigeria still needs to grow her teledensity figure from the current level of to over 100% to achieve the vision 20-2020 targets for national development. The USPF will no doubt have a critical role to play in extending services to rural communities. We must reach all parts of the country with both voice and data carrying infrastructure. It is instructive to note that today; over 70 countries in the world have passed the 100% teledensity level.

We must continue to place emphasis on growing broadband infrastructure and catalyzing adoption and usage of internet and broadband services by the citizens. Broadband is no doubt an accelerator of social and economic development in the modern world with its applications enabling and facilitating economic and social services such as Public Safety, National Security, Telemedicine, governance structures, distance learning, utility applications etc. It should be collective responsibility of policy makers the regulators, governments at all levels and other stakeholders to catalyze a much higher penetration of internet and broadband facilities at business premises, educational institutions, homes and on mobile devices. The expansion of fibre optic cable transmission infrastructure nationally and internationally will be necessary in achieving this objective.

CHAPTER FIVE

CONCLUSION, FINDINGS AND RECOMMENDATIONS

5.1 Findings and Observations

From the preceding study, it is exceedingly apparent that there exist regulatory overlap between National Environmental Standard Regulation and Enforcement Agency (NESREA) And Nigerian Communication Commission (NCC) over which of the two is the appropriate agency responsible for regulating the operation of base stations of telecommunications company in Nigeria which came as a result of NESREA's shut down of MTN's Base Transceiver Station which was thereafter re-opened by NCC insisting that it has the sole mandate to regulate the telecom industry and not NESREA. Thus, this study observed that the approach of the two sister's agency (NESREA & NCC) toward the regulation of telecommunication industry has posed a major challenge to telecommunications regulation in Nigeria. Therefore, it is submitted that the regulations of these two agencies and other relevant laws in tandem with telecommunications regulations shall be harmonised otherwise after the NESREA & NCC the operators may still be confronted with another overlapping jurisdiction.

The research also finds out that the problem of cybercrime is a global one whose extent, magnitude and impact reverberate throughout various walks of life, leaving hitherto unimaginable damage in its wake, these fraudulent activities are carried on by a recalcitrant few, but the impact is far reaching due to the world wide reach of the Internet. Cybercrime is not only an embarrassment; it also has negative implications for the positive deployment of ICT for socio-economic growth and development. Thus, it is recommended that the Nigerian government should deploy some legal and enforcement tools, such as the Economic and Financial Crimes Commission (EFCC), the Nigerian Police Force, and other crime fighting

bodies with a refined and technology savvy approach and seeking of relevant information from and collaboration with Internet Service Providers (ISPS) to detect and arrest perpetrators so as to tackle the problems occasioned by cybercrime,

This study equally finds out a related issue is the problem of cyber squatting, whereby domain name speculators, in bad faith, intentionally register domain names corresponding to famous personalities, trademarks or other identifiers, with a view to selling them off at a profit to the person or company with legitimate claim to the name at a later date. In view of this menace the research recommended for law reform that will protect the rights of trademarks and business name owners from unauthorised use of the name or mark as a domain name, and to prohibit cyber squatting. This is imperative given the increasingly popular practice of creating web sites for individuals, businesses and government agencies and departments, and the need to protect unsuspecting members of the public from the fraudulent antics of tricksters. Additionally, the establishment of a registration authority within the country for the assignment and management of domain names within the country code top-level domain, and rules for dispute resolution, revocation, assignment and other issues need to be promptly addressed.

The research also finds out that despite the fact that the ICT revolution presents possibilities for the carrying on of commercial transactions, including buying and selling of goods and services, promotion of businesses and other related activities online. The new issues arising in this regard cut across the formation and validity of contracts, where questions may be raised about whether, for contracts which are in writing, e-mails and other means of electronic communication satisfy the requirements of writing and signing. Thus, the validity of ICT-related commercial transactions, their admissibility in evidence and options for dealing with conflict of laws issues arising where, as is often the case, these transactions are

carried out between persons who are connected to different countries have been severally identified as some of the challenges posed by ICT.

With regard to the buying and selling of goods, the law sets out the obligations of sellers and buyers in such contracts. However, these legal provisions inadequately address concerns arising in the online environment. For example, under the law, the place of delivery of goods is deemed to be the seller's place of business. However, in the case of e-commerce, the existence of a physical place of business cannot be assumed. Furthermore, even where such exists, it can no longer be presumed to be the place of delivery. Thus, there is a need for legislation which addresses concerns of buyers and consumers generally by specifying obligations of sellers in e-commerce, including the indication of a geographical address of the seller's place of business where complaints may be addressed, and terms of exercise of withdrawal options. This is to preserve the buyer's right of examining the goods, and the presumption against acceptance of goods until the opportunity to examine has been given. Other consumer protection provisions which ought to be put in place include disclosure of the full identity of the seller and cost of delivery. Options for achieving these objectives include the promulgation of a new law or the amendment of existing laws, such as the sale of goods law and the consumer protection law.

It is also the findings of this research that the deployment of broadband infrastructure is very critical to the development of Nigerian Telecom Industry. The broadband supply chain comprises of International Connectivity, a national backbone network, metropolitan access banks, and the local access network (the last mile). In Nigeria, there are now an appreciable number of submarine cable landings on the shores of the country providing over 9 Tbits of combined capacity. However, there is concern about the fact that all landings are in Lagos and that access to other part of the country is chocked due to limitations of distribution of infrastructures to the rest of the country. For National Security and resilience purposes, it is

considered critical that these cable companies all have demonstrable recovery and restriction agreements with each other, and that the cable systems are extended to other coastal region or states. This will help to further accelerate the expansion and distribution of the currently under utilized bandwidth to the rest of the country.

This research further observed that there is presently no specific legislation on e-banking and e-payment. In Nigeria, despite e-banking is critical component of ICT enabled e-commence with e-payments as most core pillars. The existing legal and regulatory region is more of a patchwork governed by a mix of the laws relating to banking/contracts, torts, agency, restitutions and applicable common law rules. Completing the patchwork are rules and guidelines issued by the apex banking regulator, the Central Bank of Nigeria, in pursuing its mandate, arguably implicit, under section 47(2) of the CBN Act No.7 of 2007, "to promote and facilitate the development of an efficient and effective system for the settlement of transactions (including the development of e-payment systems"

It is also the findings of this research that developed countries have long recognized the enormous benefit derivable from e-payment adoption ranging from reduced transaction costs, to efficiency gains to the facilitation of financial inclusion and the channeling of funds remittance away from largely unregulated informal channels, which are susceptible to money laundering (to formal regulated channels); and have accordingly developed and adopted definitive legal and regulatory framework. Conversely, the same can hardly be said to most developing countries, particularly those in Sub-Sahara Africa which are reluctant to follow the lead of developed nations that have long embraced e-payment system. These countries found justification for their wariness in the absence within their countries of e-payment supportive system and frameworks including, the requisite legal and regulatory framework, steady power supply; ICT Infrastructure and appropriate Cyber-Security regime-Supportive Systems and frameworks that are taken as given in developed countries. Many of these

developing countries could not see past the giants before them, on how to surmount the various challenges militating against the deployment of e-payment systems.

The research equally finds out that coordination amongst MDA's in respect of ICT services will eliminate overlap, create more efficiency, reduce government expenditure, and encourage holistic planning of ICT deployments, capacity building and utilization. ICT development in Nigeria is hampered by the lack of a cohesive framework that unites sector development plans with a broader ICT policy environment. This has resulted in uneven development across the various sectors, capacity gaps, duplication of efforts and resources and a lack of holistic policy implementation. Appropriate measures should, therefore, be put in place to create an enabling environment that will enhance effective and coordinated ICT development across all sectors.

This study further observed that although the ICT sector has witnessed tremendous investments over recent years, the occurrence of multiple regulation and taxation – a phenomena where ICT operators are subjected to various rules, regulations and taxes, for the same aspects of a 'service providers' operation, by different tiers and agencies of government (Federal, States and Local Government) – tends to discourage investors, consequently threatening investments and potentially depriving the sector of the necessary funding required for ICT.

It is also the findings of this research that ICT local content (including software and hardware) remains grossly underdeveloped in Nigeria, although many reasons are adduced for this, including the high cost of production and scarcity of expertise; the fact remains that there is an over-dependence on foreign importation of software and hardware and this has led to diminished opportunity for domestic economic empowerment, and contributed to limited capacity building within the context of ICT. In addition, given the quantum of hardware

devices, and software application imported into, and used within Nigeria, there has been considerable drain in the Nigerian's foreign exchange. Therefore, there is the urgent need to boost domestic participation in the ICT industry by incentivizing local hardware and software companies to increase local content.

5.2 Suggestions and Recommendations

Consequently, the following suggestions and recommendations are made:

Policy and Regulations: Government should review all telecom laws in order to ensure that they support and facilitate ICT/broadband development and give legal substance to the ICT policy and National Broadband plan. Government should also structure the administration of the ICT Industry and complete the merger of the relevant bodies in order to ensure a single and constant regulatory regime that will bring about better efficiency in the management of scarce resources. All Federal Agencies shall forthwith make their public information and services to Nigerian citizens available online and the Federal Government shall offer technical assistance to all other tiers of government to achieve this same capability for all their MDAs.

It shall be a priority for government to classify all public ICT/broadband infrastructure deployed under a national license as a critical national security and economic resources, that must be protected from vandalization, theft, unauthorized tampering and from enforcement action by any authority without a valid order from a high court. The enactment of an ICT Critical Infrastructure Act shall be pursued and in the interim a Federal Executive Directive shall be issued to security agencies for the administrative protection of this security sensitive and economical important infrastructure.

On the regulatory side, the regulator shall give effect to the open access principles enshrined in the information and communication technology laws where no infrastructure deployed on public resources shall be administered to the detriment of the general public. The regulation shall proactively monitor and address any anticompetitive behaviour among service providers along the broadband value chain, and shall also monitor the quality of the services delivered, the billing, billing patterns and billing structures for services to ensure that customers get good value for money. The regulator shall where necessary reformed, re-assigned and relocated to benefit new wireless broadband technologies capable of delivering high-speed broadband networks and a regulatory framework developed to promote optimal use of spectrum.

E-commerce and internet banking permit clients to access their financial records and general information on bank products and services via computers, mobile phones or other intelligent devices after establishing a connection with the bank's computer system over the internet and it occupy a significant function in this era of electronic humanity. Conversely, in Nigeria e-commerce and internet banking have not been completely developed in terms of legal framework. Thus, it is the recommendation of this research work that a potent and coherent framework need to be re-structured in this area so as to allow a hitch-free and unlimited range of e-commerce and banking services through the internet in Nigerian. It is further submitted that banks shall not only establish the identity of their customers but also enquire about their integrity and reputation. To this end, accounts should be opened only after proper introduction and physical verification of the identity of the customers. The banks shall maintain secrecy and confidentiality of customers account, and privacy of the customers' personal data.

With respect to broadband deployment, it is recommended that Government at various levels should strive to have pervasive broadband infrastructure across the nation. Government must

convert the nation into a digital haven that will be fully networked and ready to be integrated into the new old world order of digitally enabled citizens in an environment of e-governance, e-health, e-commence and e-agriculture among others.

The Federal Government should focus on policy formulation and direction as well as legal and regulatory functions. Government should therefore focused on providing overall policy, legal and regulatory platform for attracting the required investment for the sustainable development of the sector to support national development goals and plans.

As Federal Government does its part, States and Local Government must also do their part in ensuring their citizens have access to the necessary infrastructure vital for connecting to the Information Superhighway of digital age. There have been reports about some areas of the country where government agencies at States and Local Government levels create bottlenecks in the deployment of ICT Infrastructure by operators, either by imposing taxes arbitrarily, or obstructing, delaying or denying right of way applications. Government should make efforts to ensure that these incidences are minimized.

The Local Government is a focal point of community development and its recommended that the local government should facilitate broadband growth and adoption by working with communities to reduce disruption to infrastructures build and operations and creating innovative schemes to encourage adoption and usage of the internet to enhance development.

It is further suggested that government should encourage Research, Development and Initiative for the attainment of sustainable development and competitiveness. Research is necessary for the technological development of the nation and for reaping the enormous benefits that exist in the ICT sector of the economy. Although there is some research and development activity in the general area of science and technology, research and development in specific areas of ICT is, at best very minimal in Nigeria. This adversely

impacts innovation, reduces growth potential and continues to constrain the Nigeria's huge ICT prospects. Therefore, to reverse the trend, there is the need to promote research and development activities to stimulate and sustain innovation in ICT.

Government should further encourage investment and funding of the ICT development plans and programmes due to its critical nature to the success of any national ICT development. The source for such funding should include Government, Private Sector, as well as International Organisations. Government should create an enabling environment that will attract investment and funding from these various stakeholders.

On the aspect of universal access and service, it is the recommendation of this research that government should ensure adequate provision of universal access and delivery of quality service through nationwide development of ICT infrastructure and services especially basic voice / data services, broadband internet access, related facilities and applications. This is particularly so because large population of Nigerians lives in rural areas and most of these rural communities do not have access to basic ICT services. Moreover, some Nigerians reside in urban areas that are either unserved or underserved. Thus, Nigeria should follow the international best practice in addressing the challenges via development of various initiatives in the ICT sector.

There is the need for telecom operators to improve the poor quality of service situation as telecom services have become central to our daily lives as consistent decline in quality of service may result in economic losses for individuals and businesses. There is also the need for the regulator to protect the consumer which is the ultimate reason for the provision of ICT service and product. Therefore effort must be made to ensure that goods and services offered in Nigeria conform to international standards and also complied with guidelines set by the regulator. It is also important that the consumer is provided with mediums through which

they can air their grievances and/or provide feedback to government. The increase in service, device and equipment availability presents new challenges for consumers in terms of quality assurance, safety standards and other considerations. Furthermore, the consumer experience in Nigeria in the context of ICT services and equipment continues to be diluted as a result of uneven quality of service, influx of substandard equipment, and at times, unclear consumer protection responsibilities. It is therefore important for the government to ensure operation of a well-defined and effective consumer protection framework.

There is also the need for the government to address the issues of the centrality of the telecommunication services, a dearth of expertise, the regulatory authorities' unwillingness to engage indigenous experts when they are available, and the poor construction and unsatisfactory implementation of sector-specific (e.g. telecommunications). Thus, for the purposes of leapfrogging development in transition economies such as Nigeria, the implementation of the principles of affordability, availability and accessibility should be considered crucial. Though service providers are primarily accountable for access to, the availability of and the affordability of telecommunications services, nonetheless, it is submitted that the government is still under a statutory obligation to guarantee integrity of the telecommunication legal environment and processes.

BIBLIOGRAPHY

Journals

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

Ajakpovi, M., 'The Law and Status of Telecom Licences' (2000) Vol. 4 No. 3 ISSN: 1116-7971, *Modern Practice Journal of Finance and Investment Law.*

Ajakpovi, O., 'Formulating a Tariff Policy For Nigerian Telecommunication' (2002) Vol. 6 No. 1-2 ISSN: 1116-7971, *Modern Practice Journal of Finance and Investment Law*

Ajayi, G.O., et al, ''A Century of Telecommunications Development in Nigeria: What next?'' (online @ http://www.vii.org/paper/nigeria.htm accessed on 8/10/2014)

Alabi, G.A., (1996) ''Telecommunications in Nigeria'' University of Pennsylvania – African Study Centre, pp 1- 75

Anthony, F.K., ''Telecommunications Installations and Environmental Pollution in Nigeria: A Case for Taming a Growing Monster in an Emerging Economy'' (online @ http://www.vii/org/paper/nigeria.htm accessed on 8/10/2014)

Ariyoosu, D.A., ''Legal Regulation and Institutional Framework for the Nigerian Telecommunication Industry: An Overview'' (2011) Vol. 2, *Journal of private and Property Law,* University of Benin.

Ariyoosu, D. A. "An Examination of Legal Regulation and Environmental Impacts of Telecommunication Installations in Nigeria" (2014) Vol.30, ISSN 2224 – 3240 (paper) ISSN 2224 – 3259 (online) *Journal of Law, Policy and Globalization.*

Asogwa, F.O. et al, "The Impact of Telecommunication Expenditure on Economic Growth in Nigeria'' (2013) Vol. 4 No. 13, *Journal of Economics and Sustainable Development* also available @ http://www.liste.org

Ayinmode, B. O. et al "Evaluation of GSM Radiation Power Density in Three Major Cities of Nigeria" (2014) Vol. 8, *Internet Journal of Environment, Ecological, Geological, and Geophysical Engineering.*

Babalola, C. et al, ''Development in Nigeria's Telecommunications Sector'' (online @ http://www.giwa-osagie.com,) also available @ http://www.werksman.co.za

Bamodu G, "Information and Communications Technology and E-Commerce: Challenges and Opportunities for the Nigerian legal System and Judiciary" 2 (2004) *The Journal of Information, Law and Technology*, online at http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2004_2/bamodu/.

Benyehlef and Fabien, ''*Online Consumer Dispute Resolution: a narrative around and an example of postmodern law*'' 2005 available @ http://www.lex-electronica.org.

Datta, D. "Telecommunication Networking" (2015) *Journal of Information Technology and Communication Resources for Sustainable Development,* available online @ http://www.eolss.net/sample-chapters/c15/e1-25-01-18pdf

Dr. G.A. Alabi: Telecommunications in Nigeria. University of Pennsylvania - African Studies Center

Fink, C., Mattoo, A. & Rathindran, R., "An Assessment of Telecommunication Reforms in Developing Countries'' (2002), Policy Research Working paper 2909, The World Bank Development Research Group

Halpern M & Mehrotra A, "From International Treaties to Internet Norms: The Evolution of International Trademark Disputes in the Internet Age", 21(2000), *Journal of International Economics.*

Ijewere, A.A. and Gbandi E.C, "Telecommunication Reform in Nigeria: The Marketing Challenges'' (2012) 10 *Journal of Research in Development*, pp 193 – 197. Also available online @ http://www.ajol.info/journal/jorind

Isabona, J. “Harnessing Telecommunications Revolution in Nigeria: A case study’’ Wireless and Mobile Technologies 1, no. 1 (2013): 20 – 24 (online @ http://www.purs.scipub.com/wmt/1/14)

Lawal T. “Challenges of Regulatory and Intervention Agencies in National Economic Development: The Role of Nigerian Communication Commission in National Economic Development” (2014) available online @ http://www.ssvn.com/abstract/pdf=2485081.

Li, W. & Xu, L. C., “The Impact of Privatisation and Competition in the Telecommunication Sector Around the World’’ (2004) 47 (2), 1 – 36 *The Journal of Law and Economics*

Longe, O.B. & Chiemeke, S. C., Cyber Crime and Criminality in Nigeria – What Roles are Internet Access Points is playing? *European Journal of Social Sciences* – Volume 6, Number 4(2008) 132-139

Mowete, A.I., (2007) “Telecommunications Sector Performance Review: A supply Side Analysis of Policy Outcomes’’ (online @ http://www.research ICTafrica.net)

Nwaulune, A.K., “The Role of Nigerian Communications Commission in Frequency Management, Co-ordination/Allocation as it Affects Satellite Communication” paper presented at the NASRDA’S stakeholders meeting by head spectrum administration NCC (online @ http://www.nasrda.gov.ng/stakeholdersmeeting/satellite)

Obayemi, O.K. “Competition in the Nigeria Telecommunication Industry” (2014) V01.5, 283 -297, *Beijing Law Reform Journal*, available @ http://www.dx.doi.Org/10.4236/b/v.2014.54027

Obutte, P. C. “ICT Laws in Nigeria: Planning and Regulating a Societal Journey into the Future” (2014) Vol.17, ISSN 1727–3781, *Potchefstroom Electronic Law Journal* http://dx.org/10.4314/pelj.V17i1, 102014

Ogboru, T. "NESREA and NCC Regulations on Telecommunication Masts: Implementing the Precautionary Principe" (2015) Vol. 5. 155.1 *Journal of Sustainable Development Law and Policy.*

Oki, P.T."Regulating the Pricing of Mobile Telecommunication Services – The Role of the Nigerian Telecommunications Communication" (2014)availableonline@geplaw.com/wpcontent/uploads/2014/II/regulating–the–pricing–of–mobile.Pdf.

Omowunmi, H. et al, "Evaluation of Nigeria's Telecommunication Policy'' (2003) 3 (1) *Journal of Mobile Communication*

Soyela, O. "The Internet and Emergent Regulatory Framework: A Selective Appraisal" (2000) Vol.4 No 3 ISSN 1116-7971, *Modern Practice Journal of Finance & Investment Law*

Turget, N.Y. 'The Side Effect of Electromagnetic Radiation' (2008) *Journal of Business Law* 269-289.

Wallsten, S. J., "An Econometric analysis of Telecom Competition, Privatisation and Regulation in Africa and Latin America (2001), 49(1), 1 – 19, *Journal of Industrial Economics.*

Wojuade, J.I. 'Impact of global system for mobile telecommunication on Nigerian Economy: A case of some selected local government areas in Oyo State, Nigeria'. A PhD thesis University of Ibadan, Nigeria (2005)

Text books

A.A. Borokini, Olong Adefi, *Administrative Law in Nigeria*, Malthouse Press (2007)

Carolina R & Stokes S, *Encyclopaedia of E-Commerce Law*, Thompson, Sweet & Maxwell, (2006)

Deakin, Johnston and Markesinis, *Markesinis & Deakin's Tort Law*, Oxford University Press (2008)

Edwards C. and Savage N., *Information Technology and the Law* 2nd Ed. Macmillan (1990)

Grabosky P. & Smith R. G., *Crime in the Digital Age: Controlling Telecommunications and Cyberspace Illegalities*. Rutgers University press, Australia, (1998)

Iluyomade & Eka. Administrative *Law in Nigeria*, University of Lagos Press Ltd. (1998)

Ladan, M.T. *Cyberlaw and Policy on Information and Communications Technology in Nigeria and Ecowas,* Ahmadu Bello University Press Ltd. Zaria, Kaduna State, Nigeria, (2014)

Oluyede, P.A. *Nigerian Administrative Law*, Ibadan University Press

Winsfield & Jollowitc on Tort, Sweet & Maxwell

Conference papers

Organisation for Economic Co-operation and Development *The Economic and Social Impact of Electronic Commerce: Preliminary Findings and research Agenda* (OECD France 1999)

Carlson J. et al *"Internet Banking: Market Development and regulatory Issues"* unpublished contribution delivered at the Society of Government Economists Conference The New Economy: What Has Changed, and the Challenges for Economic Policy (17th November 2000 Washington DC)

Ndukwe, E. C., (2000) ''*Telecommunication challenges for Nigeria in the 21st Century*'' (online @ http://www.ncc.gov.ng/speeches-presentations/EVC's presentation, accessed 29/9/2014)

Deji Olatoye : '*Copyright Law & Piracy – Legal Issues in the Information Society*' Lecture Delivered at Public Lecture Day of Association of Information Resources Management Students Babcock University Ilishan, Ogun State On Wednesday 7th October, 2009 Available at: www.thelodt.com.

Legislations

Federal legislations:

Advance Fee Fraud and other Fraud Related Offences Act 2006

Banks and other Financial Institutions Act (as amended), Cap B3, LFN 2004

CBN Guidelines on Electronic Banking in Nigeria, 2003

Companies and Allied Matters Act, [CAMA] Cap C20 LFN 2004

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Consumer Protection Act, Cap C 25 Laws of the Federation of Nigeria 2004

Copyright Act, Cap C28 Laws of the Federation of Nigeria, 2004

Criminal Code Cap 77 Laws of the Federation of Nigeria 1990

Decree 75 of 24th November1992

Evidence Act Cap. E14 LFN 2004 (as amended)

Federal Environmental Protection Agency (FEPA) Act, Cap F 10 LFN 2004

Freedom of Information Act, 2011

Land use Act of 1978

National Environmental Standards and Regulation Enforcement Agency (NESREA) (Establishment) Act No 25 of 2007.

National Information Technology Development Agency Act, 2007

National Identity Management Commission (NIMC) Act, 2007

National Office for Technology Acquisition and Promotion (NOTAP) Act, 2004

Nigerian Broadcasting Commission Act 1992 (as repealed by Decree 55 of 1999)

Nigerian Communication Act No. 19 of 2003

Nigerian Electronic Transactions Bill, 2011

Nigerian Investment Promotion Commission (NIPC) Act No.16 of 1995

Personal Information and Data Protection Bill, 2013

Patent & Design Act, Cap P2, LFN, 2004

Standards Organisation of Nigeria (SON) Act, Cap S. 9 Laws of the Federation of Nigeria 2004.

Wireless Telegraphy Act of 1990

State legislations:

Lagos State Infrastructure Maintenance and Regulatory Law 2004

Sales of Goods Law, Cap S2, Laws of Lagos State of Nigeria, 2005

Foreign legislation:

Uganda Communications Act, 1997

UK Communication Act, 2003

USA Communications Decency Act of 1996

USA Anti-Cyber squatting Consumer Protection Act 1999

Cases

Federal Republic of Nigeria V. Femi Fani Kayode (Unreported Suit No FHC/L/523C/08 of the Federal High Court Sitting in Lagos.)

Registered Trustees of ALTON & Ors v LASG & Ors (FHC/L/CS/517/2006)

Blue-chip Communications Company v. Nigerian Communications Commission Suit No: CA/A/108/04 –

Nuba Commercial Farms Limited v NAL Merchant Bank Ltd 2002 24 WRN 157, (2003) FWLR (Pt 145) 661 CA

Esso West Africa Inc v Oyegbola (1969) 1 NNLR 194

Anyeabosi v RT Briscoe (Nig) Ltd 1987 3 NWLR (Pt 59) 84; 2 NSCC (Vol. 18 Pt 2) 805,

Ogolo v IMB (Nig) Ltd NWLR (Pt 419) 314 CA

Internet sources

http://www.thisdaylive.com/articles/cbn-limits-daily-cash-withdrawals-to-n150-000/90464/.

http://www.cenbank.org/Out/2011/pressrelease/gvd/Revised%20QnA%20on%20CBN%20P

OLICY%20ON%2 0CASH%20WITHDRAWAL%20LIMIT.pdf,

http://www.alibaba.com/country search/NG/craft-supplier.html,

http://www.jumiaonline.com.ng,

http://www.jiji.ng

http://www.thelodt.com.

http://www.en.wikipedia.org.wiki/telecommunication

http://www.privacyinternational.org/survey/phr2003/threats.htm

http://www.crime-research.org/library/Peter.htm

http://www.personal.law.miami.edu/~froomkin/articles/privacy-deathof.pdf

http://www.epic.org/epic/staff/hoofnagle/plidraft2002.pdf

http://www.tscm.com/full_text.html

http://dictionary.reference.com/browse/tort

http://www.transcampus.org/journals

http://www.wipo.int/amc/en/domains/decisions/html/2003/d2003-0821.html,

http://nigeriacommunicationsweek.com.ng/node/263.

http://www.nigerianbestforum.com/generaltopics/nesrea-vs-ncc-raging-battle-

overregulationoftelecomsmasts/.

http://www.ic3.gov/crimeschemes.aspx#item-13,

http://www.sfo.gov.uk/),

http://www.microsoft.com/africa/stories/curbing_cybercrime.mspx,

http://www.letregualtionstoolkit.org/en/sections.html.accepted

http://www.crime-research.org/library/Peter.htm

http://www.britannica.com/technology/telecommunication

http://www.thefreedictionary.com/telecommunication

http://www.businessdictionary.com/definition

http://www.ITUtoolkit

http://www.lawrepository.com.ng/2014/09/telecommunications-laws-in nigeria.html

http://www.dictionaryofengineering.com/definition

http://www.privacyinternational.org/survey/phr2003/threats.htm

http://www.personal.law.miami.edu/~froomkin/articles/privacy-deathof.pdf

http://www.epic.org/epic/staff/hoofnagle/plidraft2002.pdf

http://www.en.wikipedia.org/wiki/CIA_World_Factbook

http://www.ncc.gov.ng/speeches-presentations/EVC's presentation

http://www.purs.scipub.com/wmt/1/14

http://www.ajol.info/journal/jorind

http://www.iiste.org.

http://www.researchICTafrica.net

http://www.nasrda.gov.ng/stakeholdersmeeting/satellite

http://www.vii.org/paper/nigeria.htm

http://www.searchtelecom.techtarget.com

http://www.umsl.edu/.../chapt07.htm

http://www.study.com/academy/lesson/components

http://e-Advance English Dictionary and Thesaurus

http://www.study.com/academy/lesson/components

http://www.investopedia.com/ask/answers/070815/what-telecommunications

sector.asp#ixzz4GmzF1c4