

PUBLIC ENLIGHTENMENT SERIES

VOL 2 NO 1

**SALIENT CONTEMPORARY
ISSUES IN BROADCASTING
LEGISLATIVE/REGULATORY
REFORMS IN **NIGERIA****



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I N T R O D U C T I O N

For many years, the legislative framework for broadcasting in Nigeria yearned for reform. Before the military handed over to the civilian rulers in 1999, they managed to carry out a little amendment to the original 1992 National Broadcasting Commission (NBC) Act, with which they liberalized the broadcasting sector and established a regulatory body, the NBC. But the 1999 Amendment Act was not far-reaching: it did not address the critical gaps in the broadcasting law.

The government launched a major reform initiative in 2019, in response to concerns on the performances of broadcasting industry players, including the regulator, during the general elections held early that year.

A government-constituted reform committee submitted a report, including recommendations which were approved by government. Another committee, which focused on implementation, also submitted its report.

A visible legislative reform which emerged was a Bill in the House of Representatives (National Legislature) which sought to repeal and re-enact the NBC Act. It got to the stage of Public Hearing in the House in 2021. Since then, no visible progress has been reported in the public space.

Yet, urgent and critical issues are waiting to be addressed in the reform process. This document presents and explains these issues, with the expectation that it will provide deeper understanding for stakeholders and lead to appropriate reforms in the broadcasting sector.

S E C T I O N O N E

Towards Independent Regulation In the Broadcasting Sector: Issues in the Legislative/Regulatory Reform Process

Independence is critical to the functioning of regulatory bodies, especially in the broadcasting sector. A proper regulatory body should be able to take decisions and carry out its activities without encumbrances.

However, there are several encumbrances in the broadcasting legislative framework which constrain the regulator, the National Broadcasting Commission (NBC). Among them are that:

- a. The leadership does not have security of tenure.

Section 4(4) of the NBC Act provides that a Board member of the Commission may be removed from office by the President “if he is satisfied that it is not in the interest of the Commission or interest of the public that the member should continue in office”.

- b. The regulator cannot perform the full gamut of regulatory functions.

Section 2(1)(b) &(c) of the Act restrict the licensing powers of the NBC to merely “receiving, processing and considering applications”, and to recommending “applications through the Minister to the President, for

the grant of radio and television licences”.

c. Therefore, it is duty bound to implement directives given by political authorities.

Section 6 of the Act states that “the minister may give the commission directives of a general character relating generally to particular matters with regard to the exercise by the commission of its functions under the Act and it shall be the duty of the commission to comply with such directives”.

d) Section 23 of the law also provides for ministerial approval in the process of regulation-making by the regulatory body.

Recommendations.

1. Section 2(1)(b) and (c) of the NBC Act should be amended to give the NBC the power to approve broadcasting licenses.
2. Section 4(4) of the Act should be amended to provide a framework that insulates NBC leaders from arbitrary removal from office.
3. Sections 6 and 23 of the Act which provide for Ministerial interference in the operations of the regulator should be removed.

S E C T I O N T W O

Shaping a Suitable Resource Pot for Broadcasting Regulator in Nigeria

A variety of revenue sources for the regulator are in place within the framework provided by the National Broadcasting Commission (NBC) Act. Among them are:

- a. Government appropriation: This is mainly the usual annual budgetary provision provided from state treasury to support the operations and staff remunerations of the agency. In the case of the NBC, this fund usually comes as a fraction of the budget allocated to agencies in the Information Sector and routed through the Ministry of Information.
- b. Radio/TV Set Fees: This is a fee paid annually by citizens on ownership of broadcasting receivers. But while the NBC Act vests the power of collection on the broadcast regulator, the constitution empowers local government councils to collect. Consequently, the regulator is unable to access it, because constitutional provisions are superior to those of ordinary legislations.
- c. Annual charges. The broadcasting law provides for the payment of annual levy to the regulator. This levy was fixed at 2.5% of the gross annual income of broadcasting licencees.
- d. Digital Access Fee (DAF): This is a revenue source which has emerged in the policy process of the Digital Switch-Over (DSO)

programme. It is to be paid by citizens to access broadcasting content.

Challenges remain with various funding sources. Government appropriation through annual budgeting has dwindled over the years. In fact, the NBC has now been removed from annual budgetary allocation, forcing it to live only on its internally generated revenue. Constitutional hurdle makes the radio/TV set fees inaccessible to the regulator. Broadcasters find it difficult to pay the annual levy. A large number of broadcasters default in the payment of licence renewal fees. The proposed Digital Access Fees (DAF) is still embroiled in controversy over the sharing formula of the expected proceeds.

Recommendation

1. Constitutional amendment should be effected so that it will be possible for the Commission to collect the radio/TV set licence fees.
2. The management of the Digital Access Fee (DAF) should be properly addressed in the amendment of the NBC Act to provide for structured oversight under the NBC and the sharing of the (DAF) proceeds to be decided in consultation with industry stakeholders.

SECTION THREE

Addressing the Liberty of the Broadcast Industry: Issues in Legislation and Regulation.

The basic law underpinning governance in Nigeria, the constitution provide provides freedom for the media to perform an important democratic function. Section 22 of the country's constitution gives the media, including broadcast media, the freedom to uphold the responsibility and accountability of the government to the people.

The broadcasting legislation, NBC Act, also specifically provides (in Section 2t) that the regulator shall have the power of “guaranteeing and ensuring the liberty and protection of the broadcasting industry”.

However, the regulator itself does not enjoy freedom under this law. According to Section 6 of the Act, the Minister in charge of Information may give the Commission directives and it shall be duty of the commission to comply with such directives. The question is: How can the regulator “guarantee and ensure the liberty and protection” which it does not have?

The other dimension of the issue is that restrictions to the freedom of the media are emerging in legislative reform efforts. For example, the Bill to amend the NBC Act, currently before the National Assembly empowers the regulator to refuse a broadcasting licence renewal application if the regulator has drawn a licensee's attention to

infringement and exercised its power of sanction over the licensee on three or more occasions. Another provision in the bill states that “No civil action shall be commenced against the commission (NBC) or its authorized officers before the expiration of a period of 30 days after which notice of intention to commence the suit shall be served on the commission by the intending plaintiffs or his agents”.

Recommendations

1. Exercising regulatory power of sanctions over a licensee up to three times during a five-year period should not be enough ground for the regulator to refuse licence renewal. The section 13A(2)(b) of the bill should be removed.
2. The section 19 T of the bill which provides that no civil action can be instituted against the NBC until after 30 days should be removed.
3. The existing provision in Section 6 of the NBC Act which empowers the minister to give directives to the NBC should be removed.

SECTION FOUR

Pace of licensing, Cost of licensing: What Has Changed?

Broadcast licensing in Nigeria is done through 2 approaches: direct application and bidding. Licensing for commercial and third sector broadcasters is mainly done through the direct application approval.

The licensing process has several stages which ranges from registration of a limited liability company, through application to the regulator seeking approval to purchase application forms, to allocation of appropriate frequency to a successful applicant by the regulator.

The first level of processing applications is done by the regulator. Section 2 of the NBC Act restricts its powers to receiving, processing, and forwarding applications through the Minister of Information to the President. The processing time between the offices of the Minister and President (who gives approval), cannot be determined. Licence applications can take months or years in this processing mill before approval, for those who eventually succeed.

License fees are in two categories. For private commercial radio stations, the fees are ₦20 million for Lagos, Abuja and Rivers states, and ₦15 million for all other locations. Campus radio stations pay ₦1 million while their community counterparts pay #250,000. For TV, the licence fees are ₦15 million commercial DTT TV per city, ₦10 million

for DTH and ₦10 Million for IPTV.

These fees have remained the same for several years.

Spread of licenses: Licenses are spread into three broad sub-sectors. The Federal and state governments own stations across the country. Apart from special national broadcasters of government, some federal agencies are also licensed to run radio stations. Commercial stations are also spread across the country but mostly concentrated in commercially viable locations. There are radio stations in grassroots communities and academic institutions but their overall presence remains relatively low.

Two groups are excluded from ownership of broadcasting outfits in the country. According to Section 10 of the NBC Act, these groups are religious organisations and political parties.

Recommendations.

1. The NBC Act should be amended to give the regulator the power to approve licenses.
2. The pace of the licensing process should be increased.
3. The licence fees for commercial licences should be reviewed downwards.
4. Larger proportions of licences should be allocated to the community sub-sector, while attention should be given to border communities and other under-served locations.

SECTION FIVE

Plurality of the Broadcasting Landscape

The Nigerian Broadcasting sector continues to grow in terms of number of players, variety of services and other characteristics.

According to 2021 data from the regulator, National Broadcasting Commission (NBC), there are 624 functional broadcasting stations in the country. Of this number, television accounts for 162(25.9%) stations while radio takes 462(74.03%) stations. This indicates that there are far more radio broadcasting service providers on the scene.

For the television sub-sector, 153 (94.4%) are terrestrial service providers while cable operators account for mere 9 (5.5%). Among the terrestrial broadcasters, there are 49 private, 37 state government and 67 Federal government owned stations, meaning that private providers account for 32.02% while 67.97% are in the hands of the government, a heavy dominance of government in the sub-sector. In terms of geographical distribution across the ten zones of the NBC, four states have the lowest presence of private TV stations. These are Enugu (1), Jos (2), Maiduguri (2) and Sokoto (2). Zones with high private TV presence are: Lagos (11), Abuja (7), Benin (7) and Kaduna (7). For State government stations, Ibadan (6), Benin (5), and Uyo (3) zones are the leaders while Lagos (1), ranks lowest. Abuja zone (13) is the leader for federal stations followed by Ibadan(10), Benin (8),

Enugu (7) and Kaduna (7). Again, Lagos zone (2) has the lowest. There are cable (DTH) operators in only 3 zones: Uyo (6), Kaduna (2), and Lagos (1).

In the radio broadcasting sub-sector, there are 2 classes of stations: AM and FM. There are 26 AM stations, with the state governments controlling 22, private businesses (3) and Federal government (1). Jos zone (with 7 state government stations) leads in the distribution of AM stations. Others are Abuja (4), Kaduna (4), Maiduguri (4) and Sokoto (3). Such Zones as Benin, Enugu, Ibadan, Lagos and Uyo have no AM operators.

Within the FM radio broadcasting class, Private (commercial) interests account for 255 stations, state governments (67) and Federal government (38). The rest is shared among community (22) and campuses (of academic institutions) - 54.

The highest numbers of private commercial radio stations are in Ibadan zone (43) and Abuja (41) while the lowest are in Maiduguri (9) and Sokoto (4). For state government stations, Jos (14) is the leader while the lowest presence is in Lagos (3) and Sokoto (2). Most zones host an average of 3 Federal radio stations in the FM category.

Community broadcasting has a total of 22 FM stations. Abuja zone (7 stations) leads in this tier of broadcasting. Zones such as Lagos, Maiduguri and Sokoto each has one (1) station. There is none in Ibadan and Uyo Zones.

Campus Radio stations are spread among private (16), state (16), and Federal (22) government institutions. The private ones have relatively strong presence in Enugu (6) and Ibadan (6) zones but are absent in Jos, Kaduna, Lagos, Maiduguri and Sokoto zones. State government ones exist in most zones in numbers ranging from 1 to 3, the only exception being Maiduguri zone. A similar picture obtains with federal government-owned campuses where Abuja zone leads with (4) stations while Sokoto zone is yet to have a presence.

Despite this spread of broadcasting services across the country, there are still concerns. For example, there have been complaints that

i. Border communities across the country are underserved or unserved by in-country broadcasting services, even despite the acquisition of multiple licenses (e.g. both AM & FM licenses) by some state governments.

ii. The number of broadcasting outlets is very low in some zones. Examples are Maiduguri and Sokoto zones which figures are low across most of the sub-sectors.

iii. After many years of its introduction on the Nigerian broadcasting scene, community radio broadcasting has only 22 stations, among a sectoral total of 462!

Recommendations

1. Government policy should discontinue with AM radio broadcasting licenses.

2. The regulator should license more FM radio stations for private entities and ensure distribution of more licences in currently underserved zones .

3. The regulator should prioritize community broadcasting in every round of licensing and ensure that higher proportions of licence are issued to community broadcast operators.

S E C T I O N S I X

Looking at the Sanctions System in the Broadcast Industry from Several Lenses: The Technical, The Economic, The Political.

The sanctioning powers of the broadcasting regulator has its foundation in the NBC Act. Section 2 (1)(n) states that the NBC shall have responsibility of “determining and applying sanctions including revocation of licenses of defaulting stations which do not operate in accordance with the broadcast code and in the public interest”.

In the exercise of this power, the regulator ensures elaborate provisions on Sanctions in its regulatory instrument called the Nigeria Broadcasting Code. There are 3 classes in the sanctions system. At the bottom is Class C, which covers written admonition to remedy a breach within 24 hours; written warning after failure to comply; and payment of a fine after subsequent failure to comply.

Next at medium level is Class B, which covers “a written warning to remedy or rectify a breach within a time frame”, while failure to comply will attract “a reduction of daily broadcast hours for a given period”.

Class A, the high end of the classes of sanctions, covers immediate order of suspension of broadcast services; suspension of licence and immediate shutdown/seal up of transmitter; and revocation of licence, seizure and forfeiture of transmitting equipment.

The Code also articulates 3 categories of financial penalties. Light penalty ranges from #200,000 to #500,000. Heavy penalty is from #500,000 to #4,999,000 million naira. At the top of it is Severe penalty which stands at #5 million naira and above.

The implementation of the sanctions system has been a subject of controversy among stakeholders. Voices within the regulator have argued that implementation is strictly technical/ professional. They maintain that sanctions are imposed only when rules have been broken and that there is fairness in the system.

However, external stakeholders have criticized the system. One major plank of the criticism is that the system has no provision for fair hearing and appeals mechanisms and that it lacks transparency.

It is argued that the regulator uses the sanctions systems to inflict economic losses on broadcasting industry investments while shoring up its own revenue profiles.

Yet, another angle is the political: in the eyes of many participants and observers of the broadcasting scene, the broadcasting regulator is labouring under the weight of political interference, specifically interference by the government.

Recommendations.

1. The regulator (NBC) should review its sanctions systems to provide for fair hearing for broadcasters on alleged breaches, and an appeal mechanism which would be subject to court adjudication.
2. The penalties for breaches should be reviewed downwards.

S E C T I O N S E V E N

Third-Sector Broadcasting: Contemporary Concerns in the Development of the sub-sector.

Third sector broadcasters are found in grassroots communities or academic institutions where they are referred to as community and campus stations, respectively.

This category of broadcasters appeared on the broadcasting landscape about ten years after the liberalization of the sector. Licensing of campus broadcasters started at about 2002 while that of their grassroots counterparts followed in 2015.

The legislative framework provided in the NBC Act for the liberalization of broadcasting in the early 1900s failed to define the various sub-sectors of broadcasting, globally recognized as public (or state), commercial and community. The initial focus in Nigeria was on the state and commercial sub-sectors. Strong advocacy from civil society and other stakeholders was required before the community sub-sector was accommodated.

The sub-sector currently faces challenges which include the following:

A. **Limited Geographical Coverage:** Stations on campuses initially had an approval for a maximum of up to 100 watts, which was later scaled down to as low as 20 watts in some campuses. Grassroots community broadcasters had approval for 250 watts transmitters even where geographical sizes of communities required more.

b. Content coverage restrictions: regulatory framework forbids these broadcasters from carrying political contents, including during electoral processes. This restriction does not make any distinction between, for example, the provision of basic voter education and coverage of political party campaigns.

c. Restricted revenue sources: For community broadcasters, approved revenue sources are: community members contributions, donations/gifts/grants and local spot announcements. Their campus counterpart is allowed access to subventions, spot announcements, donations or grants, event coverage within the campus, sale of station's memorabilia and staff/students membership fees.

d. Diversion of space to government agencies: In recent years, part of the licences meant for community broadcasting have been diverted and allocated to government agencies. Such licences are then listed as community broadcasting licences.

Recommendations.

1. Community broadcasting and other sub-sectors should be clearly defined and provided for in legislation, that is, in the amendment of the NBC Act
2. Geographical coverage approval for both community and campus stations should be on a case-by-case.
3. Regulation should provide that these broadcasters can engage in voter education during electoral processes.
4. The revenue framework should be reviewed to accommodate other revenue sources such as local commercials, development-oriented programme sponsorships, and a Community Broadcasting Development Fund.
5. The regulator should undertake appropriate classification of broadcasting sub-sectors.

S E C T I O N E I G H T

CONCLUSION

This material has taken a critical insight into the current state of broadcasting in Nigeria and issues that need to be urgently reformed. It has established the need for a robust reform, especially of legislative and regulatory frameworks, to make them more responsive to the broadcasting industry and the Nigerian people.

The Executive, the National Assembly, the regulators (NBC), Broadcasters and other Media professionals, Industry groups, Civil Society Organisations, Academics and other stakeholders have important roles to play in ensuring that the agenda for reform is properly shaped and managed to full implementation.

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