

Broadcasting In Nigeria:
Unlocking The Airwaves

**Report on the Framework for Broadcasting
and Telecommunications in Nigeria**

Media Rights Agenda and ARTICLE 19

February 2001

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Preface

This report is the outcome of a study undertaken by Media Rights Agenda (MRA) and ARTICLE 19, Global Campaign on Freedom of Expression, on the legal and institutional framework for the regulation of the electronic media and telecommunications in Nigeria.

The study was necessitated by the urgent need for the legal and institutional framework for the broadcast media as well as telecommunications to be reformed. Despite the progress made in broadcasting in Nigeria with the promulgation of the National Broadcasting Commission Decree No. 38 of 1992, which introduced private ownership of broadcasting stations, many questions, including with regard to state ownership and control of broadcasting remain to be finally resolved. This report, therefore, seeks to identify the anomalies in the present arrangement and to outline the principles which should guide the reform efforts, in line with constitutional and international guarantees for the protection of media freedom and freedom of expression. It is intended to be the starting point for advocacy work for reform in these sectors.

Although, historically, there has been a tendency to view issues relating to telecommunications as purely technical, recent developments globally have established quite clearly that the regulation of the telecommunication industry raises important freedom of expression issues, especially in the light of the role which telecommunication plays in the transmission of information. It is as a result of this realization that a study of the legal and institutional framework for the regulation of telecommunications in Nigeria is included in this report.

In 1997, Media Rights Agenda and ARTICLE 19 published a joint report entitled: *Unshackling the Nigerian Media: An Agenda for Reform*. The report outlined an agenda for long-term media law reform work in Nigeria, including with regard to broadcasting. The report noted that "the entire institutional and legal framework for radio and television broadcasting needs urgently to be reformed. Preferably, this should be part and parcel of a comprehensive process of repealing all laws which unduly restrict freedom of expression ..."

Following the report, the two organizations, working with the Nigerian National Human Rights Commission, organized in March 1999 a media law workshop, out of which emerged the Ota Platform of Action for Media Law Reform in Nigeria, a document endorsed by representatives of intergovernmental agencies such as the United Nations Special Rapporteur on Freedom of Opinion and Expression, Mr. Abid Hussain; and Mrs. Glenys Kinnock, a member of the European Parliament; representatives of the public and private media in Nigeria; local and international human rights organizations; the legal profession; and other media stakeholders.

The participants, however, recognized that despite the wide breadth of participation and the depth of the discussions, there were media-related issues which could not fully addressed by the workshop, while some issues which were discussed would require further consideration. They therefore mandated the sponsoring organizations and other interested parties to develop and refine proposals for media law reform and to consult regularly as part of this effort. This study was carried out in that spirit and in furtherance of this objective. This report is to serve as a basis for further consultation and future advocacy work aimed at ensuring that the problems which still beset the sector are resolutely addressed.

Part One

Broadcasting

Introduction

For more than half a century prior to the promulgation of the National Broadcasting Commission Decree No. 38 of 1992 by the Administration of General Ibrahim Babangida on August 24, 1992, the ownership, control and operation of broadcasting stations in Nigeria was the exclusive preserve of various governments – Federal, Regional and State.

This has been the state of affairs since December 1, 1935, when the British Colonial government launched the first known broadcasting system in Nigeria known as the Rediffusion Broadcasting System. (1)

Even after Nigeria gained political independence in 1960, this regime of ownership and control remained firmly in place. No private ownership of radio or television stations was allowed. Not even mass communication departments of universities which wanted to establish small radio stations for training purposes were allowed to do so.

Although both the 1960 and 1963 Constitutions of Nigeria guaranteed the right of every person to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference, none of them protected the right of persons to own, establish and operate any medium for the dissemination of information, ideas and opinions, (2) as did the subsequent constitutions. (3)

However, the main instrument for the regulation of the broadcasting industry prior to the promulgation of Decree No. 38 of 1992, was the Wireless Telegraphy Ordinance. (4) The first Wireless Telegraphy law was enacted by the colonial government in 1935, and after a series of amendments, was finally replaced by the Wireless Telegraphy Act No. 31 of 1961, which came into force on July 1, 1966.

The Wireless Telegraphy Act established the principle of mandatory licensing of broadcasting stations by prohibiting the establishment or use of any station for wireless telegraphy, except under a licence issued for that purpose by the Minister charged with responsibility for matters relating to wireless telegraphy (the Minister of Communications). Specifically, the Act stipulates in section 4(1) that: "No person shall establish or use any station for wireless telegraphy or install or use any apparatus for wireless telegraphy except under and in accordance with a licence in that behalf."

The Act also gave the Minister powers and the discretion to issue broadcasting licences, including to regional governments. Section 31(1) of the Act provided that: "In the discharge of the executive authority of the Federation in relation to the allocation of wavelengths for

wireless broadcasting and television transmission, the Minister after consultation with the Director-General of Communications may grant to the Government of a Region licences to provide sound or television broadcasting services transmitting on such wavelengths as may be allocated."

Although the National Broadcasting Commission Decree gave effect to private sector participation in broadcasting, the Wireless Telegraphy Act suggests in several of its provisions that the Minister always had a discretion to grant citizens of Nigeria licences to operate wireless telegraphy, including radio and television.

Section 8(1), in particular, suggests that the Minister was, in fact, under an obligation to grant any applicant, who is a Nigerian citizen, a licence to conduct experiments in wireless telegraphy for the purpose of scientific research. The section states: "Subject to the provisions of this section, where an application for the grant or renewal of a licence is made to the Minister by a citizen of Nigeria and the Minister is satisfied that the only purpose for which the applicant requires the licence is to enable him to conduct experiments in wireless telegraphy for the purpose of scientific research, the Minister shall not refuse to grant or renew the licence and shall not revoke the licence when granted, and no sum shall be payable under regulations under this Act otherwise than on the issue or renewal of the licence."

As a result of the fact that the radio station was always the first target for coup-makers and has always been an important tool for the coup makers to announce a change of government, successive governments have nursed the fear that relinquishing control of broadcasting by allowing private concerns to own and operate broadcast stations would worsen their state of insecurity.

In addition, all the governments have recognised the power of radio and, indeed, television, and were, therefore, afraid that if they lost control or allowed independent ownership, the emerging private stations would become tools for their critics or opponents. This may have accounted for the reluctance of successive governments before the Babangida Administration to licence Nigerian citizens or companies to operate radio and television stations, although the legal framework for this has existed for decades under the Wireless Telegraphy Act.

The Act also empowered the Minister to make regulations for giving effect to its provisions. In pursuance of this, the Minister issued copious guidelines under the Wireless Telegraphy Regulations. However, many of the powers previously exercisable by the Minister under the Act and the Regulations have now been transferred to the National Broadcasting Commission, in the case of broadcasting, and to the Nigerian Communications Commission, in the case of telecommunications.

But the broadcasting industry continues to be regulated and guided to date by a range of laws including the Wireless Telegraphy Act, the National Broadcasting Commission Decree and its Amendment, the Nigerian Television Authority Act, the Federal Radio Corporation of Nigeria Act, and the Voice of Nigeria Corporation Act and its amendment. The only modification which the Wireless Telegraphy Act has undergone, with the promulgation of the Decree No. 38 of 1992 is contained in section 22(2) of the Decree. The section states that: "The power under the Wireless Telegraphy Act and regulations made thereunder in so far as they relate to broadcasting shall, as from the commencement of the Decree, vest in the Commission without further assurance than by this Decree."

In effect, the Wireless Telegraphy Act remains one of the main regulatory instruments for broadcasting, except that the powers previously exercised by the Minister of Communications and other government authorities under the Act and the regulations made pursuant to its provisions are now being exercised by the NBC.

The National Broadcasting Commission

The National Broadcasting Commission (NBC) was established by Decree No. 38 of 1992. The Decree has subsequently been amended by the National Broadcasting Commission (Amendment) Decree No. 55 of 1999, promulgated by the administration of General Abdulsalami Abubakar on 26 May 1999.

The Decree did away with the State monopoly of broadcasting by providing for the licensing of private concerns to establish, own and operate radio and television stations, hitherto functions which for more than 50 years since the advent of broadcasting in Nigeria had been the exclusive preserve of various state and federal governments. The Decree also allowed foreign investors to participate for the first time in the establishment, ownership and operation of broadcasting, (5) something which had been prohibited under the system imposed by the Wireless Telegraphy Act.

The main functions of the Commission include:

- receiving, processing, and considering applications for the ownership of radio and television stations including cable television services, direct satellite broadcast and any other medium of broadcasting;
- regulating and controlling the broadcasting industry;
- receiving, considering and investigating complaints from individuals and incorporated or unincorporated bodies regarding the contents of a broadcast and the conduct of a broadcasting station;
- upholding the principles of equity and fairness in broadcasting;
- establishing and disseminating a national broadcasting code and setting standards with regards to the contents and quality of materials for broadcast;
- promoting Nigerian indigenous cultures, moral and community life through broadcasting;
- regulating ethical standards and technical excellence in public, private and commercial broadcast stations in Nigeria;
- monitoring broadcasting for harmful emission, interference and illegal broadcasting;
- determining and applying sanctions, including revocation of licences of defaulting stations which do not operate in accordance with the broadcasting code;
- ensuring qualitative manpower development in the broadcasting industry by accrediting curricula and programmes for all tertiary training institutions that offer mass communication in relation to broadcasting; and
- intervening and arbitrating in conflicts in the broadcasting industry.

A major problem which the Commission faces under a democracy is the constitutionality of its regulatory and sanctions process. The Commission is empowered to investigate complaints about the conduct of a broadcasting station which may be in violation of the

broadcasting code (6) and at the same time, to try and punish broadcasting stations for breaches of the broadcasting code. (7)

The Supreme Court of Nigeria has held that vesting in a body the powers of both investigation and trial amounts to a breach of the rule of fair hearing expressed in the Latin maxim, *nemo iudex in causa sua* ("you cannot be a judge in your own cause") and is therefore unconstitutional. (8) As constitutional democracy takes root in Nigeria, the Commission may yet face a stiff test in this regard which might undermine its ability to effectively regulate the broadcasting industry in Nigeria.

The amendments of 1999 also gave the Commission the responsibility of collecting and holding in trust for or disbursing on behalf of broadcast houses licence fees accruing from the ownership of radio and television sets. However, the implementation of this provision is frustrated by Para. 1(b) of the Fourth Schedule to the 1999 Constitution. This constitutional provision provides for collection of rates, radio and television licenses as one of the main functions of local government councils but fails to stipulate who should receive such rates. As a result, many local government councils in some states have been collecting moneys from owners of radio and television sets and spending the moneys without disbursing to either the NBC or the radio and television stations.

Independence of the Commission

It is well established under international and comparative law that bodies which exercise regulatory powers over the media should be independent of political or other influences. Otherwise, the free flow of information will be undermined, or biased, to the detriment of the public's right to know. In recognition of the importance of such independence, in South Africa the regulatory body established in 1993 was specifically called the Independent Broadcasting Authority (IBA) and the law establishing this authority specifically provided that it should be fully independent of the State. (9)

A major shortcoming in Decree No. 38 is the lack of independence of the National Broadcasting Commission. This is apparent in several areas including the process of appointment and removal of the Chairman and members of the Commission, as well as the lack of security of tenure for the Chairman and members of the Commission.

With regard to the appointment process, the Chairman and other members of the Commission are appointed by the President on the recommendation of the Minister of Information. This is a significant failure as regards the independence of the Commission and under this law the President could easily appoint a Commission dominated by Government officials or members of the ruling party. The importance of an appropriate appointment process for broadcasting regulatory authorities has been recognised around the world. For example, a broadcasting bill in Sri Lanka was subjected to constitutional challenge under the guarantee of freedom of expression, among other things because of the manner of appointment of the Board of Directors of the broadcast regulatory authority. Under the bill, the Minister had substantial power over appointments to the Board of Directors. The Supreme Court noted: "[T]he authority lacks the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought." (10)

Under Decree No. 38 as amended, the Commission's membership consists of a Chairman and 10 other individuals, including representatives of the Federal Ministry of Information and Culture and the State Security Service (SSS). Representatives of the Federal Ministry of Information and the SSS were added through Decree No. 55 of 1999, obviously to increase the government's presence within the Commission and thereby enhance its ability to control the Commission's decision-making process.

The situation in Nigeria may be contrasted with the situation in South Africa, where members of political parties, elected officials and civil servants of all types are specifically prohibited from being members of the IBA. (11) Similar prohibitions exist in many countries. In the light of the history of government control over broadcasting in Nigeria, it is unlikely that the Commission, with such a membership, will have due regard for media freedom and freedom of expression generally. Having a representative of the SSS on the Commission, in particular, given its historical antecedents and the intimidating influence which it is likely to wield, is not conducive for independent decision-making.

The other members of the Commission are supposed to represent various interests, including law, business, culture, education, social science, broadcasting, public affairs and engineering. However, there is no process for stakeholders in the various sectors represented to nominate or appoint their representatives to the Commission as all appointments are made by the President on the recommendation of the Minister of Information. Neither the President nor the Minister is obliged to consult with the interests sought to be represented during the appointment process. Indeed, the process means that even elected officials from other parties have no opportunity to influence the choice of candidates. Again, this may be contrasted with the situation in other countries. In South Africa, to continue with that example, members are appointed by the President on the recommendation of the National Assembly, a multi-party body. In addition, the process must be open and transparent, allow for public participation in nominations and a shortlist of candidates must be published. (12)

Very few conditions are placed on who may be appointed to the Commission, thus increasing the possibility of non-independent political appointments. Members must be citizens of Nigeria and be persons of proven integrity, experience and specialised knowledge in the broadcasting industry and who by reason of their professional or business attainment are capable of making useful contribution to the work of the Commission. However, these requirements are undermined by Para. 2(b) of the First Schedule to Decree No. 38 which provides that the Commission may function notwithstanding "any defect in the appointment of a member." In effect, the President may appoint any person he desires to the Commission and the Commission will continue to function, and its proceedings and decisions will remain valid, even if members of the Commission do not meet the requirements stipulated by the law.

The Decree also provides for the office of the Director-General of the Commission, who is the Chief Executive of the Commission, and again necessary guarantees of independence are lacking. Like other members of the Commission, the Director-General is appointed by the President on the recommendation of the Minister of Information. The Director-General has neither security of tenure nor clearly defined conditions of service. Section 5(5) provides simply that the Director-General shall hold office "in the first instance for a period of five years and shall be eligible for re-appointment for such further periods as the President ... may, from to time, determine". In a similar fashion, section 5(6) stipulates that he shall hold office "on such terms as to emoluments and otherwise as may be specified in his letter of

appointment and as may, from time to time, be approved by the President." This effectively grants the President enormous discretionary powers which are not subject to any guidelines or conditions and therefore may be exercised in an arbitrary or capricious fashion. This exposes the Director-General to considerable political pressure to act always in accordance with the wishes of the President.

Although the Chairman and members of the Commission hold office for three years renewable for one further period of three years, any member may be removed from office by the President before the expiration of his or her term if the President is satisfied that "it is not in the interest of the Commission or the interest of the public that the member should continue in office." These Presidential powers are again excessively discretionary, over-broad and liable to arbitrary or politically motivated application. The meaning of the term "public interest" has been very controversial in the past in Nigeria, due to its vague nature and the tendency for persons exercising political or public authority to apply the expression too broadly to serve political ends. By failing to make specific provisions that protect the security of tenure of members of the Commission, Decree No. 38 undermines the independence of the Commission and leaves members in a situation where their period in office may depend entirely on the whims of the President. Once again, this may be sharply contrasted with the situation in South Africa where the law sets out clear and narrow grounds for removal of members of the IBA. In particular, a member may be removed only "on account of misconduct or inability to perform the duties of his or her office efficiently, or by reason of his or her absence from three consecutive meetings of the Council without the prior permission of the chairperson, except on good cause shown" and even then only after an inquiry. (13)

In fact, not only is the Commission not independent but, both in the manner of the drafting of its enabling law and in actual practice, the Commission actually operates like a department of the Federal Ministry of Information. Indeed, the Minister of Information has on several occasions directed the Director-General of the NBC to stand in for him at events, as he would any director in the Federal Ministry of Information, even when such events were not related to broadcasting. This is clear evidence that he perceives of the Commission as a department under his ministry.

Another provision which undermines the independence of the Commission is section 6 of Decree No. 38. Section 6 states: "Subject to the provisions of this Decree, the Minister (of Information) 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 this Decree and it shall be the duty of the Commission to comply with such directives." Although this power is restricted to directives of a general character, it is easy to imagine it being abused to affect decisions affecting individual broadcasters. Given the considerable powers the Commission wields over broadcasters, including the power to revoke licences, the possibility of Ministerial interference via directives is a cause for some concern, particularly for those broadcasters that are critical of the government. While these powers are relatively being benevolently invoked at the moment, if this provision remains, future ministers may have a different attitude, which may be inimical to the independence of the Commission.

The opportunity for ministerial interference is furthered by the fact that under the Decree, the Commission may make regulations generally for the purpose of giving effect to the Decree but these need to be approved by the Minister of Information. Thus, in effect, the Minister has to approve the guidelines and regulations for the operation of licensed broadcast stations,

including with regard to the technical as well as editorial aspects of their operations. This could be used to institute guidelines which limit the ability of licensed broadcasters to critically evaluate the activities and performance of the government and its functionaries, including the Minister of Information. One regulation already issued by the Commission is the National Broadcasting Code, which contains detailed guidelines on the content and format of programmes and technical matters, as well as a range of sanctions for breach of the Code, and when and how they should be applied (see below).

The problem of lack of independence of the Commission is not just an academic concern and private broadcasters have already complained about this problem. For example, on 20 October 1998, a number of private broadcasters operating under the banner of the Independent Broadcasters Association of Nigeria (IBAN), met with the then Minister of Information, Chief John Nwodo (Jnr.), to discuss problems relating to the manner in which the industry was being regulated. A key complaint was the lack of independence of the NBC and they proposed restructuring the Commission in various ways, including by ensuring its independence from the Minister of Information and the President.

Ironically, however, the amendment to the NBC Decree which came after the meeting between IBAN and Chief Nwodo sought to increase government control over the Commission, for instance, by including in the membership of the Commission's governing board, representatives of the Federal Ministry of Information and the State Security Service.

Licensing Process

One of the most important functions of the NBC is in relation to the licensing of private broadcasters and it is of the greatest importance that licensing processes be open and fair. Unfortunately, under Decree No. 38 the process for allocating licences for radio, television, cable, and satellite broadcasting is arbitrary and susceptible to discriminatory application.

Since the inception of the Commission, the process for allocating initial licences to private broadcasters has been very secretive, with the result that licences have been delayed or refused for reasons which are not known. In the last few years, the NBC has at least made the requirements and procedure for applications for licences publicly available. (14) However, the actual process by which applications for broadcast licences are considered remains secretive. Once again, this is in stark contrast to South Africa, where the whole process for issuing licenses is required under the law to be open and transparent and allows for public input. (15)

Another significant problem is that the NBC may only make recommendations in relation to licensing, with the final decision residing with the President. Under section 2(1)(b) of Decree No. 38, the NBC is charged with "receiving, processing, and considering applications for the ownership of radio and television stations including cable television services, direct satellite broadcast and any other medium of broadcasting". Section 9(2) stipulates: "The grant of a licence by the Commission under this Decree shall be subject to availability of broadcast frequencies" while section 9(3) states: "Compliance with the requirements specified in subsection (1) of this section shall not entitle an applicant to the grant of a licence but the grant of a licence by the Commission shall not be unreasonably withheld."

While these provisions give the impression that the Commission has the powers to grant licences, section 2(1)(c) is quite clear, stating that one of the functions of the Commission is "recommending applications through the Minister (of Information) to the President, Commander-in-Chief of the Armed Forces for the grant of radio and television licences." That the final authority for the issuance of broadcast licences rests with the President is without doubt and this is consistent with the provisions of the 1999 Constitution (and the correlative provision in the earlier 1979 Constitution that was in force when the NBC Decree was promulgated) which stipulates that only the President can authorise the establishment or operation of a television or radio station. In particular, section 39 (2) of the Constitution provides that "... every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions: Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever."

This legal interpretation is also consistent with the practice whereby the NBC has never directly issued licences to private broadcasters but rather has recommended applications to the President through the Minister of Information. This is borne out by the procedure outlined by the NBC itself. (16) Thus ultimately, broadcast licences are not issued by an independent body at all but by the country's supreme political authority.

In terms of the NBC's procedure, any person intending to apply for a broadcast licence must first incorporate a limited liability company, with Nigerians holding a majority of the shares. A prospective applicant must then fill in and return an application form, which must be purchased for 15,000 naira, (about US\$150) to the Secretary to the Commission. This form must include information about how the license is to be utilised, for example whether for radio, television, open or scrambled broadcast, or cable/satellite retransmission. The application is then processed by the Commission's staff and who make a recommendation to the Board of the Commission. The Board then sends its recommendation through the Minister of Information to the President who gives the final approval. However, as noted above, this process is a closed one and it remains unclear whether or not the Commission has actually followed this procedure in practice since the Board of the Commission was only appointed on 10 November 2000. (17)

Section 9(1) of Decree No. 38 sets out the criteria for the allocation of broadcast licences. Essentially, these require that the applicant should be a corporate body registered by the Corporate Affairs Commission in accordance with the provisions of the Companies and Allied Matters Act or a station owned, established or operated by the Federal, State or Local Government. (18) Other matters which the Commission may take into account in determining whether an applicant should be granted a licence are the structure of share holding in the broadcasting organisation, the number of share holding in other media establishments, and the distribution of those stations and establishments as between urban, rural, commercial or other categorisation.

In addition, the applicant must be able to demonstrate to the satisfaction of the Commission that he is not applying on behalf of any foreign interest, that he can comply with the objectives of the National Mass Communication Policy as applicable to radio and television and that he would ensure that the licensed station "shall be used to promote national interest, unity and cohesion and that it shall not be used to offend the religious sensibilities or promote

ethnicity, sectionalism, hatred and disaffection among the peoples of Nigeria." While it may be legitimate to prohibit broadcasters from promoting hatred or disunity, it is hardly the responsibility of private broadcasters to promote national unity.

Section 9(3) of Decree No. 38 stipulates: "Compliance with the requirements specified in subsection (1) of this section shall not entitle an applicant to the grant of a licence ..." This provision creates uncertainty in the licensing process and gives latitude, not only for its manipulation, but also for licensing decisions to be motivated by purely political considerations.

Section 10 of Decree No. 38 of 1992 prohibits the Commission from granting licenses to both political parties and religious bodies. Although a prohibition on political parties holding broadcasting licenses is common in other countries, the justification for this is to ensure a level playing field for different political viewpoints, particularly during elections. In Nigeria this result cannot be achieved due to the fact that publicly funded media are controlled by the ruling party. These media often equate the personal or political interests of public office holders with the public interest and deny access to political opponents.

It seems clearly illegitimate to provide for a blanket restriction on religious broadcasters, which should be considered on a case-by-case basis according to their merits. The rationale for this measure is unclear since one of the conditions for the grant of a broadcast licence is that the applicant is able to give an undertaking that the station, if licensed, "shall not be used to offend the religious sensibilities or promote ethnicity, sectionalism, hatred and disaffection among the peoples of Nigeria." In many countries in Africa and outside the continent, several examples of broadcasting stations owned by religious groups exist. Examples include the Voice of Hope (the Adventist World Radio) in Nairobi, Christian Science Radio in Boston and the Vatican Radio in Rome.

Once a licence application is finally approved by the President, the successful applicant must then pay for the licence before it is issued and the appropriate frequencies are allocated. The NBC has three categories of licence fees: Category 1 is applicable in key urban locations, Category 2 applies to semi-urban locations, while Category 3 is applied in rural locations. Licence fees for Category 1 are 3 million naira (\$30,000) for radio, 1.5 million naira (\$15,000) for television and 2.5 million naira (\$25,000) for cable/satellite retransmission. For category 2, licence fees are 900,000 naira (\$9,000) for television, 2,250,000 naira (\$22,500) for radio and 1.8 million naira (\$18,000) for cable/satellite retransmission. For Category 3, licence fees are 450,000 naira (\$4,500) for television, 1.5 million naira (\$15,000) for radio, and 1,350,000 naira (\$13,500) for cable/satellite retransmission. There is a flat fee of 12 million naira (\$120,000) for global satellite television. This fee structure does not appear to take into account the fact that broadcasters may use transmitters with varying strength and capacity, a fact which should be taken into account when determining the fee structure. It is obviously ridiculous, for example, to charge a small community broadcaster in an urban area Category 1 fees.

These rates apply only to privately owned stations, while stations owned by the Federal or State governments pay a flat fee of 50,000 naira (\$500), regardless of location or type of station. Following widespread criticism, the Director-General of the NBC, Mallam Danladi Bako, has said that the licence fees for government owned stations have now been increased to create "a more level playing field", but the new rates are not publicly available and it is not clear whether their application has begun.

The main problem with the rates for privately owned stations is that they make it extremely difficult for a broadcaster to be commercially viable, especially having regard to the under-developed nature of the industry and the market. This means that the public interest in receiving information and ideas from a wide variety of sources, including the broadcast media, is undermined. It is now widely recognised that the guarantee of freedom of expression places the State under an obligation to promote pluralism in the media. As the European Court has stated in striking down State monopoly on broadcasting: "[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism." (19)

The current licence fees in Nigeria represent a 300 per cent increase over the previous rates and many broadcasters, including major ones, have been unable to keep up with the new schedule of payments. For instance, on October 4, 1999, the NBC revoked the licences of 19 private radio and television stations following their inability to pay the new licence fees. The private operators complained that the fees were draconian and that they could not pay up immediately. The affected broadcast operators were said to owe the NBC a total of about 72 million naira (\$720,000) in arrears of licence fees. It was only after numerous individuals and organisations criticised these revocations that the NBC restored the licences and gave the affected stations more time to pay up. The government has taken hardly any step to relieve private broadcasters of their economic burden in other areas. For example, private broadcasters also have to pay full custom duties and value-added taxes, as well as a surcharge of 2.5 per cent of their annual turnover to the NBC.

All licences are issued for five years in the first instance. But the licence may be revoked if it is not utilised within two years of issuance. Terrestrial broadcasters are required to carry a minimum of 60 per cent local content and a maximum of 40 per cent foreign content, while cable/satellite retransmission stations are required to carry a minimum of 20 per cent local content. These percentages, particularly for terrestrial broadcasters, are excessive and the cost and lack of availability of local programming makes it extremely difficult for them to comply. It may be noted that the European Convention on Transfrontier Television only requires European broadcasters to carry 50 per cent European production, let alone programming from any single country, and that even this percentage is to "be achieved progressively, on the basis of suitable criteria." (20)

The licence renewal process places further onerous terms and conditions on broadcasters. The basic requirements are that the station must clear all its outstanding financial and administrative obligations to the NBC, including a requirement that each station pays 2.5 per cent of their gross turn-over to the Commission as annual charges. A renewal applicant is also expected to demonstrate its compliance with the provisions of the National Broadcasting Code. This Code imposes strict rules on the content of what may be broadcast, including in the areas of national cohesion and security, respect for human dignity and values, accuracy, objectivity, and fairness, the right of reply, good taste and decency, and so on (see below). Applicants are also required to show how they have complied with any other rules and regulations issued from time to time by the NBC.

A renewal applicant must submit to the NBC its Statement of Account for the period covered by its previous licence, along with 15 copies of its licence renewal application form and a feasibility report for the period for which the renewal is sought. In addition, an applicant must submit a detailed report on its compliance with its statements of intent in its original licence application, as well as a report on its compliance with the relevant provisions of the Third

Schedule to Decree No.38. The Third Schedule requires broadcasters to submit to the NBC quarterly programme schedules accompanied by a synopsis of the programmes listed, and a description of their compliance with local programme content rules and daily station log books of transmitted programmes, transmitter output power and radiating frequencies. Broadcasters must also make available for inspection by the Commission's staff, their broadcast facilities including equipment, financial records and station log books. These requirements place an excessive burden on broadcasters, both in terms of cost and administrative resources.

Although the NBC has consistently ignored demands that it should conduct public hearings when considering original applications for broadcast licences, as a way of engendering a more transparent licensing process, it nevertheless holds public hearings when considering applications for renewal of broadcast licences. In the light of this, it is difficult to understand the rationale for the closed nature of the application process for the original licence.

Regulation of Licensed Establishments

The Commission has a number of regulatory powers over broadcasters, deriving in part from section 2(1)(d) of Decree No. 38 which states as one of the responsibilities of the Commission, "regulating and controlling the broadcasting industry". Unfortunately, many of the specific regulatory powers allocated to the Commission are both broad and vague, with the result that the Commission has undue latitude to sanction broadcasters it deems to be in breach of the rules. For example, section 2(1)(n) of the Decree gives the Commission the responsibility of "determining and applying sanctions including revocation of licences of defaulting stations which do not operate in accordance with the broadcasting code and in the public interest." The phrase "public interest" is used several times in the decree and there is no attempt to define it. The problems with phrases such as "the public interest", particularly in the Nigerian context, have already been noted. In particular, this gives the Commission a wide scope for discretionary application of these provisions, thus creating enormous scope for politically motivated intervention in the operations of the licensed stations.

In an analogous fashion, the Commission is given powers to sanction broadcasters for not operating in the national interest. For example, section 8(d) of Decree 38 allows the Commission to revoke a station's licence, among other things, "where in the opinion of the Commission the station has been used in a manner detrimental to national interest ..." This phrase is again used in Para. 2B of the First Schedule to Decree No. 38, which states that "[t]he Commission may not renew a licence if, having regard to the past performance of the station, it is not in the national interest or public interest or the interest of the broadcast industry to do so."

The arbitrariness of the powers given to the Commission is again reflected in the provisions of section 19A of Decree No. 38, as amended, which states that "Any station which contravenes the provisions of the National Broadcasting Code or *any other order* of the Commission shall be liable to the sanctions prescribed in the Code." The implication of this provision is that the NBC may issue any order to licensed stations, even where the order does not fall within its authority, and such stations are obliged to comply with the order.

In practice, licensed broadcasters are subject to strict monitoring and control by the Commission, both in technical aspects and in editorial matters. As regards the former, the Commission is given the power to approve the transmitter power, the location of stations and areas of coverage of a licensed establishment, as well as to regulate the types and technical specification of broadcast equipment to be used by it.

The most significant content regulation by the NBC under Decree No. 38 is in the form of the regulations contained in the National Broadcasting Code. While the Code has many positive provisions intended to improve the standards and quality of broadcasts, it also imposes a number of content restrictions on broadcasters which are excessive and contrary to international standards in this area.

One problem with the Code is that it reinforces some laws and legal provisions that are antithetical to media freedom. For instance, the Code requires "all those involved in the production and transmission of programmes" to acquaint themselves with the law of sedition and the Official Secrets Act, both draconian colonial era legal rules widely viewed as contrary to the constitutional guarantee of freedom of expression. (21) The Code also prescribes that in news and current affairs programmes, all sources "shall" be duly acknowledged, a requirement which clearly undermines the ability of broadcasters to protect confidential sources of information, contrary to established international standards. (22)

A number of the specific rules in the Code are excessively detailed and overly restrictive. Some of these are as follows:

- to promote and uphold the sanctity of marriage and family life;
- not to show liquor consumption and smoking, unless it is consistent with plot and character development;
- to promote national cohesion, national security, respect for human dignity and values;
- to be accurate, objective, fair, integral and authentic;
- to provide a right of reply; and
- to broadcast with good taste and decency.

The Code also contains strict guidelines in a number of other areas such as respect for women, advertisements, the protection of children from obscene material, harmful or deceitful advertisements and exploitation, the advertisement of magical cures, sponsorship of news casts programmes and the commercialisation of political coverage.

Often, a mere likelihood of the undesired result is enough to constitute a breach of the Code, even though the result does not occur. For instance, it is considered a serious breach of the Code for any station to broadcast any information "immediately leading, or likely to lead, to a breakdown of law and order" (23) and a broadcasting licence may be revoked for breach of this provision. However, the ability of the NBC to objectively determine whether or not a particular broadcast is likely to lead to a breakdown of law and order is open to serious question.

Some private broadcasters have complained that the regulatory regime as applied by the NBC is weighted unfairly in favour of publicly funded broadcasters. This complaint must be seen in the light of the economic problems of private broadcasters, the hitherto dominant position of publicly funded broadcasters and the new competition between the private and public

sector. This is exacerbated by the lack of independence of the publicly funded broadcasters (see below) and the fact that they compete with the private sector for advertising revenue.

The NBC has also shown a tendency to incessantly interfere in the operations of the private operators to such an extent that it gives the impression that it is primarily concerned with ensuring that private broadcasters do not take over the market from the state-owned stations or, at best, that it is not in the least interested in the economic well being of private broadcasters, and is merely paying lip service to being committed to promoting the concept of media pluralism.

This view is reinforced by the NBC's seeming silence in the face of attempts by the Nigerian Television Authority (NTA), the Federal Government owned television station, to dominate its private competitors and the speed with which the Commission rules in favour of the NTA in the event of any dispute between it and private broadcasters. For instance, early in 2000, when Channels Television obtained the right to broadcast in Nigeria the European football championships, known as EURO 2000, from TV Africa, an international programme and broadcast signal supplier based in Johannesburg, South Africa, which NTA was also seeking to broadcast, the NBC intervened in a manner which betrayed its bias in favour of NTA.

The NBC ruled on that occasion that since TV Africa was not registered with the NBC, its programmes could not be retransmitted in Nigeria. It, therefore, directed Channels Television and other stations airing TV Africa's programmes to cease forthwith or face being sanctioned by the Commission.

The ruling was suspect for a number of reasons. There is no provision in the NBC Decree and its amendment or in the National Broadcasting Code which requires foreign producers to register with the NBC or to be licensed in Nigeria before their programmes can be aired or retransmitted by a licensed station. The only applicable rule in this regard is the requirement that licensed radio and television stations do not exceed 40 per cent foreign content in their programming.

Besides, the NTA itself regularly airs or retransmits the musical programmes of Channel O, a channel of the South Africa-based cable television station, M-NET. The NTA has not been asked by the NBC to stop this practice, although M-NET is not registered with the NBC or licensed in Nigeria. The NTA also airs or retransmits news and other programmes from other foreign stations such as Atlanta-based Cable News Network (CNN), and it has not been sanctioned by the NBC.

In September 2000, subsequent to the TV Africa incident, but prior to the commencement of the Sydney 2000 Olympic Games, the NBC issued a press statement and published a series of adverts in different newspapers in the country warning that the broadcast rights for the airing of the Olympic Games in Africa had been given to the Union of Radio and Television Nations (URTNA) and that only URTNA members in Nigeria would have the right to broadcast it. The NTA is the URTNA member in Nigeria. The NBC, in its press statement and paid advertisements, advised all stations wishing to transmit the games to seek and negotiate with URTNA or its affiliates, a clear indication that it wanted to prevent any other station from contesting the broadcast rights for the Olympic Games with the NTA.

Such conduct and attitude undermines the NBC's role as an independent regulator as stated in its enabling laws, which includes upholding the principles of equity and fairness in broadcasting as well as intervening and arbitrating in conflicts in the broadcast industry.

Sanctions Process

The NBC maintains a range of sanctions under three categories for licensed stations which violate either Decree No. 38 or the National Broadcasting Code. The first class of sanctions includes revocation of licence, immediate shut down or sealing up of the transmitter and stations, seizure and forfeiture of the transmitting equipment, and suspension of licence with a recommencement fee of not less than two million naira (\$20,000).

The second class of sanctions includes a written warning to remedy or rectify the breach within a specific time frame, failing which, a fine of not less than 100,000 naira (\$1,000) will be imposed, or a reduction of the daily broadcast hours for a given period with recommencement of full broadcast hour attracting a fine of not less than 500,000 naira (\$5,000), and suspension of licence for a given period until payment of a recommencement fee of not less than one million naira (\$10,000).

The third class of sanctions includes various categories of fines, including stiffer fines for non-compliance with earlier sanctions; for breaches related to advertisements, a fine the value of the advert placements and 20 per cent of that value; a fine of 10,000 naira (\$100) for every one per cent in excess of the foreign or religious content allowed by the code; and a graduated fine of 25,000 naira (\$250) for each offence not remedied within the given time.

However, the offences for which each of these categories of sanctions may be applied are not stated. For example, a licence may be revoked for "a serious breach" of either the technical or non-technical aspects of the Code but what constitutes a serious breach is neither defined nor explained. The Code stipulates that the revocation of a licence is final and that no re-application will be "tolerated" by the NBC from the same company or persons. The situation is rendered even more confusing in the light of the fact that the Code warns that broadcasting without a licence is a criminal offence, suggesting that dealing with such a situation is in the realm of criminal prosecution and not within its remit.

Acts which constitute offences under the Code include transmitting without a valid licence, being involved in commercial activities in relation to materials intended to be used for broadcasting without a licence for that purpose, failing to pay any fees charged by the Commission and violating provisions of the NBC decree. Technical offences include poor quality transmission within an assigned boundary and operating a broadcast station without at least one engineer registered by the Council of Registered Engineers of Nigeria (COREN). It is also an offence to contravene some or all of the provisions of the Code.

The only procedure laid down by the Commission for dealing with allegations of breaches of the Code or Decree No. 38 is outlined in the Code under the Public Hearing Procedure. Under this Procedure, the Commission may constitute a public hearing for the purpose of considering a complaint made against a station by members of the public or arising from the Commission's monitoring activities. The Code stipulates that "Where a public hearing becomes imperative, and the process as contained in the Code, is duly employed, the

Commission's administrative costs shall be borne by the station in addition to the eventual penalty, if any." (24) The effect of this is to make the broadcaster liable for the costs of a public hearing, regardless of whether or not it is ultimately found to be in breach. This is clearly unjust.

Although this provision implies that the Commission has other procedures for dealing with breaches besides the public hearing, no other procedure is outlined in either the Code or the NBC decree or any other regulation.

The Commission may decide to impose a fine at any time, even after it might have issued a warning to the offending station, and any fine imposed must be paid by the date on which it is due, as failure to comply will lead to a higher fine, and a further failure, to a more severe sanction than a fine. Where corrective action, such as the requirement for the exercise of the right of reply by an aggrieved individual, is demanded, this must be implemented within 24 hours.

Diversity, Concentration and Cross Ownership

The NBC has taken only very tentative steps to promote diversity in the broadcast media. Although the regime of licence fees is somewhat to the advantage of rural or non-urban broadcasters in an effort aimed at promoting geographical diversity, in fact the harsh economic environment means that only stations which are highly commercialised and therefore located in urban centres, have a chance of survival. While the NBC has divided the country into zones for the purpose of ensuring a spread of stations across the country, neither Decree No. 38 nor the NBC itself have established a framework which will promote community broadcasting and therefore ensure pluralism and diversity. In addition, the promotion of diversity is not taken into account in the licensing process, at least not formally.

The only effort at outlawing monopolies is that contained in section 9(5) of Decree No. 38 which attempts to prevent concentration and limit cross-ownership by making it illegal for any person to have "controlling shares in more than two of each of the broadcast sectors of transmission."

Although monopoly and media concentration is not yet a source of concern in the industry, with the return of partisan politics and the tendency for persons with political interests and ambitions to establish media outlets for the control of information, it is an area of potential concern in the near future.

Funding Sources

Under the decree, the sources of funding for the Commission include:

- Budgetary allocations made to the Commission in the country's annual budget.
- Such percentage of fees and levies to be charged by the Commission on the annual income of licensed broadcasting stations owned, established or operated by private individuals, the Federal, State or Local Government.
- Moneys which may from time to time, be lent or granted to the Commission by the Federal Government or the Government of a State.

- Moneys raised by way of gifts, loans, grants-in-aid, testamentary disposition or otherwise.
- Assets that may, from time to time, accrue to the Commission.

However, budgetary allocations to the NBC form part of the allocations to the Federal Ministry of Information and National Orientation and are controlled by the Ministry. The Commission therefore remains dependent on the Ministry for its funding.

An unrealized source of funding for the Commission as well as broadcast operators is the collection of licence fees from owners of radio and television sets. The Commission is empowered to collect and hold in trust for or disburse on behalf of broadcast houses such licence fees accruing from the ownership of radio and television sets, as the Commission may prescribe. However, the implementation of this provision, which is contained in Decree No. 55 of 1999, has been made impossible by the provisions of Para. 1(b) of the Fourth Schedule to the 1999 Constitution. This constitutional provision includes as one of the main functions of a local government council, the collection of rates, radio and television licences. But it does not stipulate who the beneficial owners of such rates collected by the local government councils are. As a result, many local government councils in some states have been collecting moneys from owners of radio and television sets and spending the moneys without disbursing any part of it to either the NBC or the radio and television stations.

Publicly Funded Broadcasters

Introduction

Most publicly funded broadcasters in Nigeria are established by law; all operating at the federal level are established by Federal laws while most of those operating at the state level are established by State laws. However, broadcasting has always been a matter of exclusive national jurisdiction in the various constitutions of Nigeria, giving the national legislature the exclusive right to legislate on matters pertaining to broadcasting. Thus, those State laws that do exist are primarily for the purpose of allowing the state governments to vote and expend moneys for the establishment and operation of the radio and television stations and have not been concerned with the technical or programmatic aspects of the operation of broadcast stations.

The first law in the area of broadcasting, the Nigerian Broadcasting Corporation Ordinance No. 39 of 1956, (25) established the Nigerian Broadcasting Corporation, which took over all the broadcasting services previously undertaken directly by the government of the Federation. In accordance with the provisions of section 10(1) and (2) of the Ordinance, the Nigerian Broadcasting Corporation was vested with the responsibility of providing, as a public service, independent and impartial broadcasting services by means of wireless telegraphy and by television for general reception both within and outside Nigeria. However, the extension of its services to countries outside Nigeria had to be approved by the Governor-General in Council.

The Nigerian Broadcasting Corporation was ultimately replaced by such current publicly funded broadcasters as the Nigerian Television Authority and the Federal Radio Corporation of Nigeria. The establishment of these agencies in the 1970s led to the dissolution of the Nigerian Broadcasting Corporation, the repeal of its enabling law, and the subsequent transfer of all its assets, liabilities and services to the NTA and the FRCN. These two stations were then saddled with the responsibility of providing the broadcasting services that were previously provided by the Nigerian Broadcasting Corporation. Although the enabling laws of NTA and FRCN remain principally the same as that of the Nigerian Broadcasting Corporation, the regulatory framework under which they operate has now changed substantially since the government embarked on a policy of deregulating the broadcasting industry and brought an end to their monopolies.

The main state-owned stations which are reviewed here are the Nigerian Television Authority, the Federal Radio Corporation of Nigeria and the Voice of Nigeria. They are all owned and controlled by the Federal Government. Each has relatively similar enabling laws, and the operations of the three stations all have similar characteristics.

International Standards

It is now well-established that publicly funded broadcasters should be established in a manner which effectively guarantees their independence from political or other partisan influences. In particular, their governing boards must be appointed in a manner which ensures they are free of political interference and they should have stable sources of funding. This principle has been explicitly endorsed in a number of international instruments.

Perhaps the most important of these is Recommendation No. R(96)10 on the *Guarantee of the Independence of Public Service Broadcasting*, passed by the Committee of Ministers of the Council of Europe, a body currently comprised of 41 States, committed to human rights and the social advancement of its members. The very name of this Recommendation clearly illustrates the importance to be attached to the independence of public service broadcasting organisations. The Recommendation notes that the powers of supervisory or governing bodies should be clearly set out in the legislation and these bodies should not have the right to interfere with programming matters. Governing bodies should be established in a manner which minimises the risk of interference in their operations, for example through an open appointment process designed to promote pluralism, guarantees against dismissal and rules on conflict of interest. (26)

Several Declarations adopted under the auspices of UNESCO also note the importance of independent public service broadcasting organisations. The 1996 *Declaration of Sana'a* calls on the international community to provide assistance to publicly funded broadcasters only where they are independent and calls on individual States to guarantee such independence. The 1997 *Declaration of Sofia* notes the need for state broadcasters to be transformed into proper public service broadcasting organisations with guaranteed editorial independence and independent supervisory bodies. (27)

Resolution No. 1: Future of Public Service Broadcasting of the 4th Council of Europe Ministerial Conference on Mass Media Policy, noted above, reiterates these principles, including the need for independent governing bodies, and for editorial independence and

adequate funding. These recommendations, particularly the requirement of effective independence from government – including financial independence – are reiterated in a number of resolutions and recommendations of the Parliamentary Assembly and other Ministerial Conferences on mass media policy of the Council of Europe. (28)

ARTICLE 19, Global Campaign for Free Expression, has adopted a set of recommendations drawn from international law and practice relating to broadcasting, entitled, *Measures Necessary to Protect and Promote Broadcasting Freedom*. (29) Recommendation 1 reflects the principles noted above, stating: "The independence of the governing body of the public broadcaster should be guaranteed by law."

These same principles are also reflected in a number of cases decided by national courts. For example, the Supreme Court of Ghana has noted: "[T]he state-owned media are national assets: they belong to the entire community, not to the abstraction known as the state; nor to the government in office, or to its party. If such national assets were to become the mouth-piece of any one or combination of the parties vying for power, democracy would be no more than a sham." (30) As regards the governing body, the National Media Commission, the Ghanaian Supreme Court stated that it was their role, "to breathe the air of independence into the state media to ensure that they are insulated from Governmental control." (31)

Many of the standards set out above reflect both the idea of independence of governing bodies and the related but slightly different idea that the editorial independence of public service broadcasting organisations should be guaranteed, both in law and in practice. Recommendation 2 of the ARTICLE 19 *Measures* states: "The principle of editorial independence should be guaranteed by law." In practice, editorial independence is often promoted by ensuring a clear separation between the governing body, with overall responsibility for the broadcasting organisation, and managers and editors, who have responsibility for day-to-day and editorial decision-making. The governing body may set directions and policy but should not, except perhaps in very extreme situations, interfere with a particular programming decision.

This approach is reflected in Article 1 of Recommendation No. R(96)10 of the Council of Europe, which notes that the legal framework governing public service broadcasters should guarantee editorial independence and institutional autonomy as regards programme schedules, programmes, news and a number of other matters. The Recommendation goes on to state that management should be solely responsible for day-to-day operations and should be arranged in such a way as to minimise the risk of political interference, for example by restricting its lines of accountability to the supervisory body and the courts. (32) In a related vein, Articles 20-22 of the same Recommendation note that news programmes should present the facts fairly and encourage the free formation of opinions. Public service broadcasting organisations should be compelled to broadcast messages only in exceptional circumstances.

Similarly, true independence is only possible if funding is secure from arbitrary government control and many of the international standards noted above reflect this idea. In addition, public service broadcasting organisations can only fulfil their mandates if they are guaranteed sufficient funds for that task. Articles 17-19 of Recommendation No. R(96)10 of the Council of Europe note that funding for public service broadcasting organisations should be appropriate to their tasks, secure and transparent. Funding arrangements should not render the broadcasters susceptible to interference, for example with editorial independence or institutional autonomy.

ARTICLE 19's Recommendation 3 deals with funding, stating: "Public service broadcasting should be adequately funded by a means that protects the broadcaster from arbitrary interference with its budgets." Similarly, the Italian Constitutional Court has held that the constitutional guarantee of freedom of expression obliges the government to provide sufficient resources to the public broadcaster to enable it discharge its functions. (33)

Establishment

The Nigerian Television Authority

The Nigerian Television Authority was established pursuant to the Nigerian Television Authority Decree No. 24 of 1977. Although promulgated in 1977, the decree was given retroactive effect to April 1, 1976, the date on which the NTA began operations. In effect, the station had been created and had started operations for more than one year before the Federal Government promulgated a decree to give it legal backing and stipulate the management and control of the station. The law was later re-designated the Nigerian Television Authority Act following the return to democratic rule in the Second Republic in October 1979. (34)

The Act unequivocally vested the NTA with exclusive rights over television broadcasting in Nigeria through its introductory explanatory notes and under section 7. This monopoly was maintained until the enactment of Decree No. 38 of 1992, which specifically repealed section 7 of the NTA Act. The Second Schedule to the NTA Act contained detailed provisions as to how the NTA was to take over the operations of all existing broadcasting stations in the country owned by either the Federal or State governments.

The Federal Radio Corporation of Nigeria

The Federal Radio Corporation of Nigeria was established by the Federal Radio Corporation of Nigeria Decree No. 8 of 1979. However, like the NTA Act, it was also given retroactive effect, in this case to April 1, 1978, the date when the Corporation came into being. As in the case of the NTA, with democratisation, the Decree has been re-designated as an Act.

Section 30(1) of the FRCN Act dissolved the pre-existing Nigerian Broadcasting Corporation and repealed the Nigerian Broadcasting Corporation Ordinance No. 39 of 1956. (35) Section 30 (2) of the FRCN Act dissolved the Broadcasting Company of Northern Nigeria, which unlike the Nigerian Broadcasting Corporation, was a non-statutory body meant to service the northern part of the country. Consequently, all the assets and liabilities of these bodies were transferred to the FRCN as stipulated in section 30 (3) of the Act.

Section 6 of the FRCN Act granted the Corporation exclusive authority to broadcast simultaneously in more than one State of the Federation at any one time on either short wave or powerful medium wave band. As a result, all other radio stations not owned by the Federal government, were to restrict the reception of their services to the particular states where they were located. However, section 22(1) of Decree No. 38 of 1992 specifically repealed this provision on exclusivity.

The primary responsibility of the FRCN, as set out in section 5(1) of the Act, is to provide, as a public service in the interest of Nigeria, independent and impartial radio broadcasting services meant for general reception both within and outside Nigeria. In the discharge of this responsibility, section 5(2) provides that the corporation is to ensure that the totality of its service adequately reflects not only the unity of the Nigerian Federation but also the culture, characteristics, affairs and opinions of each state or other parts of the Federation.

Voice of Nigeria

The Voice of Nigeria (VON) was established under the Voice of Nigeria Corporation Decree No. 15 of 1991 which, though promulgated by the regime of General Ibrahim Babangida on May 14, 1991, was given retroactive effect to January 5, 1990 in an analogous fashion to the NTA and FRCN Acts.

In accordance with the provisions of sections 8(1), 8(2) and 29 of the Decree, the Corporation has exclusive responsibility for broadcasting beyond the borders of Nigeria. Prior to the establishment of VON, this function was being undertaken by the FRCN. Section 5(1)(a) provides that the public service imperative is central to the discharge of the functions of VON.

Appointments

The Nigerian Television Authority

Under section 2 of the NTA Act, the Authority consists of a chairman, the director-general, one representative of the Federal Ministry of Information, one person to represent women's organisations, and six other persons with requisite experience in one of the following: the mass media, education, management, financial matters, engineering, arts and culture. Members are to be appointed by the National Council of Ministers on the recommendation of the Minister having responsibility for broadcasting, which is the Minister of Information and National Orientation. The law further provides that the National Council of Ministers may by an Order published in the Federal Gazette increase, reduce or otherwise vary the composition of the membership of the Authority.

The NTA Act grants the National Council of Ministers a central role in the appointment and removal of members of the Authority. However, with the advent of democratic government and the coming into force of the 1999 Constitution on May 29, 1999 the National Council of Ministers, which was an informal body which existed in Nigeria during the period of military rule, has effectively ceased to exist. Its functions are now being performed by the Federal Executive Council, which like its predecessor, is not given constitutional recognition.

Some legal remedy, albeit an unsatisfactory one, is provided by paras. 10(a) and (b) of the First Schedule to the NTA Act which provides that the validity of any proceedings of either the Authority or any of its committees shall not be affected by either any vacancy in its membership or any defect in their appointment. In effect, this allows the government to do as

it pleases since it renders irregularities committed in the appointment process immune from legal challenge.

On November 10, 2000, the Federal Government announced that it had appointed members of a number of Federal government bodies, including the governing body for the NTA. (36) Unfortunately, these appointments were totally lacking in transparency, as it is not clear who appointed the chairman and members of the Authority or how these appointments were made. It is also not clear whether other requirements of the law, such as the requirement of experience relevant to public service broadcasting, were respected.

Under section 3(1) of the Act, public officers who are members of the governing body for the NTA have an unspecified tenure of office, while members who are not public officers have a three year term which may be renewed for a maximum of one further term of three years only. For the appointment of members of the Zonal Boards, (37) there is no such discriminatory treatment and all members have three years which may be renewed.

The Federal Radio Corporation of Nigeria

Section 2(1) of the FRCN Act provides for membership of the Corporation's governing body in very similar fashion to the NTA, to consist of a chairman, the director general of the Corporation, one representative each of the Ministry of Information and the Ministry of External Affairs, one person to represent women's interest and six other persons with relevant experience in the following spheres of human endeavour: the mass media, education, management, financial matters, engineering, arts and culture. The chairman and members are to be appointed by the Minister with the prior approval of the National Council of Ministers. Section 4(2) provides for the appointment of the Director General in the same manner.

The corporation has, in fact, functioned for many years without being constituted as required by its enabling Act. However, on 10 November 2000, along with a number of other appointments as noted above, the Federal Government announced that it had appointed members of the Corporation. (38) Again, the closed nature of these appointments make it unclear whether the requirements of the legislation regarding the interests which the appointees should represent, were satisfied. Again, this defect is formally remedied by paras. 10(a) and (b) of the First Schedule to the Act which maintains the validity of any proceedings of the Corporation notwithstanding any defect in the appointment of members.

As with the NTA, the tenure of members who are also public officers is indefinite while members who are not public officers are restricted to a maximum of two terms of three years each in office. In addition, section 3(1) of the FRCN Act gives the Minister the power, with the prior approval of the National Council of Ministers, to remove any member of the corporation from office on the grounds of misconduct or inability to perform the functions of his office. Section 3(2) allows the Minister to remove a member without the prior approval of the National Council of Ministers if he receives a recommendation to that effect, that is based on the member's absence from two consecutive meetings of the Corporation without satisfactory explanation, or if issues of national interest or the interest of the corporation so dictate.

Voice of Nigeria

Section 2 of Decree No. 15 of 1991 establishes the governing body of the VON, consisting of a chairman, the director general, one representative each from the Federal Ministry of Information and the Ministry of External Affairs, one person to represent any interest not otherwise represented, one person with requisite knowledge in Nigerian art and culture, and three persons with requisite experience in the mass media, financial matters, and engineering. The chairman and other members are appointed by the President on the recommendation of the Minister of Information. Except for the requirement that the members appointed represent various interests, the President and the Minister have broad discretion and powers in the appointment of persons to the Corporation.

VON functioned for many years without being constituted as required, but on November 10, 2000 the Federal Government announced that it had appointed members of the governing body, (39) along with the other appointments made for the NTA and the FRCN, among others. However, although Decree No. 15 provides for the appointment of seven members of the Corporation, in addition to the Chairman and the Director-General, it would appear from the names announced by the Federal Government on November 10 that only five members were appointed, besides the Chairman and the Director-General. The Director-General had been appointed previously. Once again, any defects in appointments are formally remedied by paras. 6(a) and (b) of the First Schedule to the VON Decree.

As regards tenure, the Chairman is allowed a maximum of two terms of four years each, while members of the Corporation, other than *ex-officio* members, are allowed a single term of three years. But the Decree empowers the Minister, with the approval of the President, to remove from office at any time, any member of the Corporation if he is of the opinion that it is not in the interest of the Corporation that such a member should continue in office. In addition, the Minister may remove any member of the Corporation from office without the approval of the President if he receives a recommendation to that effect from the Corporation and he is satisfied with the recommendation.

Sections 6(1), (5) and (6) of the VON Decree provide that the Director-General shall hold office for a period of five years in the first instance "on such terms as to emoluments and otherwise as may be specified in his letter of appointment and as may, from time to time, be approved by the President." Although he or she is eligible for re-appointment, the law provides that in such an instance, the term of office shall be for such further periods as the President may, from time to time, approve. These are broad discretionary powers that are not made subject to any guidelines or conditions and are therefore susceptible to be exercised arbitrarily. These provisions expose the Director-General to considerable pressure which may prevent him from acting with any level of independence.

In practically every regard (including the fact that there are government representatives on their boards, the process by which appointments are made and the lack of security of tenure) appointments to the various publicly funded broadcasters in Nigeria do not safeguard independence and fail to meet international standards. Once again, the contrast with South Africa is stark. The law there provides that the members of the South African Broadcasting Corporation (SABC) are appointed by the President on the advice of the National Assembly in a manner which ensures transparency, openness and public participation in the nomination process, after publication of a shortlist of candidates. Viewed collectively, the law requires members of the Board to have suitable qualifications, expertise and experience in various

broadcasting areas, to be committed to fairness, freedom of expression, the objects of the SABC, accountability, and to represent a broad cross-section of the population. (40) Individually, Board members must be citizens and permanent residents of South Africa, not be determined by a court to be mentally ill, and not have been convicted of a serious crime, a crime of dishonesty or an offence under the Act. (41) The appointing body has the power to remove a Board member but only on account of misconduct or inability to perform his or her duties, after due inquiry and upon recommendation of the Board. (42) The Act also sets out strict conflict of interest rules and, if a conflict of interest issue arises at any point, the Board member involved must leave the proceedings and let the remaining members determine the appropriate course of action. (43)

Other Issues Affecting Independence

The Nigerian Television Authority

The independence of the NTA is also undermined in the areas of editorial and operational matters. The general duties of the NTA, set out in sections 6(1) and (2) of the NTA Act, include providing in the interest of Nigeria and as a public service meant for general reception, independent and impartial television broadcasting service, which should in its totality simultaneously reflect such issues as the unity of the Nigerian federation, culture, characteristics and the affairs of the different federating units in the country.

In practice, however, the NTA has failed to fulfill this obligation and is generally seen as a federal government mouthpiece, providing uncritical support for the actions, statements and policies of persons exercising political authority within the Federal Government. In addition, it has always demonstrated a readiness to attack anyone who is critical of the government or viewed by the government as an opponent.

Certain provisions of the NTA Act were creatively exploited by successive governments, especially the military, to ensure that the NTA remained firmly under government control. These provisions include those of sections 10, 11, 12(3) and (4), which deal with broadcasting of matters, the duty to broadcast government announcements, and the approving authority for the broadcast of special programmes and the placement of commercials. The provisions of these sections make it obligatory for the NTA to defer to instructions given to it by government functionaries with regards to the broadcasts of programmes on its stations. However, this has regularly abused by the government functionaries to such an extent that the NTA is seen as the mouthpiece of the government, since it more or less only broadcasts government viewpoints as it is instructed by these government functionaries ostensibly in accordance with the provisions of its enabling law. Further control over the NTA is provided by section 13 of the Act, which empowers the Minister of Information to give directives of either a general or specific nature to the Authority and obliges the Authority to comply with such directives. In addition, it is the National Council of Ministers rather than NTA's governing board which has the power to make regulations for the Authority under the Act.

The Federal Radio Corporation of Nigeria

Several provisions in the FRCN Act enhance the government's control over its functions. For example, sections 9 (a) and (b) require the corporation to broadcast, as desirable in the public interest, the speeches of members of both the Armed Forces Ruling Council (AFRC) (44) and the National Council of Ministers. Such speeches may include statements of fact, explanations of government actions or policies or matters of any other kind (including religious services or ceremonies relating to or representing the main streams of religious thought or belief in Nigeria). Furthermore, sections 10(1) and (2) require the FRCN to broadcast any government programme upon the request of a public officer authorised to do so by the President, at its own expense. Sections 11(3) and (4) grant the Minister the power to determine how special programmes meant either specifically for schools or for general reception should be broadcast.

The Federal Radio Corporation of Nigeria (Amendment) Decree No.14 of 1991 enhanced the powers of the Minister to exercise control over the operational conduct of the corporation. This amendment stipulates that the Minister may give the FRCN directives not only of a general character but also relating to particular matters regarding the exercise by the Corporation of its functions, and that the Corporation must comply with such directives. This amendment repealed a portion of the old section 14 which specifically provided that the Minister could not give the corporation directives on particular, individual, or specified cases or incidents. In other words, the government extended the Minister's powers to directives on particular matters. This amendment, particularly when taken in conjunction with the provisions regarding the regulation of the Corporation's operations and those of section 34, gives the National Council of Ministers and not the Corporation's governing board the power to make general regulations, and therefore constitutes a serious threat to the operational independence of the FRCN.

Voice of Nigeria

Section 7 of the VON Decree gives the Minister the power to issue directives of a general character relating to the exercise by the Corporation of its functions under the Decree, and the VON is duty bound to comply with such directives. Similarly, although the VON is empowered by the Decree to make regulations for giving effect to its provisions, this power is circumscribed by the provisions of section 28 of the Decree, which stipulates that such regulations must be made with the approval of the Minister. Thus, even staff regulations can only be made with the prior approval of the Minister. In addition, under section 9 of its Decree, the VON is obliged, whenever a duly authorised public officer so requests, to broadcast a government programme or announcement at its own expense.

Funding

The Nigerian Television Authority

Another area where the independence of publicly funded broadcasters may be undermined is funding, particularly where, as in Nigeria, these bodies have no security of funding and rely

almost entirely on essentially discretionary grants or subsidies from the government. For example, under sections 23 and 24 of the NTA Act, the NTA has three main sources of funding, which are grants from the government, loans, and such other sums as the Authority may receive or collect from other sources either in the execution of its functions or in respect of any property vested in it or otherwise howsoever. The moneys generated from these sources are to be paid into a Fund, the proceeds of which will then be used to run the operations of the NTA. The NTA cannot even borrow money without the approval of the National Council of Ministers where the amount outstanding on any existing loan exceeds 500,000 naira (about \$5,000).

The legislation originally envisaged a situation where most of the funds meant for running the operations and activities of the NTA would come from government grants and budgetary allocations in line with its supposed status as a publicly funded broadcaster. In fact, however, this source of funding has proved to be completely inadequate, hence the NTA has for many years operated like a commercial station. Particularly since the deregulation of the broadcasting industry, the government has attempted to commercialise the station and to encourage it to compete with the newly licensed private commercial broadcasting stations. This raises questions about the NTA's ability to function as a true public service broadcaster.

The Federal Radio Corporation of Nigeria

Section 22 of the FRCN Act provides that the Corporation should be financed through a fund, which is to consist of such sums as may be provided to it by the government of the Federation for the running expenses of the Corporation and all other assets from time to time accruing to the Corporation, such sums as may be lent to the FRCN and such other sums as maybe collected or received from other sources either in the execution of its functions or in respect of any property it may have. This provision, read in conjunction with those of section 11 (1), (5), (6) and (7), clearly allows the corporation to engage in commercial activities whilst also receiving government funding. All such commercial activities undertaken by the corporation are, in accordance with the provision of section 11(8), exempted from the payment of entertainment levies or other charges as may be payable to any state government. The FRCN is also, pursuant to sections 22 and 24 (1) of its Act, allowed to borrow funds to finance its operations. Thus, although it appears from the law that the FRCN has a variety of funding sources, the practical reality is that intense regulation of its operations severely limits its ability to operate at a commercial level. It thus remains heavily reliant on government funding.

Voice of Nigeria

Section 19 of the VON Decree provides for the establishment and maintenance of a Fund which shall consist of such sums as may be provided by the Federal Government, fees for services rendered and other sums accruing to the VON by way of gifts, testamentary disposition and endowments or contributions from philanthropic persons or organisations or from other sources. In practice, however, the VON has over the years depended largely on government funding since its commercial operations, according to the provisions of sections 11(2) and (3) of the Decree, are limited to the activities of six United Nations agencies.

Furthermore, section 20 of the Decree allows the Corporation to borrow money only after either obtaining the consent of the Minister or in accordance with any general authorisation he or she may have issued.

In practice, there are three main sources of funding for public broadcasters around the world: direct government grants, a direct public service broadcasting fee levied on the general public and commercial activities. Although in the past many public broadcasters could rely entirely on direct grants or broadcasting fees, this is no longer deemed possible in many countries and increasingly public broadcasters are allowed to raise money through commercial activities, particularly through broadcasting. This, however, has two key drawbacks. First, it may lead to unfair competition with the private sector, with the public broadcaster using state subsidies to effectively out-compete private broadcasters. Second, if too large a proportion of the public broadcaster's funds come from commercial activities, it will be unable to effectively fulfil its public sector mandate due to an excessive focus on programming which is cheap to produce and attracts large audiences. As a result, in many countries, public broadcasters are allowed to carry advertisements, but this power is restricted. For example, in Canada, public broadcasters may not raise more than 25 per cent of their funds from advertisements.

Conclusions and Recommendations

- The fundamental principle governing public service broadcasting is that it should be completely free from political interference and pressures in terms of editorial independence, method of funding, appointment and removal processes. Accordingly, Decree No. 38 of 1992 should be amended to ensure that the National Broadcasting Commission is fully independent of government. All members of the Commission should be appointed by the National Assembly in open public hearings, and should be accountable to the National Assembly.
- The process of appointing representatives of the different interests groups that constitute the NBC should include a requirement for consultation to be held with the various stakeholders in each of the named sub-sectors of the Nigerian Society, when picking their representatives that make up the commission.
- The overbearing presence of government officials in the membership of the NBC should be curtailed by removing representation for the State Security Service (SSS) and the Federal Ministry of Information from the commission's membership.
- The issuing and revocation of licenses by the NBC should be transparent, non-discriminatory, should include public participation and should encourage diversity (for example, through community broadcasting).
- Members and Staff of the NBC should have security of tenure and clearly defined conditions of service.
- The NBC should be the sole issuer and revoker of broadcast licenses, through a process that should be subject to judicial review. Consequently, the proviso to Section 39(2) of the 1999 Constitution should be amended to reflect this principle of empowering the NBC to so act.
- Broadcasting licenses should be issued along the lines of public, commercial and community broadcasting. To level the playing field as between the public broadcaster

and the commercial broadcaster, public broadcasters should not be allowed to take on commercial advertisement and should not be allowed to compete with private commercial broadcasting stations for advertisement.

- The NBC should promote broadcasting which satisfies the social, cultural and religious interests of the public. Consequently, the ban on religious organisations and political groups owning broadcast stations should be lifted, by repealing the relevant provision of the existing legislation.
- The government should support the broadcasting sector by ensuring that there is adequate public infrastructure (e.g. steady electricity supply, affordable and reliable telecommunications services) and institute appropriate economic policy incentives.
- The provision contained in paragraph 1(b) of the Fourth Schedule to the 1999 Constitution, which vests the local government authorities with the power to collect licence fees for television and radio sets should be repealed. In its place, the NBC should, in conjunction with the broadcasting stations, collect these licence fees, which should be shared equitably between the NBC and the broadcast operators. This will serve as a major source of revenue for developing the industry generally and enhancing the operations and financial well being of the industry's operators as is the practice in other countries.
- Media monopolies, whether state or private, should be discouraged by establishing clear limits on media ownership, including cross-ownership between the broadcast and print sectors.
- The NBC should be made one of the Federal Executive Bodies recognised in both Section 153 and the Third Schedule to the 1999 Constitution. This is owing to the critical role it plays as an essential tool in aiding the development of the country's democracy through ensuring the effective development and regulation of the nation's airwaves, which remains the most critical source of information for the generality of the citizenry. Making it one of the Federal Executive Bodies in the Constitution would guarantee to it adequate funding for its operations.
- The present mandatory requirement that broadcast operators should pay 2.5 per cent of their annual turnover to the NBC should be abolished. Such a surcharge should rather be on their profit, if and when the industry does become profitable.
- The NBC should at all times act impartially in its regulation of both government owned and privately owned broadcast stations, especially when resolving disputes.
- The present broadcast licensing fee structure should be reviewed with a view to accommodating potential applicants who may require licences to operate community broadcasting stations.
- The process of sanctioning broadcast operators by the industry's regulator should be objective and have clearly defined conditions that are ascertainable by both the industry's operators and members of the public. Consequently, the present system should be reviewed along the lines of allowing broadcast operators to have advance knowledge of what actions or omissions constitute offences and what sanctions they attract.
- The present requirement that the broadcast operator be responsible for the cost of holding a public inquiry into allegations of breaching the broadcasting code should be abolished. Rather the broadcast operator should only be obliged to obey and discharge any penalty imposed on it, if at the end of the said public hearing it is found to have erred.
- The provisions of the broadcasting code should be made more explicit in certain areas, where its intentions are not clear. In addition, provisions of the Code which

have a tendency to endorse the application of some obnoxious legislation like the Official Secrets Act and the law of Sedition, should be removed.

- All publicly funded broadcasters should be established and managed in such a way that guarantees their independence from political or other partisan influences.
- The final authority in the decision making processes of all publicly funded broadcasting stations should be the board of directors, which should be independent and free from political interference both in the appointment and removal of members as well as in the tenure of office and conditions of service.
- Editorial independence of publicly funded broadcasting organisations should be clearly guaranteed in law. In furtherance of this objective, there should at all times be a clear separation of responsibilities between the boards of these organisations and the editors/line managers, as it relates to the operations and daily management of these organisations.
- The funding mechanism for publicly funded broadcasting organisations should be such as would be secure and free them from all manner of political interference and the funding must be such as is adequate to enable them effectively discharge their public service obligations.
- There should be statutory time limits within which appointments to the governing boards of publicly funded broadcasting organisations are to be made, and there should be no statutory protection for irregular board appointments made in violation of the established statutory procedure for such appointments, which should in the main provide adequate guarantees for transparency and independence.
- Government functionaries and political authorities should be barred from interfering in the daily operations of publicly funded broadcasting organisations.
- Existing legislation establishing publicly funded broadcasting stations should be repealed and replaced with general principles regulating the establishment, management and operations of such stations. Such principles should be included in the legal regime governing broadcasting generally in Nigeria.

Part Two

Telecommunications

Introduction

Telecommunication services were introduced in Nigeria by the British Colonial government in 1886, to facilitate colonial administration in the country. As a result, while internal telecommunication services were poorly developed, there was extensive external connection by public telegraph services linking Lagos by sub-marine cable to other British colonial territories in West Africa, such as Ghana, Sierra Leone, and The Gambia, and then to Britain.

At independence in 1960 there were only 18,724 telephone lines for an estimated population of about 40 million – a teledensity ratio of just 0.4 telephone for every 1,000 inhabitants. The system comprised 121 telephone exchanges, of which 116 – that is all but five – were manual exchanges. The pace of development since independence has remained slow. Twenty-five years later, in 1985, the total installed capacity was 200,000 telephone lines, all with analogue exchanges, giving a teledensity of one telephone line for every 440 inhabitants, still far short of the minimum international standards.

Today, the total installed capacity is 700,000 telephone lines, of which only 400,000 lines are connected, giving Nigeria a teledensity ratio of 1 telephone line to 300 inhabitants, far below the International Telecommunications Union (ITU) recommended minimum teledensity of 1 to 100. The only cellular mobile network operating in Nigeria has a total capacity of only 22,500 lines. Official estimates (45) say that there are over six million prospective subscribers on the waiting list of those who have applied for telecommunication services.

Efforts to regulate the telecommunications industry began in 1916 with the Telegraphs Ordinance of that year, which provided for regulation of the construction and working of telegraph lines for the purpose of telegraph communication. This law went through a series of amendments between 1916 and 1969, and was finally abolished in 1990 during the review of all Federal Laws, resulting in the publication of the Laws of the Federation of Nigeria 1990. (46) At present, the telecommunications sector is regulated through a range of laws, civil and criminal, including the Wireless Telegraphy Act, the Post and Telecommunications Proceedings Act, Cap 362, Laws of the Federation of Nigeria, 1990, the Telecommunications and Postal Offences Decree No. 21 of 1995, as amended by Decree No. 19 of 1997, and the Nigerian Communications Commission Decree No. 75 of 1992, as amended by Decree No. 30 of 1998.

The primary focus of most of these laws is to create offences relating to telecommunications and to outline procedures for the punishment of those offences. Some of the laws were made during the period of military rule and the military influence is still very evident in them. Unfortunately, there has been no effort to review them to bring them into conformity with the present democratic environment as they are not listed among the laws modified under the provisions of the Tribunals (Certain Consequential Amendments, etc.) Decree No. 62 of

1999, or those repealed under the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 63 of 1999. For instance, Decree No. 21 of 1995, as amended, empowers the Head of State to constitute special tribunals to try cases under the decree as well as offences relating to postal and telecommunication matters in any other law. The same Decree bars any judicial review of the proceedings of these tribunals, a signature characteristic of penal legislation under the military.

Regulation of the telecommunications industry, like regulation of broadcasting and governance of publicly funded broadcasters, raises important freedom of expression issues. Although historically the telecommunications industry was concerned with technical matters, rather than content, this is now changing with convergence and the fact that increasingly content is being transported through telecommunication lines. This is particularly evident in relation to the Internet, which in most countries, including Nigeria, still travels down the telephone lines.

In addition, the technical capacity of the telecommunications industry, particularly where this is far below demand, is a freedom of expression issue. The right to express oneself is theoretical if access to the means of communication is unduly limited. The telephone, for example, is a hugely important means of communication in the modern world and yet the vast majority of Nigerians still do not have access to a telephone.

The importance of an efficient telecommunications industry was recognised by the Supreme Court of Zimbabwe in a case in which the public monopoly on the provision of telephone services, including by cable, was subjected to a constitutional challenge. The Court noted the dire performance of the public company which had a monopoly over telephone services, and its total inability to satisfy the public need in this area. On that basis, it held that the public monopoly breached the constitutional guarantee of freedom of expression by denying citizens adequate access to the means of communication. (47) The same principle applies to other telecommunications services.

Nigerian Communications Commission

The Nigerian Communications Commission (NCC) is the statutory regulator of the telecommunications industry. The NCC was established by the Nigerian Communications Commission Decree No. 75 of 1992, which was subsequently amended by the Nigerian Communications Commission (Amendment) Decree No. 30 of 1998. The Commission became operational in July 1993.

The functions of the NCC include issuing licences to telecommunications operators, assigning frequencies, facilitating private sector participation and investment in the telecommunications sector, establishing and enforcing technical and operational standards and practices, ensuring that the interest of consumers are protected through enforcing service standards and pricing regulations, arbitrating between operators, carriers and consumers, and generally regulating all telecommunications licensees and service providers. It is also responsible for designing and maintaining a national numbering plan. Specifically, under section 4 of Decree 75 of 1992, the functions of the Commission include:

- responsibility for economic and technical regulation of the privatised sector of the telecommunications industry;
- ensuring the safety and quality of telecommunications services by determining technical standards and regulating technical execution and performance;
- managing Nigeria's input into the setting of international technical standards for telecommunications within the provisions of the Decree;
- promoting competition in the telecommunications industry;
- protecting suppliers of telecommunications services or facilities under the Decree from unfair practices of other telecommunications suppliers which are damaging to competition;
- facilitating the entry into the market for such services and facilities by persons wishing to supply such services and facilities;
- undertaking studies into space technology and managing the utilisation of Satellite facilities for the benefit of Nigerian operators and users;
- protecting licensees from misuse of market power by other carriers;
- arbitrating in disputes between licensees and other participants in the telecommunications industry;
- receiving and investigating complaints from licensees, carriers, consumers and other persons in the telecommunications industry;
- responsibility for protecting public interest by ensuring that the provisions of the Decree are carried out with due regard to the public interest;
- protecting consumers from unfair practices of Licensees and other persons in the supply of telecommunications services and facilities;
- developing performance standards and indices relating to the quality of telephone and other telecommunications services and facilities supplied to consumers having regard to the best international performance indicators and Nigerian conditions;
- monitoring and reporting to the Minister of Communications on charges paid by consumers, the performance of Licensees and other persons in meeting the standards developed under the Decree;
- issuing telecommunications licences in accordance with the provisions of the Decree;
- monitoring the conduct of holders of the licences and enforcing the conditions included in the licences.

Since the establishment of the NCC in July 1993, it has issued licences to a number of companies for the following telecommunications undertakings;

- installation and operation of public switched telephony;
- installation of terminal or other equipment;
- provision and operation of public payphones;
- provision and operation of private network links employing cable, radio communication, or satellite within Nigeria;
- provision and operation of public mobile communications;
- provision and operation of community telephones;
- provision and operation of value-added network services;
- repair and maintenance of telecommunications facilities; and
- cabling.

Independence of the Commission

Like the National Broadcasting Commission, the NCC suffers from a clear lack of autonomy and independence. As noted above, efficient regulation of the telecommunications sector is an aspect of the right to freedom of expression. Although the need for a telecommunications regulator to be independent of government was not previously considered as imperative as in the case of a broadcast regulator or a publicly funded broadcaster, it is now clear that excessive government control is likely to lead to interference and undermine efficiency. In addition, with content increasingly being subject to telecommunications regulation, particularly in areas such as the Internet, the importance of independence is growing.

The lack of independence of the NCC is apparent in a number of areas. It is established like a department of the Ministry of Communications and is directly responsible to the Minister of Communications. In addition, the government controls the process of appointment of the Chairman, the Executive Vice Chairman, and members of the Commission, and exercises significant influence over their continued stay in office.

The Commission is made up of a chairman, an executive vice chairman (who is the chief executive officer) and eight other full-time or part-time commissioners who are experienced in any of the following areas: commerce, consumer affairs, financial matters, industry, law, management, public administration, technology, and telecommunications engineering. These individuals are all appointed by the President, on the recommendation of the Minister of Communications. In addition, the President may "at his discretion" designate some of the commissioners as full time or part time commissioners. There are no guiding principles set out to confine the exercise of this discretion by the President. He is therefore at liberty to decide which members of the NCC should be full-time commissioners and what members should be part time.

Under section 9(4) of the NCC Decree, the President "may at any time" remove any member of the Commission from office before the expiration of their term of office "if he is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office." The only limitation to this broad discretionary power is the proviso to the sub-section which states that "not more than two-thirds of the members of the Commission shall be removed at any one time." As with the NBC, the expression "public interest" provides very little clarity or direction to limit potential abuse of these powers for political or other unacceptable reasons. In effect, then, the power of the President to remove the Chairman and members of the Commission before the expiration of their terms is excessively discretionary and may easily be applied in arbitrary or politically motivated ways. This clearly creates insecurity for members in a manner that makes them subject to manipulative practices.

Section 26 of the NCC Decree authorises the Commission to make regulations generally for the purpose of giving effect to the provisions of the decree, but stipulates that the regulations can only be made with the approval of the Minister of Communications.

Licensing

Decree No. 75 of 1992 requires any application for licences to provide and operate telecommunication services or any of the "value added network services" to be addressed to the NCC. Thus, all existing or prospective telecommunications service operators are required to apply to the NCC for licences on the relevant NCC application forms. In considering an application for a licence, the Commission may request the applicant to produce any evidence or information showing its capacity to operate the service to enable the Commission to take a decision on the application. Only Nigerian citizens, including bodies registered as corporate bodies under the Companies and Allied Matters Act, may be granted a license to operate a telecommunication service.

Although the NCC claims to have instituted the necessary licensing and regulatory framework for the provision of telecommunications services, including procedures for the award of licences, these are neither published nor publicly available. The Commission may grant a licence to an applicant if it is satisfied from all the evidence and information supplied to it that the applicant is "suitable" to operate the service and the Commission has an "absolute discretion" under section 12(2) of the Decree to "defer consideration of any application for as long as it deems fit" or to grant or refuse the licence.

The NCC also has broad discretionary powers to impose any kind of limitation on any licence granted. The Commission issues licences for periods ranging from five years to 15 years. Section 12(3) of the Decree provides that "the licence granted under subsection (1) of this section shall be subject to such terms, provisions and limitations *as the Commission may deem fit in each circumstance*". Section 15(e) of the Decree stipulates that in the discharge of its functions in relation to the issuance of licences under the decree, the Commission shall have the power to "approve guidelines for *each* licensee for the purpose of keeping of accounts and a cost allocation formula."

The NCC also has broad discretionary powers to revoke licences. Section 14(1) of the Decree empowers the Commission to revoke any licence "if it is satisfied that a condition of the licence has been breached or the licensee has ceased to be eligible or *it is in the interest of the public so to do.*"

Although the NCC Decree grants the NCC a number of extremely broad and discretionary powers, it fails to provide for the review of the Commission's decisions either by a higher administrative body or a judicial authority. There is therefore no forum for aggrieved persons to challenge or appeal against the Commission's decisions.

Internet Services

Pursuant to its powers under its enabling decree, the NCC requires all Internet Service Providers (ISPs) and Web site operators to obtain licences. The application form from the NCC costs N1,000 (about \$10) and there are a number of other costs, such as a non-refundable administrative fee, which is payable on submission of the application and is usually five percent of the licence fee. In the event that the licence is granted, the licence fee of N338,000 (\$3,380) and Value Added Tax (VAT), which is another five percent of the licence fee, become payable.

The regulation of Internet services are covered as an adjunct by the reference in the NCC Decree to value-added network services, which has been deemed to cover Internet and voice-mail services. No separate consideration appears to have been given to the Internet and related services, despite the fact that they clearly differ enormously from other telecommunications services. In particular, the NCC does not appear to have any codified or published regulations or guidelines regarding the Internet, for instance regarding issues of content, the liability of ISPs for the content of their subscribers or even on when and how the Commission can intervene in the fixing of tariffs and rates by service providers for a range of Internet services. The result has been that service providers, potential investors and users do not know in advance what practices are prohibited and what the penalties for breaches of these prohibitions are. In addition, the NCC has not separated out in licensing terms those wishing to simply create Web sites, now a common practice for end Internet users, from those wishing to operate commercially as Internet Service Providers. This means that individuals who wish to post pictures of their family on the Internet for viewing by relatives abroad are subject to the same licensing requirements as major commercial ISPs.

The lack of clear rules and transparency regarding the Internet has undermined consistency in the NCC's operations and created uncertainty and confusion in the industry.

Penal Offences and Sanctions

Various laws create offences relating to telecommunications. While some of the offences created are clearly legitimate, the rationale for some of the other offences is not so obvious. For instance, the Telecommunications and Postal Offences Decree No. 21 of 1995, as amended by Decree No. 19 of 1997, makes it an offence for any person to use or buy "any telephone service or any other telecommunications service in or from a telephone call office not approved by the approved agency." Since this offence was created at a time when the government abolished the use of business centres, which previously provided such services, the only rationale for the creation of this offence seems to be the need to maintain NITEL's monopoly in the provision of this service.

The NCC Decree also makes it an offence for any person, without lawful authority or a licence from an approved agency (defined as the Nigerian Telecommunications Commission or any other agency or body approved by the Federal Government to issue telecommunications licences), to sell, offer for sale or otherwise deal in any telecommunications equipment. This offence is punishable, in the case of an individual, with a fine of not less than 100,000 naira (\$1,000) or imprisonment for a term not exceeding 12 months or to both fine and imprisonment, and in the case of a corporate body, to a fine of not less than 500,000 naira (\$5,000). In addition, the NCC Decree makes it an offence for any person "who, being the landlord, tenant, occupier or is concerned with the management of any premises, causes or knowingly permits the premises to be used for any purpose which constitutes an offence" under the decree and makes such a person liable, on conviction, to a fine of not less than 100,000 naira (\$1,000).

Of particular interest is the fact that it is an offence for any person without a license to operate a land line, a fixed or a mobile telephone call office for the purpose of selling or offering for sale any telephone service or any other telecommunications service, to operate a pay phone service, to sell, offer for sale or engage in any other commercial activity connected

with telecommunications. This provision is targeted primarily at businesses offering facilities to members of the public to make telephone calls as well as to send and receive fax messages. Such businesses emerged several years ago in reaction to the growing public demand for public phone facilities, which NITEL was clearly unable to meet. This provision is clearly intended to maintain NITEL's monopoly in the provision of this service. Although the NCC has subsequently licensed nine pay phone service providers who have installed about 600 phones in different parts of the country, this is still grossly inadequate. As noted above, regulations which lead to seriously inadequate telecommunications services themselves represent a breach of the guarantee of freedom of expression. (48)

As noted above, the NCC Decree gives the Head of State the power to constitute tribunals, known as Telecommunications and Postal Offences Tribunals, to try the offences specified in the decree as well as all other telecommunications and postal offences under any enactment, including the Wireless Telegraphy Act. The Decree also precludes judicial review by the courts over any matter or proceeding before these tribunals, regardless of any provision to the contrary contained in any enactment, including the Constitution. In addition, the Postal and Telecommunications Proceedings Act empowers an investigation officer in the Ministry of Communications to conduct proceedings in respect of matters relating to posts and telecommunications under the Criminal Code or any other enactment.

A person may be tried and convicted of any offence under the NCC Decree even if he or she is out of Nigeria and the Decree provides that in such cases, orders of the tribunal trial "shall, where expedient, be executed on the person convicted, but the commencement of a sentence of imprisonment shall be deferred until his return to Nigeria."

Monopolistic Practices

NITEL is the dominant local telephone carrier in Nigeria and, although it operates as a public limited company, it is wholly owned by the Federal Government. There are number of private telecommunication service providers presently in operation which compete for local telephone services, but NITEL remains the National Carrier and basic service provider for both domestic and international services. As noted above, this has had serious negative consequences in terms of inefficiency, leading to excessively high costs in the telecommunications sector and massive under-supply of services and inadequate general access to telecommunication services.

In theory, NITEL provides a wide range of services, including telephony, telex, cellular mobile telephony, facsimile, radio/television carrier, Gentex (extension of telex terminals to rural areas), voice cast/press receipt, private leased circuit, alternate leased circuit, maritime mobile service (including INMARSAT, Ship-Shore, etc.) and data communication. Other services include high speed data transmission, telegraphy, public payphones, valued added services (voice mail, paging, etc), business network services, computer networking and telecommunications consultancy services. In practice, however, many of these services are not available and where they are, they are plagued by inefficiency and prohibitive costs of access.

There is one mobile cellular telephony network provided by the Nigeria Mobile Telecommunications Limited (M-tel), which is owned by the Federal Government. The

cellular mobile network covers three areas of the country with a total capacity of 22,500 lines and all are fully loaded. There is only one Mobile Switching Center (MSC) in each area. This network is however grossly inadequate to serve the country with its large population and the heavy demand for telecommunication services, including mobile telephones.

Despite the inefficiency of the telecommunication services provided by NITEL, it has recently moved into the Internet market by establishing an Internet gateway and has started to provide Internet services. The NITEL Internet gateway was established with a United Nations Development Programme (UNDP) \$1million project grant in a project called the Internet Initiative for Africa (IIA) under which NITEL will establish an Internet backbone with an initial capacity of 5,500 ports and with a 2 MB/s digital transmission link to Global One in the United States. Lagos will be the main point of presence (POP), with 3,000 ports. NITEL has also established a POP each in Abuja (with 1,000 ports), Kaduna (500 ports), Bauchi (500 ports), and Enugu (500 ports). The other ISPs, which are privately owned, depend on NITEL's telecommunications facilities to operate and provide Internet services. Since NITEL itself became an Internet Service Provider, it has sought to undermine the private ISPs by charging them exorbitant fees for its telephone access services.

Frequency Management

The new government of President Olusegun Obasanjo proposes that the telecommunications industry should be managed through a structure consisting of the government, the Ministry of Communications, the National Frequency Management Council, the NCC, the national carriers and others. Under this structure, the National Frequency Management Council will be responsible for the planning, regulation and monitoring of the radio frequency spectrum in the country. Specifically the functions of the NFMC will include:

- enforcing rules and regulations for the effective utilisation of the frequency spectrum on the basis of national priorities;
- identifying the spectrum requirements to satisfy the needs of the country;
- producing a National Frequency Plan;
- assigning bulk frequencies to regulatory bodies and relevant government agencies on the basis of the Plan;
- processing requests and co-ordinating them with other existing frequency assignments nationally and with the administration in other countries;
- keeping a computerised and up-to-date database of all assigned frequencies in the country;
- monitoring and detecting any operational or technical irregularities in the use of the spectrum;
- taking corrective action and setting penalties for unauthorised users and for violations of regulations;
- promoting and safeguarding national interests, safety and security relating to the use of the radio frequency spectrum;
- publishing an up-to-date national table of frequency allocations and radio regulations;
- promoting research and investigation into radio propagation problems with a view to achieving interference-free operation of radio systems; and
- controlling cases of harmful interference and radiation.

The activities of the Council, like the NCC, will have important implications for freedom of expression in Nigeria. Despite this, it is proposed to establish it as part of the Ministry of Communications, with the Minister of Communications as its chairman. There is thus no question but that the Council will be part of government, rather than independent from it. Other members of the council will include a representative each of the Ministry of Communications, the NCC, the NBC, security agencies, the Ministry of Aviation, the Ministry of Transport, as well as a representative of the licensed operators and "such other bodies as may be determined from time to time." It is envisaged that the Council will liaise with the NCC and the NBC in the assignment of frequencies.

Conclusions and Recommendations

- The provision of the Telecommunications and Postal Offences Decree No 21 of 1995 and the Telecommunications and Postal Offences (Amendment) Decree No 19 of 1997 should be substantially amended to bring them into conformity with Nigeria's present democratic status, by dispensing with the need for special Tribunals and recognizing the right of judicial review and general adjudication by the courts.
- The Nigerian Communications Commission should be granted full independence and autonomy, whether in the appointment or removal of members of the Commission, their tenure of office, conditions of services and the general regulation of both the affairs of the Commission and of the industry generally.
- The wide discretionary powers vested in the NCC with regard to the grant or refusal of licences should be subject to judicial review.
- Internet services should not just be treated as an adjunct of telecommunication services, as is the case presently. Rather a well thought out legal framework, which takes into account issues of Freedom of Expression should be developed for regulating the industry.
- The provisions of the Telecommunications and Postal Offences Decree No. 21 of 1995, the Telecommunications and Postal Offences (Amendment) Decree No. 19 of 1997 and the NCC Decree, which seek to create offences that attempt to legitimise NITEL's monopoly of the telecommunications industry, should be abolished immediately. In addition, there is a need to repeal the provision of the Postal and Telecommunications Proceedings Act, which vests an investigator in the Ministry of Communications with the power to conduct proceedings in cases involving post and telecommunication offences under the Criminal Code or any other enactment.
- There is the urgent need for the government to create the enabling environment for the licensing of a second national carrier to compete with NITEL and improve both the availability and efficiency of telecommunication services.
- The National Frequency Management Council, being proposed under the New National Telecommunications Policy, should be structured in such a way as to ensure its autonomy and independence from government or political interference.

ENDNOTES

1. This was later transformed into the Nigerian Broadcasting System (NBS) in 1952, using the RCA71/4KV short-wave Frequency Normandy Beachhead Mobile Transmitter.

2. See section 24 of the Constitution of the Federation of Nigeria, 1960 and section 25 of the Constitution of the Federation, 1963.

3. In addition to the general protection for the right to freedom of expression, section 36 of the 1979 Constitution provided in subsection 2 that "every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions", and added a caveat thus: "Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever." These provisions are replicated in section 39(2) of the 1999 Constitution.

4. See Cap. 233 of the 1948 Revised Edition of the Laws of Nigeria.

5. Despite the fact that foreign investors are now allowed to participate in the ownership, establishment and operation of broadcasting stations, one of the conditions for grant of a broadcasting licence is that Nigerian citizens must hold a majority of the shares in the company applying for the licence. In addition, the licensing procedure outlined by the NBC retains the requirement that an applicant for a broadcast licence should be able to demonstrate to the satisfaction of the Commission that he is not applying on behalf of any foreign interest.

6. See Section 2(1)(f) of the National Broadcasting Commission Decree No. 38 of 1992.

7. See Section 2(1)(n) of Decree No. 38 of 1992.

8. See *The Legal Practitioners Disciplinary Committee v. Fawehinmi* (1985) 2 NWLR (Part 7) 300.

9. The Independent Broadcasting Authority Act, No. 153 of 1993. See in particular, s. 3(3).

10. *Athokorale and Ors. v. Attorney-General*, 5 May 1997, Supreme Court, S.D. No. 1/97-15/97.

11. Act No. 153 of 1993, s. 5(b)-(d).

12. Act No. 153 of 1993, s. 4.

13. Act No. 153 of 1993, s. 8.

14. These are available on the Commission's website at <http://www.nbc-ng.org>

15. Act No. 153 of 1993, s. 41.

16. See the licensing procedure on the NBC's website: <http://www.nbc-ng.org>

17. The Federal Government announced on November 10 that it had appointed members of the governing body for the Commission, along with the appointment of directors for other Federal Government "parastatals". The process of appointment was not open and it is, therefore, not certain if the requirements of the law, such as the stipulation that the members should represent various interests, including law, business, culture, education, social science, broadcasting, public affairs and engineering, was taken into account in the process of appointment. However, those appointed to the Commission on November 10 are Chief Obong O.R. Akpan, as chairman, while the members are Hajia Aishatu Modibbo, Hajiya Lebu Dodo, Mrs. Adenrele Ogunsanya, Alhaji Kolawole Badmus, Dr. John Apeh, Mrs. Grace Alabi, Umar Usman Lamido, Mrs. Pamela Ukaku, Prince Godwin M. Atibile, and Honourable Benjamin Okoko.

18. Under Decree No. 38 of 1992, the NBC's licensing and regulatory authority only covered private radio, television and satellite stations. Stations owned and operated by the Federal, State and Local Governments were brought within the NBC authority by Decree No. 55 of 1999.

19. *Informationsverein Lentia and Others v. Austria*, Judgment of 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17202/90, 17 EHRR 93, para. 38.

20. E.T.S. 132, in force 1 May 1993, Article 10(1).

21. See *State v. Arthur Nwankwo* (1985) 6 NCLR 228.

22. See the European Court of Human Rights case, *Goodwin v. United Kingdom*, 27 March 1996, 22 EHRR 123.

23. See Para. 9.3.3.1 of The National Broadcasting Code, 1996.

24. See Para. 9.5.2 of the Code.

25. See Cap 133, Laws of the Federation of Nigeria, 1958.

26. Articles 9-13.

27. Clause 7.

28. For the former, see Res. 428(1970), Rec. 748(1975) and Rec. 1147(1991) and for the latter see Res. No. 2 (1st Conference, 1986) and Res. No. 2 (5th Conference, 1997).

29. ARTICLE 19, *Who Rules the Airwaves? Broadcasting in Africa* (London: Article 19, 1995), pp. 133-140.

30. *New Patriotic Party v. Ghana Broadcasting Corp.*, 30 November 1993, Writ No. 1/93, p. 17.

31. *Ibid.*, p. 13.

32. Articles 4-8.

33. Decision 826/1998 [1998] Guir. cost. 3893.

34. Under section 274(1)(a) of the Constitution of the Federal Republic of Nigeria 1979, all existing laws were deemed to be Acts of either the National Assembly or State Houses of Assembly (as applicable), subject to the provisions of the Constitution and such modifications as may be necessary to bring them into conformity with the provisions of the Constitution. Its new name was more formally reflected in Cap 329, Laws of the Federation of Nigeria 1990.

35. Cap 133 Laws of the Federation of Nigeria 1958.

36. Those appointed to the Authority are Mr. Yakubu Hussaini, as Chairman, while the members are Dr. Adamu Zakari, Mr. Charles Idahosa, Princess Isoma Ige, Dr. Udo Orji Okoro, Alhaji Abdul Mashi, Joshua C. M. Mkpapa, J.S. Anga, and J. K. Lewa.

37. The Zonal Boards of the NTA are responsible for the management of the NTA at the level of the six zonal districts into which the station was divided for the purpose of better reception of its programmes.

38. Those appointed to the Corporation are Honourable Y. Alabi, as Chairman, while the members are Mr. Ismaila Adegbiyi, Comrade Obi Ojage, Idris Waziri Serti, Alhaji Bello Bala, Maru Emma Nnacho, Alhaji Sanni Iliya Soba, and Mr. Jerome A. Nongo.

39. Those appointed to the Corporation are Mr. Joe Ebusie, as the Chairman, while the members are Elder Ine, Mr. John Ameh, Evangelist Dotun Okusanya, Baba Gana Nafada, and Salihu Abdulrazaq.

40. Broadcasting Act, No. 4 of 1999, assented to 23 April 1999, Section 13.

41. Section 16.

42. Section 15.

43. Section 17.

44. The Armed Forces Ruling Council was established by Section 8(1) of the Constitution (Suspension and Modification) Decree No. 1 of 1984 as the highest ruling military body for the country following the overthrow of the Second Republic Government of President Shehu Shagari. It was later replaced by the Provisional Ruling Council (PRC) when the General Sani Abacha became Head of State on November 17, 1993.

45. The Executive Vice Chairman of the Nigerian Communications Commission gave this figure at the African Telecommunications Summit (Africa Telecomm Summit 2000) held in Accra, Ghana, from March 21 to 23, 2000.

46. There is no provision formally repealing the Telegraphs Act, although it was omitted from the Laws of the Federation of Nigeria, 1990. The side notes in the Index to the Laws of the Federation indicate that it was omitted pursuant to Statutory Instrument No. 4 of 1990. S.I. 4 of 1990, known as Revised Edition (Authorised Omissions) Order 1990, authorised the Law Revision Committee to omit certain laws, enactments, legislation and subsidiary enactment, including the Telegraphs Act, from the revised Laws of the Federation. However, there continue to be references in various laws thereafter to the Telegraphs Act, as if it remains in existence. For instance, the Voice of Nigeria Corporation Decree No. 15 of 1991, which was promulgated after the revision of the Laws of the Federation, makes a reference in its section 27 to the Telegraphs Act to the effect that nothing in section 4 of the Act "shall apply to the broadcasting services provided by the Corporation...." Section 32 of the Federal Radio Corporation of Nigeria Act, Cap 140, Laws of the Federation of Nigeria, 1990 and section 34 of the Nigerian Television Authority Act, Cap 329, Laws of the Federation of Nigeria, 1990 also contain similar provisions.

47. *Retrofit (Pvt) Ltd v. Posts and Telecommunications Corporation and Anor*, 1995(2) ZLR 422 (SC).

48. See previous footnote.