

MEDIA POLICY

BRIEFINGS

No. 3

SALIENT ISSUES IN NIGERIA'S BROADCASTING LAWS

**N I G E R I A
COMMUNITY RADIO
C O A L I T I O N**



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The strategic journey of MEDIA POLICY BRIEFINGS is progressing. And it remains faithful to its mandate: to deliver up-to-date information and education to stakeholders. Our focus is development of the pluralism of the broadcasting sector, including community radio, in Nigeria.

In this edition, we look into military-era laws and bring to the attention of our readers, those contents which the world now knows as anachronisms, which remain in the books and regulate broadcasting, which hamper pluralism and freedom, and which need urgent reform.

We strongly hope that you will be enriched as you read through.

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The 1999 Constitution of the Federal Republic of Nigeria sets the context of ownership of broadcasting establishments in Nigeria. Section 39(2) of the constitution provides that only “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.” This means that eligibility for ownership is confined to three broad categories: the first and second tiers of government, and private groups.

In giving effect to this constitutional provision, the National Broadcasting Commission (NBC) Act 38 of 1992 (as amended by the NBC Act 55 of 1999) defines these ownership categories as “a body corporate registered under the Companies and Allied Matters Decree 1990” and “the Federal, State or Local Government.” This effectively means this law has knocked out individuals from the private ownership category while adding the third tier of government, the local government, as eligible for ownership.

In addition to private individuals, two other categories are ineligible for ownership. According to Section 10 of the NBC Act, these are religious organizations and political parties.

Concerns have been raised by stakeholders on the ownership systems in these laws. Among these concerns are:

- ❖ The law elaborates the three distinct ownership groups under the government category but not under the private category. And this deviates from international standards. The global practice is to recognize three ownership categories: public, commercial and community.
- ❖ It seems unconvincing and illegitimate to put a blanket ban on ownership by religious organizations in view of the requirement in Section 9(1)(c) of the NBC Act that licenced stations “shall not be used to offend religious sensibilities or promote ethnicity, sectionalism, hatred and disaffection among the people of Nigeria.” A case-by-case consideration of religious organizations for ownership of broadcasting stations has been recommended.



The NBC Act creates a regulatory body, the National Broadcasting Commission. It vests the Commission with various functions such as: advising the federal government on broadcasting policy implementation; receiving, processing and recommending applications to the President; undertaking research and development; setting broadcasting standards; accrediting broadcast training curricula in tertiary institutions; arbitrating in industry conflicts; and ensuring the liberty and protection of the industry with due respect to the law.

The law contains several provisions which effectively remove the independence of the Commission. For example: the Chairman, Director General and other members of the governing board of the Commission are all appointed by the President on the recommendation of the Minister of Information. The State Security Service (SSS) and the Information Ministry each has a representative on the board along with such other interests as law, business, culture, education, social science, broadcasting, public affairs and engineering.

The chairman and members of the commission hold office for three years renewable for one further period of three years, but could be removed from office before tenure completion 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".

As for the Director General, he or she 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 time to time, determine".

The law also says "the Minister may give the Commission directives of a general character relating generally to particular matters with regard to the exercise by the commission of its functions under this Act and it shall be the duty of the Commission to comply with such directives".

The problems with these provisions are numerous and include:

- ❖ the appointment processes lack transparency and could lead to stuffing the commission with members of the ruling political party
- ❖ the inclusion of State Security Services and Information Ministry representatives has the possible effect of intimidating other members and enhancing government dominance of the Commission's decisions.
- ❖ the possibility of removal of members before completion of tenure, under the guise of "public interest"(which is solely defined by government) translates into insecurity of tenure for the Commission's Chairman and members.
- ❖ The power vested in the Minister to give directives to the Commission is too wide and open to abuse, to the extent that it could be used to revoke licences of broadcasters considered to be critical of government.



Crucial issues which affect the management and editorial independence of broadcasters, especially those owned and controlled by government, are to be found in broadcasting laws. Prominent among these laws are the Nigerian Television Authority (NTA) Decree 24 of 1977, the Federal Radio Corporation of Nigeria (FRCN) Decree 8 of 1979 (as amended) and the Voice of Nigeria (VON) Corporation Decree 15 of 1991.

In all the three laws, which establish the three respective broadcasters (NTA, FRCN and VON), similar conditions, apply as follows:

- (a) appointment of governing boards and Directors General are made on the recommendation of the Information Minister . For NTA and FRCN, the confirming authority is the National Council of Ministers while it is the President in the case of VON. There is no provision for transparency, openness and public participation in the nomination/appointment process.
- (b) the Minister of Information is empowered to remove governing body members before they complete their tenure even without reference to the Council of Ministers. This could happen if: (i) a member is absent from two consecutive ordinary meetings and his explanation is not accepted (ii) the authority/corporation is satisfied that the continued presence of a member on the board is not in the national interest or in the interest of the authority/corporation. Here, again, there is indication of lack of security of tenure.
- (c) These broadcasters (particularly NTA and FRCN) are under obligation to give coverage to activities of various categories of government officials, at their (the broadcasters') expenses. This erodes editorial independence.
- (d) The laws also empower the minister of Information to give directives of either a general or specific nature to all these authority/corporations and obliges them to comply.

It is easy to imagine how difficult it is for these organizations to serve the public effectively in the absence of credible/popular appointment processes and security of tenure, in the face of externally imposed editorial content and open-cheque ministerial interference.



Although the law, NBC Act, establishes a regulatory body, the National Broadcasting Commission, it does not vest the Commission with full powers to licence broadcasting stations. The NBC's licencing powers are shared with two other but more powerful bodies: the Ministry of Information and the Presidency. Section 2(1)(b) and (c) of the NBC Act provides that the NBC shall receive, process, consider licence applications and recommend same through the Minister of Information to the President, who gives final approval.

This is a departure from international standard practice. Regulatory bodies carry out the full gamut of the licencing process from the stage of receiving applications to the licence approval stage.

The law (in section 9(1)) lists requirements which a licence applicant must fulfil in the Commission's considerations. These include that the applicant: is a body corporate registered in Nigeria and whose majority shares are owned by Nigerian citizens; should demonstrate he is not applying on behalf of any foreign interest; can comply with the objectives of the national mass communication policy; can give undertaking that the licenced station shall be used to promote national interest, unity, cohesion, etc. But in section 9(3) it curiously says "compliance with the requirements specified in sub-section (1) of this section shall not entitle an applicant to the grant of a licence..." This clearly creates uncertainty and gives room for manipulation in the licencing process.

A licence has two years to begin operation. An unutilized licence is according to the law, revoked after two years. But there have been cases of unutilized licenses that were not revoked after more than two years. And the public has no information on the reason for dormancy of licence as well as inability of the regulator to put the hammer of revocation.

The law provides for a life-span of five years for a licence. Renewal follows for the same length of time. It has been observed that the regulator introduced public hearings when considering renewal applications some years ago.

It is important that public hearing be introduced fully into the licencing process and that this be written into legislation. Public hearing during the initial and renewal processes of licencing should be stipulated in the NBC Act, and not left to the discretion of the regulator.



The various broadcasting laws provide for funding sources for the regulator, NBC, as well as for the three federal publicly funded broadcasters- NTA, FRCN and VON. But they (the laws) are silent on funding sources for other sub-sectors of broadcasting and appear to have left these to the regulatory body.

Common to all four establishments as funding sources are government subsidies (allocations in government's annual budgets), loans and gifts.

But the NBC has a lifeline in an additional source: a proportion of fees and levies charged on the annual income of licenced broadcasting stations. The NBC chose to peg this amount at 2.5 per cent of the annual income of broadcasters. This has led to a running controversy between it and commercial broadcasters who insist it is arbitrary, unrealistic and unaffordable for them. This charge/levy should be abolished.

The NTA and FRCN have strong legal backing to generate funding from commercial activities such as advertisements, sponsorships, etc. In addition to their establishment laws (NTA Act and FRCN Act), they are supported by such other laws as the Commercialization and Privatization Decree of 1988 and the Public Enterprises (Privatization & Commercialization Decree) of 1998. These latter laws classified NTA among government enterprises approved for partial commercialization. The Bureau for Private Enterprises (BPE) moved them into the full commercialization category in 2002. This has attracted criticism from commercial broadcasters who claim that the access of NTA and FRCN to government subsidies and commercial revenues does not create a level playing field for all sub-sectors of broadcasting. They have suggested that these publicly-funded broadcasters be restricted to funding from government subsidies.

An important but yet unrealizable funding source to the broadcast industry is the collection of licence fees from owners of radio and television sets. The NBC Act empowers the NBC to collect these fees and disburse to the industry. But the 1999 constitution vests this power of collection in the local governments without stipulating who the beneficiaries should be. Many local governments across the country have been collecting this money and spending it without disbursing any part of it to the broadcasting sector. This constitutional provision should be amended to give NBC the power to collect the fees and disburse to the industry.



One of the key goals of broadcasting legislation is to understand and satisfy the rich diversity of this country. This has not happened.

The only effort in the NBC Act, which seeks to prevent cross-ownership, simply says it shall be illegal for any person to have “controlling shares in more than two of each broadcast sectors of transmission”. If this would mean that one person could have controlling shares simultaneously in up to two television and two radio stations (i.e. four stations), then this is a bad provision and should be reviewed.

Meanwhile, there are many areas involving our diversity but not yet attended to:

- ❖ Broadcasting stations are licenced in urban centres and administrative (political) capitals.
- ❖ Only government-owned and commercial stations are licenced; proper community radio stations have not been issued licences.
- ❖ Distribution of government and commercial stations is heavily skewed. Government still controls more than half of the total number of broadcasting stations.
- ❖ Regional distribution is lopsided as well. Today, the whole of the north-east zone of the country (comprising six of the thirty-six states) has just one commercial radio station and no commercial television station.

Legislation must be reviewed to redress these anomalies such that all sections of the country get voices to participate in Nigeria's democracy and development.





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Supported by the UK Foreign and Commonwealth Office [FCO] as part of
Building Media Pluralism in Nigeria Project.

