**Book Review**

**Title of Book**: Nigerian Telecommunications Law and Regulations

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**Introduction**

The book, Nigerian Telecommunications Law and Regulations, is a compendium of the legal and statutory regime governing the most vibrant sector in the Nigerian economy. It is a useful resource that traverses the entire length and breadth of the telecommunications spectrum; reviewing, highlighting and discussing every segment of the Sector. The book has six hundred and ten (610) pages and eighteen (18) chapters.

The Foreword to the book is written by Barrister Adeleke Adewolu, the Executive Commissioner Stakeholders Management of the Nigerian Communications Commission (NCC). He states that the book could not have come at a more auspicious time; I could not have agreed more with him. Remarkably, the foreword also points out the unique advantage the book had as both Quasim Odunmbaku and Rotimi Akapo are seasoned lawyers and longtime practitioners in the Nigerian telecommunications sector. Clearly, this combination saved the book from being a theoretical treatise and transformed it to a hybrid of theories and practical scenarios.

**Content Review**

**Chapter One** introduces the book by providing an insight into the history of the telecommunications sector. It reviews the evolutionary phase the Sector went through from 1897 to date. It discusses the phase of monopoly from 1897 to 1992; when the Sector was bottled up inside a large monolithic player. The Chapter also looks at the second phase when the telecommunications Sector was partially liberalized in 1992 during the administration of General Ibrahim Babangida. Yet the most important part of Chapter One is its interesting review of the full liberalization of the Sector in 2001. Lastly, this Chapter reviews the structure of the telecommunications Sector after the full liberalization, focusing on classification of licences and the market structure.

**Chapter** **Two** focuses on telecommunications policy. This is key as it sets the doctrinal basis for the other chapters in the book. It discusses the constitutional issues and main purpose of some policy instruments. The authors highlight the chain of policy evolution and changes and the role of the Minister overseeing the Sector. The Chapter looks at different policy instruments such as the National Broadband Plans and historical ones such as the National Telecommunications Policy of 1995 and 2000. The book also reviews the National Cyber Security Strategy and Policy and the National ICT Roadmap 2017 to 2020. Illustratively, it suggests future directions on telecommunications policy in Nigeria in the light of emerging issues such as convergence, local content, disruptive platforms and related trends.

**Chapter Three** is the crux of the book as it focuses on the sources of Nigerian telecoms Law and Regulation. It classifies the regulatory instruments into primary and secondary instruments. It reviews the different legislative enactments by the organ of government vested with the power to make laws for the nation, as well as regulatory instruments developed by NCC, the sector regulator. The legislative enactments examined include the Wireless Telegraphy Act of 1961, the Nigerian Communications Act, 2003 while the regulatory instruments examined were those issued by the Commission, including Directions.

It also examined legislations that have a direct or indirect impact on the telecommunications industry but not necessarily targeted at the industry. Some of which include; the National Environmental Standards and Regulation Enforcement Agency Act, 2007, the Federal Competition and Consumer Protection Act, 2019, The National Information Technology Development Agency Act, 2007 amongst others. It concludes by reviewing the roles of International bodies as well as professional bodies as shapers of telecommunications policies.

**Chapter Four** attemptsto appraise the regulatory regime of the Nigerian Communications Sector. It takes an *apriori* in evaluating the need for Regulation. From making a case for Regulation, it proceeds to adumbrate the various method of Regulation. It further espouses on the principles of good Regulation and the approach by NCC in this regard. Having laid a proper foundation on the essence of Regulation and the key principles thereof, it proceeds to explore the regulatory approach of the NCC vis-à-vis its establishing Act. It concludes by reviewing other Quasi-Regulatory bodies that complement the regulatory activities of the NCC.

**Chapter Five** is an exposition on the nature/incorporation requirements of a telecommunications company. It attempts to review the likely agencies that are imbued with certain statutory obligations that may affect or impact the incorporation of a telecommunications company. A company licensed to carry on telecommunications activities in Nigeria should expect interface with agencies such as the Corporate Affairs Commission, the Nigerian Investment Promotion Commission, the National Office for Technology Acquisition and Promotion. Hence, the Chapter critically unveils the steps and grounds that need to be covered in fully floating a telecommunications company in Nigeria and possible quotation on the Stock Exchange.

**Chapter Six** examines the requirement for market entry as it focuses on the licensing regime. It notes that licensing is a method to efficiently allocate and manage scarce communications resources. It gives an overview of the licensing framework, the types and method of licensing against the backdrop of the standard provision for licensing. The chapter proceeds to critically highlight spectrum licensing and emphasizes the growing demand for spectrum and the need for same to continue to be licensed.

**Chapter Seven** focuses on Intellectual Property and gives a brief background on the concept of Intellectual Property, particularly in view of its relevance to telecommunications law and policy. It lists International and Local Regulatory instruments guiding Intellectual Property Rights. The Chapter highlights key principles of IP Rights as well as Digital Rights and the extant legal provision.

**Chapter Eight** introduces the reader to telecommunications infrastructure. To aid its discussion, the author divides the telecoms network into three layers: the access network, the core network and the transmission layers. The chapter states the elements of each layers. The chapter proceeds to explore the market participants in the network infrastructure value chain and further identifies how each aspect is regulated by NCC. It further makes a case for telecommunication infrastructure to be designated as Critical National Infrastructure. It further reviews how critical this aspect is to the National Broadband Plan.

**Chapter Nine** focuses on the impact of Taxation in the Nigerian Telecoms Industry. It notes common disagreement between operators and tax authorities specifically in the application of the ‘Wholly, Reasonably Exclusively and Necessarily (WREN) tests. This Chapter points out the telecoms sector has been more heavily impacted by taxation compared to other sectors. The Chapter gives an overview of the types of taxes applicable in Nigeria and other operational levies. It concludes by noting that the telecoms industry is heavily taxed and this is further complicated by the level of multiple taxation and regulation imposed by different levels of government.

**Chapter Ten** reviews environmental issues especially as it affects health and safety. It considers the legal and regulatory framework governing the installation and management of telecoms infrastructure. It highlights the key legislative enactments that telecommunications companies must comply with in installing telecommunications infrastructure. It addresses the vexed issue of electromagnetic spectrum and radiofrequency emissions and the attendant health effects and notes that EMF radiation from telecommunications infrastructure is relatively safer from other sources of EMF to which the human body is exposed. The chapter also notes the Memorandum of Understanding (MoU) between NCC and NESREA in ensuring health and safety standards are adhered to when installing telecommunications infrastructure. It concludes by noting that the Commission imposes sanctions for violation of standards which may compromise health and safety.

**Chapter Eleven** reviews Employment and Labour Law issues that may impact the telecoms industry. It lists the applicable legal instruments. It proceeds to espouse on the contemporary labour issues in the telecoms sector such as local capacity development. It further addresses the vexed issue of unionization in the telecommunications industry and notes that joining a trade union is voluntary. The Chapter concludes by giving an overview of the Nigerian Code of Corporate Governance and highlights key principles that must be noted when drafting non-compete clauses in employment contracts. It further highlights the restriction puts in place on public officials/civil servants in serving in a Management/Executive role in the private sector.

**Chapter Twelve** focuses on the nature of telecommunication agreements and lists the type of regulated agreements such as interconnect agreements, collocation and infrastructure sharing agreements, subscriber agreements, value-added service agreements amongst others. The Chapter lists the key features of these agreements and explains the significance of key/typical clauses unique to telecommunications agreements. It concludes by giving a special mention to international roaming agreements which is geared towards managing complex mobility, user authentication, billing and other processes to facilitate international roaming.

**Chapter Thirteen** focuses on Jurisdiction and Dispute Resolution in the telecommunications industry. It underscores the fact that the Federal High Court is the appropriate forum to adjudicate on matters arising out of the administration of the Nigerian Communications Act, 2003. It also notes that disputes between licensees and the NCC must follow the statutory procedure as laid out in **Section 86** of the Act. The Chapter proceeds to highlight the procedure of resolving disputes amongst licensee, including as it relates to interconnection agreements and other related Agreements. It further focuses on consumer related disputes and the dispute resolution mechanism of the Commission and the steps that must be taken before resorting to litigation. It notes that exhausting the Commission’s dispute resolution mechanism is a precondition to instituting an action in Court.

**Chapter Fourteen** focuses on consumer protection. It begins by identifying who a Consumer is, in accordance with the provisions of the Nigerian Communications Act and notes that Consumer Protection is a key function of the Commission. The Chapter highlights the various regulatory enactment that enshrines consumer protection in the telecoms industry. Conversely, the Chapter explains consumer obligations in the telecoms industry. It also analyses the enforcement of consumer rights under the FCCPA and the powers of the FCCPC.

**Chapter Fifteen** addresses the important issue of Data Protection and Information Privacy. It classifies the type of consumer data protected under the law to Primary Data, Secondary Data and Communication Content. The chapter notes the provision of the Constitution which protects data and guarantees privacy. It notes that information privacy is protected at common law and that there are certain aspects of the Commission’s subsidiary legislation that protects consumer although the NCA is yet to make any substantive legal provision on privacy and data protection.

The Chapter analyses the Nigerian Data Protection Regulation 2019 issued by NITDA and legislative enactment such as the Cybercrimes Act 2015, Terrorism (Prevention) Act, 2011 amongst others. It further highlights other key International Instruments like the GDPR that seeks to protect data and guarantee privacy. It specifically highlights subscriber registration and the safeguards put in place by the NCC to protect subscriber’s data. It highlights issues such as SIM Swap fraud, unsolicited text messages.

It also addresses the tension between national security and data protection by referring to the Lawful Interception of Communications Regulations issued by the Commission as an attempt to balance. It however concludes by stating that a standard legislative enactment is needed to sufficiently guarantee privacy and data protection.

**Chapter Sixteen** focuses on Competition Regulation. It highlights Competition Regulation as one of the key functions of NCC. It notes that issues such as licensing, interconnection, retail tariff, spectrum regulation and universal service serves as areas that the NCC may use to regulate competition in the industry. More specifically, the Chapter highlights the Competitions Practices Regulation, 2007 as the key subsidiary legislation issued by the NCC to regulate competition in the telecoms industry. It however notes that the FCCPC is the supervisory authority in regulating competition although being a recent enactment, it is yet to make an impact on competition regulation.

The Chapter proceeds to review the Competition Practices Regulations issued by the NCC noting that key steps it covered such as ‘Market Definition’, ‘Assessment of Competition, Market Power and Dominance’ ‘Restoring Market Competitiveness’ ‘Enforcement of Market Competitiveness Restoration’. It further analyses the provisions of the Investment and Securities Act as well as the FCCPA in regulating competition, particularly highlighting the issues of merger and acquisition. It concludes by highlighting the role of other regulators that may likely impact competition issues in the telecoms sector.

**Chapter Seventeen** focuses on Corporate Governance and begins by discussing the evolution of Corporate Governance. It notes the various approaches to Corporate Governance such as ‘apply or explain’ and ‘mandatory application’. It enumerates on the various regulatory enactments applicable to the telecoms industry as it relates to corporate governance. It also highlights the corporate governance structure of the NCC, the NCC Code of Corporate Governance, the provisions of CAMA and the Nigerian Code of Corporate Governance. It notes that where the Codes conflict, that of CAMA takes priority being a superior legislation. It however recommends harmonization and internalization of the various Codes.

**Chapter Eighteen** focuses on trends and developments by juxtaposing the technology revolution against legal and regulatory evolution. Key trending issues include digitalization and convergence. It notes the convergence in technology, service and device. It also highlights Digital Services and OTT Service Models and explores the issue of taxing OTT platforms. Other trending issues explored include: Net Neutrality, Mobile Commerce, and Virtual Currencies. It concludes by noting that there is a need to reduce regulatory asymmetries between the revolution of technology and the evolution of the law.

**Identified Areas for Future Review**

The book attempts to address every legal issue and takes a more descriptive approach in appraising regulatory instruments. However, it would have been a lot more helpful, if more analysis went into the substance of each instrument by assessing its viability and efficacy in the industry and whether any is due for reform. A clear example of this is the book’s review of the Nigerian Data Protection Regulations 2019 and the Guidelines on Local Content for the ICT Sector, both documents suffer doctrinal and legitimacy difficulties, yet the book missed that.

The book does an excellent job in introducing readers to various legal enactments in the industry. Consequently, the titling of the book would be more apt if it was titled “Introduction to the Regulatory Framework of the Nigerian Telecommunications Sector”. A lot more attention ought to have been made to philosophical underpins of each regulatory instrument which was maintained initially. The book nonetheless does an excellent job in making readers aware of the varying legal enactments that affect the industry but this appears to stray from the general thesis of the book.

Also, a narrower and highly analytical assessment of the viability of the current regulatory state of the industry and its impact thereof would do more justice to the overall efficacy of the book, and not necessarily a compendium of laws which the book currently appears to be.

It is hoped that further editions of the book would critically evaluate the extant laws and advance remedies or reform where needed.

**Conclusion**

The book is highly useful to practitioners and lay readers alike. It serves as a window into what shapes the industry and ensures readers are familiar at surface, to the basic rules and norms that influence the industry. However, practitioners may aspire to a more critical evaluation of these laws to get a sense of where reform is needed and where it should come from.