

Broadcasting Regulation and Broadcasting In Nigeria: An Overview Of The Approaches

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Abstract

Different countries adopt different measures to check broadcasters. This work, with the objective of ascertaining the regulation impact on the Nigerian broadcasting system, x-rayed the approaches adopted by National Broadcasting Commission. To do this, the authoritarian and libertarian theories became the frameworks. At the end, it was discovered that the major regulatory approaches were licensing, sanctioning, arbitrating and monitoring. It was however found that the NBC exhibited bias against the private stations in its bid to protect the government owned ones. It was therefore recommended that the Nigerian Broadcasting Code be reviewed to make the regulatory body independent; and to encourage pluralism and healthy competition in the industry.

Keywords: broadcasting, regulation, system, licensing, monitoring, arbitrating, control.

1. Introduction

According to Harvey (1999 P.1), the study of broadcasting regulation “has started to creep into the edges of the media studies curriculum.” This wind of change should be welcomed, because it will aid the apprehension of the major forces that shape the communication environment. It has been noted that “literature on media regulation were predominantly produced by legal scholars following Eric Barendt’s comparative study on law” (Harvey 1999, p.1).

However, globalization in the face of specialization necessitated probes in sections of the society by scholars in the different areas. That is why media scholars cannot do without looking at issues as they concern media practices. An appraisal of the statutes of regulation of the Nigerian broadcast industry is pertinent at this period when the whole world is talking about digitization of broadcasting. By 2015, according to the deadline by International Telecommunication Union, ITU, every broadcast station in the world would have switched over from analogue to digital broadcasting. Against this backdrop, the National Broadcasting Commission, NBC, (the regulatory body for broadcasting in Nigeria) set June 2012 as the switchover date for Nigeria (Aihe 2008, p.1). Several issues have arisen from scholars and stakeholders since the announcement. But there are several advantages in the digitization policy; including the expected shoot up in the number of broadcast stations and the competitions that will follow.

This circumstance and other bugging issues bring to the fore, the paramount need to delve into the regulation realm of the Nigerian broadcast industry. The quest will, no doubt engender comprehensibility on the populace as well as guide the regulators and stakeholders for effective broadcasting in a digital age.

1.1. Objectives

This work set out to achieve the following purposes.

1. This work will determine the type of influence exerted on broadcasting in Nigeria by broadcasting regulations.
2. It has been observed that different countries follow different approaches to regulations. Therefore, this work will ascertain the approaches to broadcasting regulation in Nigeria.
3. In the light of the above goals, this piece will also appraise the application of the broadcasting code to broadcasting operation in the country.

2. Historical Background

For the perspicacity of this work, a brief incursion into the past of broadcasting in Nigeria will suffice at this juncture. Beiang (2006, p.1) states:

With the natural backdrop of three vegetation zones and a varied colourful topography, Nigeria has an impressive historical location, traditional festivals and durbars, which provide a rich tapestry and backdrop for television and radio production. There is also a rich multi-cultural setting of about 400 indigenous cultures to fertilise creation and creativity in the area of programming.

The coming of BBC Empire service in 1932 marked the beginning of broadcasting in Nigeria. The Empire service which utilized radio signal Re-diffusion Service, RDS, was designed to enhance economic, political and cultural relationship between Britain and its colonies. The outfit became Nigeria Broadcasting service, NBS, in 1951.

Furthermore, ordinance No. 39 of 1956 enabled the conversion of NBS to Nigerian Broadcasting Corporation NBC, in April 1, 1957. The same act provided for the external service of NBC, the Voice of Nigeria, which began operation in January 1, 1962. However, the three regions established TV stations as follows: West (WNTV: 1959); East (ENBS-TV: 1960); and North (RKTV: 1962). In 1979, all the regional radio stations came under one umbrella: Federal Radio Corporation of Nigeria (Betiang 2006, p.1). Prior to that time the regional TV stations were harmonized to become Nigerian Television Authority, NTA, in 1976 (Owuamalam, 2006, p.10).

All along the ownership, control and operation of broadcasting in Nigeria were preserved exclusively for the various governments – Federal, Regional, and State (Media Rights Agenda, MRA, 2001, p.7). In 1992, the Deregulation of Broadcasting Decree No.38 was promulgated by the administration of General Ibrahim Babangida. The expression of that presidential *ipse dixit* which established the National Broadcasting Commission, NBC, also created a new pattern of ownership and control as well as injected competition in the broadcast industry. Corroborating, NBC (2009, p.2) submits that “as a result of the revolution in the Nigeria broadcast industry, the number of broadcasting stations in Nigeria has, at the last count, risen to 394, from less than 30 before deregulation”.

3. What is Regulation?

Bringing the concept into perspective, Harvey (1999, p.2) states:

Regulation involves intervention by the state in areas of economic, social or cultural life according to whatever political norms are characteristic of that nation state. Regulations may be issued by presidential decree, by religious prescription or by legislative action within a system of representative democracy.

Regulations may be administered directly by government, as it was in Nigeria before 1992. It could also be through statutory agencies that enjoy some degree of independence from government. This is exemplified by National Broadcasting Commission, NBC, of Nigeria; the Federal Communications Commission, FCC, of USA; and Independent Television Commission, ITC, of Britain.

At the basic level of broadcasting, regulation involves the issuance of permission, that is, the granting of licence to broadcasting organizations. In most countries like, Nigeria, the licences are costly to acquire by private organizations. For instance, by 2006, the lowest licence fee for private radio was 15 million Naira; as against the lowest for public stations: 10 million Naira (NBC; 2006, p.13). Moreover, broadcasting regulation is dependent on the cultural norms and also “contributes to the shaping of these norms, and can at times have a significant impact on the form and content of programmes” (Harvey; 1999, p.3), thereby affecting the economic and management structures of broadcasting. An appraisal of the philosophy and practice of broadcasting regulation would reveal its impact on the overall broadcasting activities in Nigeria.

3.1. Theoretical Framework

It would be appropriate to apply the theories of the press as framework for this study. According to Dominick (2009, p. 418-420) the theories of the press articulates the relationship between the government and the media. These

theories include authoritarian, libertarian, social responsibility, communist, and developmental theories. For obvious reasons, this study focused on the provisions of the first two.

In authoritarianism, the government used various devices like licensing, censorship, closure, and other punishments to elicit compliance from the media. On the other hand, libertarianism advocates that the media should be practiced freely without government interference so as to serve the people better. The two theories were chosen because according to Dominick (2009, p.418), all the theories of the press “fall somewhere between two ‘isms’ that reflect polar opposites in amount of control the government exerts on the media – authoritarianism and libertarianism”.

Corollary to the above, the two theories are relevant to the study because NBC was established by government to control broadcasting. The regulatory body was charged to protect the interest of the government as well as see to it that the citizens’ interests are protected. Therefore, these theories would provide the platform to adjudge the amount of control and, or, the shape of regulation handed down to broadcasting organizations in Nigeria.

4. Approaches to Broadcasting Regulation

Before delving into the approaches to broadcast regulation in Nigeria, reference must be made to the approaches in Britain and USA. The reason: Nigeria is a former British colony and currently practices the presidential system of government after the United States pattern. In Britain, after series of radical changes in the policies, the Independent Television Commission, ITC, was established under a Broadcasting Act of 1990 to enhance free programming as it replaced the old Independent Broadcasting Authority. According to Harvey (1999, p.7) the act charged ITC to ensure “that television services are of high quality and offer a wide range of programmes calculated to appeal to variety of tastes and interest.” Then, the ITC was given the “power to scrutinize applicants’ programme plans and only those judged to be of sufficient quality would be allowed to proceed to the licence bidding stage” (Harvey; 1999, p.8). The continued emphasis on quality and diversity should be seen as evidence of a regulatory body determined to pursue public interest objectives.

In USA, the broadcasting regulation is rooted in the First Amendment of the American Constitution “that congress shall make no law... abridging the freedom of speech or of the press” (Pember; 2004, p.294). The regulation in the US is handled by the Federal Communications Commission, FCC, which is charged with the implementations of Fairness Doctrine. FCC gave licences but did not make specific provisions.

In Nigeria, the National Broadcasting Commission, NBC, is solely in charge of broadcasting regulation. The body was established by Decree 38 of 1992 that was later amended by the National Broadcasting Commission (Amendment) Decree No 55 of 1999 under the administration of General Abdulsalami Abubakar (MRA, 2001, p.10). It should be noted that the state monopoly of broadcasting ended with the promulgation of the deregulation decree. Hence, private concerns started operating radio and television stations. Also, foreign investors were allowed “to participate, for the first time in the establishment, ownership and operation of broadcasting; something which had been prohibited under the system imposed by the Wireless Telegraphy Act” (MRA; 2001, p.10).

Just as USA’s broadcasting regulation borrowed from its constitutional provision, Nigeria’s 1999 constitution provided for something just opposite to that of America. Thus, the regulation in Nigeria is fashioned to uphold what the lawmakers intended – supposed protection of the interest of the nation. For emphasis, the constitution of the Federal Republic of Nigeria, (1999, p.22-23) provides for the Right to freedom of expression and the press. Section 39-(1) provides: “Every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference.” It goes further in subsection two, to give conditions for ownership of broadcast outfits which include a required authorization by the government or its agency.

Further, subsection three states: “Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society” The provisions are explicit. First, the freedom of expression is granted in subsection one, then subsection two gives the conditions for exhibiting the freedom and finally, subsection three politely withdraws the freedom. The implication is that, the government and its agencies (in this case, NBC) will grant licences for broadcasting stations to anybody that satisfies their bidding. It also shows that acquiring the licences does not give the stations the right to air their opinions or what they think will be in the interest of the society. Rather, the provision is fashioned in such a way that the bidding of the ruling class would always be observed by the stations. That is the reason behind the provisions of subsection three. After all, who determines the reasonability and

justifiability of other legal permutations? The state, through its machineries, determines and coins obnoxious intrigues to clamp down on the broadcasting stations. In 2006, African Independent Television, AIT, was closed down for three days and the state security services, SSS, were on hand to secure the closure. The station presented a live coverage of the National Assembly's debate on tenure elongation engineered by President Olusegun Obasanjo's third term bid. May be, the government thought the live coverage helped to scuttle the arrangement because, according to some analysts, the masses were looking at the faces of their representatives while the debate went on.

Having established the constitutional basis for broadcast regulation in Nigeria, it will be pertinent to note that the NBC was established to perform the following functions, as was summarized by MRA, (2001, p.11).

- Receiving, processing, and considering applications for the ownership of radio and television stations including cable TV services, direct satellite broadcast, etc.
- Regulating and controlling the broadcasting industry;
- Receiving, considering and investigating complaints from individuals and bodies regarding content of a broadcast or conduct of a station;
- Upholding the principles of equity and fairness in broadcasting;
- Establishing and disseminating a national broadcasting code and setting standards with regards to contents and quality of broadcasting
- Regulating ethical standard and technical excellence.
- Promoting Nigerian indigenous cultures, moral and community life through broadcasting.
- Determining and applying sanctions, including revocation of licences of defaulting stations.
- Ensuring quality manpower development in the broadcasting industry by accrediting curricula and programmes for all tertiary institutions that offer Mass Communication in relation to broadcasting;
- Intervening and arbitrating in conflicts in the broadcasting industry.

Based on the above stipulated functions, the NBC enacted the broadcasting code for Nigeria which is regularly upgraded to meet the broadcasting objectives. Owuamalam (2006, p.126) says "the National Broadcasting Commission (NBC), outlines the objectives of broadcasting in Nigeria, built around chapter II, of the 1999 constitution." The objectives include the social, cultural, economic, political, technological, professional objectives and profit motives. Thus, the broadcasting code specifies the overall regulation approaches. It will be apt, therefore, to appraise the approaches by looking at their principles, applications and implications.

4.1. Licensing

According to MRA (2001; p.15) "One of the most important functions of the NBC is in relation to licensing of private broadcasters... since the inception of the commission, the process for allocating initial licences to private broadcasters has been very secretive" Most times, licenses are delayed or refused for unknown reasons. Nevertheless, NBC has always made the requirements and procedure for acquisition of licence public. For instance NBC (2009, p.1) states that: "A prospective applicant must have a limited liability company registered with the corporate Affairs Commission in which Nigerians hold majority shares. It's memorandum of association and article of association must include broadcasting." But the actual processes of considering the applications are not readily ascertained. The applications are processed by the commission after which recommendations are made to the board of the commission which transmits the recommendations through the Minister of Information and Communications to the President for final approval. The process as described here is a closed one. It is entirely "in 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 debate" (MRA; 2001, p.20).

The NBC is not independent and as such its recommendations can be set aside, by the Minister and, or, the President. Again, Section 9 (3) of Decree No. 38 created uncertainty in the process of securing a licence when it states that: "Compliance with the requirements specified in subsection (1) of this section shall not entitle an applicant for the grant of licence" (Nwanze; 2003, p.250). The provision gives latitude for the licensing laws to be manipulated and also for the licensing to be motivated by political considerations.

Another area of concern is the licence fees. The fees are so exorbitant that one can easily sum up that the rates are fashioned to make it extremely difficult for a private broadcaster to be commercially viable. In essence, the public's receiving of information through a variety of sources is undermined. It also, works against the principle of pluralism. The fees are increased at will by the commission without minding the capability of the organizations. MRA (2001, p.18) submits that "The current licence fees in Nigeria represent a 300 percent increase over the previous rates and many broadcasters, including major ones have been unable to keep up with the new schedule of payments."

Also, five-year licence duration cannot be said to be enough for the organizations to recoup their investment. This invariably leads to over dependence on commercialization of broadcasting of which Okunna (2005, p. 89) citing Popoola (2004) says the broadcast media in Nigeria are "shying away from their primary responsibilities of educating, informing and enlightening the citizenry... and violates the fundamental rights of people...to receive the right type of information"

Furthermore, the equation is not yet balanced because the government owned stations do not observe the rigours. That is to say that the laws are made for private broadcasting; and as such contradicts the submission of NBC (2009, p.4) that "the air wave is being held in trust for the public, therefore the stations are accountable to the public." If the above position should hold water, both the government and private stations should be given a level-playing ground so as to enable all of them serve the public well.

4.2. Content Monitoring

According to NBC (2009, p. 3) "Every licence is required to adhere to a minimum of 60% local broadcast content for open television and 80% local broadcast content for radio. The cable/satellite retransmission stations are mandated to reflect a minimum of 20%". In addition to this, the standard for Nigeria local content specifies that programmes and advertisement for family belt shall be devoid of sex or overt sexual behaviour, nudity, violence, bloodletting, smoking, alcohol, drug abuse, denigration of womanhood, offensive, lewd or vulgar language, expression and presentation, etc. The same provision spelt out family belt to be between the hours of 7pm and 10pm daily (a period when the family as a unit is presumed to be together to watch television). The provision on content is welcome but the application is in doubt. NBC seems to focus on sanctioning the private stations in Nigeria but neglects the public stations and the influx of foreign free-to-air channels. Most of the channels do not cost the viewer any subscription to get exposed to.

For instance, there is a provision against religious broadcasting in the broadcasting code but the free-to-air channels churn out religious programmes that tend to represent cultic portrayals. Furthermore, the NBC either by commission or omission relegated its duties by keeping silent over *Big Brother Nigeria* despite the numerous outcries. Egbunike (2008, p.1) states that "the constant manner in which these inmates are watched is reminiscent of the way children go to watch caged animals in the zoo." Other concerns had made sinister remarks: Abati (2007) says *Big Brother Nigeria* involved pornography and money. Uzo (2008) submits that Nigerians do not want Big Brother III. Even the House of Representatives condemned the show. In spite of these, the NBC did not do anything immediately and the show bombarded TV screens for three years. NBC kept silent on a matter that bothered on cultural integrity that one would wonder where the conscience of the commission lies. It will not be hard to deduct that the entire episode were shadowed under a political enclave – showing that the application of some regulatory provision is selective. Or, it could be as Egbunike (2008, p.2) puts it "Perhaps they are not yet aware of the broadcast, though I rather doubt that." Again most of the stations derail in presentation that one will readily find out that most presentations are not well edited. But they are not worried because the NBC's monitoring strategy is not organized, neither is it comprehensive. This is partly due to the absence of monitoring stations. The commission depends on the complaints of individuals and organizations for it to act. This brings this discourse to another import issue.

4.3. Sanctioning Process

There are three categories of sanctions maintained by the NBC for licensed stations who violate either Decree 38 or the National Broadcasting code. The first class include licence revocation, shutting down or sealing up of a station or transmitter, seizure or forfeiture of equipment and suspension of licence (MRA; 2001, p.22). Another category involves written warning to remedy a breach within a given time failing which a fine is imposed. The last category includes fines and stiffer sanctions for not complying with earlier sanctions.

As a matter of fact, the offences for which these categories of sanctions can be applied are not stated clearly. For instance the code provides that a licence can be revoked if there is a serious breach of technical or non technical aspects of the code. What constitutes “serious breach” cannot be easily identified. This further emphasises the notion that the commission was created to represent certain interests, and such interests determine whether a station should be sanctioned or not. This situation usually arises in circumstances where the commission acts in arbitrariness or violates its own rules.

In October 24, 2005, advocacy groups protested, through a letter to the Director General of NBC, over the closure of AIT and Ray Power FM. The position of the group as contained in Omoyele (2005) states:

There was a lack of proportionality between the offence allegedly committed by the stations and the sanctions imposed on them as the reasons given by the commission do not warrant the measures taken. The procedure adopted by the commission violated its own rules particularly the provisions of the Nigeria Broadcasting Code (p.1).

Corollary to the above submission, the NBC’s action violated the right to fair hearing under the 1999 constitution. It was also against some international human rights instruments. The Daar Communications Limited, AIT and Ray Power, was shut down based on its coverage of Bellview Air Crash on 23 October 2005. Establishing their dissatisfaction with the sanction, the advocacy group established that:

- (1) AIT and Ray Power were the first to locate the crash site.
- (2) The coverage helped search and rescue teams.
- (3) The report helped the appropriate authorities to access the situation because they did not know where the accident occurred.
- (4) The Nigerian Television Authority, NTA, put out misleading information that there were survivors at the crash scene.
- (5) The stations complied with requirements under paragraph 3.8.7 of the Nigeria broadcast code.

For emphasis, paragraph 3.8.7 provides that “Excessive portrayal of physical suffering and pain or dead bodies or blood, except for the purpose of conveying a message, which must be preceded by a caution, shall be avoided.” It is worthy to note that AIT and Ray Power were reopened immediately the advocacy group published the letter they wrote to NBC. That showed that the sanctioning process by the commission was haphazard. In a related development (MRA; 2009, p.2) reports that Adaba FM, a private radio station had its licence suspended by the NBC for failure to comply with earlier sanction of a fine of N500, 000.00. The suspension materialized due to complaints and insinuations by the Peoples Democratic Party (PDP) about the focus of election coverage in Ondo and Ekiti states. The implication was that, it took the ruling party for the NBC to perform any action – that is, obey the directives from government and its agencies.

4.4. Arbitration and Other Control Loopholes

Another approach to broadcasting regulation surrounded by controversies is the umpire posture of the NBC. It has been observed that the commission has been working as if it does not want any other (private) station to compete with the public stations. Analysts say it is merely paying lip service to being committed to promoting the concept of media pluralism. As a controller and an arbitrator, most of the actions and, sometimes, inactions point towards confirming the notion above. MRA (2001; p.21) makes reference to NBC’s seeming silence to attempts by, NTA, a federal government owned TV station, to dominate its private competitors.

In 2000, Channels Television obtained the right, from TV Africa, to broadcast Europe Nations Football Tournament, Euro 2000, which NTA was equally seeking. Amusingly, NBC showing bias said the signals should not be aired in Nigeria since TV Africa was not registered in Nigeria. That directive was suspect because there no legal provision for foreign stations to register with NBC for their programmes to be aired in Nigeria. Furthermore, in September of the same year, NBC issued a press statement that the rights for airing the Sydney 2000 Olympic Games had been

given to Union of Radio and Television Nations (URTNA) and their affiliates. In Nigeria, only NTA and FRCN are members of URTNA. That was a clear ploy to prevent private stations. And most recently, in 2009, FIFA, the world football governing body, gave the right to cover Nigeria 2009 Youth Championship to AIT. Based on that right, AIT acquired up-to-date equipment for the coverage only for NBC to rule that NTA has the right to cover the event. It took the intervention of FIFA Local Organizing Committee for AIT to cover the tournament. From the forgoing, the conduct and attitude of NBC undermines its role as an independent regulator that was established to intervene and arbitrate in conflicts in the broadcast industry.

5. Conclusion

Regulation is one of the instruments used by the society to check media content and portrayal. The political system of a country determines the direction its regulations follow. In Nigeria, the National Broadcasting Commission, NBC, was established by Decree 38 of 1992, to register, regulate and control broadcasting in Nigeria. But it has been established that the commission serves as an agent of government thereby beclouding its agenda of pluralism in the broadcast sector.

Nevertheless, its regulation approaches include, licensing, monitoring, sanctioning defaulters, intervening and arbitrating in conflicts and other control measures. The commission performs all these duties with overt showcase of bias against the private stations; thus making it an “irregular” regulator. It is believed that the inability of NBC to exercise its duties independently rests on the fact, that the power to issue licences is with the president, and not the commission. Also, the laws erroneously gave the commission too much powers – making it a regulator and an arbitrator – thus it commits some fundamental flaws that places the country far behind other nations in terms of positive regulation.

As an aftermath of the licences being issued by the country’s supreme political authority, the commission would always bend the rules to protect the stations established by government. This scenario fosters the principles of the authoritarian theory. In order to uphold democratic principles in a period Nigeria is being re-branded, it would be pertinent to adopt the principles of the libertarian theory by reviewing the Nigerian Broadcasting Code and its application, and create an equal competitive atmosphere for all and sundry. This will be in line with the international standard that preaches against indecent content; for equal opportunities and the fairness doctrine (Dominick 2009, 380-1). Nigeria should emulate the success stories of the broadcasting atmosphere in Britain, USA, Ghana and South Africa among other nations.

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