

# CRITICAL ISSUES IN BROADCAST MEDIA REGULATIONS IN NIGERIA

Ogbole John\*, Matthias Omu Eba\*\*

\*National Broadcasting Commission, Abuja

\*\*Department of Mass Communication, The Federal Polytechnic, Bauchi

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## Abstract

The deregulation of the broadcasting ecosystem has institutionalized a new brand of journalism in Nigeria. The broadcast media has fared well in the discharge of their constitutionally assigned responsibility of holding government accountable to the people as the industry today witnessed the rise of vibrant private media stations with firestorm kind of where government policies and programmes are daily scrutinized undeterred for public consumption. However, media stakeholders continued to agitate for more freedom as they abhor any iota of regulation. The Act establishing the National Broadcasting Commission entrusted it with certain responsibilities, among which include the power to make rules and regulations for the broadcast industry. In the course of discharging these responsibilities, the Commission has accused of constituting a barrier to freedom of expression and of the media as they argued that the Commission lacks the requisite power to operate as an independent regulatory agency. Stakeholders have called for the amendment of the Act establishing the Commission to make it a truly independent agency especially on the aspects of the constitution of the Board of the Commission, power to grant license and the overbearing power of the Minister on the Commission.

**Keywords:** Communication, Broadcasting, Regulation Media, NBC, Nigeria

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## 1. INTRODUCTION

The promulgation of the famous Decree 38 of 1992 by the then military President, Gen. Ibrahim Badamosi Babangida marked a significant milestone in the development of the broadcasting ecosystem in Nigeria. The Decree which deregulated broadcasting in Nigeria, also established the Nigeria Broadcasting Commission, an agency empowered to regulate the Broadcasting industry. Hitherto, the ownership of broadcast media was restricted to government. The direct implication of this as Elisha (1998:3) rightly observed, is that, "by its actions and its whims circumscribed the practice of journalism particularly as it related to broadcasting. Broadcast media, as they were, could not muster or simply neglected to muster enough courage to take a critical look at government policies. Broadcasting almost became boring,

uninteresting and unchallenging." Elisha (1998: 166) noted further that, "Decree 38 of 1992, is no doubt a positive development in the practice of journalism. Apart from creating an enabling environment to expand the horizon for broadcasting, it has put behind the monolithic ownership structure, which on its own circumscribed the practice of journalism. The profession has become more challenging and broadcasting has shifted from the state of inertia and bore."

The deregulation of the broadcasting ecosystem that was hitherto the prerogative of the government has institutionalized a new brand of journalistic ethos in Nigeria. Although there still appear a subtle overbearing of government interference on media practice, the broadcast media has generally fared well in the discharge of their

constitutionally assigned responsibility of holding government accountable to the people. The broadcasting industry today has witnessed the rise of vibrant private media stations with firestorm kind of programmes such as 'Politics Today' and 'Sunrise Daily' on Channels Television, 'Focus Nigeria', 'Jig Saw' on AIT, 'THISDAY Live' and 'The Morning Show' on Arise News, 'Political Platform' on Ray Power FM, the 'Brekete Family Reality Show' on Human Right Radio and Television, 'Morning Crossfire' on the Nigeria Info and a host of others where government policies and programmes are daily scrutinized undeterred for public consumption. Regardless of the unprecedented freedom leveraged by broadcasters in this era of deregulation, stakeholders continued to agitate for more freedom and independence as they abhor any iota of regulation. According to Caristi & Davie (2012), Independence that people crave for are in themselves not an issue because they already have the Independence of the broadcasting system. Virtually everyone will support some kinds of regulations. Greater percentage will support limiting free expression in areas where it would endanger national security, unfairly damage reputation of individuals or corrupt children.

The Act establishing the National Broadcasting Commission has entrusted it with certain responsibilities, among which include the power to make rules and regulations for the broadcast industry within the broad framework of the act. In the course of discharging these responsibilities, the Commission has witnessed and continue to witness unprecedented attacked from stakeholders of constituting a barrier to freedom of expression and of the media enshrined in Sections 22 and 39 of the 1999 Constitution, as amended; and Article 9 of the African Charter on Human and Peoples' Rights, as preserved by the Ratification and Enforcement Act (Cap A9), Laws of the Federation of Nigeria, 2004.

Stakeholders have relied on these laws and others to sustain continuous attack on the Commission's decisions. For instance, on October 26, 2020, the National Broadcasting Commission imposed fines of N3 million each on ARISE Television, Channels Television and the Africa Independent Television (AIT) over what it termed unprofessional coverage of the #ENDSARS protests and using of unverified contents from social media. Media Rights Agenda (MRA), Socio-Economic Rights and Accountability Project (SERAP), 261 concerned Nigerians, civil society and media groups took up the case by filing a lawsuit at the Federal High Court challenging the powers of the National Broadcasting Commission (NBC) to impose

fines on broadcasting stations since it is not a judicial body. In that suit, the organization sought the following:

- A declaration that the NBC's arbitrary act of sanctioning and imposing fines of N3 million each on ARISE TV, Channels TV, and AIT purportedly in line with Sections 5.6.3 and 5.6.9 of the Nigeria Broadcasting Code creates a chilling or stifling effect on freedom of expression and is likely to interfere with the right of MRA's members to freedom of expression, particularly their right to receive ideas and information without interference as guaranteed by section 39 of the Constitution and Article 9 of the African Charter;
- A declaration that the fine of N3 million each imposed on the stations constitutes an interference with the rights of MRA's members to freedom of expression, particularly their right to receive ideas and information without interference guaranteed by section 39 of the Constitution and Article 9 of the African Charter;
- A declaration that the NBC, not being a judicial body, lacks the power to impose fines on any broadcaster, including fines imposed on the three stations, and that the imposition of such fines is null and void;
- A consequential order setting aside the fines of N3 million each imposed on the three stations as the fines were unlawfully imposed; and
- A perpetual injunction restraining the NBC, its officers, agents and/or representatives from imposing sanctions or fines or excessive, disproportionate, unlawful and unconstitutional restrictions on television or radio stations which will interfere with the rights of MRA's members to freedom of expression, particularly their right to receive ideas and information without interference.

Similarly, on June 7, 2021, the NBC's directive to broadcasting stations to de-install their Twitter handles and not use Twitter as a source of information gathering for their news and programmes following government ban of the micro blog site in Nigeria was also challenged in court. In the suit, in which MRA is being represented by a team of 14 lawyers, led by Abuja-based constitutional lawyer, Kayode Ajulo, the organization asked the court to declare that the directive is ultra vires as it violates the fundamental rights to seek and receive information and to express and disseminate opinions under the freedom of expression guarantees contained in section 39 of the

Constitution, Article 9 of the African Charter, Article 19 of the ICCPR and Article 19 of the UDHR and is also a violation of Nigeria's treaty obligations by virtue of the country being a signatory to the international instruments, as the NBC's regulatory authority does not extend to directing licensed broadcasting stations on where they should source their news and information, while the commission has no power to instruct broadcasting stations to de-install their Twitter handles under the NBC Act or any other law or subsidiary legislation in Nigeria (Yusuf, 2021).

Recently, precisely, on July 7, 2021 the Commission issued another circular titled "Newspaper Reviews and Current Affairs Programmes. A need for caution," which warned broadcast stations against glamorizing the nefarious activities of insurgents, bandits and kidnappers. According to the NBC "headlines of most newspapers on a daily basis are replete with security topics. The circular added that, "while bringing information on security to the doorsteps of Nigerians is a necessity, there is a need for caution as too many details may have an adverse implication on the efforts of our security officials who are duty bound to deal with insurgency." SERAP is equally challenging this directive in court. Reacting to the directive, the NGE described it as a subtle threat to free press, freedom of expression, access to information, and victims' right to justice, which are essential to public debate and accountability in a democratic space (Azeez, 2021). According to Ekpu (2021), this document seeks to invent new rules for journalism practice. It seeks to take something away from FOBAC (Fairness, Objectivity, Balance, Accuracy and Completeness), especially the quality of a story's completeness or comprehensiveness. He argued that the directive also seeks to deprive a story of the ability to answer the six questions embedded in Five Ws and H. He concluded that once that happens journalism would have been reduced to pure rabble-rousing, the kind of thing that you can find in some of the social media platforms.

There are those who argued that the Commission lacks the requisite power to operate as a true independent regulatory agency. The Institute of Media and Society's 2019 report stressed that the most prominent gap identified by stakeholders in the Act establishing the National Broadcasting Commission "is its failure to provide for independence of the agency. According to the report, independence is critical to the effective operation of any regulatory agency and lack of it will affect the Commission in certain ways which include: biases in decision-making, inconsistencies in attention to various regulatory functions, inability to

protect the industry and strengthen its professionalism, inability to stand updated on international standards; failure to command trust among stakeholders, and ultimately, failure to deliver on its mandate. This accusation has to do with the declaration by the African Charter on broadcasting, adopted by African Union in 2003 which provides that: "All formal powers in the areas of broadcasting and telecommunication regulations should be exercised by a public authority which are protected against interference, particularly of a political or economic nature."

This paper, therefore, treats some of these concerns as they relate to the independence of the broadcast industry in Nigeria and the power of the regulator to enact and enforce same laws, the power to grant license, monitoring activities, appointment of Board of the Commission and other related matters that continued to generate controversies in the industry.

### **Independence of the Broadcasting Industry and the Power of the Regulator**

There is a growing concern among broadcast stakeholders that the Commission's mode of operation constitutes serious obstacle to freedom of expression and of the press in Nigeria. Some have accused the Commission of lacking the power to enforce its own laws since it is not a judicial body. This argument is motivated by Section 2, Subsections 1 (h) & (n) of the National Broadcasting Commission Act, CAPN11, laws of the Federation of Nigeria, 2004, which grants the commission the power to formulate and enforce same laws. Subsection 1 (h) states: "The Commission shall have responsibility of establishing and disseminating a national broadcasting code and setting standards with regard to the contents and quality of materials for broadcast." Also, Subsection 1 (n) states: "the Commission shall have the responsibility of determining and applying sanctions including revocation of licenses of defaulting stations which do not operate by the broadcast code and in the public interest."

Elisha (1998: 164) opined that the Act invests the National Broadcasting Commission, created by it with enormous power. He argued further that "it is tempted to conclude that the law takes away with the left hand, what it gives with the right." As stated earlier, these sections of the code generate almost all the major crises that characterize the fines the Commission issued or continue to issue against broadcasting stations deemed to be recalcitrant. These sections have been severally challenged and continue to be

challenged in courts of competent jurisdiction regarding the power of the Commission to enforce its own laws, especially as an administrative agency.

### **Power Of Administrative Agencies to Enforce Their Own Laws**

According to Pember & Calvert (2008: 589) "... (administrative) agency has the power to make rules and regulations within the broad framework of the act and these regulations carry force of the law... and such agency decisions can be challenged in a courtroom outside the federal bureaucracy." Caristi & Davie also pointed out that administrative agencies have legal power to draft binding rules and then enforce the same and even deliberate on appeals to their agency decisions. The National Broadcasting Commission as an administrative agency also possessed such administrative power to draft and enforce its own laws. This matter has been contested repeatedly in courts of competent jurisdiction. In a case filed by Ifeanyi Ukaegbu Vs National Broadcasting Commission filed before Federal High Court Abuja, the plaintiff sought the court to declare as illegal and unconstitutional the statutory powers of the National Broadcasting Commission of regulating the Broadcast industry as it violates the fundamental right of the applicant to receive information as guaranteed under section 39(1) of the Constitution of the Federal Republic of Nigeria, 1999 and section 9(1) of the African Charter on Human and People's Rights.

Ruling in favour of the Commission, the presiding Judge, Justice Stephen Jonah Adah in his decision states: "This right from the scope of its presentation is not an absolute right. The Constitution has made it expressly that the right can be regulated when it comes to telephony, wireless broadcasting, television or the exhibition of cinematography films...there is wisdom in regulating this aspect of broadcasting. The issue is as simple as one filtering his drinking water before he drinks it into his bowels. In the same native safeguard, it will not be in anyone's interest for instance to connect his house directly to a high-tension electric current no matter the nature of the house. By the virtue of the National Broadcasting Commission Act CAP N11, Laws of the Federation of Nigeria, 2004, the Commission has been granted the administrative power to make and enforce its own laws.

### **Programming and Programme Contents Regulation**

Another serious issue that continues to generate dispute in the industry is the mode of media content regulation adopt by the Commission which is

largely intrusive. Analysis of the Commission's quarterly breach profile of stations shows that 99% of the reports acted upon are generated by staff of the Commission who are designated as monitoring officers. Compared to a country such as the United Kingdom, where monitoring is less intrusive, OFCOM or Office of Communication that regulates broadcasting in the United Kingdom rely more on audience complaints to regulate broadcast contents. The regulatory body sets a standard, create public enlightenment on how audience could report programme contents that fell below standard. In this case, the power of regulation is no longer a prerogative of the regulatory agency but a responsibility held in trust on behalf of the public. This promotes trust and credibility. What the National Broadcasting Commission needs to do in this regard, is to create such opportunity to the members of the public by embarking on aggressive public enlightenment on the need for audience participation in media content monitoring and regulation.

Though, the National Broadcasting Commission made provision for public complaint regarding unwholesome programming contents, but the audience enlightenment is hugely lacking. Section 14 (1) (1) of the Nigeria Broadcasting Code spelt out the complaints format as: A complaint to the Commission shall be in oral or written form and contain, amongst others, the following:

- a. Name of the Broadcaster;
- b. Title of the programme;
- c. Date and time of the broadcast; Essence of the complaint or observation, such as the absence of fairness, obscenity, or technical shortcomings, etc.; and
- d. Name, address, telephone number and/ or email and signature of the complainant.

### **Board Of the Commission and Appointment of the Director General**

According to the Institute of Media and Society 2019 report, the National Broadcasting Commission is the only Commission without Board of Commissioners. The improper designation of members of the board ignores the reality of the modern age that designation of governance organs or positions impact the corporate status and identity of public agencies, especially regulatory bodies.

Section 3 (1) of the National Broadcasting Commission Act CAP N11, Laws of the Federation of Nigeria, 2004 provides that the Commission shall consist of -

- (a) A chairman;

- (b) Ten other members as may be approved or represent the following interests, that is-
  - (i) Law;
  - (ii) Business;
  - (iii) Culture;
  - (iv) Education;
  - (v) Social science;
  - (vi) Broadcasting;
  - (vii) Public affairs
  - (viii) Engineering;
  - (ix) State security service
  - (x) The Federal Ministry of Information and National Orientation; and

(c) The director-general of the Commission

2. The chairman and other members of the Commission shall be persons of proven integrity, experience and specialized knowledge in the broadcasting industry or who by reason of their professional or business attainment are on the recommendation of the Minister and with the approval of the President capable of making useful contribution to the work of the Commission.

The situation in the United States is quite different from the practice in Nigeria. In the US, the Act provides that a five-member Federal Communication Commission (FCC) regulates the broadcast industry. Members of the FCC are appointed by the president, with the approval of the senate to serve a five-year term out of which one member is selected by the president to be chairperson. No more than a simple majority of the Commission (three members) can be from the same political party. In a situation of retirement, resignation or death any of the commissioner will be selected by the president to chair the commission without senate confirmation.

However, in Nigeria the appointment of board members of the Commission is restricted to the Minister of Information and the President which has far-reaching implication for the independence of the Commission. Political considerations may tower higher than national interest in their decision of who to appoint into the board or not. The Institute of Media and Society in their 2019 report, suggested that section 3 of the NBC Act be amended to ensure that the Board members be properly designated as Commissioners. They also recommended that representatives of the State Security Service and the Ministry of Information should be excluded from membership of the Board. To ensure the independence of the

Commission from political influence, there is the urgent need to amend the NBC Act to reflect the federal Communication Commission Act as regards appointment of the Board of Commissioners.

#### **Power Relating to Approval of Broadcast License**

The Commission currently has no power to approve license for broadcast stations unlike the United States where the FCC has full right and power to grant broadcast license. Akingbolu (2021) frowned at the present situation where the Commission is being used as a post office merely to receive applications, but could not decide on anything, as the minister of information had total control over all processes in the Commission.

Section 2(1) of the National Broadcasting Commission Act CAP N11, Laws of the Federation of Nigeria, 2004 states that: the Commission shall have the responsibility of -

(b) receiving, processing and considering applications for the establishment, ownership or operation of radio and television stations including -

(i) Cable television services, direct satellite broadcast and any medium of broadcasting;

(ii) Radio and television stations owned, established or operated by the Federal, State or local government 666

(c) Recommending applications through the Minister to the President, for the grant of radio and television licenses.

The IMS 2019 report recommended that to ensure true independence of the Commission, Section 2(1) (b) should be amended to provide the Commission the power to approve licenses without reference to other government organs, while section 2(1) (c) should be removed from the Act.

#### **The Power of The Minister Give Directives to the Commission**

The Minister of Information has been vested with enormous power in the Act to oversight the activities of the Commission. Section 6 of the National Broadcasting Commission Act CAP N11, Laws of the Federation of Nigeria, 2004 states: "subject to the provisions of this Act, 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."

According to Elisha (1998: 165) ..." the

Commission holds its power in trust for the minister, a decision as regards to standard setting may be subjected to some colouration which could be personal.” The IMS 2019 reports suggested that the power to give directives to the Commission, vested in the Minister of Information in Section 6 should be removed and replaced with powers which include policy formulation for the broadcasting sector, the negotiation of international agreements, notifying the commission of the policy direction of government and ensuring that the independence of the Commission is protected at all time.

### **Conclusion**

This chapter has shown that the deregulation of the broadcasting industry has brought reasonable independence and freedom to the broadcasting ecosystem in Nigeria. Broadcasters, more than before, dare more freely in their criticism of government policies and programmes. As noted, the right to freedom of expression is not absolute. Though, the National Broadcasting Commission may not have the complete independence but as an administrative agency, the Commission has been empowered to effectively regulate the broadcasting industry. Stakeholders have called for the amendment of the Act establishing the National Broadcasting Commission to make it truly independence regulatory agency especially on the aspects of the constitution of the board, power to grant license and the power of the minister to oversight the activities of the Commission. Equally, the Commission needs to become less intrusive in the regulation of programming and programme contents to enhance trust and credibility in its regulation. The National Broadcasting Commission needs to create such opportunity to the members of the public by embarking on aggressive public enlightenment on the need for audience participation in media content monitoring and regulation.

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