

# Telecommunications Law and Regulation in Nigeria



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By

Uchenna Jerome Orji

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*To Sir Moses Orji & Lady Christiana Orji (KSJ).*  
*To my siblings: Ify, Ngozi, Tobechukwu, and Ugochukwu.*  
*To Emmanuel Orji.*  
*And to the living memory of Orji Jerome Arochukwu Esq.*



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## **Finland**

Communications Market Act (2003)

## **Ghana**

Electronic Communications Act of the Republic of Ghana (2008)

## **Greece**

Constitution of Greece (2008)

## **New Zealand**

New Zealand Telecommunications Act (2001)  
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## **South Africa**

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African Union Convention on Cyber Security and Personal Data Protection (2014)  
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## FOREWORD

The Nigerian telecommunications industry is witnessing a revolution, largely due to the country's policy shift from monopolistic telecommunications markets to liberalized competitive markets. This policy has brought about a substantial increase in foreign direct investment and unprecedented growth in network capacity and coverage in the country. Dr. Uchenna J. Orji's *Telecommunications Law and Regulation in Nigeria* is a highly welcome addition to the body of literature in the field.

Nigeria has embarked on a journey towards digital transformation, which is a catalyst for social and sustainable economic growth. Hence, the need to pay attention to five interdependent elements of the digital transformation ecosystem: enabling policies and institutions, human capital, applied ICT industry, communications infrastructure and ICT applications, and institutional change. Therefore, any attempt to enrich the body of knowledge of the telecommunications regulatory framework must be encouraged by all and sundry.

This book has covered in detail the evolution and legal basis for the regulation of the telecommunications industry. Furthermore, the book discussed the regulatory mandate in the Nigerian Communications Act (2003), and the vital role it played in the full liberalization of the telecommunications industry. Different aspects of the industry's regulatory framework were elaborately discussed in chapters of the book, which include licensing, competition, consumer protection, interconnection and network access, universal access and service, environmental protection and public health, and the resolution of telecommunication disputes. The encumbering challenges facing the industry, especially the challenges impeding the deployment of the telecommunications infrastructure in Nigeria were also discussed in detail. This book makes a very significant contribution to telecommunications regulation in Nigeria and the author's effort is highly commendable.

*Professor Umar Garba Danbatta, PhD, FNSE, FRAES  
Executive Vice Chairman/ Chief Executive Officer  
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## PREFACE

The Nigerian telecommunications industry has continued to grow in a phenomenal manner following the implementation of market liberalization reforms that were initiated in the 1990's. Recent statistics from the Nigerian Communications Commission (NCC) indicate that Nigeria grew from having one of the world's lowest teledensity rates with about 400,000 lines in 2000, to having over 147 million telecommunication subscribers by 2018.<sup>1</sup> The NCC's statistics also indicate that Nigeria achieved a teledensity of 105.21 percent by the beginning of 2018<sup>2</sup> from 0.38 percent in 2000.<sup>3</sup> Nigeria currently has the largest population of telecommunication subscribers in Africa, and also one of the largest in the world.<sup>4</sup> The National Bureau of Statistics estimates that the telecommunications industry contributes about 8.69 percent to Nigeria's Gross Domestic Product (GDP) according to the rebased national GDP data.<sup>5</sup> The industry is also regarded as the fourth pillar of the Nigerian economy in terms of GDP contribution and the fastest growing at a rate of 24 percent.<sup>6</sup> With these developments, the telecommunications industry has become a

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<sup>1</sup> See NCC, 'Subscriber Statistics: May 2016–January 2018', available at <<https://www.ncc.gov.ng/stakeholder/statistics-reports/subscriber-data>> last accessed on 30 January, 2018.

<sup>2</sup> *Ibid.*

<sup>3</sup> See ITU, 'ICT Data and Statistics (May, 2001)', *Telecommunication Indicators Update – Archive*, available at <<http://www.itu.int/ITU-D/ict/update>> last accessed on 30 January, 2018; C Doyle and P McShane, 'On the Design and Implementation of the GSM Auction in Nigeria - The World's First Ascending Clock Spectrum Auction', (2003) 27 (5/6) *Telecommunications Policy*, 383.

<sup>4</sup> See National Bureau of Statistics, *Nigerian Telecommunications Sector (2010 – 2014) – Summary Report on Telecommunication for National and International Regions* (National Bureau of Statistics: Abuja, February, 2015) pp.1 and 11.

<sup>5</sup> See National Bureau of Statistics, *Measuring Better: Frequently Asked Questions on the Rebasing/Re-Benchmarking of Nigeria's Gross Domestic Product (GDP)* (Abuja: National Bureau of Statistics, 2014) pp.13-14.

<sup>6</sup> See Federal Ministry of Communication Technology, *Connected for Growth – Progress Report on Projects and Programme Implementation, July 2011-February 2014* (Federal Ministry of Communication Technology: Abuja, 2014) p.8.

critical economic sector and a strategic enabler of Nigeria's social and economic development.

This book presents an analysis of the legal/regulatory and policy regime that governs the Nigerian telecommunications industry. The book aims to provide a critical and informative analysis of Nigeria's telecommunications regime with a view to identifying deficiencies or gaps in the regime or its enforcement, while also proposing remedial responses. In so doing, the book elucidates the provisions of legal and regulatory instruments that govern the industry and contributes to the development of scholarly research on telecommunications law and regulation in Nigeria.

The book comprises eleven chapters. In order to provide for a broad understanding of the subject matter, chapter one provides a background discussion on the meaning of telecommunications, the historical evolution of telecommunications and its regulation, the approaches to telecommunications regulation, the objectives of regulation, and the critical components of telecommunications regulation. The chapter also discusses telecommunications as a field of law.

Chapter two presents an overview of the Nigerian telecommunications industry, including its historical development from 1886 to 2017. It highlights the major developments that shaped the industry, including the history of policy and regulatory developments in the industry such as the implementation of market liberalization and deregulation reforms, and the privatization of national telecommunications assets. Chapter three examines the legal basis for the regulation of the telecommunications industry in Nigeria, as well as the policies and legal/regulatory frameworks that govern the industry. In particular, a special attention is given to the Nigerian Communications Act (NCA) of 2003 with an examination of the functions and powers of the Nigerian Communications Commission (NCC) and the Minister of Communications under the Act. The chapter also examines the regulatory independence of the NCC and the mechanisms for ensuring its accountability.

Chapter four examines the licensing of telecommunications service providers in Nigeria, including the assignment of radio frequency spectrum, the allocation of numbering resources, and the technical standardization of telecommunications network equipment. The chapter also discusses the general duties of licensed operators under the NCA. Chapter five examines the regulation of the installation of

telecommunications network infrastructure in Nigeria and the major challenges that impede the deployment of such infrastructure, including multiple regulation and taxation by State actors. Chapter six examines the protection of consumers in the telecommunications industry, including legal and regulatory frameworks for consumer redress and the major challenges that impede consumer protection in the industry.

Chapter seven examines the regulation of competition in the telecommunications industry and discusses issues such as the prohibition of anti-competitive practices, the control of dominance, and the regulation of mergers and acquisitions. Chapter eight examines the regulation of interconnection and network access, including collocation and infrastructure sharing in the telecommunications industry. Chapter nine examines the universal access and service regime in the industry and also considers the challenges to universal access and service in Nigeria. Chapter ten examines the environmental protection and public health regime that applies to the telecommunications industry, as well as major challenges that affect the environmental regulation of the industry in Nigeria. The book ends with chapter eleven which discusses the regulatory regime for the resolution of disputes in the telecommunications industry.

The telecommunications industry remains a highly technical and naturally dynamic industry that has not been a usual area for legal research in developing countries including Nigeria. As such, there has been little legal research on the regulation of the Nigerian telecommunications industry. Within that context, this book aims to address the existing knowledge gap by analyzing and elucidating the legal and regulatory regime that govern the Nigerian telecommunications industry while also providing input for further reforms in the industry. The book also aims to make a contribution towards understanding the history of the industry as well as the policy and regulatory developments that shaped it.

Telecommunications as a field of law will remain an interesting area of study and practice due to the technical nature of the telecommunications industry and the rapid pace of technological innovations in the industry. This inherently dynamic nature of the industry generally tends to make it difficult for law and regulation to keep up with the fast pace of technological developments in the industry. Therefore, developments in the telecommunications industry would continue to race ahead of law and regulation. However, issues addressed in this book will remain relevant for a long time to lawyers, law students, regulators, researchers, policy

makers, legislators, consumers, operators, investors, and any person interested in the Nigerian telecommunications industry.

Most chapters of this book were developed from parts of my Doctorate Degree (PhD) thesis titled: *A Critical Review of the Legal Regime for Telecommunications in Nigeria*, which was undertaken at the Faculty of Law (Department of Commercial Law), Nnamdi Azikiwe University, Awka, Nigeria, between 2013 and 2016. I take this opportunity to express my gratitude to Professor Greg Nwakoby who supervised my doctoral thesis for his guidance and encouragement. My sincere thanks go to Professor Ian Walden (Institute for Communications Law, Queen Mary University of London) who gave me valuable material during the research for my doctoral thesis. My gratitude also goes to Professor Bert-Jaap Koops, (Institute for Law, Technology, and Society, Tilburg University) for his encouragement. Professor Muhammed T. Ladan (Department of Public Law, Ahmadu Bello University, Zaria) facilitated my access to some research material of which I am grateful.

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