STAKEHOLDERS' MEMORANDUM ON THE NATIONAL BROADCASTING COMMISSION (NBC) (REPEAL AND RE-ENACTMENT) BILL,

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INTRODUCTION

The 10th National Assembly has initiated the repeal and re-enactment of the National Broadcasting Commission (NBC) Act as part of ongoing efforts to modernize Nigeria's broadcasting framework and address longstanding regulatory challenges. Broadcasting is central to the country's democratic development, cultural identity, and digital transformation. However, the current legal and institutional framework has struggled to respond effectively to new realities, including digital migration, the rise of online platforms, audience fragmentation, and the need for stronger regulatory independence.

The NBC (Repeal and Re-enactment) Bill, 2023 provides an important legislative opportunity to realign Nigeria's broadcasting regulation with international standards and constitutional principles. If well designed, the Bill can strengthen the autonomy of the regulator, provide clarity in licensing and digital switchover, safeguard freedom of expression, and promote inclusivity and sustainability across the sector. Conversely, unresolved ambiguities, excessive political control, and procedural gaps could undermine the credibility, fairness, and effectiveness of the regulatory regime.

The stakeholders' memorandum represents the collective position of stakeholders committed to a transparent, accountable, and forward-looking broadcasting framework. It distils insights from consultations, comparative research, and expert analysis into a set of practical recommendations to guide the legislative process. The proposals cover ten core reform pillars, including institutional independence, licensing, digital content regulation, sanctions and appeal mechanisms, media freedom, financial autonomy, public accountability, inclusivity, digital switchover, and environmental compliance.

The overarching goal is to support the National Assembly, executive agencies, civil society, and industry actors in ensuring that the reform of the NBC Act delivers a regulatory framework that is independent, inclusive, transparent, and responsive to Nigeria's democratic and digital future.

STRATEGIC OBJECTIVES OF THE STAKEHOLDERS' MEMORANDUM

1. **Guarantee Institutional Independence of the Regulator**

    - Establish the National Broadcasting Commission (NBC) as a politically independent, credible, and

professional regulator in line with African Union and international standards.

- Ensure transparent, merit-based appointments, limited ministerial influence, and security of tenure for the Board and Director-General.

2. Reform the Licensing Framework for Transparency and Fairness

- Create a streamlined, depoliticised licensing process that is predictable, timely, and subject to judicial review.

- Expand fair access by eliminating blanket disqualifications and making licensing criteria clear and objective.

3. Define and Limit the Scope of Online/Digital Content Regulation

- Clarify NBC's mandate over online and digital platforms, ensuring it covers onlybroadcasting-like services with mass public reach.

- Protect freedom of expression by excluding user-generated content and private communications from NBC regulation.

4. Strengthen Sanctions and Appeal Mechanisms

- Establish fair, transparent, and rights-respecting enforcement procedures, with independent appeal and judicial oversight.

- Guarantee broadcasters' rights to due process, legal representation, and timely redress.

5. Protect Media Freedom and Ensure Industry Sustainability

- Reinstate the NBC's function to safeguard media liberty while creating mechanisms to promote financial and operational sustainability of the industry.

- Remove restrictive provisions, such as mandatory pre-action notices, that impede access to justice.

6. Secure Financial Autonomy and Transparency

- Guarantee stable, diversified, and transparent funding for NBC operations.

- Institutionalise independent auditing, accountability measures, and effective oversight of funds such as the Digital Access Fund.

7.Enhance Public Accountability and Stakeholder Participation

- Institutionalise inclusive, transparent decision-making processes through regular consultations, public hearings, and publication of regulatory drafts.
- Require annual reporting and disclosure of NBC's regulatory actions, financialstatements, and industry performance data.

8. Promote Inclusivity and Diversity in Broadcasting

- Mandate enforceable local content quotas and affirmative licensing policies to support marginalised groups, women, youth, and persons with disabilities (PWDs).
- Ensure diverse representation on the NBC Board and equitable licensing categories for community and regional broadcasters.

9. Prioritise Digital Switchover (DSO) in the Main Body of the Law

- Elevate provisions on Nigeria's digital migration from the Schedule into the Bill'ssubstantive sections.
- Provide clear rules for signal distribution, funding, and capacity-building for broadcast professionals in the digital era.

10. Enforce Environmental and Infrastructure Compliance

- Integrate environmental sustainability obligations, including e-waste management and infrastructure optimisation, as conditions for licensing.
- Promote cost efficiency and ecological responsibility in Nigeria's transition to digital broadcasting.

REFORM PILLARS

To ensure that the National Broadcasting Commission (Repeal and Re-enactment) Bill, 2023, delivers a modern, independent, and inclusive regulatory framework, this memorandum is structured around ten reform pillars. Each pillar highlights critical gaps in the current draft of the Bill and sets out practical recommendations to address them. Collectively, these pillars reflect stakeholders' priorities for strengthening institutional independence, enhancing transparency, promoting inclusivity, safeguarding media freedom, and aligning Nigeria's broadcasting laws with international standards and democratic principles.

Pillar 1: Institutional independence of the Regulator

The Issues/Gaps:

To function effectively and deliver on its mandate, the regulator, the National Broadcasting Commission (NBC) must be independent. This is the standard laid down by the international instruments in which Nigeria has obligations. Example is the Declaration of Principles on Freedom of Expression and Access to Information in Africa, an African Union Instrument. However, this Bill retains excessive political interference, over the regulators' operations, as well as gaps in the process, appointment, composition, and tenure of the board.

Recommendations:

Strengthen the Independence of the NBC

i. The Bill retains excessive ministerial and executive influence over the operations of the NBC, especially in appointments (Sections 5, 8), licensing (Section 13), and policy control (Section 7(d)). Therefore,

ii. Amend Sections 5 and 8 to provide for consultation with appropriate industry groups and National Assembly confirmation of appointments to the Board and Director- General to enhance legitimacy and independence.

iii. Delete Section 7(d) to remove the obligation of the Board to comply with ministerial directives. Instead, allow the Minister to provide broad policy direction without interfering with regulatory decisions.

iv. Empower the Commission to independently issue licences and regulate their management with transparent administrative procedures and subject to judicial review. **Clarify and Narrow Ministerial Powers**

To safeguard the Commission from undue political interference and reinforce its status as an independent regulator, there is a need to:

i. Clearly define the scope of the Minister's powers in Section 10, ensuring that policy communication directives do not encroach on the Commission's operational independence.

ii Explicitly require that all ministerial communication directives be published and subject to review, with mechanisms for the Commission to challenge directives that threaten its autonomy.

Strengthen Board Appointment and Tenure Provisions

To enhance credibility, diversity, and independence of the Board, reducing the risk of politicisation. There is a need to:

i. Introduce transparent, merit-based criteria for Board appointments in Section 5, including consultation with the industry groups that the prospective members represent and stakeholder consultation.

ii. Define the terminology "proven integrity, experience, and specialised knowledge"with objective benchmarks.

iii. For Section 6, specify clear, objective grounds and due process for removal of Board members.

iv. Provide for tenure of four years, renewable only once.

v. Introduce inclusion into the composition of the Board by providing for geopolitical spread and representation for under-represented groups such as women, youths and persons with disabilities (PWDs).

<u>Pillar 2: Licensing Framework</u>

The Issues/Gaps:

Although section 13 vests the licensing process in the constitution, final approval still rests with the President through the Minister. This Multi-layered process risks politicisation and delays, and contradicts authority subject to judicial review.

Recommendations

F. Revise Licensing Framework for Transparency and Fair Access

Licensing processes remain opaque and overly discretionary (Sections 13–18), with vague grounds for disqualification and no guarantee of due process.

i. Clearly define the criteria, timelines, and grounds for grant, renewal, suspension, and revocation of licences.

ii. Replace blanket disqualification of religious organisations (Section 17) with conditional licensing, ensuring editorial independence and non-partisanship.

iii. Publish periodic licensing guidelines and application windows, and ensure public disclosure of licensing decisions.

<u>Pillar 3: Scope of online/Digital Content Regulation</u>

The Issues/Gaps

The Bill extends the Commission's power to regulate internet services and online media platforms. But there is insufficient clarity on the scope. Standards and limitations of such regulation, concerning user-generated content and social media. This ambiguity could lead to overreach of arbitrary enforcement, particularly regarding online content and freedom of expression.

Sections 2(l), 4(e), and 14(2) give NBC the power to regulate “online media platforms” and “webcast content” without definitions or thresholds.

Recommendations

Clarify and Limit the Scope of Online Content Regulation

i. Define "webcast," "online media platforms," and "digital broadcasting" in Section 34 (Interpretation) to include only platforms with mass public reach or broadcasting intent, as well define all ambiguous words as contained in the bill.

ii. Exclude user-generated content, private communications, or social media expression not classified as broadcasting.

iii. Limit NBC's jurisdiction to platforms delivering structured audiovisual content to the public, consistent with UNESCO and ECOWAS broadcasting norms.

iv. Specify the limits of the Commission's jurisdiction over online content and require coordinationwith other relevant agencies.

v. Standardise terminology throughout the Bill and provide a clear definition section for each regulatory category (licensing types, personnel roles, content classifications).

Pillar 4: Sanctions and Appeal System

The Issues/Gaps

The Bill empowers the Commission to impose sanctions but makes no explicit provisions for fair hearing, appeal and judicial redress (Section 25, Third Schedule). This raises concerns about fairness, transparency, and accountability in regulatory actions and protection of broadcasters' rights.

Recommendations

Enhance Procedural Safeguards for Sanctions and Appeal Mechanisms

i. Establish a Broadcasting Appeals Tribunal or designate the Federal High Court as the competent forum to hear appeals against NBC decisions.

ii. Mandate that take-down orders, sanctions, and revocations follow clear procedures: notice, public hearing, response opportunity, and written decisions.

iii. Include provisions in the Third Schedule for timelines, burden of proof, and the right to legal representation in administrative proceedings.

iv. Amend Sections 13, 19, and 28 to include detailed procedures for licensing decisions, sanctions, and revocation of licenses.

v. Mandate written reasons for adverse decisions, provide for a right to be heard, and establish an independent appeal or review mechanism.

vi. Include a clear procedural framework for administrative fairness, such as timelines for appeals, right to legal representation, and an option for judicial review in line with Section 36 of the 1999 Constitution.

Pillar 5: Freedom and sustainability of the Media

The Issues/Gaps

Protection of the freedom of the media should be one of the functions of the broadcasting industry regulator. The repealed law (NBC Act) makes a provision in the functions of the Commission requiring it to protect the liberty of the industry. But this Bill not only omits that provision but makes a new one that restricts freedom, compelling a pre-action notice (15 days before a civil action can be commenced in court against the Commission.

Recommendations

i. Insert in the Bill a provision among the functions of the Commission requiring it to defend and protect the liberty of the broadcasting industry.

ii. Delete the provision in section 30(7) which requires pre-action notice (expiration of 15days before a civil action can be commenced in the court against the Commission

iii. Create a new function which requires the NBC: to promote broadcasting industry sustainability.

Pillar 6: Funding

The Issues/Gaps

There is no sufficiently clear picture of funding source, despite section 20 which establishes a fund for the Commission. It is also not clear how financial independence from government appropriations will be maintained, nor are there detailed provisions for transparency and oversight of the Commission's finances.

Recommendations

Strengthen Provisions on Financial Autonomy and Oversight

To enhance transparency, accountability, and financial sustainability.

i. Sections 20–26, require independent annual audits by external auditors and regular publication of financial statements.

ii. There is a need to establish clear rules for the management and disbursement of the Digital Access Fund and other resources.

iii. Include detailed provisions on the structure, oversight, and utilisation of the DAF (e.g., an independent Board or Committee to oversee disbursements).

iv. Require annual audited reports of the Fund, published alongside NBC's financial statements.

Provide a Clear Package of Funding Services

v. Elaborate a clear package of sources that will provide consistent and secure funding for the NBC. This should include services such as: Licence fees, government appropriations, grants from other bodies (state and non-state) radio/ TV ownership rates Digital Access Fund (DAF)

Pillar 7: Public Accountability

The Issues/Gaps

The Bill grants NBC extensive rule-making powers (Sections 14, 31) but does not require public input or transparency.

Recommendations

Mandate Stakeholder Engagement and Public Participation

i. Mandate the Commission to conduct regular stakeholder consultations and public hearings on key regulatory decisions, including the development and amendment of the National Broadcasting Code (Section 14).

ii. Require NBC to publish draft versions of new regulations on its website with a minimum 21-day comment period. iii. Include a duty to conduct impact assessments for major regulatory changes, especially those affecting community media and online platforms.

iii. Mandate the Commission to submit its annual report to the President and National Assembly.

Include a duty for Commission to prepare and publish periodic reports during each year and disseminate to the public on: The status of license granted, renewed and sanctioned, performances of licences and industry developments such as ownership structures and patterns, quality of broadcasting services, industry statistics, tariff rates and charges paid by consumers for services, adequacy and availability of services in each part of Nigeria.

Pillar 8: Enhancing Inclusivity

The Issues/Gaps:

While the Bill promotes indigenous content, community broadcasting, and minority inclusion, it lacks enforceable quotas and support mechanisms.

Recommendations

Enhance Inclusivity and Local Content Mandates

i. Enshrine minimum local content requirements (e.g., 60% for terrestrial, 20% for satellite) in primary legislation or in a binding Code.

ii. Introduce affirmative licensing policies to support marginalised communities, persons with disabilities, women, and youth-led media.

iii. Create specific licensing categories for community, city, state, regional, and national broadcasters (as outlined in the Fourth Schedule).

iv. Provide for inclusion in the composition of the NBC Board by providing for geographical spread and representation for under-represented groups such as women, youths, and persons with disabilities (PWDs).

Pillar 9: Coverage of Digital Switchover

he Issues/Gaps:

The title of the Bill suggests that among its primary concerns is the transition from analogue to digital broadcasting in Nigeria. However, this subject matter is treated in the Fourth Schedule, meaning that it is not prioritised in the main body of the Bill.

Furthermore, the Fourth Schedule creates those new players for the digital broadcasting era: Broadcasting Content Providers, especially, for the latter, such important matters as application procedures, application form and funding framework.

Recommendations:

i. Contents of the Fourth Schedule, which address transition from analogue to digital broadcasting, should be moved to and treated in the main body of the Bill.

ii. The issues to be treated should include the application, procedure, application form and funding framework of the signal distribution.

iii. The bill should also introduce and address other issues in the Federal Government's white paper on the DSO, such as Capacity Building of Broadcast Professionals in the digital broadcasting era.

Pillar 10: Enhancing Environmental /Infrastructure Compliance

The Issues/Gaps:

The Bill acknowledges e-waste and infrastructure reuse issues but lacks enforceable obligations.

Recommendations:

Ensure Environmental and Infrastructure Optimisation Compliance

i. Make compliance with national e-waste management laws and environmental impact reporting a condition for licence renewal.

ii. Mandate the use of existing infrastructure for digital migration to minimise cost and redundancy.

iii. Require broadcasters and BSDs to submit environmental compliance reports annually.

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