

NATIONAL BROADCASTING COMMISSION ACT

ARRANGEMENT OF SECTIONS

Establishment, etc., of the National Broadcasting Commission

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An Act to establish the National Broadcasting Commission and for matters connected therewith.

[1992 No. 38.]

[24th August, 1992]

[Commencement.]

Establishment, etc., of the National Broadcasting Commission

1. Establishment of the National Broadcasting Commission

There is hereby established a Commission to be known as the National Broadcasting Commission (in this Act referred to as "the Commission") which shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

2. Powers of the Commission

(1) The Commission shall have responsibility of--

(a) advising the Federal Government generally on the implementation of the National Mass Communication Policy with particular reference to broadcasting;

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

[1999 No. 55.]

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

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

(c) recommending applications through the Minister to the President, for the grant of radio and television licences;

(d) regulating and controlling the broadcasting industry;

(e) undertaking research and development in the broadcasting industry;

(f) receiving, considering and investigating complaints from individuals and bodies corporate or incorporate regarding the contents of a broadcast and the conduct of a broadcasting station;

(g) upholding the principles of equity and fairness in broadcasting;

(h) establishing and disseminating a national broadcasting code and setting standards with regard to the contents and quality of materials for broadcast;

- (i) promoting Nigerian indigenous cultures, moral and community life through broadcasting;
- (j) promoting authenticated radio and television audience measurements and penetration;
- (k) initiating and harmonising Government policies on trans-border direct transmission and reception in Nigeria;
- (l) regulating ethical standards and technical excellence in public, private and commercial broadcast stations in Nigeria;
- (m) monitoring broadcasting for harmful emission, interference and illegal broadcasting;
- (n) determining and applying sanctions including revocation of licences of defaulting stations which do not operate in accordance with the broadcast code and in the public interest;
- (o) approving the transmitter power, the location of stations, areas of coverage as well as regulate types of broadcast equipment to be used;
- (p) ensuring qualitative manpower development in the broadcasting industry by accrediting curricula and programmes for all tertiary training institutions that offer Mass Communication in relation to broadcasting;

[1999 No. 55.]

- (q) intervening and arbitrating in conflicts in the broadcasting industry;

[1999 No. 55.]

- (r) ensuring strict adherence to the national laws, rules and regulations relating to

the participation of foreign capital in relation to local capital in broadcasting;
[1999 No. 55.]

- (s) serving as national consultants on any legislative or regulatory issues on the broadcasting industry;

[1999 No. 55.]

- (t) guaranteeing and ensuring the liberty and protection of the broadcasting industry with due respect to the law; and

(u) carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under or pursuant to this Act.

(2) No person shall operate or use any apparatus or premises for the transmission of sound or vision by cable, television, radio, satellite or any other medium of broadcast from anywhere in Nigeria except under and in accordance with the provisions of this Act.

3. Composition of the Commission

(1) The Commission shall consist of-

(a) a chairman;

(b) ten other members as may be approved to 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.

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(2) The chairman and other members of the Commission shall be persons of proven integrity, experience and specialised 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.

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(3) The chairman and other members of the Commission shall be citizens of Nigeria who shall be appointed by the President on the recommendation of the Minister.

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(4) The chairman and other members of the Commission shall be part-time members.

(5) The supplementary provisions contained in the First Schedule to this Act shall have effect with respect to the proceedings of the Commission and the other matters contained therein.

[First Schedule.]

4. Tenure of office, etc.

- (1) The chairman and other members of the Commission shall hold office for three years renewable for one further period of three years only.
- (2) The chairman or a member of the Commission may resign his appointment at any time by notice in writing under his hand addressed to the President.
- (3) If a member of the Commission dies or resigns or otherwise vacates his office before the expiry of the term for which he is appointed, a fit and proper person shall be appointed for the remainder of the term of office of the predecessor, so however that the successor shall represent the same interest and shall be appointed by the President.
- (4) A member of the Commission may be removed from office by the President if he is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office.

Staff of the Commission

5. Director-General and other staff of the Commission

- (1) There shall be appointed for the Commission, a Director-General who shall be the chief executive of the Commission.
- (2) The Director-General shall be appointed by the President on the recommendation of the Minister.
- (3) The Director-General shall be a person with wide knowledge and experience in broadcasting.
- (4) The Director-General shall be responsible for the execution of the policies of the Commission and its day-to-day administration.
- (5) The Director-General shall hold office in the first instance for a period of five years and shall be eligible for re-appointment for such further periods as the President may, from time to time, determine.
- (6) Subject to this section, the Director-General shall hold office on such terms as to emolument and otherwise as may be specified in his letter of appointment and as may, from time to time, be approved by the President.
- (7) The Commission shall appoint a secretary to the Commission who shall keep records, conduct correspondence of the Commission and carry out and perform such other duties as the Commission or the Director-General may, from time to time, direct.
- (8) The Commission may appoint such other employees to assist the Director-General in the exercise of his functions under this Act.

6. Power of the Minister to give directives

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.

7. Conditions of service

The Commission shall develop and submit to the President appropriate conditions of service covering remuneration, fringe benefits, pension scheme and other benefits for its employees.

8. Service in the Commission to be pensionable

1. Notwithstanding the provisions of the Pensions Act, service in the Commission shall be approved service for the purposes of that Act and, accordingly, officers and other

persons employed in the Commission shall in respect of their service in the Commission

be entitled to pensions, gratuities and other retirement benefits as are enjoyed by persons

holding equivalent grades in the civil service of the Federation, so however that nothing

in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.

[Cap. P4.]

(2) For the purposes of the application of the provisions of the Pensions Act, any power exercisable thereunder by a Minister or other authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is hereby vested in and shall be exercisable by the Commission and not by any other person or authority.

9. Power of the Commission to grant licences

(1) The Commission shall, in the consideration of an application or a licence under this Act, be satisfied that the applicant-

(a) is a body corporate registered under the Companies and Allied Matters Act or a station owned, established or operated by the Federal, State or local government;

[Cap. C20.]

(b) can demonstrate to the satisfaction of the Commission that he is not applying on behalf of any foreign interest;

(c) can comply with the objectives of the National Mass Communication Policy as is applicable to the electronic media, that is, radio and television;

(d) can give an undertaking that the licensed station shall be used to promote national interest, unity and cohesion and that it shall not be used to offend the religious

sensibilities or promote ethnicity, sectionalism, hatred and disaffection among the peoples of Nigeria.

(2) The grant of a licence by the Commission under this Act shall be subject to availability of broadcast frequencies.

(3) Compliance with the requirements specified in subsection (1) of this section shall not entitle an applicant to the grant of a licence but the grant of a licence by the Commission shall not be unreasonably withheld.

(4) In determining the grant of a licence the Commission shall consider the following, that is-

- (a) the structure of shareholding in the broadcasting organisation;
- (b) the number of shareholding in other media establishments;
- (c) the distribution of those stations and establishments as between urban, rural, commercial or other categorisation.

(5) It shall be illegal for any person to have controlling shares in more than two of each of the broadcast sectors of transmission.

[1999 No. 55.]

(6) Any broadcast station transmitting from Nigeria before the commencement of this Act shall be deemed to have been licensed under this Act and, accordingly, shall be subject to the provisions of this Act.

10. Persons disqualified from the grant of a licence

The Commission shall not grant a licence to-

- (a) a religious organisation; or
- (b) a political party.

11. Method of application for a licence

A request by a person for authority to own, establish or operate a radio, sound, television, cable or satellite station shall be by way of an application for a licence addressed to the Director-General of the Commission and in the form prescribed in the Second Schedule to this Act.

[Second Schedule.]

12. Terms and conditions for a licence

The grant of licence shall be subject to the terms and conditions set out in the Third Schedule of this Act.

[Third Schedule.]

13. Power of the Commission with respect to licences

(1) The Commission shall have power with respect to any licence granted under section 9 of this Act-

(a) to allocate to a licensed station, that is-

(i) in the case of a radio station, Frequency Modulation, Medium Wave and Short Wave;

(ii) in the case of television, Very High Frequency and Ultra High Frequency; and

(iii) such other broadcast frequencies as the Commission may, from time to time, determine;

(b) to approve the location of a station;

(c) to regulate the technical specifications of equipment and standard of transmission;

(d) to approve the call signal of a station;

(e) to approve the area to be served by a station;

(f) to impose sanctions in accordance with paragraph 8 of the Third Schedule to this Act; and

[Third Schedule.]

(g) to prescribe an appropriate fee payable.

(2) The Commission shall have the power to enter into the premises of any station and inspect or examine any apparatus of operation in the station in order to ascertain their conformity with the provisions of this Act.

(3) The Commission may exercise its power under this section of this Act through its agents.

Financial provisions

14. Fund of the Commission

(1) The Commission shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Commission.

(2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section-

(a) such percentage of fees and levy to be charged by the Commission on the annual income of licensed broadcasting stations owned, established or operated by private individual(s), Federal State or local government;

(b) such moneys as may, from time to time, be lent or granted to the Commission by the Government of the Federation or of a State;

(c) all moneys raised for the purposes of the Commission by way of gifts, loans, grants-in-aid, testamentary disposition or otherwise;

(d) all other assets that may, from time to time, accrue to the Commission.

(3) The fund shall be managed in accordance with rules made by the Commission and without prejudice to the generality of the power to make rules under this subsection, the rules shall in particular contain provisions-

(a) specifying the manner in which the assets or the fund of the Commission are to be held and regulating the making of payments into and out of the fund; and

(b) requiring the keeping of proper accounts and records for the purpose of the fund in such form as may be specified in the rules.

(4) No person shall offer for sale, sell or have in his possession with a view to selling in the course of his business, any installation, mechanism, instrument, material or other apparatus-

(a) constructed for the purpose of; or

(b) intended to be used for,

wireless telegraphy except under and in accordance with a licence issued by the Commission in that behalf.

[1999 No. 55.]

15. Radio and television licence fees

The Commission shall-

(a) collect and hold in trust for;

(b) disburse on behalf of,

the broadcast houses such licence fees accruing from the ownership of radio and television sets, as the Commission may prescribe.

16. Expenditure of the Commission

(1) The Commission may, from time to time, apply the proceeds of the fund established pursuant to section 14 of this Act to-

(a) the cost of administration of the Commission;

(b) the payments of salaries, fees and other remuneration, allowances, pensions, and gratuities payable to members or employees of the Commission.

17. Power to accept gifts

(1) The Commission may accept gifts of money or other property and upon such terms and conditions, if any, as may be specified by the person or organisation making the

gift provided that such gifts are not inconsistent with the objectives and functions of the Commission under this Act.

18. Borrowing power

(1) The Commission may with the consent of the Minister borrow, on such terms and conditions as the Commission may determine, such sums of money as the Commission may require in the exercise of the functions conferred on it under this Act.

19. Annual estimates, accounts and audit

(1) The Commission shall, not later than 31 October in each year, submit to the President an estimate of its expenditure and income during the next succeeding financial year.

(2) The Commission shall cause to be kept proper accounts of the Commission in respect of each year and proper records in relation thereto and shall cause its accounts to be audited not less than six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

Miscellaneous and supplementary

20. Annual reports

The Commission shall prepare and submit to the Minister not later than 30 June in each year, a report in such form as he may direct on the activities of the Commission during the immediately preceding year, and shall include in such report a copy of the audited accounts of the Commission for that year and Auditor-General's report thereon.

21. Liability to code of sanctions

Any station which contravenes the provisions of the National Broadcasting Code or any other order of the Commission shall be liable to the sanctions prescribed in the Code.

[1999 No. 55.]

22. Indemnity etc., of the Commission and staff

(1) Every member of staff or other officer of the Commission shall be entitled to be indemnified by the Commission against losses or liabilities sustained or incurred in or about the execution of the duties attached to his office or otherwise in relation thereto, and no member, staff or other officer of the Commission shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Commission in the execution of the duties of his office or in relation thereto unless the same happened through his wilful neglect or default.

[1999 No. 55.J

(2) The Commission shall not be liable or responsible for any infringement by a licensee in the exercise of his licence, of a copyright in any work or any law arising out of the exercise of the licence, and nothing in this Act shall affect the liability of the licensee in respect of any such act done by him.

[1999 No. 55.J

23. Regulations

(1) The Commission may, with the approval of the Minister, make regulations generally for the purpose of giving effect to the provisions of this Act.

24. Savings

Pursuant to the provisions of section 9 of this Act, the power hitherto exercised by the Minister in so far as they relate to the grant of licences in respect of cable television services shall be deemed to have been performed by the Commission established by this Act.

25. Repeal of certain sections of certain enactments

(1) Section 7 (1) of the Nigerian Television Authority Act and section 6 (I) of the Federal Radio Corporation of Nigeria Act are hereby consequentially repealed.

[Cap. N136. Cap. FI8.]

(2) The power under the Wireless Telegraph Act and regulations made thereunder in so far as they relate to broadcasting shall, as from the commencement of the Act, vest in the Commission without further assurance than by this Act.

[Cap. W5.]

26. Interpretation

In this Act, unless the context otherwise requires-

"chairman" means the chairman of the Commission;

"Commission" means the National Broadcasting Commission established by section 1 of this Act;

"member" means a member of the Commission and includes the chairman;

"Minister" means the Minister charged with responsibility for information and
"Ministry" shall be construed accordingly;

"secretary" means the secretary to the Commission;

"station" means a place or organisation established for the purpose of distribution of radio or television programmes to the public through wireless or cable means.

27. Short title

This Act may be cited as the National Broadcasting Commission Act.

SCHEDULES

FIRST SCHEDULE

[Section 3 (5).]

Supplementary provisions relating to the Commission

Proceedings of the Commission

1. The Commission shall meet for the conduct of its business at such times as the chairman may determine.
2. The principal office of the Commission shall be in the Federal Capital Territory, Abuja where its general sessions shall be held.

[1999 No. 55.]

3. The Commission shall have power to regulate its proceedings and may make standing orders for that purpose and subject to any such standing orders and to paragraph 4 of this Schedule, may function notwithstanding-

- (a) any vacancy in its membership or the absence of any member;
- (b) any defect in the appointment of a member; or
- (c) that a person not entitled to do so took part in its proceedings.

4. The quorum at any meeting of the Commission shall be a simple majority of the members.

5. Where standing orders made under paragraph 3 of this Schedule provide for the Commission to co-opt persons who are not members of the Commission, such person may attend meetings of the Commission and advise it on any matter referred to them by the Commission but shall not count towards a quorum and shall not be entitled to vote at any meeting of the Commission.

Committees

6. The Commission may appoint one or more committees to advise it on the exercise and performance of its functions under this Act and shall have power to regulate the proceedings of its committees.

7. The Commission shall conduct its proceedings in such a manner as shall be best conducive to the proper dispatch of its business and the ends of justice.

[1999 No. 55.]

8. Each vote and official act of the Commission shall be entered on record and its proceedings shall be made public upon request by any party interested.

[1999 No. 55.]

9. The Commission may withhold publications of records or proceedings containing secret information affecting national defence and security.

[1999 No. 55.]

Miscellaneous

10. (1) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be made under seal may be entered into or executed on behalf of the Commission by any person generally or specifically authorised in that behalf by the Commission.

(2) Any member of the Commission or of a committee thereof, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Commission or a committee, as the case may be, shall not vote on any question relating to such contract or arrangement.

11. (1) The common seal of the Commission shall not be used or affixed to any document except in pursuance of a resolution duly passed at a properly constituted meeting of the Commission and recorded in the minutes of the meeting.

(2) The fixing of the seal of the Commission shall be authenticated by the signature of the chairman or some other members authorised generally or specifically by the Commission to act for that purpose.

(3) Any document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

SECOND SCHEDULE [Section II.]

Form for application for a grant of licence

I. Name of applicant

.....

2. Address

.....

3. Names and nationalities of directors

.....

4. Names and nationalities of shareholders and shareholding

.....

5. Equity structure

.....

6. Type of broadcast licence required (radio/TV. cable TV, etc.)

.....

7. Purpose of licence

.....

8. Duration for which licence is required

.....

9. Location

.....

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10. Coverage area
.....
11. Target audience/programme profile
.....
12. Applicant's interest in any other media organisation
.....
13. Type and make of transmitters
.....
14. Effective radiating power
.....
15. Type of antenna and its characteristics
.....
16. Distance between studio and transmitter station
.....
17. Type of link. system to be used
.....
18. Method of reception (scramble or open broadcast)
.....
19. Type, range and standard of programmes
.....
20. Proportion of Nigerian content to the foreign content
.....
21. Proposal for increase of local content over licenced period
.....
22. Any special effort to promote indigenous talents
.....
23. Evidence of financial and technical capabilities of applicant
.....

Undertaking

24. I/We hereby give an undertaking that upon a grant of a licence I/we shall abide by the terms and conditions upon which the licence is granted.

.....

Signed

25. An application shall be accompanied by the following-

- (a) Certificate of Incorporation;
- (b) Certified copy of Articles and Memorandum of Association;
- (c) Project study including engineering design of system;
- (d) Evidence of the undertaking required under section 9 (d) of the Act.

THIRD SCHEDULE

[Section 12.]

Terms of a licence

1. A licence shall be valid for a period of five years in the first instance.

2. An application for the renewal of a licence shall be made to the Commission within a period of six months before the expiration of the licence.

3. In considering an application for the renewal of a licence the Commission shall review the past conduct of the licensee.

[1999 No. 55.]

4. The Commission may not renew a licence if, having regard to the past performance of the station, it is not in the national or public interest or the interest of the broadcast industry to do so.

[1999 No. 55.]

5. A licence shall not be transferable and the licensed station shall not be changed without notifying the Commission of the intention and the reasons for such change.

6. A licensee shall be responsible for the contents of the station's broadcast.

[1999 No. 55.]

7. A licence shall-

(a) contain a schedule of proposed programmes over a given period of time e.g. quarterly;

(b) a local programme content which shall not be less than 60 per cent local and not more than 40 per cent foreign for radio and television and not less than 20 per cent local or more than 80 per cent foreign for cable satellite retransmission;

[1999 No. 55.]

(c) a schedule shall be accompanied by a synopsis of each of the programme plans.

8. Each station shall keep a daily log of its transmitted programmes and the station log book shall include a transmitter output power and radiating frequencies.

[1999 No. 55.]

9. Each station shall make available for inspection by the inspectorate staff of the Commission, its broadcast facilities including equipment, station transmission log, programmes and transmission recordings which must be kept at least 3 months before being discarded.

[1999 No. 55.]

10. A licence may be revoked by the Commission in the following cases, that is-

(a) where the prescribed fee has not been paid on the due date;

(b) where the licence has not been put to use within a period of one year after issuance;

[1999 No. 55.]

(c) where it is found that the licence was obtained in breach of the provisions of section 13 of this Act or where it is found that the provisions of the said section are not being complied with;

[1999 No. 55.]

(d) where in the opinion of the Commission the station has been used in a manner detrimental to national interest or where a complaint from the public has been upheld after a public hearing instituted by the Commission and whose decision is upheld by a majority of members of the Commission;

[1999 No. 55.]

(e) for false statements knowingly made either in the application form or in any statement of fact which may be required pursuant to this Act;

[1999 No. 55.]

(f) where the Commission discovers even after the issuance of a licence, authentic information or facts that would ordinarily preclude the granting of a licence to the licensee;

[1999 No. 55.1

(g) where there is wilful or repeated failure to operate substantially as set forth in the licence;

[1999 No. 55.]

(h) where there is wilful or repeated violation or wilful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission authorised by this Act or by a treaty ratified by the Federal Republic of Nigeria;

[1999 No. 55.]

(i) where there is violation of or failure to observe any cease and desist order issued by the Commission;

[1999 No. 55.]

(j) where there is wilful or repeated failure to allow reasonable access into the premises of any station; and

[1999 No. 55.]

(k) where a provision of the National Broadcasting Code has been seriously breached.

[1999 No. 55.]

11. The public hearing referred to in paragraph 10 (d) may be held at such places as the Commission may determine to be appropriate, and in making such determination, the Commission shall consider whether the public interest, convenience or necessity will be served by conducting the hearing at a place in or in the vicinity of the principal area to be served by the station in question.

[1999 No. 55.]

12. Pursuant to paragraph 11, the Commission shall serve upon the licensee or person involved an order to show cause why an order of revocation, suspension, or any order should not be issued against him and the order to show cause shall contain a statement of the matter with respect to which the Commission is inquiring and shall call upon the said licensee or person to appear before the Commission at such time and place as may be stated in the order but not less than thirty days after the receipt of such order, to give evidence upon the matter specified therein.

[1999 No. 55.]

13. If, after the hearing, the Commission determines that an order of revocation, suspension or any such other order should be issued, it shall issue such order, which shall include a statement of the findings of the Commission, the grounds and reasons for the findings and specify the effective date of the order, and cause same to be served on the said licensee or person.

[1999 No. 55.]

14. The Commission may impose a lesser sanction such as a warning or the suspension of a licence as it may deem fit.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation