A Critique of the National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations, 2011

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ABSTRACT
The regulation sought to be examined in this paper, National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulation, 2011 is a creation of the National Environmental Standards and Regulations Enforcement Agency (NESREA). The Agency created the regulation by virtue of section 34 of NESREA ACT 2007, which saddled the minister with power of making the regulation considering the fact that mobile communication is presently the dominant telecommunication player in the telecommunication industries in Nigeria. The paper briefly in practical terms looked at the background and key problems faced by the telecommunication industries in the course of NESREA implementing some of the areas identified in the regulation particularly the physical component of the infrastructure which is the base transceiver station (BTS) site which comprises of the space to be occupy, installation of equipments for transmission, use of alternative power supply, oil and noise pollution, this resulted to indiscriminate shut down of the stations due to non compliance with the regulation. It is against this background the paper analysis the shortfall of the regulation in it application on the following; collocation, which the National communication commission guidelines on technical specification for the installation of communication mask and tower issued in 2009 has provided a comprehensive framework on it. Secondly the sphere of prohibition of new facilities, perimeter setback, the generator setback, the enforcement mechanism and sanction as provided by the regulation runs contrary to the NESREA ACT 2007 and deviate from the guidelines for telecommunication industries as provided by the National communication commission being the principal regulator of the industry in Nigeria. Therefore the paper concluded by preferring the most effective way the stakeholders in the telecommunication industry should adhere to in order to avoid stampeding the telecommunication operator by arbitral use of the regulations created by the Agency.

Keywords: telecommunication, NESREA, Regulations, Enforcement

INTRODUCTION
The National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations, 2011 hereafter referred to as the “Regulation”, is a creation of the National Environmental Standards and Regulations Enforcement Agency (NESREA). NESREA created the Regulation by virtue of Section 34 of its establishment Act, to wit:

The Minister shall make regulations:
(a) generally for the purposes of carrying out or giving full effect to the functions of the Agency under this Act

NESREA itself was creation of the Federal Government in line with Section 20 of the 1999 Constitution as amended – “The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”. It is created as a parastatal of the Federal Ministry

1 National Environmental (Standards for Telecommunications and Broadcasting Facilities) Regulations, 2011, S.I. No. 11
Gazette No. 38, Vol.98 of 29th April, 2011.

2 Section 34, NESREA Act 2007
of Environment via the NESREA Act (National Environmental Standards and Regulations Act) 2007\(^3\). The Federal Government established the Agency as an institution under the supervision of the Federal Ministry of Environment, Housing and Urban Development. NESREA was created to replace the defunct Federal Environmental Protection Agency (FEPA). Our main thrust here is however not NESREA per se, rather, one of the regulations it birthed- the National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations, 2011, ostensibly to regulate environmental concerns relating to telecoms and broadcast facilities within the country. Mobile telecommunication is presently the dominant telecommunication player in the telecommunication industry despite it only came into Nigeria in 2001. Telecommunication came in with a loud bang and since then, it has been growing in an astronomical rate. Against the huge commercial and infrastructural deployment that immediately picked up on the trail of mobile telecom operators in Nigeria, there was a scurry of activities by individuals, communities, government parastatals, State and Local government bodies alike to cash in on the promising potentials of the nascent industry. It was contemporaneous to this period that NESREA came out with the Regulation. It has been proffered that the Regulation was setup to protect environmental and human health; ensure safety and general welfare; eliminate or minimize public and private losses due to activities of the telecommunications and broadcast industry\(^4\) but in the wake of flagrant abuse of legal process and visiting of telecom operators with indiscriminate and outrageous amounts of money in fines, their stated motives becomes highly suspicious. Some highly questionable provisions in the Regulation and the keen interest that the Agency has placed on telecoms operators has not only made the Regulation seem suspicious; it also easily gives the impression of NESREA having a regulatory function over telecom operation in the country, a core prerogative Nigerian Communication Commission (NCC)\(^5\) via the 1999 Constitution as amended.\(^6\) In recent time, ALTON\(^7\) has often been in the news over clashes with NESREA mostly over noncompliance with provisions of the Regulation. Inevitably, the NCC finds itself dragged into this disputes equally fighting NESREA.\(^8\) In this discourse, we seek to objectively analyze the Regulation, its intention, scope/powers, implementation and enforcement in a bid to find out who or what is at fault. Our aim cannot be achieved without reference to the NCC and NESREA Acts as well as other key legislations incidental to the issue. It is hoped that at the end of this discourse we shall be able to find out the validity or otherwise of the Regulation vis-à-vis the NESREA Act and relevant extant laws. Our approach is simply to subject provisions of the Regulation to these laws. A critique of this particular regulation of NESREA becomes necessary in the light of passionate outcry of foul play leading to the call for a judicial review of the Regulation from stakeholders of the telecoms industry individually\(^9\) and collectively.\(^10\)

**Background and key problems**

Global System of Mobile Communications (GSM) is without doubt the biggest indices of our national development in recent times. It has not only completely and speedily transformed information dissemination but it has also made it more available and affordable. GSM licenses were auctioned in 2001 and following this, operators quickly deployed mobile telecommunication services\(^11\). The existing infrastructure in the country then could not support their operation thus; there was rapid development in recent times. It has not only completely and speedily transformed information dissemination but it has also made it more available and affordable. GSM licenses were auctioned in 2001 and following this, operators quickly deployed mobile telecommunication services\(^11\). The existing infrastructure in the country then could not support their operation thus; there was rapid

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\(^3\)National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. 25, July 2007


\(^5\)Section 3(1) Nigerian Communications Act, 2003

\(^6\)Pursuant to item 46, Second Schedule (Exclusive Legislative List)1999 Constitution as amended dealing with Posts, telegraphs and telephones

\(^7\)The Association of Licensed Telecommunications Operators of Nigeria


\(^10\)Critical Evaluation Of The Power, Scope And Functions Of NESREA:-- Presentation By Babatunde Soyemi at Airtel’s 2012/2013 Legal & Regulatory Retreat

\(^11\)Ibid 8 pg. 5
deployment of telecommunication infrastructures and facilities nationwide. The most basic and physical component of the infrastructure is the BTS Site (Base Transceiver Station) which is made up of the whole Real estate space, this basically houses the tower which holds the antennas, the generator set, the shelter and support cabinet and any other transmission equipment.\textsuperscript{12}Because of lack or insufficient power supply in Nigeria, telecom operators are forced to operate BTS Sites using alternative power – mostly from diesel powered outdoor generator sets. The use of generators of course comes with its attendant effluent concerns – noise and oil/fuel pollution. Considering the operation of a BTS Site in Nigeria, it becomes evident why they are easy targets of NESREA using the Regulation. It should be noted here that NESREA has always had friction with telecom operators even before the Regulation came into being. In August 2010, for instance NESREA sealed two Base-stations belonging to MTN in Abuja allegedly for non-compliance with the environmental Impact Assessment Act and the Nigerian Communications Commission regulations on set-back of BTS Sites from residential areas. The Agency is reported to have stated that their actions were also based on complaints of noise pollution, vibration of buildings, environmental degradation resulting from oil spill and effect of the radio-active waves by the residents of the area.\textsuperscript{13} ALTON foresaw the inevitability of conflict that was going to occur between it and the Agency if the Regulation becomes operational which is what prompted it to make submissions on the Regulation draft at its infancy stage. As a matter of fact, ALTON specifically made a quite radical suggestion;

“We therefore restate our position that the NESREA Regulations be reviewed and that appropriate provisions be subsumed into the NCC’s Guidelines to address any additional concerns which NESREA believes have not been adequately addressed by the NCC Guidelines”.\textsuperscript{14}

As predicted, when the Regulation came into operation in 2011, NESREA took to the field hacking; thus began the era of indiscriminate and illegal clamping down on telecoms facilities in the country. By 2012, NESREA is reported to shut down about 52 BTS Sites.\textsuperscript{15} This had a very negative impact on quality of GSM service within the country. In a memorandum to the Senate Committee on Communications probing poor quality of service in the communications industry, then Executive Vice Chairman at NCC, Dr. Eugene Juwah, said the unilateral action of NESREA compounded quality issues in the industry.\textsuperscript{16} In 2013, both GLO and Visafone base stations were sealed by NESREA at various locations.\textsuperscript{17} It is imperative to state here that there are indeed environmental concerns associated with operation of telecommunication BTS Sites and facilities but does the NCC have a mechanism for addressing this concerns or not and is NESREA being objective and complimenting in addressing any lapses or not?

**Analyzing the Regulation**

To fully apprehend the impact of the Regulation on the Nigerian telecommunication industry, it is very pertinent for us to appreciate relevant provisions of the NESREA Act. NESREA is given a wide range of power and scope by its enabling Act to safeguard and protect the environment. The Act is drafted to be thorough and contemplate conceivable contemporary environmental issues. The scope and powers of NESREA are captured in Sections 7 and 8 of the Act. The Agency is authorized to enforce compliance with laws, guidelines, policies and standards on environmental matters.\textsuperscript{18} The Agency is mandated to enforce compliance with policies, standards, legislations and guidelines on
water quality, environmental health and sanitation including pollution abatement.\textsuperscript{19} It is also empowered and charged with enforcement of the guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria’s natural resources.\textsuperscript{20} NESREA is further saddled with the responsibility of compliance monitoring of environmental regulations and standards on noise, air, land, seas, oceans and other bodies.\textsuperscript{21} The Agency is to conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards.\textsuperscript{22} NESREA is given far reaching powers by Section 7(m) of the Act which empowers it to carry out such activities as are necessary or expedient for the performance of its functions.\textsuperscript{23} The Agency can also prohibit processes and use of equipment or technology that undermine environmental quality,\textsuperscript{24} conduct field follow up of compliance with set standards and take procedures prescribed by law against any violator; and subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations.\textsuperscript{25}

On the creation of the \textit{National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations, 2011}, NESREA invoked the provisions of Section 34 of the Act which inter alia provides that the Minister shall make regulations generally for the purposes of carrying out or giving full effect to the functions of the Agency under the Act.\textsuperscript{26} It is worth mentioning here that the subject of this discourse - National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations, 2011 is not the only regulation that has been formulated by the Agency, 11 Regulations are reported to have been created by the Agency\textsuperscript{27} sometime around 2010 and by 2012 it has risen to 24.\textsuperscript{28} It has been reported by Ladan (2012)\textsuperscript{29} that in crafting the regulations NESREA sought to address all four broad environmental problems being accorded highest priority in Nigeria, namely ensuring sustainable use of natural resources and adoption of sustainable and environmental friendly practices in both industrial and general sanitation nationwide. On the purpose of creating the Regulations, Regulation 3(1) provides thus:

“…to protect the environmental and human health; ensure safety and general welfare; eliminate or minimize public and private losses due to activities of the telecommunications and broadcast industry.”\textsuperscript{30}

Having now grasped the intendment of the Regulation, we can proceed to give a forensic appraisal of the Regulation by identifying and analyzing areas whose application raise confrontational issues.

1. Colocation

First we need to ask and answer the question; Regulation 3(1) (f):

“encourage the sharing or colocation of telecommunication/broadcasting masts”

This is stated in Section 3(1) (f) as a “Specific objective” of the Regulation. This is usurpation of the powers of NCC more so as this is a technical matter not an environmental concern. If NESREA is seeking to preserve environmental aesthetic or reduce visual impact of Masts, it should not list this as a major or specific objective of the Regulation as this has often encouraged officers of the Agency to insist on Telecoms operators collocating proximate BTS Sites. This section of the Regulation is especially uncalled for in the light of provisions of NCC’s Guidelines on Technical Specifications for

\textsuperscript{19} Section 7(d)
\textsuperscript{20} Section 7(e)
\textsuperscript{21} Section 7(h)
\textsuperscript{22} Section 7(k)
\textsuperscript{23} Section 7(m)
\textsuperscript{24} Section 8(d)
\textsuperscript{25} Section 8(e)(f)
\textsuperscript{26} Section 34(c)
\textsuperscript{27} Ladan M. T., \textit{A Review of the NESREA Act and Regulations Agreements: a New Dawn in Environmental Protection in Nigeria} (pg.199) published in the Nigerian Bar Journal, Vol. 6 No. 1 July 2010
\textsuperscript{28} Ibid 4 pg.14
\textsuperscript{29} Ibid 4 pg.15
\textsuperscript{30} Regulation 3(1) National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations, 2011
The Installation of Telecommunications Masts and Towers issued since 2009\textsuperscript{31}. This Guideline contains a comprehensive framework for colocation. Provisions of the Guideline on colocation are captured below;

(7) \textbf{Shared Use of Towers & Masts}

(a) The design, construction and Installation of towers over 25 metres, shall be done in such a way as to accommodate a minimum of three service providers using the same structure.

(b) Owners of Towers shall in furtherance to sub-paragraph (a) above, provide written certifications to the Commission that such towers are available for use by other telecommunications service providers on a reasonable cost and non – discriminatory basis, and modalities and conditions for such shared usage.

(c) Where any serious disagreement or dispute arises that threatens the shared use of facilities, the Commission shall arbitrate over the dispute and any decision so reached by the Commission shall be final.

(d) For the avoidance of doubts, the sharing of towers and masts in these guidelines shall be subject to the provisions of the Collocation and Infrastructure Sharing Guidelines of the Commission.\textsuperscript{32}

In addition to this provision in the Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers, NCC also has a colocation and infrastructure sharing specific guideline – Guidelines on Collocation and Infrastructure Sharing.\textsuperscript{33}

\textbf{2. Prohibition of new facilities}

Regulation 5(4) (1) (a) provides thus;

“All new facilities shall... primarily be located in industrial, commercial and business areas”.\textsuperscript{34}

This provision apparently seeks prohibition of the construction of any new facility within residential areas and instead stipulates new facilities to only be built in industrial, commercial and business areas. This clearly indicates a lack of technical wherewithal by NESREA of the workings of GSM service provision because if this provision is to be strictly adhered to, residential areas hitherto uncovered will continue to be without coverage. The sense in the drafting of this provision is completely lost especially in view of the fact that residential areas have higher population density than industrial, commercial and business areas and thus, this call for deployment of more facilities here. It is important to note here that NCC in its guidelines only placed a height limit of 25 metres for towers in areas delineated as residential but even this limitation is qualified thus “where towers in excess of 25 metres in height are permitted, they should be placed at a minimum setback of 5meters distance to the nearest demised property, excluding the fence. Prior permission must be obtained from the Commission”.\textsuperscript{35} We can equally deduce from the provision of the Regulation that there is equally a discrimination against location of facilities in remote areas and along distant highways despite strategic service relay needs of these areas. This provision is even made worse by its criminalization in Regulation 11(2) providing that anybody who violates the provisions of Regulations 5, 6, 7, 8 & 9 commits an offence and is liable to pay N5, 000,000.00 on conviction or imprisonment of 5 years or to both such fine and imprisonment and an additional fine of N50, 000.00 for every day the offence subsists.\textsuperscript{36}

\textbf{3. Perimeter Setback}

The NCC being the principal regulator of telecoms in the country has put in place a set of setback rules and guidelines for telecoms facilities though it is arguable if this is all-encompassing or

\textsuperscript{31}NCC’s Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers

Issued 9th April, 2009

\textsuperscript{32}Chapter Five (7) - Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers

Issued 9th April, 2009

\textsuperscript{33}NCC Guidelines on Collocation and Infrastructure Sharing, available at www.ncc.gov.ng/.../Legal-

Guidelines_Collocation_and_Infrastructure... accessed 20/07/2015

\textsuperscript{34}Regulation 5(4) (1) (a)

\textsuperscript{35}Chapter One, 3 (4)

\textsuperscript{36}Regulation 11(2)
sufficient to address environmental concerns. Chapter 5 of the NCC’s Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers deals with environmental requirements of setting up masts and towers. It provides 150 metres height limit and 5 meters distance limit from any demised property excluding the fence. NESREA now came up with its own divergent setback requirement for masts and towers in the Regulation. The Agency gave 10 metres setback from perimeter fence of nearest residential property and 12 meters setback from wall of nearest residential property where there is no perimeter fence and for sites adjacent to any hospital or school. This inconsistency on perimeter setback is a cause of confusion to telecoms operators especially as NESREA sought to apply the regulation retrospectively. It stands to reason that if the Agency feels that the extant setback guideline being operated by the NCC falls short of environmental preservation requirements it should liaise with the NCC and stakeholders to review extant NCC guidelines so that even if NESREA would still come up with a separate set of rules there would at least be uniformity in the industry. This is even more expected of NESREA before drafting the Regulation in view of the objectives of the Agency to wit; “...coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.”

This area of conflict between the NCC and NESREA is yet to be resolved and it can be argued that since the matter (land use) is neither in the Exclusive legislative list nor the Concurrent list it behooves on the State Governments to legislate upon. The Supreme Court gave confirmation on this position in A.G Lagos State v A.G Federation & 36 Others where it stated thus; "Although S. 20 of the 1999 Constitution gives the National Assembly the legislative jurisdiction on environment generally, it did not give it the power to legislate on planning and development control over land in the States or Local Governments..."

We go further to state here that the conflict in this area should be resolved in favour of the NCC on the basis that telecoms operators are required by the NCC establishment Act (Section 135) to “require approvals of the State Government, Local Government or other relevant authority for installation, placing, laying or maintenance of any network facilities on, through, under or across any land”. This position is strengthened by the fact that in compliance with the NCA Act, telecom operators forward building plans to local planning boards within the States for approval before site construction is undertaken.

4. Generator Setback
NESREA in the Regulation introduced novel setback requirement which has not been provided for in NCC’s guidelines. Where fossil fuel generators is used to power a BTS Site the Regulation provides for 6 meters setback from the perimeter fence of the nearest residential property and 8 meters setback from the wall of the nearest residential property where there is no perimeter fence. Such generators must also be 15 meters setback from any existing surface water body or domestic source. The Regulation encourages the use of environment friendly power sources like solar, hydro, wind etc.
Agency prescribed the use of sound proof generators and regulates noise pollution emitted to a permissible level of 50 decibel by day and 30 decibel by night for residential area while for hospital and school environments it is 45 decibel by day and 35 by night.\textsuperscript{52} The noise emitting from power generators at BTS Sites is the most disturbing and noticeable pollution in the telecoms industry and coupled with the absence of a comprehensive regulation on the use of generator it is highly commendable of NEREA make this provision. It is also reported that the Agency is prompt in enforcing compliance where noise pollution as soon as reported or noticed.\textsuperscript{53}

5. Enforcement
The Regulation’s mechanism for enforcement of non-compliance starts when the Agency notifies a facility owner of such non-compliance, after 14 days it re-inspects for compliance. If all the above fails the Agency then issues a notice directing compliance. Pursuant to the NESREA Act, it is an offence to obstruct any officer of the Agency in performance of his duties. Any owner of a facility that violates provisions of the Regulation is deemed to commit an offence. The enforcement procedure however becomes manifestly flawed where it stipulates thus;

“An officer of the Agency may, in the course of his duty under these Regulations, at any time – enter any facility or premises to take samples or specimen for analyses and measurements in length or level of standard to which these Regulations relate and – take any further appropriate action which he reasonably believes is necessary for the purpose of effectuating the provisions of these Regulations”.

Looking critically at the wordings of the above enforcement rules the manifest mischief it abodes becomes evident. Drafting a rule permitting an officer to enter into a private property or facility and to take any action he deems without any secondary authorization, check system or legal safeguard is extremely unprofessional and raises suspicions of mischievous intentions by NESREA. This suspicion is further confirmed when these enforcement regulations are considered against Section 30 of NESREA Act(reproduced below);

(1) An officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certificate of designation if so required:
(a) enter and search with a warrant issued by a court, any premises including land, vehicle, tent, vessel, floating craft, at all times, for the purpose of conducting, inspection, searching and taking samples for analysis which he reasonably believes, carries out activities or stores goods which contravene environmental standards or legislation;
(b) examine any article found pursuant to paragraph (a) of this subsection, which appears to him to be an article to which this Act or the regulations made under apply or anything which he reasonably believes is capable of being used to the detriment of the environment;
(c) take a sample or specimen of any article to which this Act or the regulations apply or which he has power to examine under paragraph (b) of this subsection;
(d) open and examine, pursuant to paragraph (a) of this subsection, any container or package which he reasonably believes may contain anything to which this Act or its regulations apply or which may help in his investigations;
(e) examine any book, document or other record found pursuant to paragraph (a) of this subsection, which he reasonably believes may contain any information relevant to the enforcement of this Act or the regulations and make copies thereof or extracts there from;
(f) seize and detain for such time as may be necessary for the purpose of this Act, any articles by means of or in relation to which he reasonably believes any provision of this Act or the regulations has been contravened; and
(g) obtain an order of a court to suspend activities, seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland water and other structure whatsoever.
(2) A written receipt shall be given for any article or thing seized under subsection (1) of this section and the reasons for such seizure shall be stated on such receipt.

\textsuperscript{52} Regulation 9(3) (b) – Schedule I
\textsuperscript{53} Discussion with Airtel North East Zone Legal and Regulatory senior manager – Joseph Myapurgi (30/04/15)
(3) An article seized under this Act shall be kept or stored in such a place as the officer of the
Agency may direct and shall be returned to the owner or the person from whom it was seized if the
article upon analysis or examination is found to conform with the requirements of this Act or
regulations made under it.

(4) An article ... seized by an officer of the Agency in pursuance of this Act or the regulations
made under it, may be submitted.

It is abundantly clear that the enforcement rules of the Regulation were copied from Section 30 of the
Act albeit poorly and unprofessional attempt. Most importantly, the major check systems and
preconditions for enforcement contained in the Act (underlined above for emphasis) are conspicuously
absent in the Regulations without any logical explanation or need. This makes the enforcement
regulations ultra vires the Act and gives room for unnecessary confrontation with stake holders during
application.

6. Sanctions

The operation of telecoms and broadcast facilities in Nigeria cannot be considered among the
industries causing the highest environmental degradation yet the monetary sanctions labeled against
violation of the Telecommunication and Broadcast Facilities Regulation is one of the highest imposed
by NESREA than in any other Regulation. Be that as it may, it is expected that the fines imposed
should be consistent with the NESREA Act but here again we find a distinct departure that makes
such fines not only suspicious but illegal. NESREA has been using the fines housed in the Regulation
as justification slam outrageous amounts of money from telecom operators over the slightest infraction
and failure to make payment results in the affected sights being locked up. Please find table below;

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CONCLUSION

Having identified crucial defects in NESREA’s Regulation it is imperative that such a sector-specific
regulation should be in harmony and only compliment provision already put in place by the sector’s
regulator. Alternatively, drafting of the regulation should have considered and included positions
proffered by both the regulator (NCC) and stakeholders of the sector as they both have the requisite
technical knowhow and have full understanding of the issues to be addressed as it concerns the
telecommunications industry. The confusion and crises in the industry continues unabated with no
foreseeable truce or common ground being contemplated between the parties. It is without doubt that
there are environmental concerns to be protected and in the same light their role that should only be
played by the statutorily empowered bodies. Nigeria is yet to fully enjoy fair priced quality voice and
data service largely due to the huge contending factors challenging the sector like lack of power
supply, growing insecurity, hostile/demanding communities, extreme taxes etc and it is without doubt
that indiscriminate shutting down of BTS Sites by NESREA and the constant fracas associated with
this also goes a long way in further undermining the expected quality deliverables of the telecom
industry. It is therefore highly advised that before the foundations of the telecoms industry will harden that NESREA goes back to the drawing board, liaising with all relevant stakeholders to evolved a non-offensive and healthier regulation. Information dissemination is the most important vehicle of modern development therefore justifying a strong need for a holistic complimenting relationship between all stakeholders as this would boost mileage and fast track development of the industry and by implication Nigeria.

REFERENCES
National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. 25, July 2007
The Association of Licensed Telecommunications Operators of Nigeria
Nigerian Communications Act, 2003
Critical Evaluation Of The Power, Scope And Functions Of NESREA:- (Unpublished article) By Babatunde Soyemi at Airtel’s 2013 Legal & Regulatory Retreat
Collocation & Infrastructure Sharing: Prospects and Challenges (unpublished article) pg.9, presentation at Airtel Regulatory Affairs Team Building 31 January 2013
Ladan M. T., A Review of the NESREA Act and Regulations Agreements: a New Dawn in Environmental Protection in Nigeria (pg.199) published in the Nigerian Bar Journal, Vol. 6 No. 1 July 2010
National Environmental (Standards for Telecommunication and Broadcast Facilities) Regulations, 2011
NCC’s Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers Issued 9th April, 2009
Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers Issued 9th April, 2009
Section 135 Nigerian Communications Act, 2003
Discussion had with LivinusUdubu, Director Town Planning, Adamawa State Town Planning & Development Authority, 18/07/2017
Discussion with Airtel North East Zone Legal and Regulatory senior manager – Joseph Myapurgi (30/04/16)