

Regulatory independence and the development of the telecommunications sector: The Liberian Telecommunications Authority¹

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This white paper is based on the results of a wider project on the information and communication technology sectors in Liberia carried out by a team of researchers from the Georgia Institute of Technology. Findings are based on interviews conducted with key actors from government, industry, and international governmental organizations in Monrovia, Liberia. The purpose of this paper is to offer an independent, outside, and disinterested scholarly opinion on the role and operation of the Liberian Telecommunications Authority and is based upon our understanding of international and regional best-practice and current Liberian domestic conditions. This paper is offered in the spirit of friendship and international collaboration with the hope that it can be of use in the on-going development of the sector and of Liberia at large.

Introduction

The importance of telecommunications to economic and social development is well established both for developed and developing countries. Most governments interested in promoting a vibrant telecoms sector will seek to build a strong and independent regulator to ensure that national development goals are also met. This is in fact the stated position of the Government of Liberia (GoL) (GoL, 2007). The question is how can this be achieved within the context of the nascent Liberian telecoms sector? This paper presents a succinct analysis of this issue by first looking at the development and current status of the sector, the rationale and conditions for attaining regulatory independence and factors supporting and constraining regulatory independence in Liberia.

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The final section of the paper briefly puts forwards several recommendations for developing an independent and effective regulator in Liberia. The purpose of these recommendations is to support the goal of regulatory independence. It is our belief that in the nascent legislative and institutional environment currently governing the Liberian telecoms sector, a purposive effort must be made to ensure that the Liberian Telecommunications Authority (LTA) is able to work effectively and independently. Policy declarations aside, our analysis shows that there are several obstacles, both institutional and political, that can hamper the realization of this goal. It is hoped that by highlighting these issues and possible solutions policy-makers, industry players, consumers and other relevant stakeholders will be better equipped to develop a telecoms sector that will provide the most benefit to the Liberian people.

Background – the development of the Liberian Telecommunications sector

As a consequence of several years of civil war, much of the social and economic infrastructure in Liberia has been badly damaged. Recent estimates indicate that some 76% of the population live below the US\$1/day poverty line, the unemployment rate is approximately 85%, and life expectancy at birth is only 47.7 years (UNDP-Liberia, 2006). The government is pursuing various strategies to meet these development challenges including the use of information and communication technologies (ICT's) as a development tool.

However, the telecoms sector itself also suffered from the civil conflict. For example, the entire fixed line network was destroyed and most of the supporting infrastructure stolen. As a result voice telephony in Liberia is based solely on mobile phone networks. Prior to 2003, even these networks were limited in operation. Before and immediately after the establishment of the Interim government in 2003, the Ministry of Post and Telecommunications (MPT) went about issuing licenses to the mobile phone companies to operate, in some cases, on the same frequencies. Some fifteen GSM licenses were granted with overlapping frequencies during this period. By late 2004, a Presidential Telecommunications Committee, which had been set up to look at the management of licenses, revised the spectrum plan and completed a redistribution of frequencies to four major mobile phone operators.

The greater need for a new national legislative framework from which the sector could function was still unfilled at this point. In that regard, and with the technical support of the World Bank, one of the major achievements in this period was the passing of a new telecoms law (Bill No. 18) in September 2005. This law was developed through a process of consultation and coordination between the Interim government, the mobile operators and the World Bank. It amended previous legislation, articulated the regulatory regime for the sector, established an (interim) independent regulator the Liberian Telecommunications Authority (LTA), and outlined the functional and reporting relationship between the MPT and the LTA and the mechanisms for the issuing of licenses and fees.

During the evolution of this policy and regulatory environment, the market continued to develop. Currently, it consists of four mobile phone operators who together are responsible for an estimated phone penetration of 12-13% of the population and with a signal reaching 60-70% of the populated areas (Best et al., 2007). Competition between these companies has brought call rates to some of the lowest levels in the region (Balancing-Act, 2007b). In addition, Internet use is growing supported by ten wireless Internet Service Providers (WISP's) operating in Monrovia and serving approximately one to two thousand users. At the same time, several problems still persist in the sector and the role of the LTA in managing this development has been limited due in part to their lack of resources, confused and interim status, weak enforcement and political powers, and the limited scope to the current legislation.

Bill No. 18 was only meant to serve as controlling legislation until the establishment of a more comprehensive and permanent law. In November 2006 a new Telecommunications Act (2006) was drafted and in early 2007 it was presented in Liberia's Parliament for review. The 2006 Act is broader in scope and addresses issues such as the roles and responsibilities of the LTA and MPT, interconnection, universal access, spectrum management, and consumer protection. Part III of the Act deals specifically with the LTA and states that it must operate in an independent manner and in line with the stated objectives of the Act.

The Importance of an Independent Regulator

While there are several qualities that a government would want to have in any telecoms (or for that matter in any utility) regulator, independence is a pre-requisite when it comes to realizing other broader objectives such as achieving socio-economic goals, managing public

sector reform, promoting competition, encouraging investment, and acting as an impartial arbiter. Regulatory independence is predicated on a separation of policy-making from policy implementation and a separation from the regulator and those regulated. The former separation is critical because any system of effective governance requires accountability; by separating policy making from policy implementation we place political accountability on the policy makers and legal and administrative accountability on the regulators (ITU, 2002b). The latter separation ensures a predictable and level competitive landscape with fair and non-discriminatory capacity for arbitration and dispute resolution. In summary regulatory independence involves (i) the separation of the regulator from the telecommunications operators which it regulates, (ii) no direct political influence on the regulator and (iii) the regulator having an open and transparent decision-making process (FCC, 1999).

Based upon international experience and best-practice it is clear that greater regulatory independence brings significant benefits to a nation and its people. For example, various econometric studies on both Latin American and African countries have shown that having an independent regulator leads to increases in various telecoms performance measures such as tele-density (Gutierrez & Berg, 2000; Wallsten, 2001). In addition, the introduction of an independent regulator in several African markets led to a dramatic increase in mobile phone penetration (OECD, 2004).

Having an independent regulator can also lead to increased confidence both among consumers and investors. For example in Nigeria, efforts to attract investments in the telecoms sector were supported by the perception of a transparent and autonomous regulator within the industry (Thakur, Best, & Jones, 2006). In general having an independent regulator reduces regulatory risk or uncertainty in the legal and policy environment. Alternatively, having a weak regulator can lead to regulatory capture or the loss of independence because of undue influence from an incumbent operator, political interests, industry players or other government entities. Thus the independence of the sector regulator is an critical factor used by investment analysts when assessing a given telecoms market (ITU, 2002a).

The experience of many regulators has shown that independence helps to create a stable investment environment which, under market-based competition, is necessary to achieve universal service and other social and economic goals (ITU, 2002b). Indeed, the consensus

amongst scholars and among many foreign investors suggests that regulatory independence can be the single most important component to a robust and pro-development telecommunications sector. The importance of an independent regulator is also incorporated in guidelines for the establishment of ICT policy and laws that have been adopted by ECOWAS member states². Specifically, member states are to ensure that they establish regulatory agencies that are independent, impartial and transparent in their operations.

Assessing Regulatory Independence

If regulatory independence is important then how can we assess it? Wu (2004) has developed a framework designed to evaluate an agency's independence. Her factors include:

1. Stability of leadership – This concerns the nature in which the leadership of the regulatory agency is selected and removed.
2. Scope of its authority – What are the functions of the regulator and to what extent are they exclusively the purview of the regulator.
3. Financial independence – refers to how the regulator is funded.
4. Ownership of incumbent – refers to the level of privatization of the incumbent operator and the level of the state's financial interest in it.
5. Movement of staff from industry to regulator – staff may be less influenced by external interests if there is discouragement of a "revolving door" between the regulator and private industry.
6. Representation of consumer concerns – the degree to which the regulator can and does represent the interests of consumers
7. Ethical guidelines – what kind of guidelines exist internally that deal with ethical issues that arise in the course of normal operations.

Additional considerations include the level of expertise and human resources available to the regulator, particularly important in a fast-moving technologically dependent industry. Transparency in decision-making is also critical including how open the internal decision-making process is and the level of consultations that are part of this process. Finally, there is the issue of legitimacy and acceptance of the authority of the regulator. Here independence is predicated on the regulator having sufficient credibility and clout in the eyes of the

² "Decision on the harmonization of policies and the regulatory framework for the information and communication technology (ICT) sector," adopted at the 6th Meeting of the ECOWAS Ministers in charge of Telecommunications and ICT, Abuja, Nigeria, May 11, 2006.

industry, consumers and other government institutions. If the regulator lacks legitimacy then there is potential for constant appeals, lack of support from government, and ultimately an ineffective sector (ITU, 2002b).

Constraints to Regulatory Independence in Liberia

In order to assess regulatory independence in Liberia we have to consider the fact that Bill No. 18 is currently the governing law for the telecoms sector until the passage of the 2006 Act (though there seems to be some lack of clarity on this among sector actors). Therefore we will look both at the current environment and the implications of the new Act and evaluate regulatory independence under these bills.

Selection of Commissioners. Under Bill No. 18, there are two Commissioners and one chair. These were all nominated by a inter-governmental selection committee³ and then recommended to the President for appointment and confirmation by the Senate. Under the 2006 Act, the Commission will consist of 4 commissioners and one chair. The President will directly appoint the commissioners who are then subject to Senate confirmation. Thus the vetting of the commissioners is simpler and more streamlined than under the 2006 Act as the inter-governmental selection process has been removed⁴. At the same time, the conditions under which commissioners can be removed (such as being convicted of a crime, having a financial interest or investment in a telecoms company in Liberia, becoming mentally incapacitated, etc.) are clearly spelled out and the length of terms (4 years) and number of terms (2) are fixed. The terms of office and conditions for removal therefore support the autonomy of the commissioners, a feature that was also present in Bill no. 18.

Scope of authority. The 2006 Act, as with Bill No. 18, clearly outlines the range of functions and responsibilities of the LTA and the MPT by dividing the policy implementation and policy making functions between the two. In terms of policy-making the MPT is required to consult with the LTA in the development of any new policy or activity for the sector. In practice however, this functional distinction has not been easily achieved. Thus the MPT, which originally functioned as both policy-maker and regulator, was resistant in handing over

³ This consisted of members of the Presidential Telecommunications Committee, the Governance reform commission and the Contract and Monopolies Commission under the Interim government.

⁴ Even the wording outlining the required qualifications for the chair which was clear in Bill No. 18 is non-existent under the 2006 Act (see Telecommunications Act of 2006, Section 9 (4) and the Bill No. 18, Section 3 (e)).

its regulatory powers to the LTA. In fact, it was almost a year after Bill No. 18 was passed before the MPT officially transferred regulatory authority of the sector to the LTA. Differences remain between the two organizations and it might be sometime before they are able to work effectively together.

One reason for this is that these differences can take on a personal dimension as well. For example, there have been instances where contentious personal relationships have contributed to a lack of cooperation between the MPT and the LTA. While this could be the case in almost any context, the institutional environment of the Liberian telecommunications sector is still nascent and therefore there is greater space for individuals to shape and influence this environment. The long term development of any country requires effective institutions and not just powerful personalities. However, these new institutional structures will take some time before becoming stable irrespective of new laws that are passed. It could be argued then that a lot depends on the type and quality of persons selected to lead both the LTA and MPT.

Another emerging element that is limiting the scope of LTA's authority is the influence of the Executive on its operations. There is a perception among some members of the LTA, and some operators, that the policy-making function of the MPT is now being directed by policy-makers within the Executive and that these persons are also influencing the operation of the LTA. This can create the impression, and perhaps reality, that the Executive has too much influence on the LTA ultimately undermining the independence of the LTA from policy making and political processes. This problem is compounded by the fact that some of the persons working within the Executive are also affiliated with the Liberian Telecommunications Corporation (LTC), a point we shall return to later.

Financial independence. Based on its projected revenues from licenses and other fees, the LTA is expected to be financially independent. Regarding GSM licenses, these include a spectrum authorization fee, a spectrum usage fee and a system wide fee. These fees should be sufficient to support the operations of the LTA related to the mobile sector. The LTA has also proposed that each operator pay the GoL a one time concession fee to support the sector's development. In addition, fees will be collected from licensed Internet service providers and VSAT operators. This financial independence, if fully realized, would give the

LTA sufficient resources to function without having to apply to the Executive for operational support.

Competitive neutrality. According to elements of the 2006 Act and the draft national ICT policies, the GoL intends to rebuild, in some capacity, the LTC. Currently the LTC is not in operation and a provisional board is examining options for the company. There are no immediate plans to privatize the company and this would be difficult to do in any case, given the current status of its operations and assets. Instead, the GoL intends to make the company a government owned fifth operator in the telecoms sector. Accordingly, the company has already invested in the development of a CDMA network in Monrovia. In addition, discussions are underway as to whether the LTC should enter the mobile phone market perhaps as a fifth operator or by subsuming one of the existing licensed operators.

In the 2006 Act (Section 13) the LTC is renamed the Liberia Telecommunications Corporation (LIBTELCO). LIBTELCO is to be designated a “national operator” under the Act and given the goal of meeting a set of national interests. The specific provisions given to a national operator would be determined by both the MPT and the LTA.

The revitalization of the LTC has raised a number of questions. Some observers suggest that given the size of the market, the head-start that the other operators already have, and the current operational status of the company, it would be highly unlikely that it could be profitable as a traditional voice provider given a fair and competitive environment. Several operators are suspicious that the GoL will try to use LIBTELCO as a source of revenue at their expense, especially where operator fees could be used to support this “national operator.” Another concern is that as a government owned company it will be able to access special privileges over the other operators, that the “national operator” designation is meant to do just this, and that the LTA is part of determining these special privileges. Nonetheless LTA personnel have unofficially opposed the idea of re-introducing the incumbent as another mobile operator in the market.

The implications of a “national operator” on regulatory independence and competitive neutrality are potentially dramatic. The draft act and policy envision a favored position for LTC that may negatively distort market participation. Government policy makers and the LTC have direct relationships. And the LTA, either through policy or practice, is likely to be

predisposed to this operator and lack sufficient independence from it. As seen in many other countries, the end result of this can be an anti-competitive and abusive incumbent which restricts sector expansion and national development. An example of this may be illustrative: LTC officers have already been actively attempting to dictate policies to the LTA. Such interference is dangerous and, in many countries such as the USA, illegal.

Of course, proponents of the new LIBTELCO are able to counter that given a telecoms market dominated by foreign ownership, there must be a “national operator” to protect Liberian development interests. LIBTELCO can potentially create new jobs, enhance national security through direct domestic ownership and management, be a source of national pride and unity, and promote universal access (Best et al., 2007). Furthermore, the existing mobile operators will naturally resist any new entrant to the market regardless of the competitive realities; we should expect them to complain loudly. It is argued that the various international observers who are also opposed to elements of a revitalization plan, such as the World Bank and others, are not sufficiently aware of the domestic political and socio-economic context. For example much of this criticism, it is argued, is based on past instances of government corruption and this new administration must be given a chance to prove itself. Finally, it is stated that LTC (and ultimately LIBTELCO) enjoys favored brand loyalty amongst Liberians and that this market power has not been adequately figured into its valuation.

Ultimately, these can be valid reasons for supporting LIBTELCO and sometimes policies cannot be decided on economic criteria alone. But a revitalization plan for LIBTELCO must, based on international best-practice, be executed transparently and within a competitively neutral landscape. While this operator can enjoy marketing advantage as the “national operator” it should not enjoy advantages with respect to treatment (perceived or otherwise) from the regulator.

Internal issues in the LTA. Some attention must be placed to staffing of the LTA. Currently the staff strength is minimal. This has helped to ensure that the LTA officers are not coming directly from positions with operators, which helps ensure independence. But the LTA has, as a result, been woefully understaffed and needs to build its internal capacity. Another concern is the lack of clear ethical or operational guidelines under which the LTA’s staff will function. Operations are essentially done on an informal basis especially given the

small number of staff there. An operations manual was developed with the support of the World Bank but this is not currently being used.

Perhaps a more important concern is the internal capacity within the LTA. This has several dimensions to this. First, there is a little or no equipment to monitor spectrum use by the operators and other entities. Second, there is little technical expertise within the LTA itself to carry out the required analyses of activities in the sector. The lack of capacity in terms of human and physical resources limits the LTA's potential to be an effective regulator. For example, the LTA has not been able to accurately gather data on the quality of service provided by the operators including level of coverage, percentage of dropped calls, interconnection reliability, etc. Ultimately this attenuates its role as an independent entity since it cannot gather its own information.

Consumer protections. The 2006 Act (sections 50-52) stipulates the types of privacy protection afforded to the consumer and possible forms of recourse. It is the LTA which will be responsible for enforcing these protections. However, sections 70 and 72-73 of the Act allow the government to access information and monitor and intercept telephone calls under the general conditions of national security or other applicable Liberian laws. It is this contradiction that is of concern to some members of the House Telecommunications Committee of the Liberian Parliament. This same point was also raised in joint comments made by all four mobile phone operators regarding the 2006 Act⁵. This is a standard tension between the operators' desire to ensure subscriber privacy and the government's lawful needs for information interception given legitimate suspicions and appropriate due process. In addition, other consumer protection plans, such as quality of service, are contemplated.

Transparency of processes. Obscure decision-making no matter how good the results can still undermine independence. In this regard, the LTA is currently working on an overall strategy document which would include activities such as town meetings and regular consultations with relevant stakeholders on major decisions. The 2006 Act also stipulates that the LTA must make all decisions, licenses, agreements and other applications public unless it is not commercially viable to do so.

⁵ These comments were presented at a stakeholder meeting hosted by the House Telecoms Committee at the LTA (May 4, 2007). This was part of the Committee's efforts to get public comments on the 2006 Act.

Overall legitimacy. According to the operators and several independent observers the current approach to the establishment of LIBTELCO does not augur well for the LTA. As mentioned before, the LTA will be associated with the GoL in any attempt at setting up a publicly owned operator in the market. In addition, some operators are concerned about the influence that the Executive will have on the LTA given the selection process of the Commissioners. Some go so far as to question the need for a new law since Bill No. 18 seemed to be working well and was developed in consultation with the MPT, LTA, the World Bank and the operators. Thus one operator suggested that the GoL was trying to “reverse regulate” an already satisfactory situation for purposes of increasing government revenue. These positions might represent posturing on the part of operators trying to maximize their profits but they point to an outstanding problem for the LTA. That is, its legitimacy particularly in terms of the operators seems to be undermined by the political appointment of the commissioners and perceived problems within the 2006 Act.

Recommendations for supporting the independence of the Liberian Telecommunications

Authority

Some of the concerns highlighted above are related to the 2006 Act. The Act itself is still being debated in Parliament and has not yet been passed. House Telecoms committee members from the ruling government's party are pushing for passage of the Act in its current form while those from other parties have raised concerns such as the contradiction in the protection of privacy. The committee has embarked on a series of consultations and eventual public hearings to ensure that there is broad buy-in regarding the Act.

Therefore given this period of consultation and based on the above discussion, several recommendations to improve the potential for regulatory independence in Liberia are offered below:

- Appointment terms for commissioners – Appropriate terms for the chair and other serving commissioners can help to ensure regulator independence (ITU, 2005). It is helpful to stagger the period of appointment for the commissioners so that they do not fully overlap and also to ensure that they do not all coincide with the term of the President. This can help ensure on-going institutional strength and capacity and also encourage political independence. In addition clear and publicly articulated job requirements will increase operational transparency and broaden political acceptability.

- Emphasis on transparent internal decision-making – While the LTA's internal strategy document is being prepared, there are several points which should be considered. There must be an emphasis on public participation where relevant. Town meetings are a good idea but they must be institutionalized and become a regular part of the LTA's operations. In addition, while the 2006 Act states that most decisions should be made public, the process at arriving at a decision should also be as open as possible and include stakeholder consultations where feasible. These should be part of any internal operational guidelines.
- Clarification of fee calculation methods – One related point of concern regarding transparency is the calculation of fees paid to the LTA. This concerns not only the mobile phone operators but also other firms in the market such as ISP's. The LTA needs to ensure that all interested parties are able to see how all fees are calculated. Some operators are under the impression that this is done on an arbitrary basis. Clarity here will help support the perception of transparency and impartiality. Therefore, posting fee structures on the Internet can aid in transparency and market clarity.
- Internal capacity within the LTA – The LTA lacks equipment, human and financial capacity. For example it does not have appropriate equipment for spectrum analysis. This and other relevant equipment must be acquired as soon as possible and should be done so within a larger project of spectrum management reform. Donor support for this effort should be explored to expedite the necessary changes. There is also the need for additional operational staff and these staffing and capacity building plans need to be developed now as the LTA transitions from its current interim status to a permanent body. There is a need for spectrum, switch and telecommunication engineers as well as legal experts. Such staff could be sourced from other government agencies, where possible, while acquiring technical assistance from more established regulators in the region such as the Nigerian Communications Commission should also be explored. Also, the LTA must begin to take the necessary steps to establish internal operating procedures. Operating on an ad-hoc basis as it currently does is not sustainable. Nor is it necessary to wait until the new law is passed before steps are taken to formalize internal procedures.

- Scope of LTA's authority – In order to check that its purview is maintained, the LTA should ensure that there is a consideration of broad legal factors in all its decisions. This should include all applicable Liberian laws and the jurisdictions of individual government agencies. Furthermore, there needs to be awareness and acceptance of the role and responsibilities of the LTA from other government bodies. While this will come from greater interaction between the LTA and other parties, this is also something that will have to be pushed from the Executive, the MPT and possibly other independent parties. The Executive should also be aware of its influence on the LTA. It is important that there be no perception of any undue influence from the GoL on the regulator in order for it to effectively function. The opportunity costs of not having an independent regulator are too high and the government should be aware of this even though its intentions are good.
- Telecommunications Act (2006) – Several of the points mentioned here might involve modifications to the Act itself. In addition, a joint statement by all four of the mobile phone operators raises several points concerning the 2006 Act. Some of these are valid as well. It is important that lawmakers consider these issues while keeping in mind the need to establish a permanent legal framework for the sector. In particular the process of enacting the law must not appear to be compromised in any way given the issues at stake. In addition, while the law assigns the general management of civilian, non-civilian and commercial uses of radio frequencies to the LTA, there should also be references to other applicable laws, policies and other government agencies where relevant. This could involve other sectors such as aviation, radio broadcasting, emergency services, etc.
- Universal access fund - The 2006 Act leaves the exact details of management and development of a universal access fund to the LTA and MPT. In any future policy on universal access, the LTA should ensure that the mechanisms for the identification of target areas, contributions and reimbursement are clear and impartial. In addition, the management of the fund should ideally be handed by a new entity outside of the LTA or GoL and this should be governed by an independent board that could include civil society groups. The principles of transparency to be practiced by the LTA should also apply to the fund.

- LIBTELCO/LTC – Finally we turn to the controversial point of what to do with the currently non-functioning incumbent. We fully understand and can support the overall concepts of a revitalized LTC with a profile that makes Liberia proud. But given the problems identified in introducing the company into the mobile phone market, it might be prudent to focus its work on other areas. Some commentators have suggested that the company should focus on developing a domestic backbone and international gateways for the country. As a network service provider the company would still have to operate in a competitive and neutral environment. In order for this or other revitalization plans to go forward, external investments will be critical. Success in securing such funds will be predicated on financial transparency of the LTC and a clearly independent LTA.

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