

# A Critique on Performance of the Communications Authority of Kenya in the Digital Migration Process

<sup>1</sup>Doreen Muyonga, <sup>2</sup>Dr. Peres Wenje

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**Abstract:** This paper is a critique of the role played by the Communication Commission of Kenya (CA) in the digital migration process. Past actions by the authority have demonstrated that the regulator took the path of its predecessor and that the authority is not immune to government interference. It was expected that after rebranding from the Communications Commission of Kenya (CCK), the authority would perform its role not only with a free and fair hand but also with a requisite gusto. However it emerged that CAs independence is yet to manifest. Issues interrogated in this article will trigger further research on the role played by the regulator in the digital migration process. The study was carried out in Nairobi, Kenya. The study triangulated two different theories to give credibility to the study and also to corroborate different viewpoints in order to complement the findings of the study. The theories are: Diffusion of Innovation Theory and Technology Acceptance Theory. The study employed a mixed method research design and made use of both qualitative and quantitative methods of data collection and analysis. It is believed that this study will trigger further debate and discussions on the issue. The study concludes that the manner in which the authority handled the digital migration process was improper and full of government interference. The study recommends thorough scrutiny in the operation and management of the authority. The study also recommends independence of the authority from government interference.

**Keywords:** Communications Commission of Kenya (CCK), digital migration process.

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## 1. INTRODUCTION

The Kenya Posts and Telecommunications Corporation (KP&TC) Act, Cap 411, Laws of Kenya, Section 86, vested authority to the defunct KP&TC to manage the entire radio frequency resource and issue radio communication licenses. Thus broadcasting service providers who wanted to use the radio frequency resource were subject to KP&TC in terms of assignment of frequencies. Following the repeal of the KP&TC Act and enactment of the Kenya Communications Act of 1998 (KCA 1998), the Communications Commission of Kenya (CCK) was created now the Communications Authority of Kenya (CA) took over the mandate of management of radio frequency spectrum as well as assignment of the frequencies, including broadcasting (Mbatha and Acholla 2011).

According to Musa (2014), on 31 March 2006, the government gazetted the ICT Sector Policy Guidelines that proposed CCK as the converged regulator for the ICT sector. This was also realized when the Kenya Communications (Amendment) Bill 2007 was passed by parliament and enacted into law. It included legal provisions that made CCK a broadcasting regulator. The current broadcasting licensing mechanism is a two stage process involving the Ministry of Information and CA. The Ministry issues broadcasting permits whereas CA's role is confined to the technical role of assigning broadcast frequencies based on these permits and availability of spare broadcasting channels.

## **2. GENESIS OF MIGRATION FROM DIGITAL TO ANALOGUE TRANSMISSION**

Lugalambi (2010) explains that in accordance with the Geneva 1989 Agreement, the world resolved to adopt an international treaty which could offer international protection to broadcasters against any interference from other users of the radio spectrum. A digital broadcasting plan for Europe, Middle East, former Soviet Union Republics, Iran and Africa was established following the conclusion of the 2006 Regional Radio communications Conference in Geneva.

According to Nyabuga and Booker (2013) the conference discussed planning of digital broadcasting and Kenya participated actively in the planning process. The plan required that countries start preparation to migrate from analogue broadcasting technologies to the new digital broadcasting technologies which were gradually being introduced in many countries. In order to prepare the country for a smooth transition from analogue to digital broadcasting, the Ministry of Information and Communications decided to establish a taskforce to spearhead the process.

Taskforce was launched by the then Minister for Information and Communications, Hon. Mutahi Kagwe on 14 March 2007. The taskforce was composed of broadcasting experts and representatives drawn from the following key stakeholders: Ministry of Information and Communications (MIC); Media Council of Kenya (MCK); ICT Consultants; Communications Authority of Kenya (CA); Media Owners Association (MOA); Kenya Broadcasting Corporation (KBC); Association of Practitioners in Advertising (APA) and National Communications Secretariat (NCS).

The Minister mandated the Task Force to assist government by giving their recommendations on the required policy and regulatory frameworks to address the introduction of digital broadcasting. He urged the Task Force to develop a Kenyan approach for transition to digital broadcasting and establish a transition timeframe including a firm programme for analogue switch-off. The Taskforce was asked to make concrete proposals on how Kenyans could be encouraged to adopt digital broadcasting.

## **3. PERFORMANCE OF CA IN THE DIGITAL MIGRATION PROCESS**

Recent trends in the Countries ICT sector have demonstrated that CA has worn velvet gloves in handling matters in the sector and this has sparked numerous debates. The digital migration row saw broadcasters fight a war that saw them migrate to digital broadcasting as self provisional signal distributors. The move was strenuously contested with CA many times threatening unspecified action. This study sought views of the respondents on how the Regulator conducted the process of allocating digital broadcasting frequencies to media houses. The study's findings revealed that majority of the public 95% said the authority was unfair to the local media with regards to issuing of digital broadcasting signals.

The study findings further revealed that a consortium of leading local private media houses namely: Nation (NTV), Kenya Television Network (KTN) and Citizen TV Contested the move by CA to award Pan African Network Group (PANG) a foreign Chinese company and SIGNET a government entity as the only two licensed signal carriers to distribute digital broadcasting frequencies on behalf of local broadcasters. The local media houses opposed the move demanding to be a distributor. They claimed that freedom of the press had been violated but the regulator played foul accusing the consortium of being dishonest and that they were worried because their content was to compete globally and their content capabilities could never match the ones provided by other channels with a worldly resonance.

The study's findings further revealed that the regulator accused the consortium of engaging in fierce litigation and came out strongly to counter their claims arguing that the consortium had lost bid in the first round of the tendering process and that the consortium had disguised their inefficiency and interest game under the banner of press freedom, which is a common thing in Kenya covering up inefficiencies and malice with a veil of "in the interest of Kenyans."

Gichane (2014) says that the three aggrieved media houses had moved to court and filed a petition in November 2013 that was rejected. They then moved to the court of appeal that brought to fore concerns regarding the freedom of the media and the licensing of its operations as provided for in the constitutions article 33 and 34. On the other hand, Ochieng (2014) points out that one of the terms of the policies of digital migration was a separate licensing for content providers and digital signal distributors.

The study's findings also revealed that the regulator floated the licensing bid in the tendering process. The aggrieved media houses went further to the courts to challenge this move openly accusing the regulator of short changing them.

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Consequently, they appealed to the public procurement and lost again, they then appealed to the then Principal secretary-ICT who offered them a conditional license which they rejected and in lieu turned to the courts.

Gituku (2013) argues that the regulator forced NTV, KTN, QTV and Citizen TV out of analogue broadcasting leaving 80% of Kenyans staring at blank screens. The directive had been given after the Supreme Court ordered the regulator to take regulatory action against any broadcaster still on analogue platform. The local broadcasters analogue transmitters located in Limuru were also shut down by the authority. The study's findings further revealed that the consortium request for a three month delay to migrate from analogue to digital was rejected by the Supreme Court. They argued that they wanted more time to import their own set top boxes that would distribute their own content. Wide protests by civil groups and human rights organizations dominated the streets of Nairobi with demands that government reconsiders its stand on digital migration but all was in vain.

The study's findings also revealed that CA declined to allow the consortium time to import transmitters and set top boxes that could enable viewers receive broadcast on own platform as provided by the Self Provisional Digital Broadcasting License granted by the supreme court. On the other hand, the three media houses maintained that they were not opposed to digital migration but wanted more time to put in place proper infrastructure which included acquisition of digital decoders, antennae and transmitters for a smooth take off. Gituku (2013) points out that the three media houses were also opposed to the authority's move to let other operators with commercial interest carry and trade using their content without their consent.

Critics have argued that the authority seems not to have its own voice with its arguments appearing to suspiciously mirror the position of government. This informed the study to seek views on whether there was government interference in the operations of CA with regards to the digital migration process. The study's findings revealed that majority of the respondents 98% said there was a lot of political interference in the process. The findings also revealed how government had quickly come to the regulators defense with Dr Fred Matiangi the then Cabinet secretary for ICT reiterating that CA was acting within the law. Dr Matiangi also faulted the three private media houses for public incitement against digital migration.

Ochieng (2014) argues that the three media houses were justified to switch themselves off though the government interpreted it as an illegal and in blatant breach of the condition of their licensing. The Kenya Union of Journalists, Media Owners Association and Media Council of Kenya came out strongly to condemn the regulators move saying that the move risked rendering many journalists jobless. The unions raised concerns with how the president had kept mum and had declined to arbitrate in the matter even as it boiled over. The civil rights groups also raised concerns that the state run broadcaster Kenya Broadcasting Corporation (KBC) and K24 TV which is owned by the president remained on air while the others were off.

Finally the respondents were asked whether educative forums were conducted to inform the public and sensitize them on what entails digital migration. Majority of the respondents 98% said that no civic education was conducted in their respective Sub Counties on digital migration. What these means is that CA was not prepared for the digital migration process. The study's findings revealed how the public is still frustrated to date with the switch off with some demanding a roll back to analogue transmission. The study's findings further revealed that most public lack information on which Set top box to acquire and often fall prey of hungry service providers who take advantage of their ignorance. Critics have accused the regulator of playing PR with claims that digital TV would revolutionize viewership to better viewing pleasure through High Definition Resolution. Instead the public continue to grapple with the high cost of decoders and the painful reality of monthly pay TV subscription fee.

#### 4. CONCLUSION

It is said that truth is often the first casualty of war. This has been no exception. As both sides have sought to sway public opinion to their cause, honesty and objectivity have been tossed out of the window. There is no doubts the consortium was off air due to a row with the regulator over migration to digital platform. The local private media houses which account for the vast majority of TV viewership in the country have had along running and convoluted battle with the CA essentially demanding a license to broadcast their own content as opposed to handing it over to the two carriers the government had licensed.

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Gathara (2015) argues that government tried to paint it as a fight to tame intransigent monopolistic-minded media companies scared of the level field that comes with digital migration. And on the other hand, the three media houses portrayed it as a struggle against a deaf authoritarian minded regime intent on auctioning off national resources to foreigners, and in this case the Chinese.

It goes without saying that the incompetence of the regulator is hard to ignore. Government's propaganda has tapped into a rich vein of distrust and contempt for the media. The media is struggling with the legacy of its controversial reporting during the flawed 2013 general election and subsequent reluctance to challenge the official narrative and governments conduct on most issues and events.

Media's one-sided reporting of the digital migration impasse did not help matters. Journalists have seemed either unable or unwilling to separate the interests of the media from those of the public. The crisis has proven that not all audiences are created equal, some matter more than others. This has indeed divided the country further. Truth be told, two thirds of Kenyan households do not actually own a TV set but CA was scrambling to cater for the needs of one third that do, even altering their calendars to accommodate them.

Mbatha and Ocholla (2011) points out that despite radio being far away the main source of news for the vast majority of Kenyans; TV is king in urban areas. The promise of impressive clarity and variety is largely empty. The debates about the cost and availability of set top boxes are largely irrelevant for the 70 per cent of the population who feel they cannot even afford TV set and the 80 per cent who have no electricity to run them on.

### 5. RECOMMENDATIONS

Beyond exposing the incompetence of the national regulator, further debate on the matter of who won or lost is counterproductive at this stage. Perhaps the country should consider expanding the scope of discussion beyond just digital migration. According to the 2011 survey by synovate 93% household owned a mobile phone. Perhaps mobile phones can do to TV what it has done for money transfer and banking. Mobile TV could allow the poor to access the digital TV services that are now slated to be the preserve of a lucky few.

Therefore, instead of only talking about set top boxes, digital transmitters and distribution licenses, perhaps the regulator and policy makers could also spend time debating the merits of providing affordable mobile TV to all. The study recommends that the regulator should torn down and concentrate its energy in setting up regulatory tools including a proper licensing framework and draft effective complaint handling procedures. Also the regulator needs to prioritize public participation in regulating the broadcasting sector.

Broadcasters needed to have been notified well in advance and given time to prepare for the digital migration. The regulator should have provided a window of six month for submission of applications for license a provided for in the Kenya Information and Communication, Cap 411A, this would have ensured a smooth transition. The study also recommends enactment of laws and guidelines that could in future guide the regulator on similar matters since to date the public continue to raise question on the openness and transparency of the digital migration process.

The study also recommends a thorough probe in the operations and management of CA. This could reinstate public and investors' confidence in it. Government interferences cannot be ignored. Critics have doubted government sincerity in a matter that resulted into numerous court battles. The study recommends independence of CA from government. Perhaps this could see the regulator carry out its mandate in the prevailing legal framework to create an efficient broadcasting industry that can serve the demands of viewers and investors alike and above all see how all players achieve plurality, diversity and more innovation yet still maintain a vibrant sector.

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