

Radio communication Act, 2065 (Draft)

An act made to provide management of radio frequency spectrum.

Preamble:

Whereas, it is expedient to provide management of radio frequency spectrum in order to insure efficient allocation and use of spectrum for the overall public benefit and apply an efficient, equitable and transparent system for the use of spectrum, taking into consideration the economic value of spectrum.

Now, therefore, the House of Representatives/Parliament/constitution Assembly has enacted this Act.

Chapter 1

Preliminary

1. Short Title and Commencement: (1) This act may be cited as the Radio Communication Act, 2065.

(2) This Act shall come into force immediately.

2. Definitions: Unless the subject or the context otherwise requires, in this Act:

- (a) "Radio apparatus" means a device or combination of devices intended for, or capable of being used for, radio communication;
- (b) "Radio communication" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3000 GHZ propagated in space without artificial guide;

- (c) "Radio station" means a transmitter, a receiver, a combination of transmitters and receivers or any accessory thereto which is used or intended to be used for radio communications;
- (d) "Radio frequency band" means any contiguous range of radio frequencies;
- (e) "Radio frequency band plan" means a plan prepared under section.....
- (f) "Radio frequency spectrum" means the range of frequencies within which radio communications are capable of being made;
- (g) "International Radio Regulations" means the Radio Regulations annexed to International Telecommunication Convention and includes every revision or modification thereof which the Government has ratified or accepted;
- (h) "Radio frequency plan" means a plan prepared under section.....
- (i) "Reception" means in relation to any radio emission includes interception;
- (j) "Satellite orbit" means the path, relative to specified frame of reference, described by the center of mass of a satellite or other object in space subjected primarily to natural forces, mainly the force gravity.
- (k) "Charge" means the fees to be collected in pursuant to this Act.
- (l) "public operator" means a network/service provider which is accessible to any member of the public generally and which is used or intended to be used to provide radio communications services by means of radio-communication to the general public:
- (m) "Government" means the Government or the authority prescribed by the Regulations made under this Act.
- (n) "Authorization" means a spectrum license or class license or certificate or approval issued by the Government under section.....
- (o) "Spectrum license" means license issued under section

- (p) "Class license" means license issued under section.....
- (q) "Minister" means a government minister in-charge for implementing the Act.
- (r) "Customer" means a person who receives the radio communications service made available by the licensee.
- (s) "harmful interference" means Radio interference that endangers the operation of radio navigation and other safety services or seriously degrades, obstructs, or repeatedly interrupts a properly licensed radio service.
- (t) "As prescribed" means prescribed by Regulations.

Chapter 2

National Frequency Allocation Plan

- 3. National Radio Frequency Allocation Plan to be Prepared:** (1) A national radio frequency allocation plan shall be prepared in any form as considered appropriate.
- (2) The national frequency allocation plan prepared in pursuant to sub-section (1) shall:
- a) comply with the International Radio Regulations,
 - b) take into account any agreement, treaty or convention between Nepal and any other country, in relation to radio frequency band planning and radio emissions,
 - c) divide into any such number of radio frequency bands as it deems appropriate for the purpose of regulating radio communications; and

- d) Specify the general purpose for which each radio frequency band may be used.

(3) The national frequency allocation plan prepared in pursuant to sub-section (1) shall be reviewed, updated and amended to accommodate for the changes made by the each of the World Radio Conferences (WRC) of the International Telecommunication Union (ITU).

(4) The national frequency allocation plan might be varied or revoked, in whole or in part at any time.

(5) The national frequency allocation plan prepared in pursuant to sub-section (1) and any amendment, variation or revocation made in pursuant to sub-section (3) and (4), shall be published in an appropriate form or manner.

4. **Radio Frequency Band Plans to be Prepared:** (1) A radio frequency band plan shall be prepared in any form as considered appropriate.

(2) The radio frequency band plan prepared in pursuant to sub-section (1) shall:

- a) Be consistent with the use of the radio frequency bands specified in the national frequency allocation plan,
- b) confirm with any applicable radio frequency band allocation plans made pursuant to any agreement, treaty or convention between Nepal and any other country, and
- c) Specify the purpose for which the radio frequency band may be used.

(3) In case of any review, update and amendment made in pursuant to sub-section (3) of Section 3, the radio frequency band plan shall also be accordingly reviewed, updated and amended, if necessary.

(4) The radio frequency band plan might be varied or revoked, in whole or in part at any time.

(5) The radio frequency band plan prepared in pursuant to sub-section (1) and any amendment, variation or revocation made in pursuant to sub-section (3) and (4), shall be published in an appropriate form or manner.

5. **Radio Frequency Marketing Plans to be Prepared:** (1) A radio frequency spectrum marketing plan shall be prepared for issuing licenses in pursuant to **Section.....**

(2) The marketing plan in pursuant to Sub-section (1), may indicate not limiting the following matters:

- (a) the procedure to be followed for issuing licenses in accordance with the plans;
- (b) the time table for issuing licenses in accordance with the plan;
- (c) how the radio frequency dealt with under the plan is to be apportioned among the licenses to be issued;
- (d) how much of the radio frequency dealt with under the plan is to be reserved for public or community services; and
- (e) the conditions or types of conditions that may be included in licenses to be issued

(3) In indicating the procedures to be followed for issuing licenses, the plan may, for example, indicate whether the licenses are to be allocated by auction, by tender, for a pre-determined price or for a negotiated price.

(4) In preparing marketing plan in pursuant to Sub-section (1), it shall be specified whether the plan is subject to re-allocation with respect to particular area or subject to a conversation plan or variation of a conversation plan to replace one type of license to another.

6. **Reallocation of Radio Frequency Assignment:** (1) The government may move one Radio frequency assignment assigned to

a user to another Radio frequency assignment to free the Radio frequency spectrum for more efficient use.

(2) The circumstances, the amount of payment to be made to the aggrieved person by the benefited person and the implementation time frame due to the reallocation radio frequency assignment in pursuant to sub-section (1) shall be as prescribed.

Chapter 3

Licensing of Radio Frequency

7. **Establishment and Operation of Radio Station:** (1) A person shall establish and operate radio stations/networks or other radio frequency transmission facilities or radio communications device after obtaining an authorization or license pursuant to **Section**

(2) A person shall install, operate or possess radio apparatus after obtaining an authorization or license in pursuant to **Section**, otherwise than:

- a) Radio apparatus capable of using radio frequency spectrum that are exempted or waived from Licensing in pursuant to **Section**,
- b) Radio apparatus that is capable only of the reception of broadcasting and is not a distribution undertaking,
- c) Radio apparatus used by costumer of public network or service provider licensed under **Section** of Telecommunication Act, 2053.

8. **Issuance of license for Radio Frequency Spectrum:** (1) Following type of license or licenses shall be issued, under the provision of this Act, to a person for the use of any specified part of the radio frequency under prescribed procedures and conditions for a specified period:

- (a) a class license or
- (b) a frequency license.

(2) A license does not confer any right of continued tenure beyond the license period of a radio frequency spectrum.

9. Application to be Filed for a class license: (1) Where an applicant for a class license, or renewal of a class license, requires radio frequency, the applicant shall file an application for authorization for grant of class license or renewal of a class license.

(2) The applicant filing an application for a license in pursuant to Sub-section (1) shall submit technical study report on the radio communications service proposed and shall have the requisites as prescribed.

10. Pricing of radio frequency spectrum for a Class license: Any one of the following methods without limitations may be used for the pricing of radio frequency spectrum in issuing a class license.

- a) free but users made aware of value (with potential pricing later),
- b) fixed charge based on costs,
- c) fixed charge based on perceived value of spectrum (e.g. revenue share),
- d) market determined charges (or auctions),
- e) giving incentives to public operators, rolling out in less developed regions of Nepal or
- f) any combination of the method mentioned in the Clause (a), (b), (c), (d), and (e).

11. License to be Issued: (1) Upon receipt of an application pursuant to Section 8, an inquiry into the matter shall be conducted and if deemed necessary to have additional information or details, the applicant shall be required to furnish such information or details.

(2) After the inquiry made pursuant to Sub-section (1), if it is found appropriate to issue the license, the applicant shall be required to pay the fee as prescribed.

(3) The applicant shall be issued a class license upon the submission of the evidence of the required fee in pursuant to Sub-section (1).

12. Issuance of a Frequency License: (1) A frequency license shall be issued subject to the following limitations:

- (a) unavailability of radio frequency spectrum for allocation/assignment in sufficient quantity,
- (b) due to reason mentioned in clause (a), the issuance of the number of licenses is to be limited.

(2) Following competitive method to award one or more frequency licenses for radio communications shall be selected to issue frequency license in pursuant to sub-section (1):

- (a) Comparative evaluation,
- (b) An auction, and or
- (c) Such other form of objective, transparent, non-discriminatory and competitive bidding method deemed appropriate in the circumstances.

(3) In awarding the license using the selected method in pursuant to sub-section (2), a notice for invitation for proposals shall have to be published in a daily newspaper of national circulation and, in the case of an international bid; it may also be published in any international communication media including in the website as applicable.

(4) In publishing a notice under Sub-section (3), for invitation for proposals, a period of at least forty five days shall be given.

(5) A notice on invitation for proposal shall contain the following matters:

- (a) The name and address of the Entity inviting the proposal,
- (b) The nature of the proposal requested for the issuance of spectrum licenses,
- (c) The amount and validity period of the bid security required,
- (e) The place, manner of obtaining the Invitation for Proposal Documents and the fees charged thereof,
- (f) The place, manner, the deadline for the submission or forwarding of the invitation for proposal documents,
- (g) The place, date and time for the opening of proposals, and matter that the proponents or their authorized agents shall be invited to attend the opening of bid, and
- (h) Other matters as prescribed.

13. Denial on Issuance or Renewal: The issuance or renewal of an authorization or grant of license may be denied subject to either one of the following evidence:

- (a) unavailability of radio frequency,
- (b) to avoid harmful interference with other authorized/licensed radio communications Services,
- (c) would otherwise contravene the law of Nepal or the ITU recommendations or standards, or

(d) the applicant not meeting requirements specified under this Act.

14. Exclusion From Participation for Obtaining License: (1) A person may be excluded or limited for participation in obtaining license by publishing a notice in writing:

(a) for the purpose of developing the communications industry in Nepal,

(b) for maintaining effective competition between person engaged in the provision of radio communication services; or

(c) for the public interest.

(2) The affected person to be excluded or limited for participation in obtaining license in pursuant to Sub-section (1) shall be provided an opportunity for hearing before such exclusion or limitations.

(3) The aggrieved person due to the decision made in pursuant to Sub-section (1) may appeal to the Minister whose decision shall be final.

15. Amendment of License: (1) If a licensee deems necessary to amend any matter set forth in the license obtained by him, he has to submit an application with reasons thereof as prescribed.

(2) If the reasons for amendment to the license as mentioned in the application submitted in pursuant to Sub-section (1) are found reasonable and appropriate and the amendment does not affect the substantial matters of the license, amend to the license will be made upon payment of charge as prescribed.

(3) In case amendment to license has to be rejected, a notice within fifteen days thereof, accompanied by the reasons, has to be given to the applicant.

(4) By any reasons, amendment to any matter mentioned in the license has to be made, a notice to the concerned licensee thereof, accompanied by the reasons shall be given.

(5) If, after receipt of the notice in pursuant to Sub-section (4), the licensee does not deem it necessary to so amend his license, he may submit an application to the licensing authority, also setting out the reasons thereof, within fifteen days of the receipt of such a notice.

(6) After receipt of an application in pursuant to Sub-section (5), decision shall be made within seven days of the receipt of such application whether or not to amend the license.

(7) In case no application has been received within time limit in pursuant to Sub-section (6), the amendment shall be made as the notice provided.

(8) A notice shall be given thereof to the licensee on decision in pursuant to Sub-section (6) and (7).

16. Sale or Transfer or License: (1) If a licensee desires to sell or other wise transfer his license to any other person, the licensee and the buyer or the transferee of the license have to submit a joint application in the prescribed form, accompanied by the reasons thereof, as well as the terms and conditions mutually agreed, for approval.

(2) If any application is received in pursuant to sub-section (1), and if, upon making necessary inquiry, if it deems appropriate to sell or transfer the license to the person mentioned in the application, it has to give approval upon payment of the prescribed charge for such sell or transfer and if it deems inappropriate to give such approval, it has to give a notice thereof, accompanied by the reasons, to the applicant within fifteen days of the receipt of such application.

17. Exemption or Waiver from Licensing: Notwithstanding any thing contained elsewhere in this Act, the requirement of license for the use of certain radio frequency as prescribed may be exempted or waived.

18. License to be Suspended: (1) The license obtained by a licensee shall be suspended for a period of maximum three months if there is evidence in pursuant to **Section 27** sub-section (4).

(2) During the suspension period in pursuant to Sub-section (1), the licensee shall not be entitled to use the radio frequency spectrum licensed to him/her.

(3) Before suspending the license in pursuant to Sub-section (1), the licensee shall be asked to submit his clarification or issue an order to rectify the performance at least within fifteen days.

(4) A licensee who is not satisfied with such suspension of the license in pursuant to sub-section (1) may file a complaint before the committee no later than fifteen days of such suspension.

(5) The committee shall make decision within fifteen days on such a compliant and the decision of the committee shall be final.

19. License to be Cancelled: (1) The license obtained by a licensee irrespective of the licensing process used, shall be canceled if:

- a) the licensee fails to make use of the radio frequency spectrum within the time limit specified in the license, or
- b) the licensee performs in contravention of this Act or the Regulations made under this Act, or the terms and conditions set forth in the license.

(2) Before canceling the license in pursuant to Sub-section (1), the licensee shall be asked to submit his clarification or issue an order to rectify the performance at least within fifteen days.

(3) In asking to submit the clarification, the licensee shall be asked, the reason of failure to make use of the radio frequency spectrum in pursuant to Sub-section (1) clause (a) and to rectify the performances of contravention in pursuant to Sub-section (1) clause (b).

(4) A licensee who is not satisfied with cancellation of the license in pursuant to sub-section (1) may file a complaint before the committee no later than thirty five days of such cancellation.

(5) The committee shall make decision within sixty days on such a compliant and the decision of the committee shall be final.

Chapter -4

Determination of Standards and Quality of Radio Communication apparatus/ equipment

20. Standard to be Specified: (1) The standards for radio apparatus or equipment, based on the international standards, may be made considering the following matters:

- a) The performance of specified devices, or
- b) The maximum permitted level of radio emissions from devices within specified parts of the spectrum,
- c) General application or limited application,
- d) Applying to one or more specified areas or one or more specified parts of the spectrum.

(2) In specifying the standards in pursuant to Sub-section (1), the standards may be specified containing the following matters as necessity:

- a) interference to radio communications, or
- b) interference to any uses or functions of devices
or
- c) establishing an adequate level of immunity from electromagnetic disturbance caused by the use of devices (including other radio communications transmitters or radio communications receivers) for the operation of radio communications transmitters or radio communications receivers or
- d) establishing for the uses or functions of devices an adequate level of immunity from electromagnetic disturbances caused by the

operation of radio communications transmitter
or

e) establishing for the uses or functions of devices
an adequate level of immunity from
electromagnetic disturbances caused by the use
of other devices or

f) protecting the health or safety of the following
persons:

I. Who operate radio communications
transmitters or radio communications
receivers, or

II. Who work on radio communications
transmitters or radio communications
receivers, or

III. Who use services supplied by means of
radio communications transmitters or
radio communications receivers, or

IV. Who are reasonably likely to be affected
by the operation of radio communications
transmitters or radio communications
receivers.

v. compliance with the international
guidelines for general, public exposure to
radio frequency spectrum fields.

21. Procedure for Type Approval: (1) The procedure for type approval and acceptance of radio equipment of the licensee, based on international standards may be as prescribed.

(2) The information on the operational standards and quality of the radio apparatus or equipment may be asked from the licensee as and when required.

(3) The licensees shall provide the relevant information and quality of his/her radio apparatus or equipment asked in pursuant to Sub-section (2).

22. Certificate to be Taken: (1) A person shall obtain a technical acceptance certificate as prescribed to manufacture, import, distribute, lease, offer for sale or sell any radio apparatus, interference-causing equipment or radio-sensitive equipment.

(2) A person shall manufacture, import, distribute, lease, offer for sale or sell any radio apparatus, interference-causing equipment or radio-sensitive equipment in complying with [Section](#)

Chapter 5

Provisions for satellite networks/services

23. Provisions for foreign satellite networks/services: (1) The procedures for application for a license, coordination and notification for frequency assignment for the use of the services provided by the foreign satellite operator shall be as prescribed.

24. Domestic satellite network implementation: The guidelines on the implementation of satellite orbit and use of a domestic satellite network shall be as prescribed.

Chapter 6

Antenna sites and infrastructure facilities building and sharing

25. Antenna Sites to be Shared: (1) The Licensees shall negotiate and reach agreement on commercial terms for the shared uses of sites for co-sitting of antennas to reduce the proliferation of antenna towers.

(2) The licensees shall negotiate and reach agreement on commercial terms for sharing of other infrastructures such as transmitter/receivers or switching equipment etc for co-locations.

(3) The licensees shall be obliged to make the sites and infrastructure available and share them on an equitable basis in pursuance of sub-section (1) and (2).

(4) Before the installation of radio station and antennas the licensee will be responsible for:

- (a) obtaining approval of the antennas support structure with respect to its acceptability from an air navigation hazard point of view.
- (b) coordination with municipalities and or land use regulatory bodies to ensure that municipal zoning and land use issues are resolved.
- (c) ensure that any environmental issues have been addressed.

26. **Permission to be Granted for Building Separate Facilities:** The decision for granting permission to build separate facilities (antenna and other infrastructure) shall be made subject to:

- (a) Review on the application made by the licensee in compliance with public interest,
- (b) ensure adequate competition in the market place.

Chapter 7

National Frequency Register

27. **The National Frequency Register to be Established:** (1) A National frequency register shall be established and kept in the electronic form and or any other form the registration of all licenses issued.

28. **Contents of the National Frequency Register:** The National Frequency Register shall contain the information on each of the license issued as prescribed.

29. **Updating of the National Frequency Register:** The National Frequency Register shall be updated if the following the information are changed:
- a) Any amendment made in the license in pursuant to Section....
 - b) Any Suspension made in the license in pursuant to Section....
 - c) Any Cancellation of the licenses in pursuant to Section...
 - d) Any transfer or Sale of the license in pursuant to Section....
30. **The National Frequency Register to be Posted in the Website:**
(1) The National Frequency Register shall be posted in the website.
31. **Parts of the National Frequency Register May be Kept Confidential:** Notwithstanding any thing contained in Section ..., any part of the National Frequency Register may be kept confidential if it considered to be in the national interest (for example: defense or security reasons).

Chapter 8

Monitoring and Inspections

32. **Monitoring of Radio Frequency Spectrum:** (1) Fixed or mobile radio monitoring stations shall be established and operated for radio frequency spectrum monitoring as appropriate.
- (2) The monitoring station in pursuant to sub-section (1), shall carry out to:
- (a) scan the radio frequency spectrum,
 - (b) determine channel occupancy and for frequency planning,
 - (c) determine any stations are operated unlawfully,
 - (d) ensure and confirm that the radio frequency spectrum license are operated under this Act,

Regulations made under this Act and terms and conditions specified on the license.

e) Resolve and prevent harmful interference

(3) The records of monitoring carried out in pursuant to Sub-section (2) shall be maintained as prescribed.

33. Inspection and Investigation: (1) An inspection or investigation on the activities of the licensee may be carried out at any time, if deemed necessary.

(2) For the purpose of inspection or investigation in pursuant to sub-section (1), any person or body of the Government may be designated.

(3) It shall be the duty of the concerned licensee to provide information or details and documents required by the designated person or body of the Government in pursuant to sub-section (2) in the course of inspection or investigation.

(4) The procedures to be followed and powers to be exercised by the designated person or body of the Government in the course of inspection or investigation in pursuant to this Section, the provisions relating to reports thereof and execution of reports shall be as prescribed.

Chapter 9

Administration and Enforcement

34. Formations of Monitoring Committee: (1) A Monitoring Committee shall be formed consisting of the following officials:

(a)	Minister or Minister of state, Ministry of Information and Communications	Chairman
(b)	Secretary, Ministry of Home Affairs	Member
(c)	Secretary, Ministry of Defense	Member
(d)	Secretary, Ministry of Tourism and Civil Aviation	Member
(e)	Secretary, Ministry of Information and Communications	Member
(f)	Secretary, Ministry of Finance	Member

(g)	Chairperson, Nepal chamber of Commerce and Industry	Member
(h)	Chairperson, Nepal User's Foundation	Member
(i)	Gazetted First Class Officer, Ministry of Information and Communications	Member-Secretary

(2) The function, duties and powers of the committee formed in pursuant to Sub-section (1) shall be without limiting to the following matters:

- a) The operation and administration of this Act, Regulations and Bylaws,
- b) The efficiency in which licensees provide facilities and services. Services are reasonably accessible to all people and are supplied as efficiently and economically as practicable and at performance standards that reasonably meet the social, industrial and commercial needs,
- c) The quality of services,
- d) The rates paid by consumers for services,
- e) Review and analyze the pricing methods adopted on giving incentives to public operator rolling out in less developed region of Nepal taking into consideration the utilization of Rural Telecommunication Development Fund (RTDF) in pursuant to Section 30 and the relevant Regulation, Bylaws, thereof,
- f) The level of compliance by licensee in regard to Acts/Regulation conditions, codes, mandatory standards and undertakings,
- g) The adequacy of services and availability of services in all parts of Nepal. Efficient market conduct and effective competition between persons engaged in commercial activities connected with radio communication technology are taking place,

- h) Any deficiencies in the scope of operation of this Act and its Regulation, Bylaws,
- i) Other matters as specified,
- j) the effective participation of all sectors of the Nepalese information and communications industry in markets (whether in Nepal or elsewhere),
- k) national needs and policies in respect of all information and communications technology matters,
- l) advancement of technology and research and development relating to information and communications technology,
- m) standards and codes relating to equipment attached to radio communication systems, and any equipment or software used as an adjunct to or in conjunction with such systems and the monitoring of and access to such equipment and software are where to,
- n) to encourage, facilitate and promote the greatest practicable use of industry self-regulation by the information and communications in Nepal,
- o) to regulation on determination and approval of prices, tariffs, charges and the provision of services,
- p) to establish, develop and expand the information and communications industry including information and communications technology manpower resources.

(3) Reports on the results of monitoring in pursuant to Sub-section (2) shall be published in an appropriate manner.

(4) The committee formed in pursuant to sub-section (1) shall have the power to constitute sub-committees, special study group of experts, or taskforces to prepare and submit report to the committee on the following subject matters but not limited to:

- (a) Preparation of National Frequency Allocation Plan,

- (b) Regulatory standards,
- (c) Exemption or waiver of license,
- (d) Spectrum pricing,
- (e) Radio frequency marketing plan and
- (f) Bi-lateral agreements on the use and allotment of radio frequency spectrum.

(5) Other functions, duties and powers of, and procedures relating to the meeting of, the committee formed pursuant to sub-section (1) shall be as prescribed.

35. Power to Issue Order or Direction: (1) A licensee may be issued Necessary orders or directions in view of the policy and direction of the Government of Nepal.

(2) The licensee shall be obliged to comply with the order or direction in pursuant to Sub-section (1).

(3) It shall be the duty of the licensee to provide the acts and actions carried out by the licensee and the description related to the radio communications service operated by him/her as and when asked.

(4) Whenever there is an evidence of breach of the conditions of a license or other conditions under which a license is authorized, that represents an immediate and serious threat to public safety, public security or public health or will create serious operational problem for other providers or users of radio communications services, urgent measures shall be taken to remedy the situation, including the suspension of the license.

36. Power to Settle Disputes: (1) The Government shall have the power to settle disputes between the licensees or between the licensee and the customer relating to the radio communications service.

(2) The method and procedures of the settlement of disputes pursuant to sub-section (1) shall be as prescribed.

Chapter 10

Provision of Prohibition

37. Emissions from Non-standards Devices: (1) A person must have a standard device in his or her possession for the purpose of operation of such device.

(2) The device in pursuant to subsection (1) must not cause a radio emission to be made by such devices.

(3) A person shall not supply a non-standards device.

(4) No person shall perform the following activities:

- (a) knowingly send, transmit or cause to be sent or transmitted any false or fraudulent distress signal, message, call or radiogram of any kind,
- (b) without lawful excuse, interfere with or obstruct any radio communication,
- (c) decode an encrypted subscription programming signal or encrypted network feed otherwise than under and in accordance with an authorization from the lawful distributor of the signal of feed,
- (d) operate a radio apparatus so as to receive an encrypted subscription programming signal or encrypted network feed that has been decoded in contravention of clause (c),
- (e) re-transmit to the public an encrypted subscription programming signal or encrypted network feed that has been decoded in contravention of clause (c),

(2) Except as prescribed, no person shall make use of or divulge a radio-based telephone communication.

- (a) If the originator of the communication or the person intended by the originator of communication to receive it was in Nepal when the communication was made; and
- (b) unless the originator, the person intended by the originator to receive the communication consents to the use or divulgence.

however, this subsection does not apply in respect of radio communication that consist of broadcasting, a subscription programming signal or a network feed.

(3) Except as prescribed, no person shall intercept and make use of, or intercept and divulge, any radio communication, except as permitted by the originator of the communication or the person intended by the originator of the communication to receive it.

Chapter 11

Punishment and Appeal

38. Punishment: (1) If a person violates the provisions of this Act or the Regulations made under this Act or fails to uphold any orders or directives given under this Act or the Regulations made under this Act, he/she may be punished with a fine of up to fifty thousand rupees; and if any loss or damage has been caused to any one else from such offence, he/she may be paid the amount of such damage or loss or compensation as well thereof realized from the offender.

(2) If any person uses the radio frequency spectrum without obtaining the license in pursuant to this Act or operates the radio frequency spectrum and does not observe the terms and conditions mentioned in the license, he/she may be punished with a fine equal to the charge for obtaining the license by him/her including the seizure of the radio apparatus.

(3) If a licensee or any other person uses or changes radio frequency spectrum without prior approval, the Government may realize the amount in controversy and impose fine equivalent to that amount including the confiscation of the radio apparatus used.

38. Appeal: (1) A person who is not satisfied with the actions taken against him subsequent to **Section** may file an appeal with the **Appellate Committee in pursuant to Section** no later than 35 days, and the decision made by such committee shall be final in respect of that appeal.

(2) The other procedure to file an appeal shall be as prescribed.

39. Appellate Committee: (1) For purposes of making appeals pursuant to section 35 of the Act, there shall be an appellate committee comprising the following members :-

a	Incumbent judge of the Appellate court or special class officer of Nepal judicial service	Chairman
b	Regulatory Expert, designated by Government	Member
c	Legal expert, Nepal Telecommunication Authority	Member
d	Frequency expert (not in active service), designated by Government	Member
e	Person designated by Government from amongst officer employees having gained experience in the idle of law	Member

(2) The officer employee designated by the Ministry shall act as the secretary of the appellate committee.

Chapter 12

Miscellaneous

40. Delegation of Power: The Government may, as per necessity, delegate some of the powers conferred on it, pursuant to this Act or

the Rules framed under this Act, to any employee of the Government.

- 41. Government to be Plaintiff:** Government shall be the plaintiff in the cases referred to Section 38 ; and such cases shall be deemed to be included in Schedule-1 to the State Cases Act, 2049 (1992).
- 42. Prevailing Law to Govern:** This Act shall govern the matters contained in this Act and the remaining matters will be governed by the prevailing law as applicable.
- 43. Power to Remove Difficulties:** (1) If any difficulty arises in the implementation of this Act, Government may, by a notification in the Nepal Gazette, issue necessary orders to remove such difficulty in such a manner that such orders are not inconsistent with the provisions of this Act.

(2) Each order issued pursuant to sub-section (1) shall be laid before Parliament as soon as possible.

- 44. Power to Frame Rules:** (1) Government may frame necessary Rules in order to implement of the objectives of this Act.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), Government may frame rules on the following matters:-

- i. Format of the application to be submitted for the license and matters to be set out therein, format of the license and terms and conditions, license and renewal charges.
- ii. Format of the application to be submitted for amendment to the license or sale or transfer of the license and matters to be set out therein and the charge payable for it.

iii. Matters to be observed by the licensee while operating the radio communications and matters relating to the maintenance of standards.

iv. Any Other necessary matters.

45. Repeal and Saving: (1) The Radio Act, 2014 (1957) is hereby repealed.

(2) All acts and actions done and taken pursuant to the Radio Act, 2014 (1957) before the commencement of this Act shall be deemed to have been done and taken pursuant to this Act.

(3) Notwithstanding any thing contained elsewhere in this Act, a person holding license under Sections of Telecommunications Act, 2053 shall be deemed to have ipso facto so issued a license under this act. Such a person, however, shall apply for a license as prescribed.

Reference documents and materials:

Act and Regulations

- (1) Radio Act, 2014 (1957)
- (2) Radio communication (license) Regulation, 2049 (1992)
- (3) Telecommunications Act 2054 (1997)
- (4) Telecommunications Regulation, 2054 (1997)
- (5) Cyber Law, 2061 (2004)
- (6) Consumer Protection Act 2054 (1997)
- (7) Consumer Protection Regulation 2054 (1997)
- (8) National Broadcasting Act, 2049 (1992)
- (9) National Broadcasting Regulation, 2052 (1995)
- (10) Radio Communication Act of Singapore, Canada and Australia

Policy

- (1) National Communications Policy, 2049 (1992)
- (2) Telecommunications Policy, 2060(2004)
- (3) Long Term Policy of information and communication Sector, 2059 (2002)
- (4) IT Policy, 2057 (2002)

Study Reports

- 1) "Frequency Management in Nepal" report prepared by international consultants in 1998.
- 2) National Frequency Allocation Plan for Nepal 1992 by ITU expert.
- 3) National Frequency Allocation Plan or Nepal prepared by FMDS-1 consultant.
- 4) FM radio channel plan: ITU expert.
- 5) Consultancy services for support and supervision of the procurement of spectrum management and monitoring system by Interconnect communications Ltd.
- 6) Consultancy services for study on NTC commercialization / restructuring (ps-5) by Pentascope international BV, the Netherlands.
- 7) Consultancy services for spectrum management by spectrum solutions limited.
- 8) Consultancy services for specialized policy advice by Teleplanning A. Wirzenius Ltd.
- 9) Consultancy services for National frequency allocation plan by Spectrum strategy consultants Ltd. and Quotient associates limited.