

*Final Report*

*Legal Report*

**SPECIALISED POLICY ADVICE  
(PS-2)**

**for**

**His Majesty's Government**

**Ministry of  
Information and Communication**

**Nepal**

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**LEGAL REPORT****STRUCTURE OF REPORT**

The report of project Specialised Policy Advice (PS - 2) consists of four volumes:

❖ **Main Report**

- Annex Draft National Telecommunications Policy
- Annex Explanatory Document to Policy

❖ **ICT Report, Information and Communications Technologies in Rural Nepal - enhancing access and services delivery.**

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❖ **Legal Report**

- Legal assessment of the current regulatory regime
- Draft short term amendments to legislation

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❖ **Annexes Report**

- Annexes (working papers on selected topics, to be used in implementation of the Policy)

The report is structured provide shorter reports for those whose interest is only part of the scope of the entire project.

The Main Report includes the high level outcome of the Project, including the draft National Telecommunications Policy. The Policy includes implementation strategies and an annex with timing of actions. The Explanatory Document includes the background for the Policy.

The Information and Communications Technologies (ICT) volume is the outcome of two separate tasks in the TOR, addressing introduction and use of ICTs in rural Nepal. Implementation of the ICT proposals is less clear-cut than for the policy proposals, and requires further study.

The Legal report includes a legal assessment of the proposed amendments to the legislation, Act and regulation.

The Annexes Report includes a collection of separate discussion documents that were developed during the work in co-operation with the Policy Team. The purpose of the working papers was to work out various key policy topics with the Policy Team and in general the MOIC and the NTA. The working papers are essential for implementation of detailed strategies, to be used by MOIC and NTA staff and subsequent consultants.

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**LEGAL REPORT****ABBREVIATIONS**

ADB	Asian Development Bank
ADSL	Asymmetric Digital Subscriber Line
ARPU	Average Revenue per User
BOI	Board of Investment
BTO	Build Transfer Operate
CBO	Community Based Organisation
CDMA	Code Division Multiple Access, mobile technology
DFID	Department for International Development (United Kingdom)
DIDC	District Information and Documentation Centre
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GIS	Geographic Information System
GNP	Gross National Product
GSM	Global System for Mobile Communication, mobile technology & service concept
HMG	His Majesty's Government of Nepal
IDA	International Development Association
ICT	Information and Communication Technologies
ICIMOD	International Centre for Integrated Mountain Development
ISP	Internet Service Provider
IT	Information Technology
ITU	International Telecommunication Union
LDC	Least Developed Country
LGP	Local Governance Programme
LOI	Letter of Intent
MBO	Management Buy-Out
MCT	Multipurpose Community Telecentre
MOF	Ministry of Finance
MOIC	Ministry of Information and Communication
MOLD	Ministry of Local Development
MOST	Ministry of Science and Technology
MSI	Media Services International
NGO	Non-Government Organisation
NITC	National Information Technology Centre
NTA	Nepal Telecommunications Authority
NTC	Nepal Telecommunications Corporation
OCID	Overall Composite Index of Development for Districts
OECD	Organisation for Economic Co-operation and Development
PABX	Private Automatic Branch Exchange
PDDP	Participatory District Development Programme
RIO	Reference Interconnection Offer
RoW	Rights of Way
RUPP	Rural-Urban Partnership Programme
SAPAP	South Asia Poverty Alleviation Programme
SIM	Subscriber Identity Module
SLT	Sri Lanka Telecom
SMS	Short Message Service, text messages in mobile telephony
TOR	Terms of Reference

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TSRP	Telecommunications Sector Reform Programme
UMTS	Universal Mobile Telecommunications System
UNDP	United Nations Development Programme
UPS	Uninterrupted Power Supply
USD, US\$	Dollar of the United States of America
UTL	United Telecom Ltd.
VAT	Value Added Tax
VCR	Video Cassette Recorder
VDC	Village Development Committee
VSAT	Very Small Aperture Terminal (satellite terminal)
WLL	Wireless Local Loop
WTO	World Trade Organisation
xDSL	Digital Subscriber Line of any technology

**LEGAL REPORT****KEY TERMS**

Broadband	Data transmission at a speed about sufficient to transmit slow video, usually implemented using the fixed telephone network (ADSL), cable television networks, or wireless connections to users
Commercialisation	Conversion of a government owned entity towards more commercial ways to operate, usually more customer oriented
Corporate services	Generic name for telecom services that companies, corporations and government entities etc. use, such as data transmission, other data services, leased lines, virtual networks, video transmission, etc.
Dual band spectrum	Radio spectrum from two different bands assigned to mobile operator, e.g. GSM 900 and GSM 1800
Dual licensing regime	Licensing regime with two parallel types of licences, such as new and old, during a transitional period
Individual Licence	A licence that is issued based upon a tender for spectrum based telecommunications services from year 2004 onwards
Interconnection	Connection of telecommunications networks to carry calls etc. from one network to another, including technical, financial, administrative and other required arrangements
Least subsidy tendering	Tendering for arranging defined services in a defined area, which is not served on a commercial basis, based on the lowest (usually one time) subsidy that an applicant offers
Liberalisation	Allowing more operators in the market, often transition from monopoly to competition
Licensing	The process of issuing licences and authorisations
Open and Technology Neutral Licensing, or Open Licensing	The procedure of issuing Standard Licences and Individual Licences
Ownership Tax	A tax (Rs 1500) levied on every new telephone user
Price elasticity	Relation between price and demand, lower prices <-> higher demand
Privatisation	The procedure when ownership of a government owned entity is sold to the private sector, either partly or fully
Receiving Party Pays	The principle that the receiver of a (mobile) telephone call pays for receiving the call

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Rights of Way, Right to Use Land	The rights of an operator to locate network components on public ground (streets, roads, etc.), based on telecoms legislation
Royalty	A tax (4 %, or fixed in a licence as an outcome of a tender) imposed on telecommunications user bills in addition to operator charges, but before imposing VAT
Service Charge	A tax (15 %) imposed on telecommunications user bills in addition to operator charges, but before imposing VAT
Standard Licence	Term used in this project for a licence that is issued to any applicant meeting minimum criteria, for operation of telecommunications services from year 2004 onwards
Technology Neutral	The principle that licences, taxes, rules and regulations etc. are the same independent of technology, also that operators may use any technology
Telephone penetration	Average number of telephone connections per 100 inhabitants. The ITU uses the term <i>teledensity</i>
Universal Access	All inhabitants in a country have access to a public telephone (relevant for developing countries)
Universal Service	All inhabitants in a country have the right to obtain a telephone to his / her home at an affordable price (not realistic in developing countries)

## Assessment of Regulatory Regime

# 1. LEGAL ASSESSMENT OF THE CURRENT REGULATORY REGIME

## 1.1 Introduction

This report represents an interim assessment of the legal situation, and highlights a number of issues which should be addressed. However, it has become clear during work on the legal issues that there are urgent issues connected with liberalisation in 2004, which need an interim, ad hoc, temporary solution, due to the fact that there is currently no parliament to carry out legislative changes in the normal manner. An amendment to this project has therefore been proposed to address this issue. Meanwhile, this paper does not address that issue, but looks in a more general way at Nepali telecoms regulation, including the changes which may be necessary in the medium term.

## 1.2 Purpose of the legal analysis

The legal advice has a number of purposes:

- to support the policy advice being given by other consultants and assess the legal implications;
- to assess the legal implications of liberalisation, privatisation, and possible commitments which might be required to join the WTO telecoms agreement;
- to assess legal points raised by the regulatory regime, to look at issues and assess whether the regime conforms to best practice.

In this respect, what follows is a list of initial conclusions relating to possible positions that have arisen, from an analysis of the legislation.

## 1.3 Structure of the Regulatory Regime

Concerning the structure of the Telecoms Act, the Regulation, the Telecoms policy, the Guidelines and the Licence conditions, as well as the by-laws, the conclusions are that:

- In many respects, the legislation is not clear and transparent enough to represent best practice, and further clarification is possible.
- The regulatory regime should be simplified in general. For example, the Regulation repeats certain elements of the Telecoms Act, and certain elements currently contained in the licences, and in guidelines should in fact be contained in higher legislation, such as the Regulation or the Act.
- An example is the fact that the Act only contains a minimal Section concerning interconnection, and most of the principles are contained in "Guidelines" which are (we understand) not legally binding. Further, it appears that the relevant licences do not in fact incorporate the guidelines with the effect of making them legally binding. Further, the guidelines themselves need to give more clear assistance. More high level principles in respect of interconnection will be contained in the Telecoms Act or the regulation.
- A major rewriting of the legislation is called for in the medium term, meaning once it becomes possible to adopt legislation in the normal manner.

## **Assessment of Regulatory Regime**

### **1.4 Regulators and their responsibilities**

We think that:

- There should be more policy objectives which should guide the regulators, and particularly the NTA, and this should be clearly stated at the beginning of the Act.
- The separate roles of the MOIC and the NTA are not distinct enough, and their functions need to be spelt out more clearly. MOIC is responsible for policy and co-ordination with international telecoms organisations, and it is the job of the NTA to implement the policy.
- In the medium term, the NTA should be required to report to Parliament in order to strengthen its independence.  
Sections 20, 46(3), 55, 58 and 60 could be amended in this sense. In respect of Section 58, it has been pointed out to us by operators that, particularly with regard to customs matters, the obligation to pass through the MOIC can cause significant delays, and that NTA should be able to contact the customs authorities directly. In general, NTA should have direct contacts with whichever part of government is most appropriate in any particular situation.
- There may be some functions of the NTA which could be better carried out by other authorities. We have asked, for example whether in respect of 13(l) of the Act the task of causing to develop the skilled manpower for the entire telecommunications sector might better be done by some other authority. It appears that the response is that it is certainly necessary that there be sufficiently qualified staff in this respect to work in the authority. However, this would be an internal matter for the NTA which could easily be a part of the by-laws without being included of the Act. It seems unnecessary to impose this obligation on the NTA otherwise, although it might also be elevated to one of the objectives of the authority to be introduced in accordance with the first point above in 1.4, with or without a specific obligation.
- It is not felt necessary to have the NTA approving the quality and standards of the individual network equipment (other than terminal equipment) used by the operators in their network under Section 14.1, and from a telecoms perspective, this could be removed. It should be replaced by an obligation relating to end-to-end quality requirements.
- The requirements for the NTA to ask for comments and to have consultation should be expanded, and made clearer. However, there is a recognition that consultation should not be so extensive that it seriously delays or damages the functioning of the NTA. We understand that a specific consultant will look at this issue.
- Reports published by the NTA should be required to specifically include certain matters, such as service provision, the need for improvement, quality of service, consumer protection and the need for price control.

### **1.5 Licensing**

In respect of licensing, our initial conclusions are that:

- Licences to which Section 22(2) applies should not carry with them an exclusive licence for a period of 5 years. This obligation should be deleted. Further, the exact

### **Assessment of Regulatory Regime**

meaning of this provision is unclear, and until it can be fully deleted, it may need clarification.

- Policy suggestions relating to licensing suggest that rewriting of a substantial section of the Act is required, which will involve a wholesale revision of sections 21 to 30 of the Act. For example, the criteria for the competitive award of licences should not be limited to the question of which applicant proposes the most licence fees (or other fees), but it should be able to decide according to either the criteria of licence fees or coverage or other appropriate criteria set out in advance. In addition, the possibility of applying a renewal fee and a royalty as part of the negotiation/bidding procedure should be removed in sections 24(3) and 24(4). These points involve a change of Section 24(3) and 24(4) in both respects. Reference on this point is made to the principle of uniform taxation and uniform fees outlined in chapter 3 above.
- The timescale for the issuing of licences should be clarified. In general, for simple standard licences, a delay of 4 weeks could be considered. In respect of other licences, which are not subject to a competitive bidding mechanism, 6 weeks should be sufficient.
- Where it is necessary to have power to authorise or refuse to licences, this power should be delegated from the NTA Board to the Chairman or otherwise, rather than submission to the Board for approval being necessary. However, in the case of the bulk issue of licences, it may nevertheless be appropriate to have an obligation to report to the Board.
- The terms of individual licences, and in particular that of NTC must be made public. Currently, operators are not aware of whether their licences are public documents or not, and do not generally make them available. This is inappropriate in a situation where competing and new operators rely on the NTC licence for some of their key rights.
- The period of licences should not be limited to 25 years as in Section 25(1), nor should the maximum period of 10 years apply.
- The renewal period should not be only 5 years as in Section 25(2).
- It should be made clearer that only upfront and yearly licence fees can be imposed, and on a uniform basis, pursuant to the suggestions in Chapter 3 above.
- In respect of Section 27 rules should be set out as to the criteria by which the transfer of the licence may be restricted. For example, transfer may only permissible where the licence is to be transferred in the context of the sale of a business, or only after an initial period of 3 or 5 years. There should be an application mechanism, with the possibility of the NTA rejecting the licence transfer where a substantial business is not being transferred. Different rules may apply also to different types of licence. For example, there is no reason why a simple "driving licence" type of licence should be transferred when it would be easy to obtain a new one. Informational and payment mechanisms should also be included for these purposes.
- Up-front and yearly licence fees should be subject to a cap, for example that the NTA should impose licence fees and other charges only to the extent that this is justified by the costs properly incurred by the NTA.
- The provisions regarding penalties for breach of licence terms, and for breach of other legal provisions need reconsideration. This involves in particular Section 28 and Section 47 of the Act. The relationship between these two provisions needs looking at. It would be appropriate, for example, to include stronger powers for the NTA to require operators to offer interconnection in a timely manner, or obey its determinations, such as either daily fines or revocation of the licence. However, it is very important that the

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punishment/remedy be proportionate. In many circumstances, to have as the only remedy the possibility of cancellation of the licence is in this sense disproportionate. One possible scheme is that a time for remedy of the breach first be indicated to the infringing licensee, typically of one month but which may be longer or shorter, which should be specified by the NTA in each case. Failure to remedy the breach may result in a range of measures being taken by the NTA, which may include fines. Failure to provide information may also be punishable by a fine. Only fundamental or serious and repeated breaches may result in the removal of the license. If this system is thought appropriate, then further detail can be provided.

- It would be appropriate to restructure the licence award system as a whole, so that a single, short certificate with minimum information is available, combined with other, fuller documents specifying terms specific to the operator, as well as the application of other general conditions, which are contained in general regulation.

#### **1.6 Interconnection**

In respect of interconnection, our initial views are that:

- It is not appropriate that the major provisions relating to interconnection be contained in non-binding guidelines and we do not consider that the licence conditions appear to be sufficient to import the guidelines as binding legal obligations. The major principles should be elevated to higher legislation such as the Act or Regulation for the sake of transparency.
- In particular, it is not appropriate that, as at present, operators other than NTC are given no detailed direct right to interconnection, other than indirectly through NTC's licence, which is only enforceable by the NTA. It should be possible for those wanting to interconnect with NTC to rely directly on a right they have against NTC in this respect, allowing them to go before a court or interconnection tribunal. We consider that it may be appropriate to establish recourse to court, or possibly a separate interconnection tribunal which nevertheless forms part of the NTA, with a presiding judge or arbitrator or chairman who has a judicial background, and who is independent of the NTA.
- Obligations such as cost-orientation and non-discrimination should not apply to all interconnecting operators, but should only be imposed on the dominant operator.
- It is inappropriate to allow the services eventually provided to customers to come into consideration in deciding what the interconnection charges should be (point 7.4 of the guidelines).
- The 90 day period for the parties to come to a commercial agreement (Point 15.1 of the guidelines) is in line with some other legislative regimes which have existed (we understand that such a 90-day period applies under a code of conduct in Singapore [see [www.apectelwg.org/apecdata/telwg/InterTG/itf05.html](http://www.apectelwg.org/apecdata/telwg/InterTG/itf05.html)], and was consistent with APEC guidelines at one stage). However, experience has shown that it usually takes significantly longer for the first interconnection agreement to be negotiated, often one year or more. After the first interconnection agreement, it is usually possible for the dominant operator to produce a standard offer, or Reference Interconnection Offer (see below). Whether this will be possible on the basis of the interconnection agreement which should now have been reached by the dominant operator is not clear. We consider that if any real negotiation is going to be necessary, 4 months may be more

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appropriate. We consider, however, that to threaten the operators with licence revocation if they fail to agree within a certain period is disproportionately strong.

- Any extension under 15.3 of the interconnection guidelines should be limited in time.
- An obligation should be imposed on dominant operators to publish a reference interconnection offer (RIO).
- NTA should have the power to intervene in an interconnection agreement in any case, particularly in respect of any interconnection agreement made by NTC.

#### **1.7 Universal Service/Access**

Specific obligations are often identified in regulatory regimes as being obligations that operators are obliged to accept in order to offer telecoms access at an affordable price even where the provision of access is not profitable, for example because it has to be offered in remote or rural areas. In this case, the obligations in the legislation relate not to universal service - the provision of a particular service being offered to all customers, but to universal access. These universal service/access obligations need to be identified, in order to make sure that they are properly assessed from time to time, to see whether the burden is fair, to ensure that any subsidy or payment is justified, and that possibly accounts are prepared to justify any subsidy, and to ensure that any payments between operators in respect of unequal provision of universal access is separately identified from any interconnection charges (although from a best practice regulatory perspective, such payments between operators are not desirable). In this respect, the conclusions are :

- Universal access obligations, which seem to be restricted at the moment to a 2% contribution to a regional development fund must be separately identified, with particular provisions in the Act. In addition, the functioning of the fund must be transparent, and the fund should not discriminate in any way in favour of NTC.
- It is important to recognise that universal access obligations relate not only to fixed services, but also involve obligations with respect to mobile and wireless local loop services, such as investment in rural services and offering certain services in rural areas.

#### **1.8 Services to Customers**

We consider that:

- Not all operators should have to have their prices to consumers and businesses approved. This obligation should only apply to the dominant operator, otherwise there is potential for market distortion.
- Obligations relating to the publication of directories and the availability of directory enquiry services need to be reconsidered, for example, so that it is not necessary for each operator to provide separate directories for their own subscribers. A scheme should be instituted whereby alternative operators are required to make this information available to others, such as NTC, who are obliged to publish the directories and make available the directory enquiry service.

## Assessment of Regulatory Regime

### 1.9 Introduction of Antitrust Principles

In future, it is possible that anti-competitive behaviour may arise which the NTA does not have the legal means to properly address. For example, a number of operators could decide to fix prices to customers, or there could be a question raised by competitors as to whether NTC is behaving in a way which restricts competition, cross-subsidising a new service, charging it at a price which means that it makes a loss, and subsidising this loss making-activity from other profitable activities.

Rules prohibiting price-fixing and other cartels, abuse of monopoly or dominant market positions, and/or rules against unfair discrimination or undue preference or cross-subsidisation should be introduced into the Telecoms Act, together with the power for the NTA to impose a fine for infringement.

We have noted the unfair trade conditions which are imposed in NTC's licence and that of other operators, which goes in this direction. However, these conditions seem to differ from one licence to another, (unless this merely reflects differences of our own unofficial English translation and the original NTC licence in Nepali).

In addition, remedies for breach requires improvement, and the scope of the provision needs to be expanded. We consider that this obligation should be included in higher legislation.

#### **Possible Regime on Antitrust/Competition Law/Fair Competition**

In general we would note that for these purposes, there are six types of clause that we propose would apply:

##### General Competition Prohibitions

(i) A prohibition on licensees entering into any written or oral agreements, whether or not legally binding, which restrict or distort competition, and in particular in relation to the fixing of prices charged to third parties, or rigging of bids to third parties, or agreeing to restrict supplies to third parties.

(ii) A prohibition on the abuse of a dominant position. In this respect, we note that clause S.2 of the United Licence provides that "the licensee shall not use any dominant position within [a service in which it is dominant] to gain an advantage, which prevents, impedes, limits, restricts or distorts fair competition among companies providing telecommunications services in Nepal".

### **Assessment of Regulatory Regime**

An alternative would be to provide for

- a general restriction on abuse of a dominant position
- a presumption that a dominant company shall be taken to have abused its position if, in the opinion of the NTA, it has engaged in conduct which has the purpose of preventing or substantially restricting competition in a market for the provision or acquisition of telecommunication installations, services or apparatus.
- Conduct which the Authority may consider to fall within the conduct referred to in subparagraph includes, but is not limited to –
  - i.* predatory pricing;
  - ii.* price discrimination;
  - iii.* the imposition of contractual terms which are harsh or unrelated to the subject of the contract;
  - iv.* tying arrangements;
  - v.* discrimination in supply of services to competitors
- There would also be a provision which would allow the NTA to take into account the principles contained in other nation's antitrust laws in interpreting these obligations.

#### (iii) Prohibition on Undue Discrimination or Undue Influence

This type of obligation is contained in Clauses S 3-4 of the United licence, which, for example, is different from the obligation regarding abuse of dominance, because it does not require the company to be dominant, nor does it need to be interpreted along the lines of antitrust principles. In particular, it would condemn any discrimination or undue influence, even if the behaviour occurred in a market in which the incumbent was not dominant. It would, however, only be imposed on the incumbent fixed line operator. The provision would be similar to that in Clauses S 3-4 of the United licence. However, the last sentence of S 3 would have to change, since it appears to allow the incumbent operator to charge customers less than other telecoms operators would be charged for a similar service, and this should not be permitted. The clause would have to be changed, to clarify its application to customers as well as telecoms operators.

#### (iv) Provisions preventing cross-subsidisation

An example of such a clause is contained in Clause S 5-6. Once again, this obligation is separate to that above relating to the abuse of a dominant position. In particular, it prohibits cross-subsidisation even of areas in which the incumbent operator is not yet dominant. This clause could also allow specific services to be named, from which cross-subsidisation must not take place, such as "basic services" as in clause S 5.

#### (v) Provision on Tie-ins or Tying

An example of a provision preventing tying is Clause S 7 of the United Licence. However, this clause would have to be reworded. The point of the clause should be that no customer or other operator of the incumbent operator should be required to buy services from the incumbent operator or from any other source, as a condition of purchasing other services which the customer is seeking to purchase.

## Assessment of Regulatory Regime

### (vi) Enforcement Provision

We would also recommend that further enforcement options be given to NTA in respect of this clause, allowing for daily fines for failing to follow any order made by NTA, in addition to a fine for any infringing activity.

### 1.10 Leased Lines

The provisions relating to leased lines in the licences are not sufficient. In particular, these provisions need to be expanded to show exactly what services are included in leased lines, and provisions need to be included relating to principles applying to provision of leased lines to operators on the one hand and consumers on the other hand. Charging principles and guidelines need also to be included. In addition, the obligations should specify any possible grounds for refusal and make it clear that the dominant operator is not able to refuse to supply lines on the basis that the lines will be used for purposes which may be unlawful. On this point, we have heard reports that the dominant operator was refusing to supply lines to Internet providers on the grounds that they were being used for voice telephony. The dominant operator should not be entitled to decide to enforce the law itself, and should incur a penalty for these sort of activities.

### 1.11 Rights of Way

Provisions will have to be included, and modification will have to be made to allow the range of rights of way obligations that have been suggested elsewhere in this report.

This may include:

- Possibility of grants of differing types of rights of way
- Information requirements
- Obligations of infrastructure sharing
- Co-ordination requirements
- Environmental restrictions

### 1.12 Numbering

While the policy regarding numbering has not yet been fully formulated, it has been suggested that with the opening of international services, carrier selection or pre-selection could be mandated, involving the possibility for all fixed line operators to choose to use the services of any of the operators authorised to supply international voice services, by using a short prefix.

### 1.13 Possible WTO Telecoms Agreement Commitments

A number of points are suggested by the paper relating to WTO commitments which have clear legal implications. However, we would particularly highlight the following:

### **Assessment of Regulatory Regime**

Section 33(1) of the Telecommunications Act says that "The Land, building, plant, equipment and other structures related to the Telecommunications service developed with more than fifty percent of its investment by a foreign person or corporate body shall be under the ownership of His Majesty's Government after the expiry of the Period of the Licence."

Section 33(4) provides that "In case of the Telecommunications Service operated with the investment of foreign person or corporate body up to fifty percent, the previous Licensee may, after the expiry of the period of the Licence, operate the Telecommunications Service by obtaining the Licence once again."

These provisions discriminate against foreign owners, and could raise issues making it difficult to join the WTO Telecoms Agreement. We consider that:

- Mention of foreign ownership be deleted, so that the provision applies to all operators, and complies with the WTO Telecoms Agreement.
- Even if the provision relating to 50% foreign ownership is removed, Section 33(1) should probably still be amended so that another mechanism is chosen to ensure continuity of service provision in the short term, rather than the transfer of ownership rights. Even if the objective is to safeguard a continued supply to customers and to make sure that the debts of the operator to the State are paid, it could be asked whether or not ensuring transfer of ownership in this way is a good way of procuring this. What tends to happen is that at any hint of trouble, the operator may simply run down equipment to provide a minimum service in case his licence is removed, and there will be no incentive to install efficient modern equipment. We would recommend that other mechanisms be explored. In other jurisdictions, for example, there are proposals that where the relevant operator is insolvent or in administration, then the administrator appointed has an obligation to continue to provide customer services, and to ensure that customers can migrate to other networks. Similar obligations could be imposed in other situations where a licence is invoked. For example, provision could be made for a special administrator to be appointed to provide the relevant services. However, where the relevant operator was not already part of an insolvency or administration scheme which already applied to limit or remove its ownership rights, we would see it as important for the above reasons that the ownership rights would be fully restored to the operator whose licence is revoked, after any special administrator was appointed. Where appropriate, the return of the ownership rights could be made conditional on the payment of any outstanding fees.
- We are assuming that in the situation where an operator refuses to pay any fees, there is the possibility for NTA to go to court to enforce the relevant obligation, where necessary by seizure of goods. However, if this were not the case, then we would like to explore further the possibilities in this respect with the customer.
- Section 33(4) be deleted.

## Amendment of legislation

### 2. AMENDMENT OF LEGISLATION

This project, PS - 2, initially included only an initial assessment of the present regulatory regime. That assessment is included unchanged above.

Due to the development of understanding during the project, the need for an urgent amendment of legislation became apparent. As a result, the MOIC requested the project to undertake a revision of the Telecommunications Act and the Telecommunications Regulation. The work is intended to be a foundation for implementation of the draft National Telecommunications Policy. The work has been done in co-operation with our Nepalese legal team member, Mr. Ram Kumar Shrestha. Legal officers of the MOIC and the NTA have reviewed a draft. We have tried to incorporate all those matters on which we have received advice.

The changes in the Policy are significant, and those changes - together with other changes caused by international development in the telecommunications sector - have resulted in a substantial amount of proposed amendments. The amendments may be implemented as changes to the Act in the short term (for example through an ordinance), but we consider that a thoroughgoing review of the Act is also necessary, in respect of particular provisions we have highlighted, and generally. The long term changes could be implemented as a completely new Act when a permanent change of the Act is possible. The Regulation can be fully replaced.

Several consultant assignments are still on-going, and will have an impact on legislation. The most important are the assignments on licensing and public hearing, and several assignments on radio spectrum management. We have included a first approximation, but we expect that details will be amended as an outcome of these assignments.

We believe that the proposed changes to the legislation are sufficient to meet Nepal's commitments to the WTO with regard to telecommunications, well ahead of the deadline stated in the commitments. We believe that the changes are needed in the first hand for development of Nepal, and the WTO commitments are of lower priority, even if very similar.

A number of issues in the Policy are of a nature of policy directions to authorities, in particular to MOIC and NTA. Examples are information on licensing, mobile tenders, Least Subsidy tenders, cyber legislation, commercialisation and privatisation of NTC, etc. These are not included in the proposed legislation.

The amendments follow the spirit of the proposed Policy. Some minor deviations have been implemented, e.g. Significant Market Power (SMP) has been used for the purpose of imposing particular obligations relating to interconnection, leased lines, numbering and certain of the fair competition provisions in Sections 31 - 31D, instead of dominance. The reason is that the ex ante (in advance) definition of SMP is much easier to deal with, and less complex in matters that are needed immediately (such as interconnection), while the more complex analysis of dominance, needs a very thorough antitrust approach. The concept of Significant Market Power was used in the EU in its main liberalisation legislation from 1998 to 2003, and did not raise significant problems. However, the new

### **Amendment of legislation**

EU regime uses the concept of dominance, and has proved more problematic. The process of analysing markets, the assessment market strength for the purposes of assessing dominance in all relevant areas in the 2003 EU regime has proved troublesome, and has taken a considerable time. On the other hand, we have also built in a provision enabling SMP obligations to be removed as the market becomes more competitive, and this will be based on the dominance test. This is the way that the dominance test has been used in the EU, so we feel that the system accords extremely well with international practice.

On the other hand, we have included a provision on the abuse of dominance prohibition in Section 31 D with regard to anti-competitive practices. This will introduce that concept in Nepal, and can be more easily applied in a specific case, rather than in generalised legislation.

We expect the proposed amendments to be sufficient to implement the draft Policy. However, international experience shows that development of telecommunications legislation is a continuous process rather than a one-time exercise. Thus we expect that minor amendments of the legislation will be required once or twice each year, and that the entire legislation should be amended about twice every ten years. This proposed amendment does not cover e.g. the impact of convergence between various forms of telecommunications and various forms of broadcasting. Our work was defined and dimensioned to be a minimum amendment required for implementing the policy.

The proposed Act and Regulation, both as amended, are attached to this Report. For practical purposes we have also separately submitted the proposed documents in a format that shows the changes. Translation of the proposed Act and Regulation are also submitted separately.

**Draft Telecommunications Act**

**3. Draft Telecommunications Act**

**Draft Telecommunications Act****TELECOMMUNICATIONS ACT, 2053 (1997)**

Date of the Royal Assent and  
Publication

2053-9-17 (1 January 1997)

The Amending Act:

The Act Amending Some Nepal Acts Relating to

Communications, 2057 (2001)

2057.10.18 (Jan. 31, 2001)

**The Amending Act: (this amendment)**

**The Act Amending Some Nepal Acts Relating to**

**Communications, 2057 (2004)**

**20XX.XX.XX (ZZ-ZZ-2004)**

Act number 18 of the year 2053 (1996)

An Act made to provide for telecommunications

**Preamble:**

Whereas, it is expedient to make the telecommunications service reliable and easily available, to get the private sector, as well, involved in the telecommunications service and to regularize and systematize such a service;

Now, therefore, Parliament has enacted this Act, in the twenty-fifth year of the reign of **His Majesty the King Birendra Bir Bikram Shah Dev.**

**Chapter - 1****Preliminary**

- 1. Short title and commencement:** (1) This Act may be cited as the "Telecommunications Act, 2053 (1997)".

**Draft Telecommunications Act**

(2) This Act shall come into force on such date as His Majesty's Government may, by a notification published in the Nepal Gazette, appoint.<sup>1</sup>

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

- (a) "Telecommunications" means any act of emission, transmission or reception, through the agency of electricity or electromagnetism, of any sounds, signs, signals, writings, images or intelligence of any kind, by the wire, radio, optical or other electromagnetic system, whether or not such signs, signals, writings, images, sounds or intelligence have been subjected to rearrangement, computation or other change in any manner for their emission, transmission or reception.
- (b) "Telecommunications line" means any wire, cable, equipment, tower, mast, antenna, tunnel, hole, pit, pole or other structure or object used or to be used in connection with the telecommunications system.
- (c) "Telecommunications system" means any equipment or a group of equipment used or to be used in connection with the telecommunications system.
- (d) "Telecommunications service" means a service relating to the acts of conveyance or reception of any sounds, signs, signals, writings or images by the wire, radio, optical or other electromagnetic systems, whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other change in any manner for their emission, transmission or reception.

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<sup>1</sup> It came into force on 2054.7.18 (Nov. 3, 2000) by a notification published in the Nepal Gazette dated 2054.7.18 (Nov. 3, 1997).

**Draft Telecommunications Act**

- (e) "Authority" means the Nepal<sup>2</sup> Telecommunications Authority established pursuant to Section 3.
- (f) "Chairman" means the Chairman of the Authority.
- (g) "Member" means the member of the Authority and this term includes the Chairman.
- (h) "License" means the license issued pursuant to Section 24 to operate the telecommunications service.
- (i) "Licensee" means a person licensed to operate the telecommunications service, pursuant to Section 24.
- (j) "Customer" means a person who receives the telecommunications service made available by the licensee.
- (k) "Charge" means the fees to be collected from the customer, for the telecommunications service provided pursuant to this Act.
- (l) "Person" includes a corporate body established pursuant to the law in force.
- (m) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules or By-laws framed under this Act.
- (n) "Operator with Significant Market Power" or "SMP Operator" shall in each case mean the relevant licensee as determined pursuant to Section 31C.

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<sup>2</sup> Inserted by the Act Amending Some Nepal Acts Relating to Communications, 2057 (2001).

**Draft Telecommunications Act****Chapter - 2****Establishment and Constitution of Telecommunications Authority**

**3. Establishment of Telecommunications Authority:** A Nepal Telecommunications Authority is hereby established with a view to making the telecommunications service reliable and easily available and managing and regularizing such service.

**4. Authority to be autonomous and corporate body:** (1) The Authority shall be an autonomous body and corporate with perpetual succession.

(2) The Authority shall have a separate seal of its own for its acts and actions.

(3) The Authority may, like an individual, acquire, use or otherwise manage movable and immovable property.

(4) The Authority may, like an individual, sue and be sued by its name.

**5. Constitution of Authority:** (1) The Authority shall consist of five members including the chairman, who possess the prescribed qualifications and experiences in financial and technical,<sup>3</sup> market management, accounts and auditing or legal field, relating to the telecommunications service.

(2) His Majesty's Government shall constitute a committee to make recommendations for the appointment of the Chairman and members of the Authority; and His Majesty's Government shall, on recommendation of the committee, appoint the chairman and members of the Authority. The Chairman of the committee will be the Chief Secretary, Members will be the Secretary of the MOIC ex officio, Secretary of the Ministry of law and justice, one

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<sup>3</sup> Amended by the Act Amending Some Nepal Acts Relating to Communication, 2057 (2001).

### **Draft Telecommunications Act**

independent expert from the telecommunications sector, and the Secretary of the Ministry of Finance.

(3) The Authority may, if the deems necessary, invite any expert to participate its meeting as an observer.

(4) The officer designated by the chairman from amongst the senior officer employees of the Authority shall act as the secretary of the Authority.

**6. Office of Authority:** The central office of the Authority shall be located in the Kathmandu Valley; and the Authority may also open its branch offices within the Kingdom of Nepal, as per necessity.

**7. Meeting and decision of Authority:** (1) The Authority shall meet as per necessity.

(2) The meeting of the Authority shall be held at such place, date and time as may be specified by the chairman.

(3) The meeting of the Authority shall be presided over by the chairman, and in his absence, the meeting shall be presided over by a member selected by the members present at the meeting from amongst themselves.

(4) The presence of more than fifty percent of the total number of members of the Authority shall be deemed to constitute a quorum for the meeting.

(5) The opinion of the majority at a meeting of the Authority shall be deemed to be the decision of the Authority; and in the event of a tie, the chairman shall exercise the casting vote.

(6) The Chairman shall authenticate any decision made by a meeting of the Authority; and the secretary of the Authority shall circulate such a decision to all members.

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(7) Other procedures relating to the meeting of the Authority shall be as determined by the Authority on its own.

- 8. Tenure of chairman and member:** (1) The tenure of the chairman and the member shall be of five years.

(2) In cases where the committee as referred to in sub-section (2) of Section 5 recommends for reappointment of the chairman and the member, showing their performance to be satisfactory, His Majesty's Government may reappoint them to the post of the chairman and the member.

- 9. Removal of chairman and member from office:** (1) Notwithstanding anything contained in Section 8, His Majesty's Government may remove the chairman or member from his office in the following circumstances:-

- (a) If he lacks competency,
- (b) If he misbehaves,
- (c) If he fails to carry out duties of his post honestly,
- (d) If he becomes mentally disorder or insane, or
- (e) If he has direct or indirect ownership or personal interest in any firm or body corporate which operates the telecommunications service or system.

(2) Before removing the chairman or member from his office pursuant to sub-section (1), he shall be provided with a reasonable opportunity to defend himself.

- 10. Vacancy of post of chairman and member:** The post of the chairman and the member shall be deemed to be vacant in the following circumstances:-

**Draft Telecommunications Act**

- (a) If his written resignation tendered to His Majesty's Government is accepted,
- (b) If he completes his tenure pursuant to Section 8,
- (c) If he is removed from his office pursuant to Section 9,
- (d) If he is convicted by the court of any criminal offence, or
- (e) If he dies.

**11. Terms and conditions of service of chairman:** (1) The chairman shall be the full timer chief office-bearer of the Authority.

(2) The remuneration, facilities and other terms and conditions of service of, and functions, duties and powers of, the chairman shall be as prescribed.

(3) Once a person is appointed as the chairman, his remuneration, facilities and other terms and conditions of service shall not be altered to his disadvantage.

(4) The member shall obtain a meeting allowance as prescribed for attending a meeting of the Authority.

**12. Employees of Authority:** (1) The Authority shall have employees in the required number in order to operate its functions.

(2) The appointment, remuneration, facilities and other terms and conditions of service of the employees as referred to in sub-section (1) shall be as prescribed.

(3) Notwithstanding anything contained in sub-section (2), His Majesty's Government may, at the request of the Authority, so depute any employee of His Majesty's Government or any corporate body to the Authority as to entitle

## **Draft Telecommunications Act**

him to get remuneration from the Authority itself pending the appointment of employees of the Authority.

### **Chapter - 3**

#### **Functions, Duties and Powers of Authority**

**13. Functions and duties of Authority:** The functions and duties of the Authority shall be as follows:-

- (a) To provide suggestions, on request from His Majesty's Government on the policy, plan and program to be adopted by His Majesty's Government for the development of telecommunications service. The MOIC shall be responsible for deciding and formulating the policy.
- (aA) The Authority shall implement the policy adopted by His Majesty's Government.
- (b) To make the telecommunications service and facility reliable and easily available.
- (c) To make necessary provision to extend the basic telecommunications service and facility to all rural and urban areas throughout the Kingdom of Nepal.
- (d) To make the national and foreign private sector investors participate in operations of the telecommunications service.
- (e) To make arrangement for coordination and healthy competition among the persons providing the telecommunications service and facility, so as to provide such service and facility to all the public in general.

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- (f) To prescribe, fix and approve standards and quality standards of the plants and equipment relating to the telecommunications and of the telecommunications service.
- (g) To regularize and manage the telecommunications service.
- (h) To grant the license to operate the telecommunications service .....<sup>4</sup>
- (i) To approve and regularize the fees to be collected by the licensee for provision of the telecommunications service.
- (j) To perform acts relating to the frequency in consonance with the policy determined by the radio frequency policy determination committee. To perform all acts necessary for the assignment of radio frequencies that have been determined to be available for assignment by the radio frequency policy determination committee pursuant to Section 49.
- (k) To carry out, or cause to be carried out, research works about the development and use of new technology in the field of telecommunications
- (m) To develop and extend, or cause to be developed and extended, the telecommunications service in such a manner that it protects the rights and interests of the consumers.
- (n) To develop, or cause to be developed, Nepal as an international transit for telecommunications.
- (o) To carry out such other functions as are necessary and appropriate for the development and promotion of the telecommunications service.

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<sup>4</sup> Deleted by the Act Amending Some Nepal Acts Relating to Communication, 2057 (2001).

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- (p) To make directions regarding service charges of any licensee in any situation involving an infringement of Section 31D.
- (q) To adopt terms, conditions and procedures relating to licences.

**14. Determination of quality standards and prescription of service standards:**

(1) The Authority may, but is not obliged to, establish a scheme for the approval of telecoms terminal equipment, based on international standards and approvals. The NTA shall not require licensees to obtain approval for equipment used internally within in their networks.

(2) The Authority may prescribe the minimum standards to be maintained by the licensee in operating the telecommunications service.

(3) The Authority may prescribe requirements relating to information that licensees must give to the Authority relating to quality of service.

**15. Power to issue order or direction:** (1) The Authority may, in view of the policy and direction of His Majesty's Government, issue necessary orders or directions to the licensee; and it shall be the duty of the concerned person to comply with such orders or directions.

(2) The Authority may require description of the acts and actions carried out by the licensee and description related to the telecommunications service operated by the licensee; and it shall be the duty of the concerned person to provide such description.

(3) Where the Authority has evidence of a breach of the conditions of a licence or other conditions under which a service is authorised, or of the offering of a service, that represents an immediate and serious threat to public safety, public security or public health or will create serious operational

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problems for other providers or users of telecommunications services, it may take urgent measures to remedy the situation, including requiring the suspension of the service.

- 16. Power to settle disputes:** (1) The Authority shall have the power to settle disputes between the licensees or between the licensee and the customer relating to the telecommunications service.

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

- 17. Inspection and Investigation:** (1) The Authority may, if it deems necessary, inspect or investigate the activities carried out or the service provided by the licensee, at any time.

(2) The Authority may, for the purpose of inspection or investigation pursuant to sub-section (1), designate any person or body of the Authority.

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

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

## **Chapter - 4**

### **Special Powers of His Majesty's Government**

- 18. Power of His Majesty's Government to operate, or cause to be operated, telecommunications service on its own:** Notwithstanding anything contained

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elsewhere in this Act, His Majesty's Government may operate, or cause to be operated, the telecommunications service on its own.

**19. Special powers of His Majesty's Government:** (1) In cases where it is required to prevent the exchange of information or to control the system exchanging such information due to a state of emergency or national security, His Majesty's Government may carry out the following acts:-

- (a) To take the telecommunications line and the telecommunications system installed, operated or being supervised by the licensee under its possession temporarily,
- (b) To issue an order to tape the information related with a specific matter, person or community, to trace the transmitter of such information or to stop broadcasting such information.

(2) After the expiry of the circumstances referred to in sub-section (1), His Majesty's Government shall return the telecommunications line and telecommunications system so possessed by it to the concerned licensees.

**20. Power to issue directives:** His Majesty's Government may, from time to time, issue necessary directives to the Authority in connection with diversification, extension and regularization of the telecommunications service in consonance with the communication policy of the country; and it shall be the duty of the Authority to comply with such directives.

**[WE HAVE SUGGESTED THAT IN THE LONGER TERM, SECTIONS 18 TO 20 SHOULD BE AMENDED. AMONGST OTHER MATTERS, WE HAVE SUGGESTED THAT THE AUTHORITY SHOULD REPORT TO A COMMITTEE OF THE PARLIAMENT.]**

### **Chapter - 5**

**Draft Telecommunications Act****Provisions relating to License**

- 21. Prohibition on operation of telecommunications service without license:** (1) After the commencement of this Act, with the exception of the services falling under section 24A, no one shall operate the telecommunications service without obtaining a license.
- (2) In respect of any person operating a telecommunication service without obtaining a licence, the Authority may impose a fine, including the fees which should have been paid, in addition to up to 5 lakh.
- 21A.** The Authority shall authorise all telecommunications services with the exception of those falling within section 24A, and shall only limit the number of licences available where the applicant will make use of scarce radio frequency. There shall be no limit on the number of other licences that the NTA grants. Where possible, and with the exception of section 24A and in particular where the risk of harmful interference is negligible, the Authority may prescribe that services making use of radio frequency, will be subject to a standard licence.
- 21B** (1) The Authority shall issue individual licences for radio frequency where the number of licences is limited for reasons of scarcity of frequency.
- (2) The licence of the dominant operator shall be an individual licence.
- (3) Individual licensees may be subject to additional terms and conditions not included in a standard licence.
- (4) The Authority shall issue standard licences for all other purposes, with the exception of services falling under section 24A.
- 22. Publication of notice for submission of Application for license:** (1) The Authority shall determine and publish the manner in which standard licences

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are to be granted, according to the type of service. Authorisation to operate under a standard licence shall be granted automatically. Where a telecommunications service is not specifically mentioned in the authorisation regime for standard licence, this shall not prevent the service being authorised under the same delay as applicable for other services.

(2) Where a licence has, prior to [1 January 2004], been granted under the condition that no other license would be issued to operate the same telecommunications service until after the period of five years, the Authority may nevertheless issue a license or licenses to another person or persons to operate the same telecommunications service, before the relevant five year period expires if (a) the licensee fails to provide the telecommunications service as prescribed in the license or (b) on the basis of objective evaluation, it seems that such telecommunications service is further required or (c) it is otherwise decided by the Authority that one or more new licenses should be granted.

- 23. Application to be submitted for license:** (1) Except for services coming within section 24A, any person who desires to operate the telecommunications service pursuant to this Act may be required to submit an application or notification to the Authority, setting out the particulars as prescribed. In respect of a standard licence, only very basic information can be required to be submitted in order to obtain the licence, as necessary to identify the applicant, the nature of the service to be initially provided and the date of commencement of the service.

(2) In respect of any standard licence, the Authority shall grant a licence allowing the applicant to offer the service, or a certificate indicating that the applicant has such a licence, within six weeks after the licence application or notification shall have been received.

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(3) For any person who has been authorised under a licence to operate a telecommunications service prior to 1 January 2004 which corresponds to a service for which a standard licence can be granted, such existing licence shall continue, but that person shall be required to comply with the standard licensing regime by 1 January 2005, at which time their existing licence shall expire. Such person shall also, at any time before 1 January 2005, be entitled to exchange its existing licence awarded before 1 January 2004 for a standard licence, corresponding to the service supplied.

To the extent that such person has, prior to [1 January 2004] paid fees entitling him to operate a particular service under the licence for a certain number of years, such fees paid under the previous licence in respect of the period after 1 January 2005 shall be treated as an advance payment for each year, in an amount equal to the total payment, divided by the number of years for which the licence was granted.

This sub-section shall not apply to the [operator owned by His Majesty's Government], to which sub-section 4 below shall apply.

(4) With respect to licenses granted before [1 January 2004] for the provision of services that do not correspond to the services that can be offered under a standard licenses, and [the operator owned by His Majesty's Government], the Authority shall establish a regime for the migration of such licences to harmonised licensing conditions by 1 July 2005. Such harmonised licensing conditions shall not preclude the application of particular conditions to particular operators, nor shall it preclude, if judged appropriate, the application of the standard licence to [the operator owned by His Majesty's Government].

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**24. Provision of individual license:** In respect of the award of additional individual licences involving the use of scarce frequency, beyond those already existing on [1 January 2004] the following provisions shall apply:

(1) Before issuing a license to operate an individual licence involving the use of scarce radio frequency the Authority will determine the number of licenses to be issued for such service and types of telecommunications and publish a public notice specifying the time limit to submit an application for the license, and the maximum time limit for applicant companies to fulfil the relevant preconditions and accept a licence which the Authority has indicated it has decided to offer pursuant to sub-section 3 below.

(2) Upon receipt of an application pursuant to Section 23(1), the Authority shall conduct necessary inquiry into the matter, and in the course of inquiry, if the Authority deems necessary to have additional information or details, it may require such additional information or details from the applicant.

(3) After the inquiry made pursuant to sub-section (2), the Authority shall take a decision, according to the procedure prescribed, as to whether or not it is appropriate to issue a license or licenses. The Authority shall then issue the license or licences to the applicant or applicants upon the relevant preconditions (including the payment of fees if relevant) as described in the notice issued under sub-section 1 being fulfilled .

(4) A decision by the Authority pursuant to sub-section (3), shall be communicated to the applicants no later than one hundred and twenty days from the date of receipt of application or receipt of additional information or details if such information or details are required pursuant to sub-section (2), but not later than 180 days from the date of receipt of the application in any case.

(5) Where the Authority has decided to issue a licence, the Authority shall issue, at the time of the communication described in sub-section (4), a

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letter of intent indicating its immediate willingness to grant a licence to the selected applicant or applicants, upon fulfilment of the preconditions described in the letter of intent, and indicating the maximum date for the applicant or applicants to fulfil the preconditions and accept the licence. If the applicant fails to fulfil the preconditions and accept the licence by the date specified in the letter of intent, the decision of the Authority to grant the licence shall no longer be binding.

(6) A person, who does not obtain the license within the time stipulated in sub-section (4) , may file a complaint with His Majesty's Government within thirty days of expiration of such time limit; and any decision made by His Majesty's Government on such a complaint shall be final.

**24A.<sup>5</sup>License not required:** Notwithstanding any thing contained elsewhere in this Act, no license shall be required to operate the telecommunications service as follows:

- (a) To establish a network by His Majesty's Government for its own purpose and operate the telecommunications service,
- (b) To install a network in consonance with international covenants in an aircraft registered outside the Kingdom of Nepal, and operate the telecommunications service,
- (c) To establish a network by a diplomatic mission for its own purpose and operate the telecommunications service,
- (d) To operate the telecommunications service within own house compound without getting it associated with the telecommunications system,

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<sup>5</sup> Inserted by the Act Amending Some Nepal Acts Relating to Communications, 2057 (2001).

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(d1) [VSAT users, email service providers, Fax Mail service providers, Vide Conferencing service providers, private virtual networks.]

(e) To operate other telecommunications services as prescribed by the Authority.

**25. Period of license and Fees:**

(1) The period of an individual licence shall be for a limited period of time as stated in the licence, and may be subject to renewal, as prescribed. Standard licences shall not be subject to a limited period, but shall continue from year to year.

(2) Fees charged by the Authority for licences shall consist of an initial fee, and yearly fees as prescribed.

(3) Fees shall, in total, be set so as to cover only the administrative costs which will be incurred in the management, control and enforcement of the licensing regime, and other costs involved in carrying out the obligations of the Authority.

(4) Initial fees shall be a fixed amount and shall be the same for all providers of services in the same category. Yearly fees shall be based on a percentage of audited turnover of the licensee as prescribed, and for these purposes, the Authority may require amounts to be paid by way of advanced deposit as prescribed.

(5) In cases where any license fee, deposit or any amount due in respect of license fees is not paid within the period stipulated, or where audited accounts are not submitted in time or are not submitted correctly then the authority may impose financial or other penalties as prescribed.

### **Draft Telecommunications Act**

(6) All Fees, including future Fees and Renewal Fees promised by licensees that acquired licences by tender before [1 January 2004] shall remain payable, except to the extent prescribed by the Authority.

(7) Notwithstanding anything contained in this Section, the Authority may exempt rural licensees with the gross annual revenue of Rs. 2 million or less, from paying licence fees, apart from the initial licence fee as prescribed.

#### **26. Amendment to conditions applying to licenses:**

- (1) Rights, terms, conditions and procedures applying to the operation of telecommunications services, whether in the license or in separate provisions, may be amended by the Authority where justified and proportionate. Such amendments may be made by the Authority in the manner prescribed, either following a request by a licensee or by the Authority acting alone.
- (2) Notice shall be given in an appropriate manner, accompanied by reasons, of the intention to make such amendments, and a consultation procedure as prescribed shall be undertaken, before a decision is taken adopting the amendments.

#### **27. [TO BE REVIEWED BY THE CONSULTANTS RESPONSIBLE FOR LICENSING ] Sale or transfer or license:**

(1) If a licensee desires to sell or otherwise transfer his license to any other person, the licensee and the buyer or the transferee of the license have to submit to the Authority a joint application, accompanied by the reasons therefor, as well as the terms and conditions mutually agreed, for approval.

(2) If any application is received pursuant to sub-section (1), and if, upon making necessary inquiry by the Authority, if it deems appropriate to sell or transfer the license to the person mentioned in the application, it has to give approval for such sell or transfer no later than thirty days of the receipt of

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application, and if it deems inappropriate to give such approval, it has to give a notice thereof, accompanied by the reasons, to the applicant.

(3) The fee as prescribed has to be paid to the Authority for the approval to sell or transfer the license.

(4) The Authority may by order prevent the combination (ceasing to be distinct), whether by sale of assets, company acquisition or merger, or transfer of licence, of two or more separate undertakings/businesses two or more of which operate a telecoms service within the scope of this Act, or have a licence to do so where to do so is likely to significantly impede effective competition in any market for telecommunications services. Failure of such undertakings to follow an order of the Authority not to combine may result in a financial penalty according to Section 47 of this Act.

**28. Cancellation of Individual license, Contravention of Individual Licence and Standard Licence terms:** (1) If any individual licensee fails to operate the telecommunications service within the time limit as specified in the license or procedure as prescribed, the Authority may cancel such license.

(2) If the licensee acts in contravention of this Act or the Rules made under this act and the terms and conditions set forth in the license, the Authority may issue an order to the concerned licensee to rectify such acts, also specifying a certain period of time.

(3) If the licensee fails to rectify the acts within the period specified pursuant to sub-section (2), the Authority may impose proportionate financial penalties on the licensee in accordance with Section 47. In the case of serious or repeated breaches of the terms, conditions or procedures applicable to its telecommunication activities of the licensee, the Authority may cancel the license obtained by such a person, and require the suspension of the relevant service.

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(4) Notwithstanding anything contained in sub-section (1) or (3), the licensee shall be provided a reasonable opportunity to submit his clarification as prescribed.

(5) A licensee who is not satisfied with any financial penalties imposed pursuant to sub-section (3) may Appeal according to the procedure of Section 48, and if he is not satisfied with the cancellation of the license by the Authority pursuant to sub-section (3) may file a complaint with His Majesty's Government no later than thirty five days; and any decision made by His Majesty's Government on such a complaint shall be final.

**29. Terms, Procedures and Conditions to be observed by licensee:** The terms procedures and conditions other than those mentioned in this Act to be observed by the licensee while operating the telecommunications service shall be as prescribed in Regulation, or by the Authority.

#### **29B Licence Terms And Conditions**

(1) Licence terms, conditions and procedures shall be published or made available as prescribed.

(2) To the greatest extent possible, licence conditions applicable to standard licence shall be set forth in Regulation (the Standard Licence Conditions).

(3) Licences or certificates given in respect of standard licence shall not repeat the terms, conditions or procedures set forth in Regulation, but shall be kept to the minimum information necessary to indicate that the operator has permission to operate.

(4) Where additional terms, conditions and procedures are applicable in respect of standard licences in addition to those contained in the Standard Licence Conditions, these shall be communicated to licensees as prescribed.

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**30. Universal Access: Requirement To develop, expand and operate telecommunications service in directed area:** (1) Individual licensees appointed pursuant to Section 24, may be required to invest a prescribed percent of his total investment in the development, extension and operation of the telecommunications service in the rural area.

(2) The rural area where the service has to be developed, expanded and operated pursuant to sub-section (1) shall be as specified in the individual license; and if it is not so specified, it shall be as specified by the Authority from time to time.

(3) If any other licensee wishes to develop, extend and operate, on the basis of mutual agreement, the telecommunications service required to be so developed, expanded and operated by one licensee pursuant to sub-sections (1) and (2), the Authority may, after making necessary inquiry, grant permission.

(4) The Authority shall create a fund for the development, extension and operation of the telecommunications service in the rural area; and all licensees shall each year deposit in the fund such amount of the annual income earned by him as specified by the Authority.

(5) The Authority has to use the amounts deposited in the fund referred to in sub-section (4) for the development, expansion and operation of universal access as prescribed in the rural area, subject to the telecommunications policy of His Majesty's Government. The objectives supported by universal access in this respect shall be to subsidise, on a technologically neutral basis, the introduction of telephone access in specific rural areas in which no telephone access is available, or where telephone access within a specific area is insufficient, as judged against prescribed standards.

(6) The Authority may only distribute the amounts deposited in the fund referred to in sub-section (4) for universal access provision on the basis of

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competitive tenders designed to achieve the development, expansion and operation of the telecommunications service in the rural area specified by the Authority on the basis of providing the least subsidy necessary, and not giving preference to any particular method of provision, such as fixed network provision. The funds may only be used to subsidise the objectives outlined in sub-section 5 above. The Authority shall prescribe in detail the principles and procedures relating to such tendering processes. .

**31. Interconnection and use of telecommunications system allowed:** (1) Any licensee may mutually connect the telecommunications system developed by him with the telecommunications system developed by another licensee and use it.

(2) The Authority may require the operator with Significant Market Power (the “SMP Operator”) to offer any reasonable interconnection services to all other operators requesting interconnection or access.

(3) The Authority shall require the SMP Operator to publish a reference interconnection offer agreement by a prescribed date and to update the reference interconnection offer as prescribed from time to time. In the event that the SMP Operator fails to publish the reference interconnect offer by the prescribed date, then the Authority may publish such information in this respect as shall be prescribed, including, if appropriate, the terms of interconnection actually entered into with any operator.

(4) If any licensee makes a request to connect and use the telecommunications system developed by another licensee, the Authority has to allow the licensee to connect and use the same based on such reasonable terms and conditions as mutually agreed or, failing such mutual agreement, on such terms and conditions as determined by the Authority.

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(5) The SMP Operator shall negotiate an interconnection agreement with all requesting parties as in sub-section (2) above, and for these purposes shall put forward a reasonable offer within 2 months of any such request. The requesting party may notify the Authority if it considers that no reasonable offer has been made within such 2 month period. The Authority shall decide, within a further four months period, and according to the procedure prescribed, whether or not a reasonable offer has been made, and if not, it may (i) require the SMP Operator to enter into an agreement on terms prescribed and further or alternatively (ii) the Authority may impose financial penalties in accordance with Section 47, in addition to any claim that the requesting operator may have for loss or damages.

(6) Charges made by the SMP Operator in respect of interconnection services shall be cost-oriented, and the terms of the offer made by the SMP Operator shall not be discriminatory.

(7) The Authority may intervene even in the absence of any complaint, in relation to any dispute relating to a request for interconnection or an interconnection agreement, including an interconnection agreement requested from or entered into by the SMP Operator.

(8) The Authority shall further prescribe, including by guidelines, details relating to any appropriate matter within the scope of this Section.

(9) The SMP Operator shall be required to keep accounts allowing the Authority to verify that its charges are cost-oriented.

### **31A Leased Lines for Licensees and End Users**

(1) The SMP Operator shall make available to licensees and end users leased lines as prescribed by the Authority where such leased line services shall be identified where possible on the basis of the relevant ITU Recommendations.

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(2) In the event that any licensee requests a leased line service which is not prescribed, the Authority shall determine, upon application, within 30 days, whether it is reasonable to require the SMP Operator to supply such leased line service, and the timescale within which such leased lines shall be supplied.

(3) Prices for leased lines offered by the SMP Operator shall be cost oriented, and the supply of such leased lines shall be non-discriminatory, in that the price charged shall not depend on the use made of the leased lines, or the identity of the requesting licensee.

(4) The Authority may prescribe quality of service obligations on the SMP Operator relating to the supply of leased lines to other licensees and end users.

### **31B Numbering**

(1) The Authority shall be responsible for the numbering plan, and shall ensure the availability of sufficient numbers.

(2) Geographic and non-geographic numbers shall be made available, as reasonably requested by any operator. Fees for numbers may be levied, and numbers shall be made available in the manner prescribed.

(3) The SMP Operator shall be required to enable its subscribers at a fixed location to access the services of any interconnected provider of publicly available telephone services, on a call by call basis by dialling a carrier selection code, for local, long distance, national and international calls. Pricing charged by the SMP Operator for the access and interconnection related to these services shall be cost oriented and direct charges to subscribers shall not act as a disincentive for the use of these facilities. The Authority shall further prescribe the details relating to all appropriate aspects of the obligations described in this sub-section,

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**31C** (1) The Authority shall designate one or more SMP operators for the purposes of Articles 31, 31A, 31B, 31C and 31D(iii)-(v) at the latest by 1 March 2004. Until such designations have been made, the operator owned by His Majesty's Government shall be subject to the obligations imposed on the SMP operator in those Articles.

(2) For the purposes of the above assessment, an organization shall be deemed to have significant market power according to its ability to influence market conditions, its turnover relative to the size of the market, its control of the means of access to end-users, its access to financial resources and its experience in providing products and services in the market. An organisation may be deemed to have significant market power when it has a share of more than 25 % in the following telecommunications sectors in Nepal:

(i) For the purposes of the assessment under Article 31 and 31D(3) to (5), the provision of fixed public telephone networks, fixed public telephone services, public mobile telephone networks and public mobile services.

(ii) For the purposes of Article 31A, the supply of leased lines in Nepal, "leased lines" shall mean the telecommunications facilities which provide for transparent transmission capacity between network termination points and which do not include on-demand switching. Leased lines shall include partial circuits.

(iii) For the purpose of Article 31B, the provision of fixed public telephone networks and fixed public telephone services in Nepal.

(3) The SMP operator for the purposes of Section 42 shall be all SMP operator or operators according to Sub-Section 1.

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(4) From 1 January 2009, the Authority may remove the application of conditions applicable to SMP operators in respect of any particular markets within the sectors described in sub-section 2 above, by excluding the designation in respect of particular markets for particular purposes, where those markets have become competitive. For these purposes, a market shall be deemed to be competitive where there is effective competition, and where there is no dominant operator or operators. An operator or operators may be considered to be dominant where individually, or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers. The removal of restrictions and the definition of markets and the assessment of dominance shall for these purposes take account of best international practice, and in particular, the regulatory structure applied by the European Union since July 2002.

## **31D Control of Anti-competitive Practices**

### **General Competition Prohibitions**

(1) It shall be prohibited for licensees to enter into any agreement, whether written or oral, whether or not legally binding, which restrict or distort competition, and in particular:

to fix prices charged to third parties,

to share customers or markets

to rig bids to customers or third parties,

to agree to restrict supplies to third parties.

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(2) No licensee shall abuse any dominant market position to gain an advantage, which prevents, impedes, limits, restricts or distorts fair competition among companies providing telecommunications services in Nepal.

A licensee shall be deemed to have abused its dominant position if, in the opinion of the Authority, it has engaged in conduct which has the purpose of preventing or substantially restricting competition in a market for the provision or acquisition of telecommunication installations, services or apparatus.

Conduct which the Authority may consider to fall within the conduct referred to in subparagraph includes, but is not limited to –

predatory pricing;

price discrimination;

the imposition of contractual terms which are harsh or unrelated to the subject of the contract;

tying arrangements;

discrimination in supply of services to competitors

A licensee may be considered to be dominant where individually, or jointly with others, it has a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers. For these purposes, the definition of the relevant market or markets, the assessment of dominance and of abuse shall be in accordance with international antitrust practice, and in particular shall take account of the principles developed under EU antitrust law.

(3) Prohibition on Undue Discrimination or Undue Influence

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In the provision of its telecommunications services, the SMP Operator shall supply and charge its services on objective and non-discriminatory terms. The SMP Operator shall not unduly discriminate against or show undue preference to any other operator or service provider licensed by the Authority, provided that the Licensee may charge a lower price to customers who use the service to a great extent, except that the SMP Operator shall not charge licensees more than they charge customers.

#### (4) Cross-subsidisation

The SMP Operator shall not use revenues from other services to cross-subsidise the services or terminal equipment that it provides or supplies.

#### (5) Tie-ins or Tying

The SMP Operator shall not require any other operator or customer to buy goods or services from it or from any other provider, as a condition of purchasing the services which the customer is seeking to purchase from the SMP Operator. The SMP Operator not unnecessarily bundle goods and/or services.

#### (6) Enforcement Provision

The Authority may, after having sent a statement of its objections to the relevant licensee or licensee, and allowing the relevant operator to make written comments as and, where it so requests, oral comments, take a decision imposing financial penalties in accordance with Section 47 for infringement of any of sub-sections (1) to (5), and/or requiring the operator to desist from certain actions or take certain actions to remedy the infringement, within a certain period of time. If the licensee fails to comply with the order within the relevant period of time, then the Authority may impose further financial penalties in accordance with Section 47.

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**32. Royalty to be paid:** (1) The licensee has to pay the royalty, as prescribed, to His Majesty's Government.

(2) All royalties, including future royalties promised by licensees that acquired licences by tender before [1 January 2004] shall remain payable, except to the extent prescribed by the Authority.

(2A) Notwithstanding anything contained in sub-sections (1) and (2), His Majesty's Government may exempt rural licensees with the gross annual revenue of Rs. 2 million or less, from paying royalty charges through notification in the Gazette.

(3) The method and time of payment of royalty shall be as prescribed by the Authority.

(4) Licensees shall submit to the Authority audited accounts within 10 months of the relevant financial year in respect of which the royalties are payable for the purposes of this Section. Failure to submit audited accounts to the Authority within this period may be punished by a financial penalty, either as a fixed penalty or as a daily penalty for each day for which the obligation is not met.

(6) In cases where any royalty is not paid within the period stipulated, then the authority may require the licensee to remedy the failure to pay within a further time limit of up to ten months (but with a limit of 10 months after the financial year in respect of which the fees are payable) by paying the full amount due, or, where audited accounts are not available, an interim amount based on the amounts payable in the previous year as prescribed. If the licensee fails to pay the full or interim amount, the Authority may declare such license to be invalid, and may require the operator to suspend operations or may take such further action as it deems appropriate, within the range of possible actions prescribed. The Authority may impose financial penalties of up to 100% of the amount of

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the royalty unpaid or imprisonment for a term not exceeding 1 year for failure to pay royalties within any period stipulated by the Authority.

- 33. Temporary Control by His Majesty's Government:** Management of the business of the licensee, including land, building, plant, equipment, bank accounts and other structure related to the telecommunications service, as well as staff and organisation and customers may, in the case of suspension of the license or other circumstance where the licensee is not able to operate the company, temporarily be put into the control of His Majesty's Government in the case where this is required to ensure continuity of customer services. For these purposes, His Majesty's Government shall appoint an administrator to manage the business of the licensee.

## **Chapter - 6**

### **Facilities Available to Licensee**

- 34. [Deleted by the Income Tax Act, 2058/12/17 (2001)]**
- 35. Foreign Exchange Facility:** (1) If any foreign currency is invested as a loan or share capital so as to provide the telecommunications service, His Majesty's Government shall provide such foreign currency at the prevailing exchange rate as may be required to pay principal and interest of such a loan or to repatriate the investment.

(2) If a licensee has to import the equipment necessary to operate the telecommunications service, His Majesty's Government shall provide the foreign currency required for such import, at the prevailing exchange rate.

(3)<sup>6</sup> His Majesty's Government shall, on recommendation of the Authority, provide such foreign currency to the licensee as he has to incur in obtaining membership from a foreign organization related with

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<sup>6</sup> Inserted by the Act Amending Some Nepal Acts Relating to Communication, 2057 (2001).

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telecommunications or making agreement with a foreign person or organization, for the operation of the telecommunications service.

**Chapter - 7****Installation and Supervision of Telecommunications Line**

- 36. Right to use land:** The licensee or his representative may install or hold and supervise the telecommunications line on, under (in trenches) or above any public or private land, also fix a pole or mast for this purpose, keep anything or support on a tree in such land or cut any tree if it causes a problem, loss or damage or obstacle to the telecommunications line.

Provided, however, that-

- (1) If the land where the telecommunications line has been or to be so installed is a public land, no compensation shall be paid for such land; and where any public property constructed or installed there is lost or damaged, the licensee has to repair, maintain or reconstruct it to bring it to its previous position.
- (2) If the land where the telecommunications line has been or to be so installed is a private land of a person, the line has to be installed at the proper and appropriate place without causing any loss or damage to such a person; and where any of his property is lost or damaged in course of such installation, the licensee has to pay compensation, including, where appropriate, continuing rental payments.
- (3) The licensee's status in the place where the telecommunications line is kept or the land where it is used or installed shall not be more than the status of the user of

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the telecommunications line, and he shall have no other rights.

**36A Limitation on Rights under Section 36 for Environmental Reasons and Obligation to share facilities**

Where necessary for environmental or cultural reasons, the right to dig land and install poles pursuant to Section 36 may be restricted, and licensees may be required to coordinate their activities in this respect, and where appropriate to share facilities, such as by sharing ducts and other facilities.

[FURTHER ADAPTATION OF THIS SECTION IS NECESSARY IN THE LONG TERM INCLUDING COORDINATION WITH ROAD WORKS AUTHORITY AND UTILITIES ETC.]

- 37. Power to inspect, repair telecommunications line or transfer it from one place to another place:** The licensee may transfer the telecommunications line or equipment erected or installed by him from one place to another place, as per necessity, inspect or repair and maintain it; and, for this purpose, he shall have the power to enter into the land where such telecommunications line or equipment is situated.

Provided, however, that if any loss or damage is caused to anyone in course of such repair or improvement of the telecommunications line, the licensee has to pay compensation to the concerned person.

- 38. Entry into other's house and land:** If, in course of operation of the telecommunications service, the licensee has to enter into anyone's house and land, he has to enter into such house and land only after giving a prior written notice to the concerned person. If any loss or damage is caused from such entry, the licensee has to pay compensation to the concerned person.

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Provided, however, that if there is a reasonable ground to suspect that the telecommunications service is being unauthoritatively used or stolen in any house and land, the licensee may enter into the concerned house and land to inquire into the matter by giving a written notice immediately.

- 39. Provisions relating to compensation:** (1) The licensee has to determine the compensation required to be paid by him pursuant to Sections 36, 37 and 38 and give a notice thereof to the concerned person no later than fifteen days from the date of occurrence of such act.

(2) The amount of compensation required to be paid pursuant to sub-section (1) shall be just and reasonable.

(3) A person who is not satisfied with the amount of compensation determined pursuant to sub-section (1) may submit an application, accompanied by reasons, to the Authority no later than fifteen days from the date of receipt of the notice thereof. A decision made by the Authority on such application shall be final.

- 40. Use or acquisition of other's house and land:** (1) If the licensee has to use or acquire any house and land belonging to another person for the expansion or distribution of the telecommunications service and fails to obtain or use the house and land from the concerned person, the licensee may, setting out that matter, submit an application to the Authority for the acquisition or use of such house and land.

(2) Upon receipt of an application pursuant to sub-section (1), the Authority shall make necessary inquiry, and if, upon making such inquiry, it deems necessary and appropriate to have the house and land mentioned in the application acquired, it has to make recommendation to His Majesty's Government no later than thirty days of receipt of such application.

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(3) Upon receipt of the recommendation of the Authority pursuant to sub-section (2), His Majesty's Government may have such house and land acquired by the licensee in the same manner as the land is provided to a corporate body pursuant to the law in force. In the case of a governmental or private land or house, it may have it provided on lease for the period of the license.

[THIS SECTION WILL NEED FURTHER REVIEW IN THE LONG TERM]

## **Chapter - 8**

### **Fixation and Realization of Service Charge**

- 41. Provision of service:** (1) If the license receives a deposit from the customer to render the telecommunications service, he has to render the telecommunications service no later than one month of receipt of such deposit, and if the licensee fails to render such service within that period of time, he has to pay to the customer an interest by ten percent from the date of receipt of the deposit.

Provided, however, that the service has to be provided no later than one year of receipt of the deposit, failing which the deposit plus interest shall be returned to the customer.

(2) The interest payable to the customer pursuant to sub-section (1) may be deducted from the charge of the telecommunications service consumed by the customer.

- 42. Service charge:** (1) The licensee may levy and realize the service charge for the telecommunications service provided by him to the customer.

Provided, however, that-

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- (a) The rate of such service charge has to be published as directed by the Authority.
- (b) The rate of such service charge has to be proper and reasonable.

(2) The SMP Operator and individual licensees must, in respect of any calendar year prepare a list of the rates of service charge, based on the directives issued by the Authority relating to any charges regulated during that calendar year and submit the list, also mentioning the day of the commencement of that year, to the Authority for approval, at least three months in advance thereof. The SMP Operator and individual licensees may lower the regulated charges at any time but may only increase the regulated charges during the relevant calendar year by making an application to the Authority for approval at least 3 months in advance.

(2A) The Authority may require the SMP operator and any other licensees to supply information concerning tariffs as prescribed.

(2B) The Authority shall publish, each year, within 3 months of the end of each calendar year, a report concerning the development of tariffs, and based on that study shall prescribe the manner in which tariffs are to be regulated.

(3) The SMP Operator shall not unduly discriminate in respect of the service charge of the telecommunications service rendered by him and other terms and conditions or give undue priority to any person including himself or cause undue loss or damage to any person.

- 43. Power to close service:** The licensee may close the telecommunications service provided to the customers in the following circumstances:-

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- (a) It may close the service temporarily to the extent that this is required to examine, repair and improve or extend the telecommunications line or the telecommunications system or to do any other important work on it,
- (b) If any customer fails to pay the charge payable by him, in the case of such customer,
- (c) If any customer uses the service unauthoritatively or contrary to the terms, in the case of such customer,
- (d) If there occurs any event such as natural calamity or strike, lock out, riot or similar other extraordinary event beyond control.

## **Chapter - 9**

### **Fund, Account and Audit of the Authority**

**44. Fund of Authority:** (1) The Authority shall have a separate fund of its own; and the fund shall consist of the following amounts:-

- (a) Amounts received from His Majesty's Government.
- (b) Amounts received for the license fee and for the renewal of, amendment to, sale or transfer of, the license.
- (c) Amounts received as grants from foreign governments or organizations.
- (d) Amounts received from any other sources.

(2) The Authority has to obtain approval of His Majesty's Government before receiving the amounts referred to in clause (c) of sub-section (1).

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(3) Amounts in the fund of the Authority shall be deposited in an account opened with any bank within the Kingdom of Nepal, and such account shall be operated as specified by the Authority.

**45. Budget and expenditure:** (1) The Authority shall cause its budget to be prepared in each fiscal year and approve it, for the performance of its functions pursuant to this Act.

(2) All expenditures of the Authority shall be chargeable on its fund, subject to the budget approved pursuant to sub-section (1).

(3) If the amount received each year by the Authority pursuant to clauses (b), (c) and (d) of sub-section (1) of Section 44 becomes insufficient to perform the functions pursuant to this Act, the Authority may request His Majesty's Government for the shortfall amount; and if the amount so provided by His Majesty's Government is overplus, the Authority has to pay such overplus amount to His Majesty's Government.

**46. Account of Authority and audit:** (1) The accounts of income and expenditure of the Authority shall be maintained in accordance with the laws in force.

(2) The accounts of the Authority shall be audited by the Auditor General.

(3) His Majesty's Government may, if it deems necessary, examine, or cause to be examined, the accounts of the Authority at any time.

## **Chapter - 10**

### **Punishment and Appeal**

**47. Punishment:** (1) If a person violates this Act or the Rules under this Act or fails to uphold any orders or directives given by the Authority, the Authority may punish such a person 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, the

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Authority may get the amount of such damage or loss or compensation as well therefor realized from the offender.

(2) If any person operates the telecommunications service without obtaining the license pursuant to this Act or operates the telecommunications service without observing the terms and conditions mentioned in the license, the Authority may punish such person with a fine of up to five hundred thousand rupees and may also cause him to close such service.

(3) If any person misuses or unauthoritatively uses the telecommunications service or causes loss or damage to any property related to the telecommunications service, the Authority may realize the amount in controversy and impose a fine equivalent to that amount.

(4) If any person abuses, threatens or causes unnecessary harassment through the telecommunications service, the Authority may punish such person with a fine of up to twenty five thousand rupees and may also cause him to close such service.

Provided, however, that, before closing the telecommunications service, the Authority has to provide the concerned person with a reasonable opportunity to defend himself.

(5) If any person commits any act, with ulterior motive, to cause adverse effect on the telecommunications line, telecommunications system or any other equipment or structure related thereto, disorders them, or otherwise cause any loss or damage thereto, or instigates for such act or attempts to do such act, such person may be punished with a fine equal to the amount of loss or damage or with imprisonment for a term not exceeding five years or with both punishments, according to the degree of crime.

- 48. Appeal:** A person who is not satisfied with the order issued by the Authority pursuant to sub-sections (1), (2), (3) and (4) of Section 47 may file an appeal

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with the committee as prescribed no later than 35 days, and the decision made by such committee shall be final in respect of that appeal.

### **Chapter - 11**

#### **Miscellaneous**

**49. Provisions on determination of radio frequency policy:** (1) There shall be a radio frequency policy determination committee consisting of the chairman and members as follows, in order to determine the radio frequency related policy and allocate frequencies.

- |     |   |                    |
|-----|---|--------------------|
| (a) | Minister or Ministry of State, for Information and Communication  | - Chairman         |
| (b) | Secretary, Ministry of Home Affairs   | - Member           |
| (c) | Secretary, Ministry of Defence  | - Member           |
| (d) | Secretary, Ministry of Tourism and Civil Aviation   | - Member           |
| (e) | Secretary, Ministry of Information and Communication  | - Member           |
| (f) | Chairman, Nepal Telecommunications Authority  | - Member           |
| (g) | At least Gazetted first class or expert Officer equivalent thereto designated by His Majesty's Government | - Member-Secretary |

(2) The function, duties and powers of the committee formed pursuant to sub-section (1) shall be as follows:-

- (a) To determine the policy relating to radio frequency.
- (b) To fix and allocate the radio frequency for various services and to determine the availability for assignment of frequency.

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(d) To determine the policy for international and multi purpose coordination of radio frequency.

(3) 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.

**49A. Power of Authority to Assign Frequency** The Authority shall assign radio frequency as allocated by the radio frequency policy determination committee and determined by that Committee as being available for assignment pursuant to Section 49.

**50. Power to form sub-committee or task force:** (1) The Authority may, as per necessary, form any sub-committee or task force in order to smoothly carry out the functions to be carried out by it.

(2) The functions, duties and powers and other procedures of the sub-committee or task force formed pursuant to sub-section (1) shall be as prescribed by the Authority.

**51. Oath to be taken:** Before assuming the office, the chairman and members has to take an oath, as mentioned in the Schedule, before the Minister or Minister of State for Information and Communication.

**52. To prepare and enforce manuals:** (1) The Authority may prepare and enforce manuals on the following matters:-

(a) Interconnection and use of the telecommunications system developed by the licensee.

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- (b) Fixation of service charge and other fees which the licensee may levy and realize for the provision of the telecommunications service.

- 53. Acts done by Authority not to be invalid:** Any act done or action taken by the Authority shall not be invalid merely because the seat of any member of the Authority falls vacant or there is any error in the formation of the Authority.
- 54. Case not to be instituted:** No case shall be instituted in any court in respect of any act or action done or taken in good faith by the Authority or any member or employee of the Authority or any employee or office designated or to whom power has been delegated, by the Authority pursuant to this Act.
- 55. Annual Report:** (1) The Authority shall, no later than three months of expiration of each fiscal year, submit an annual report, accompanied by a statement of its income and expenditure, to His Majesty's Government on the activities it has carried out during that year.
- (2) The Authority shall publish the report submitted pursuant to sub-section (1) for information of the general public.
- 56. Delegation of authority:** The Authority may, as per necessity, delegate some of the powers conferred on it, pursuant to this Act or the Rules framed under this Act, to the chairman or any sub-committee or task force formed pursuant to Section 50 or any employee of the Authority.
- 57. His Majesty's Government to be plaintiff:** His Majesty's Government shall be the plaintiff in the cases referred to in sub-section (5) of Section 47; and such cases shall be deemed to be included in Schedule-1 to the State Cases Act, 2049 (1992).

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- 58. Liaison with His Majesty's Government:** The Authority shall make liaison with His Majesty's Government, according to the relevant matter, normally with MOIC, but where appropriate, directly with any other Governmental or non-Governmental offices.
- 59. Prevailing law to govern:** This Act shall govern the matters contained in this Act and the prevailing law shall govern the other matters.
- 60. Power to remove difficulties:** (1) If any difficulty arises in the implementation of this Act, His Majesty's 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.

- 61. Power to frame rules:** (1) His Majesty's 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), His Majesty's Government may frame rules on the following matters:-

- (a) 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 fee, and royalty.
- (b) 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 fee payable for it.

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- (c) Matters to be observed by the licensee while operating the telecommunications service and matters relating to the standards of service to be provided to the customers.
  - (d) Method and procedure for distribution of frequency.
  - (e) Other necessary matters.
- 62. Powers to make bylaws:** The Authority may, subject to the provisions of this Act and the Rules formed under this Act, make necessary by-laws.
- 63. Repeal and saving:** (1) The Telecommunications Act, 2019 (1962) is hereby repealed.
- (2) All acts and actions done and taken pursuant to the Telecommunications Act, 2019 (1962) before the commencement of this Act shall be deemed to have been done and taken pursuant to this Act.

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**Schedule**

**(Related to Section 51)**

**OATH**

I ... .. swear in the name of God/with trust and faith that I will faithfully discharge the duties of the post of chairman / member with allegiance to the Telecommunications Act, 2053 (1997) without fear, favour, affection, ill-will or greed, and that I will not, in any circumstances except in the course of observing the prevailing law, disclose any matter which is known to me in the course of performing my duties.

Date:- ... ..

Signature. ... ..

**Draft Telecommunications Regulation**

# **4. Draft Telecommunications Regulation**

**Draft Telecommunications Regulation****The Telecommunications Regulation, 2054 (1997)**Date of publication in Nepal Gazette

2054-7-18 (Nov. 3, 1997)

Amendment:

The Telecommunications (First Amendment)  
Regulation, 2055 (1999)

2055.11.17 (March 1, 1999)

The Telecommunications (Second Amendment)  
Regulation, 2058 (2002)

2058.12.14 (March 27, 2002)

**The Telecommunications (This Amendment)****Regulation, 20XX (2004)****20XX.YY.ZZ (Month AA, 2004)**

In exercise of the powers conferred by Section 61 of the Telecommunications Act, 2053 (1996), His Majesty's Government has made the following Rules.

**Chapter - 1****Preliminary**

1. **Short Title and Commencement:** (1) These Rules may be cited as the "Telecommunications Regulation, 2054 (1997)".
  - (2) This Regulation shall come into force at once.
2. **Definitions:** Unless the subject or the context otherwise requires, in this Regulation,-
  - (a) "Act" means the Telecommunication Act, 2053 (1996).
  - (b) "Inspector" means the person or body designated by the Authority to carry out inspection and investigation pursuant to sub-section (2) of Section 17 of the Act.
  - (c) "Committee" means the radio frequency policy determination committee as referred to in Section 49 of the Act.

### **Draft Telecommunications Regulation**

- (d) "Ministry" means the Ministry of Information and Communication, His Majesty's Government.

## **Chapter - 2**

### **Provisions relating to qualifications of chairman and member**

- 3.<sup>1</sup> **Qualifications of chairman and member:** In order to be the chairman and member of the Authority, one has to be a Nepalese citizen who, having hold at least a bachelor's degree from a recognised institution in the field as referred to in sub-section (1) of Section 5 of the Act, has gained at least ten years of experience and at least seven years of experience in the concerned field in the case of chairman and member, respectively.
4. **Functions, duties and powers of chairman:** The functions, duties and powers of the chairman shall be as follows:
- (a) To act as the administrative chief of the Authority,
  - (b) To formulate, or cause to be formulated, annual plans and programs of the Authority and present them at the meeting of the Authority,
  - (c) To look after and control the funds of the Authority,
  - (d) To take care of, and maintain, or cause to be taken care of, and maintained, the properties of the Authority,
  - (e) To act as a liaison officer between the Authority and His Majesty's Government and other organisations,
  - (f) To perform, or cause to be performed, such other functions as delegated by the Authority pursuant to the Act or this Regulation.
5. **Remuneration, facilities and other terms of service of chairman:** The remuneration, facilities and other terms of service of the chairman shall be as prescribed by the Act or the bylaw to be framed under this Regulation; and his

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<sup>1</sup> Amended by the First Amendment.

### **Draft Telecommunications Regulation**

remuneration, facilities and other terms of his service shall be as prescribed by His Majesty's Government, pending such a bylaw.

- 6. Meeting allowance:** The chairman and members shall, for taking part in each meeting of the Authority, the meeting allowance in such a sum as prescribed by the Ministry.

### **Chapter - 3**

#### **Provisions relating to license**

- 7. Application to be submitted for license:**

(4) Any person who intends to operate the telecommunications service pursuant to sub-section (1) of Section 23 of the Act has to submit to the Authority an application. The application for a Standard Licence shall be in the format as referred to in Schedule-1A, accompanied by a plan of operations. The application for an individual licence shall be in the format as defined in a public notice published by the Authority pursuant to sub-section (1) of Section 24 of the Act, and in the manner and within the time-limit mentioned in that public notice.

(5) The terms, conditions and procedures applying to Standard Licences shall be set out in general conditions (which may include class licences) adopted by the Authority. Where a licensee wishes to offer a new service, for which the terms applicable are not specified under the Standard Licence conditions. [THIS POINT IS TO BE CONSIDERED AT GREATER LENGTH BY THE CONSULTANT DEALING WITH LICENSING]

- 10. Issuance of license:** (1) In respect of any person who has submitted an application for a Standard Licence, the Authority shall within six weeks of such application authorise the applicant to provide the services by issuing a certificate or licence in the format set out in schedule 4.

[TO BE SPECIFIED BY THE CONSULTANT DEALING WITH LICENSING ISSUES].

### **Draft Telecommunications Regulation**

(2) The Authority may only refuse to issue a licence or certificate under sub-rule 1, in the event that there are reasons relating to the protection of health or safety, or relating to the insolvency of the applicant, or if the application is incomplete, or if the applicant is prohibited from engaging in the supply of telecoms services. In any case the objection shall be withdrawn, and shall no longer apply once the relevant risk has passed.

(7) Other procedures to be followed while issuing the license pursuant to this Rule shall be as prescribed by the Authority.

**11. Licence fees:** (1) The fees for the licence to be issued shall be as follows:-

- (a) The initial fee for issuing a Standard Licence shall be Rs. 20,000 payable as a lump sum before issuing the licence.
- <sup>2</sup>(b) The fees related to application for an individual licence, such as the fee for the tender document and the fee for issuing the licence, shall be mentioned in the public notice mentioned in Section 24(1) in the Act. The initial fees shall be lump sum fees.

(7) The annual fee for a Standard Licence or an Individual Licence shall be a percentage of the total annual revenue from the services operated under the licence. The Authority shall as annually prescribe the percentage applicable in this respect. In no case shall the percentage be greater than 1%. However, minimum annual fee of Rs 20,000 per year shall apply.

The Licensee shall, not later than two months after the end of the relevant financial year, pay a deposit in respect of the licence fee payable for Standard Licence or Individual licence, equal to the amount paid in the year prior to the relevant financial year.

In the case of a new licensee for which it has not been possible to calculate the licence fee payable for the prior financial year, due to it having not had any telecoms business in the prior financial year, the deposit shall be Rs. [100,000], in

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<sup>2</sup> Amended by the First Amendment.

### **Draft Telecommunications Regulation**

the case of a Standard Licence and the amount specified in the public notice mentioned in Section 24(1) in the case of an Individual Licence.

If the licence fee for the prior financial year could not be established due to the licensee not having submitted its financial statement in time, or if the financial statement in respect of that year has been rejected by the Authority, the amount of the deposit shall be twice the amount of the last approved annual licence fee, or, in the case of a new operator with no previous approved licence fee, Rs [300,000].

(8) The licensee shall annually, not later than 10 months after the end of the fiscal year, submit a financial statement stating the revenue from the licensed services and the fees paid to other licensees. An auditor approved by the NTA shall have certified the statement. The Authority shall approve or disapprove the statement not later than 30 days after submission of the statement, and, in case of approval, notify the licensee of the annual licence fee payable. The licensee shall be liable to pay the remaining licence fee not later than 30 days after receipt of the notice. In this respect, the amount that the licensee is liable to pay shall be the difference between the amount calculated according to Sub-Section 7 above taking into account any relevant deposits that have been made, or that are deemed to have been made.

(9) If any licensee fails to submit an audited financial statement in the time limit prescribed in sub-rule 8, or fails to pay any remaining licence fee within the time prescribed in sub-rule 8, then a financial penalty of up to 15% of the total amount that remains to be paid may be imposed by the Authority. The Authority may declare the relevant license to be invalid, and may require the operator to suspend operations or may take such further action as it deems appropriate.

(10) If the licensee fails to pay a deposit within the time stipulated, or fails to pay any license fees due, other than as provided in Sub-rule 9, the Authority may impose financial penalties of up to 100% of the amount of the deposit or imprisonment for a term not exceeding 1 year. The Authority may declare such license to be invalid, and may require the operator to suspend operations or may take such further action as it deems appropriate.

### **Draft Telecommunications Regulation**

(11) If the Authority does not accept a financial statement, it shall conduct an investigation in the case, either using own staff or an approved auditor. Upon receipt of the investigation study, the Authority shall either approve the statement or determine the correct revenue and a new fee payable based on the study. If the statement is not approved, the licensee shall pay the cost of the investigation as well as any outstanding fees and possible fines of up to 300% of the correct amount payable in any case.

(12) Licence fees and deposits are not refundable.

#### **11A Cancellation of licence [TO BE CONSIDERED BY THE CONSULTANT DEALING WITH LICENSING ISSUES]**

### **Chapter - 4**

#### **Renewal, amendment and transfer of license**

- 12. Renewal of licence:** When a previous licence expires, it shall be renewed as Standard Licence or Individual Licence as prescribed by NTA.
- 13. Amendment to licence:** (1) If Authority deems it necessary to amend any matter mentioned in an Individual license, in Standard Licence conditions or separate provisions, whether on the basis of an application by a licensee or of its own volition, it shall follow the procedure set out in this rule.

(2) If any application is submitted pursuant to sub-rule (1), the Authority shall make necessary examination on that matter and if, upon such examination, the reasons given for amendment to the license are found reasonable and proper, amend the license or the separate provision by collecting a fee of fifteen thousand rupees.

(3) A licensee may apply for replacing its existing licence with an individual licence or a Standard Licence. [TO BE FURTHER CONSIDERED BY THE CONSULTANT DEALING WITH LICENSING ISSUES]

### **Draft Telecommunications Regulation**

- 14. Sale or transfer of license** *[TO BE REVIEWED BY THE CONSULTANT DEALING WITH LICENSING ISSUES]*: (1) Any person who desires to sell or receive the licensee by selling or otherwise transferring the title to the license pursuant to Section 27 of the Act has to submit a joint application, accompanied by the mutually specified terms thereon, to the Authority in the format referred to in Schedule -9, for approval.

(2) If any application is submitted pursuant to sub-rule (1), the Authority shall make necessary inquiry into the matter, and if, upon making such inquiry, if it deems necessary to obtain additional information, it may demand additional information or details from the persons who have submitted such application.

(3) If, based on the application submitted under sub-section (1) and the documents attached with the application as well as the additional information or details demanded under sub-rule (2), the Authority thinks it proper to have the license sold or title to it transferred in any other manner, it has to give approval for the sale of the license or otherwise transfer of the title to it, by collecting a sum to be set by five percent of the license fee.

## **Chapter - 5**

### **Terms to be observed by licensee**

- 15. Terms to be observed by licensee:** (1) The licensee has to observe the following terms, in addition to the terms set forth in the Act and this Regulation:-
- (a) To provide the telecommunications service to the customers of such quality standards as fixed by the Authority.
  - (b) To operate the telecommunications service in accordance with the minimum standards prescribed by the Authority from time to time.
  - (c) Not to use the machines and equipment relating to telecommunications installed by another licensee without the consent of such a licensee.
  - (d)

### **Draft Telecommunications Regulation**

- (e) .....<sup>3</sup>
- (f) To provide the telecommunications service in conformity with the agreement made with the customer, while distributing the telecommunications service to the customer.
- (g) To operate the telecommunications service only by using the frequency for which he has obtained a licence.
- (h) If the telecommunications service provided to the customer is out of order due to any reason, to repair and maintain it free of cost in conformity with the standards prescribed by the Authority.
- (i) To publish materials on telecommunications, including telephone directory, for the convenience and information of the customers.
- (j) To so operate the telecommunications service that it is in conformity with the minimum standards prescribed by the International Telecommunications Union (I.T.U.) regarding the operation of the telecommunications service.
- (k) To provide the telecoms services that it offers to all licensees or consumers on request.

(2) Terms, other than those set forth in sub-rule (1), required to be observed by the licensee in operating the telecommunications service shall be as prescribed in the licence conditions adopted by the Authority. .

**15A (1)** The Standard Licence conditions contained in Schedule [?] shall be applicable to all licensees offering services under a Standard Licence.

**(2)** The Authority may prescribe other terms, conditions and procedures to be followed in respect of all licensees, groups of licensees, or licensees providing particular types of services.

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<sup>3</sup> Deleted by the First Amendment.

## **Draft Telecommunications Regulation**

[PROVISIONS TO BE ADDED ON CONSULTATION PROCEDURES,  
FURTHER TO ANOTHER CONSULTANCY PROCESS]

### **Chapter - 6**

#### **Inspection, report and implementation**

- 16. Powers to have inspection or inquiry:** The Authority may, if it deems necessary, make, or cause to be made, inspection or inquiry as to the acts and actions carried out by the licensee or the telecommunications service provided by him.
- 16A Information Requirements:** [TO BE FURTHER CONSIDERED BY OTHER CONSULTANTS DEALING WITH THIS ISSUE]
- 17. Procedures to be followed while making inspection or inquiry:** (1) While making inspection or inquiry as to the activities carried out by the licensee or the telecommunications service provided by him pursuant to the Act or this Regulation, the Inspector has to make inspection or inquiry as to the following matters subject to the law in force, except in cases where the Authority issues an order to make inspection or inquiry on any matter specified by it:-
- (a) Whether the licensee has operated the telecommunications service by using such machines and equipment relating to telecommunications conforming to such quality standards as fixed by the Authority or not,
  - (b) Whether the telecommunications service has been operated in conformity with the minimum quality standards prescribed by the Authority or not,
  - (c) Whether the licensee has collected the service charge as approved by the Authority or not,
  - (d) Whether the licensee has carried out activities in conformity with the terms to be observed under the Act or this Regulation or not.

**Draft Telecommunications Regulation**

- 18. Powers of inspector:** The inspector shall have the following powers, in the course of inspection or inquiry pursuant to Rule 17:-
- (a) To enter the place where the telecommunications system is used,
  - (b) To demand any details or information from the licensee,
  - (c) To examine the quality standards of the telecommunications service provided by the licensee to the customers and of the telecommunications system used in operating such service,
  - (d) To take statements from anyone who-so-ever involved in the operation of the telecommunications service,
  - (e) If, while making inspection or inquiry, it appears appropriate to immediately give any order to the licensee, in respect of the operation of telecommunications service, to give such an order,
  - (f) To perform other necessary functions in respect of inspection or inquiry.
- 18A.<sup>4</sup> To give information to Authority:** If the inspector gives any order to the licensee pursuant to clause (e) of Rule 18<sup>5</sup>, he has to give information thereof to the Authority no later than three days.
- 19. To carry out order of inspector:** (1) If the inspector gives any order to the licensee in the course of inspection or inquiry pursuant to Rule 17, it shall be the duty of the concerned licensee to carry out acts as per that order.
- (2) Any person who is not satisfied with the order given by the inspector pursuant to sub-rule (1) may file a complaint with the Authority within thirty days; and any decision made by the Authority in regard to the complaint shall be final.
- 20. To submit report:** (1) After making inspection or inquiry pursuant to Rule 17, the inspector has to submit a detailed report on inspection or inquiry to the Authority within ten days.<sup>6</sup>

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<sup>4</sup> Inserted by the First Amendment.

<sup>5</sup> Amended by the Second Amendment.

**Draft Telecommunications Regulation**

(2) The report to be submitted pursuant to sub-rule (1) has to set out, *inter alia*, the following matters:-

- (a) The matter inspected or inquired in regard to the activities carried out by the licensee or the telecommunications service provided by him,
- (b) If any technical test has been conducted in the course of inspection or inquiry, the matter as to which telecommunications system has been tested,
- (c) Separate details as to whether the licensee has observed the terms to be observed under the Act or this Regulations or not,
- (d) If the licensee has not observed any terms, the matter as to the reasons why he has not so observed,
- (e) If, in the course of inspection or inquiry, an order has been given to the licensee to immediately carry out any act, the matter on which the order has been given and reasons therefor.

**21. Implementation of report:** (1) The Authority shall, upon receipt of the report as referred to in Rule 20, hold necessary inquiry in that regard; and if it appears necessary to obtain additional information while so holding inquiry, the Authority may order the concerned licensee to submit details or documents, require the licensee to appear before it and record his statement or do such other acts as it may deem proper.

(2) If, while holding inquiry pursuant to sub-rule (1), the Authority deems it proper to give any order to the licensee in regard to the activities carried out by the licensee or the telecommunications service provided by him, it shall give a reasonable period of time to carry out acts in conformity therewith; and it shall be the duty of the concerned licensee to carry out acts in conformity with the order so given in due course of time.

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<sup>6</sup> Inserted by the First Amendment.

**Draft Telecommunications Regulation****Chapter - 7****Dispute relating to telecommunications and settlement thereof**

- 22. Filing of complaint with Authority:** If there arises any dispute in respect of the telecommunications service between the licensees or between the licensee and the customer, the party aggrieved therefrom may file with the Authority a complaint also setting out reasons therefor.
- 23. Procedures to be followed in the event of dispute between licensees:** (1) If there arises a dispute between the licensees in respect of the telecommunications service and a complaint is filed with the Authority pursuant to Rule 22, the Authority has to require the concerned licensees to make presence and settle the dispute through mutual discussions.
- (2) If the dispute is not settled through mutual discussions pursuant to sub-rule (1), the Authority has to appoint an arbitral tribunal comprising one representative of each licensee and one representative of the Authority, for that purpose.
- (3) The tribunal appointed pursuant to sub-rule (2) shall itself make its rules of procedures for the settlement of dispute.
- (4) The tribunal appointed pursuant to sub-rule (2) has to make its decision on the settlement of dispute within fifteen days.
- (5) The decision made by the tribunal pursuant to sub-rule (4) shall be binding on the concerned licensees.
- (6) Notwithstanding anything contained in this Chapter, The Authority shall not be obliged to appoint a tribunal under sub rule 2 or to otherwise resolve any disputes between licensees relating to failure to pay any amounts owed by one licensee to another.
- 24. Procedures to be followed in the event of dispute between licensee and customer:** (1) If there arises a dispute between the licensee and the customer in respect of the telecommunications service and a complaint is filed with the

### **Draft Telecommunications Regulation**

Authority pursuant to Rule 22, the Authority has to require the concerned licensee and the customer to make presence, and settle the dispute through discussions with both parties.

(1A) Notwithstanding anything contained in this Chapter, the Authority will not entertain complaints from licensees relating to the failure of customers to pay their invoices, or from customers, relating to the generally applied tariffs of the licensee, or similar matters that the Authority considers should not be entertained.

(1B) In cases where the Authority deems it appropriate, it may appoint an internal arbitral tribunal or an administrator to settle disputes coming within sub-rule (1), under procedures to be stipulated in by-laws by the Authority.

(2) If the dispute is not settled through mutual discussions pursuant to sub-rule (1), the Authority may give such order as it may deem appropriate to the concerned licensee or the customer, and it shall be the duty of the concerned licensee or the customer to act in conformity with that order.

## **Chapter - 8**

### **Miscellaneous**

**25. Operation of telecommunications service in rural area:** An individual licensee has to utilize fifteen percent of his total investment in the development, expansion and operation of the telecommunications service in the rural area.

**25A Rural Telecommunications Development Fund (RTDF)** (1) The RTDF shall be administered by an independent administrator who reports to the Board (Authority). Additional staff may be appointed as required. The salary etc. of the staff shall be at the level of comparable officers of the Authority.

(2) The Authority may appoint an Advisory Committee for the RTDF, consisting of representatives for rural users, Government administration for rural areas, the MOIC, telecommunications licensees, and other persons as relevant. The Advisory Committee shall annually approve a plan for use of the Fund. The

### **Draft Telecommunications Regulation**

plan shall be structured in projects for subsidising purposes. The Administrator shall submit the plan to the Chairman for final approval by the Authority.

(3) The cost of administration of the RTDF shall be covered from the Fund, including, but not restricted to, salaries, other cost, external experts for major planning projects, etc. Such cost shall be approved in the same manner as other costs of the Authority.

(4) The RTDF will receive contributions from licensees. The RTDF may also receive other contributions from HMG, donors, and other contributors.

(5) The funds of the RTDF shall be kept in a separate bank account, be reported separately in the annual report of the Authority, and be audited in connection to auditing the accounts of the Authority.

(6) Until and including 2009, for purposes of releasing funds for Universal Access, the minimum objective will be to extend coverage of voice telephone service to all VDCs.

(7) Until and including 2009, the annual plan mentioned in sub-rule (2) shall apply funds not less than 90 % for Universal Access and not more than 10 % for other relevant telecommunications services such as Internet.

(8) Funds for subsidising Universal Access may be used for improved telephone network coverage, and in particular, shall only be applied to subsidise the provision of voice telephony in areas where there is no coverage. Funds for Universal Access shall not be used for subsidies of shared telephone connections, Public Call Offices, telecentres, etc.

(9) Funds for subsidising access to other telecommunications services may be used for network for providing Internet access and other services, and in exceptional cases for subsidising telephone connections for Public Call Offices, telecentres etc.

### **Draft Telecommunications Regulation**

(10) In 2008, the purpose of application of the Fund shall be revised and this rule amended accordingly.

- 26. Payment of royalty:** (1) All licensees, with the exception of those falling within Section 24A of the Act or those rural operators which are exempt pursuant to Section 32(2A) have to pay a royalty in a sum to be set by four percent of his annual total income for telecommunications services to His Majesty's Government each year.

(2) For purposes of this Rule, “annual total income for telecommunications services” means only that income earned by the licensee in providing telecommunications services under the licence, except the deposit, service charge, value added tax as well as other indirect taxes collected by the licensee from the customers, the fees paid to other licensees paying royalty on such revenue, the amounts to be received from the sale of equipment relating to telecommunications, and excluding any revenues from services that are exempt from licensing.

- 27. Appellate committee:** (1) For purposes of making appeals pursuant to Section 48 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)	Expert officer of Gazetted first class or equivalent There to designated by His Majesty's Government	-Member
(c)	Person designated by His Majesty's Government from amongst officer employees having gained experience in the field of law	-Member

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

### **Draft Telecommunications Regulation**

(3) The procedures and other provisions relating to meetings of the committee referred to in sub-rule (1) shall be as determined by the committee itself.

**28. Procedures relating to meetings of committee:** (1) Meetings of the committee shall be held on such date, in such time and place as may be appointed by its chairman.

(2) The presence of more than fifty percent members of the total number of members of the committee shall be deemed to constitute a quorum for the meeting.

(3) The chairman of the committee shall preside over the meeting of the committee; and in his absence, the member selected by the members of the committee from amongst themselves shall preside over the meeting.

(4) The opinion of the majority shall prevail at the meeting of the committee, and in the event of a tie, the person presiding over the meeting may exercise the casting vote.

(5) The secretary of the committee shall get the decisions of the committee meetings authenticated by the chairman and maintain them in an updated manner.

(6) Other procedures relating to the meetings of the committee shall be as determined by the committee on its own.

**29. Mode and procedures of fixation and allocation radio frequency:** (1) The Committee on Frequency Allocation and Management described in Section 49 of the Act shall, subject to the frequencies allocated by the International Telecommunications Union (I.T.U.), fix and allocate radio frequencies for various services.

(2) The Authority shall, subject to the frequencies fixed and allocated by the committee pursuant to sub-rule (1),<sup>7</sup> prescribe and distribute frequencies to be used for the telecommunications service.

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<sup>7</sup> Amended by the First amendment.

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- 30. Prescription of terms while distributing frequency:** (1) The Authority shall prescribe the terms to be observed by the licensee while using the frequency in operating the telecommunications service.
- (2) The Authority shall have the powers to inquire or monitor as to whether the licensee has used the frequency in consonance with the terms prescribed under sub-rule (1) or not.
- (3) If, while inquiring or monitoring pursuant to sub-rule (2), it appears that the licensee has not used the frequency in consonance with the terms, the Authority shall provide a reasonable period of time as well as an opportunity to the licensee to use the frequency in accordance with the terms. If the licensee fails to use the frequency in consonance with the terms even within the period of time so provided, the Authority may restrict the frequency used by him.
- 31. Payment of fees for spectrum:** (1) The licensee has to pay to the Authority such fees as prescribed by the Authority, for the use of frequency in connection with the operation of telecommunications service.
- (2) The Authority has to pay the fees received under sub-rule (1) to His Majesty's Government.
- 32. International and multi-purpose coordination of radio frequency:** It shall be the function of the Ministry to make coordination in consonance with the policy on international and multipurpose coordination of radio frequency formulated by the committee.
- 33. Submission of annual report:** The licensee has to submit a description of the telecommunications service operated by him and statements of his incomes and expenses audited by a recognized auditor, or an Auditor approved by the Authority, to the Authority within [ten] months of expiration of each fiscal year.
- 34. Maintenance of up-to-date records:** The licensee has to prepare and update records of the telecommunications service provided by him to the customers and show them to the inspector if the inspector intends to examine them in the course of inspection or inquiry.

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- 35. Power to make alteration and change in Schedule:** His Majesty's Government may, on recommendation of the Authority, make alteration or change, as required, in the Schedule.
- 36. Repeal and saving:** (1) The following Rules are hereby repealed:-
- (a) The Local Telephone Regulation, 2022 (1965).
  - (b) The Telephone Communications (In-land) Regulation, 2023 (1966).
  - (c) The Telecommunications (International) Regulation, 2024 (1967).
- (2) The acts performed and actions taken under the Regulations as referred to in sub-rule (1) shall be deemed to have been performed and taken under this Regulation.

**Draft Telecommunications Regulation****Schedule - 1***[TO BE DELETED, NO NEW LICENCES WILL BE GRANTED]*

(Relating to sub-rules (1) and (2) of Rule 7)

**Application to be submitted for license**The Nepal Telecommunications Authority,  
.....

I have submitted this application setting out the following details to obtain the license to operate the following telecommunications service.

1. Person desiring to obtain license: -
  - (a) Name :-
  - (b) Address :-
    - Permanent :-
    - Temporary :-
2. Type of the telecommunications service :-
3. Required to operate telecommunications service :-
  - (a) Estimated capital :-
  - (b) Proposed investment :-
  - (c) Source of investment :-
4. In regard to the telecommunications service :-
  - (a) Date of commencement of work :-
  - (b) Date of completion of work :-
  - (c) Projection of demand and supply of service :-
  - (d) Network expansion :-

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- (e) Description of technology to be used in the network :-
- (f) Standard of service to be provided :-
- 5. Of the telecommunications system :-
  - (a) Manufacture :-
  - (b) Country wherefrom import is made :-
  - (c) Quality standards :-
- 6. Frequency intended to be used :-
- 7. Date on which the telecommunications service can be provided to the customer :-
- 8. Region where the telecommunication service is to be operated :-
  - (a) District (b) Municipality / V.D.C. (c) Ward No.:
- 9. Details of annual profit/loss etc. to be made while operating the telecommunications service :-
  - (a) Estimated operational expense
  - (b) Estimated income
  - (c) Account of profit and loss
  - (d) Tariff rate
- 10. Documents to be submitted along with the application:-
  - (a) If the person intending to obtain the license is an individual, copy of his citizenship certificate.
  - (b) If the person intending to obtain the license is a body corporate, documents showing the name and legal status of that body.
  - (c) Documents relating to technical competency and professional efficiency.
  - (d) Financial and technical study report and plan of operations.

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- (e) Matters prescribed in the public notice published by the Authority or prescribed by His Majesty's Government by a notification in the Nepal Gazette according to the Act.

Seal of body corporate:

Applicant's.-

Signature:-

Name:-

Address:-

Date:-

**Draft Telecommunications Regulation**

**Schedule - 1A**

(Relating to sub-rules (1) and (2) of Rule 7)

**Application to be submitted for standard license**

The Nepal Telecommunications Authority,

.....

I have submitted this application setting out the following details to obtain the standard license to operate telecommunications services.

1. Person desiring to obtain licence :-
  - (a) Name :-
  - (b) Address :-  
Permanent :-  
Temporary :-
2. Services to be provided  
It is intended to provide the following services:
3. Date on Which the Services are to be provided:
4. Other documents to be submitted along with the application:-
  - (a) If the person intending to obtain the license is an individual, copy of his citizenship certificate.
  - (b) If the person intending to obtain the license is a body corporate, documents showing the name and legal status of that body.

Seal of body corporate:

Applicant's.-

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Signature:-

Name:-

Address:-

Date:-

**Draft Telecommunications Regulation****Schedule - 2**

*[TO BE DELETED, EVERYTHING SHOULD BE INCLUDED IN THE RELEVANT TENDER]*

(Relating to sub-rule (3) of Rule 7)

**Application to be submitted for license**

To,

The Nepal Telecommunications Authority,

.....

As I have been operating the telecommunications service by obtaining license from His Majesty's Government, and I have to obtain the license pursuant to the Telecommunications Act, 2053 (1997) and the Telecommunication Regulation, 2054 (1998), I have submitted this application, setting out the following details, to obtain the license for the operation of telecommunications service.

1. Of the person intending to obtain license :-
  - (a) Name :-
  - (b) Address :-
    - Permanent :-
    - Temporary :-
2. Of the telecommunications service being operated:-
  - (a) Type :-
  - (b) Date of operation :-
3. Investment made in the operation of telecommunications service:-
  - (a) Proposed investment :-
  - (c) Source of investment :-
4. Of the telecommunications system :-

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- (a) Manufacturer:-
- (b) Country wherefrom import is made:-
- (c) Quality standards :-
- 5. Frequency used :-
- 6. Statements of annual profit/loss etc. to be made while operating the telecommunications service :-
  - (a) Estimated operational expenses
  - (b) Estimated income
  - (c) Profit/loss account
  - (d) Tariff rate
- 7. Documents attached with the application :-
  - (a) Duplicate copy of the license obtained before
  - (b) Other necessary documents

Seal of body corporate:

Applicant's.-

Signature:-

Name:-

Address:-

Date:-

## Draft Telecommunications Regulation

### <sup>8</sup> Schedule - 3

*[TO BE DELETED, NO COMPETENCE WILL BE REQUIRED UNLESS STATED IN A TENDER]*

(Relating to Rule 8)

Capital, technical competency and professional efficiency required to obtain licence

Any person desiring to obtain the license to operate the telecommunications service pursuant to sub-sections (1) and (2) of Section 23 of the Telecommunications Act, 2053 (1996) and sub-rule (1) of Rule 7 of the Telecommunications Regulation, 2054 (1997) must have the following capital and the following technical competency and professional efficiency relating to telecommunications:-

(a) Authorised capital required :-

1. Two billion rupees for the operation of local telephone service throughout the Kingdom.
2. Five hundred million rupees for the operation of cellular telephone service.
3. Five hundred million rupees for the operation of inland trunk service.
4. Seven hundred fifty million rupees for the operation of inland trunk and international trunk service.
5. Two billion rupees, if a single license is to be obtained for the operation of more than one telecommunications service mentioned above.
6. The Authority shall prescribe the capital required to obtain the license to operate other telecommunications service and the telecommunications service in any particular place.

(b) Technical competency and professional efficiency :-

1. Having operated local telephone service for at least three years, for the operation of local telephone service.
2. Having operated cellular telephone service or local telephone service for at least three years, for the operation of cellular telephone service.

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<sup>8</sup> Amended by the First Amendment.

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3. Having operated international trunk telephone service or inland trunk telephone service or local telephone service for at least three years, for the operation of inland or international trunk telephone service.
4. Having possessed such technical competency and professional as prescribed by the Authority for operation of other telecommunications services.

Note:-

1. Having operated at least one hundred fifty thousand telephone lines, for the operation of local telephone service throughout the Kingdom.
2. Having operated the local telephone service with at least one hundred fifty thousand telephone lines or operated fifty thousand telephone lines, for the operation of cellular telephone service throughout the Kingdom.
3. Having operated the local telephone service with at least three hundred thousand telephone lines or local telephone service with at least one hundred fifty thousand telephone lines, and as well as the cellular telephone service with fifty thousand telephone lines, for the operation of the local telephone service and cellular telephone service throughout the Kingdom.
4. Having operated such telecommunications service as prescribed by the Authority, for other telephone services.
5. Having gained at least three year's experience in operation of anyone telecommunications service.

**Draft Telecommunications Regulation****Schedule 4****[TO BE FULLY RECONSIDERED BY THE CONSULTANT DEALING WITH LICENSING]****License to be issued for operation of telecommunications service**

This license is hereby issued to you to operate the following Telecommunications service, pursuant to sub-sections (1) and (2) of Section 23 of the Telecommunications Act, 2053 (1997) and sub-rules (1), (2) and (5) of Rule 10 of the Telecommunications Regulation, 2054 (1998).

1. Licensee's:-
  - (a) Name :-
  - (b) Address :-
    - Permanent :-
    - Temporary :-
6. Date from which the telecommunications service is to be provided to the customer:
8. Area of operation of the telecommunications service :
10. License No.:-
11. Validity period of license :-

Seal of the office:

License issuing official's-

Signature :

Name :

Designation :

Office :

Date :

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**Schedule – 5**

**[TO BE FULLY RECONSIDERED BY THE CONSULTANT DEALING WITH LICENSING]**

(Relating to sub-rules (6) of Rule 10)

**License to be issued for operation of telecommunications service**

Mr. ....  
.....

This license is hereby issued to you to operate the following telecommunications service, pursuant to sub-section (3) of Section 23 of the Telecommunications Act, 2053 (1997) and sub-rule (6) of Rule 10 of the Telecommunications Regulation, 2054 (1998).

- 1. Licensee's :-
  - (a) Name :-
  - (b) Address :-
    - Permanent :-
    - Temporary :-
- 7. License No. -
- 8. Validity period of license :-

Seal of the office

License issuing official's-

Signature :

Name :

Designation :

Office :

Date :

**Draft Telecommunications Regulation****Schedule - 6<sup>9</sup>***[TO BE REMOVED]*

(Relating to clause (a) of sub-rule (1) of Rule 11)

**Fees for license**

Fees shall be charged as follows for the license to be issued pursuant to sub-rule (5) of Rule 10 of the Telecommunications Regulation, 2054 (1998) :-

<u>S N</u>	<u>Type of telecommunications service</u>	<u>Fees</u>
1.	Internet (including e-mail)	Rs. 300,000/-
2.	E-mail	Rs. 200,000/-
3.	Audio text/voice mail	Rs. 200,000/-
4.	Video text	Rs. 200,000/-
5.	Fax mail	Rs. 200,000/-
6.	VSAT	
	(a) VSAT network provider	Rs. 2,500,000/-
	(b) VSAT user	Rs. 250,000/-
7.	Audio conferencing	Rs. 50,000/-
8.	Pay phone	Rs. 3,000,000/-
9.	Prepaid calling card	Rs. 3,000,000/-
10.	Local data network ( for commercial use)	Rs. 2,500,000/-
<sup>10</sup> 10A.	Global mobile personal communication system	Rs.1,500,000/-
11.	Radio paging network	
	(a) Throughout the Kingdom	Rs. 5,000,000/-

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<sup>9</sup> Amended by the First Amendment.

<sup>10</sup> Inserted by notice in the Nepal Gazette dated 2058.10.8.

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- |  |                 |
|--|-----------------|
| (b) Eastern and Central Development Regions (except Kathmandu Valley)  | Rs. 2,000,000/- |
| (c) Kathmandu Valley   | Rs. 200,000/-   |
| (d) Western Development Region   | Rs.1,200,000/-  |
| (e) Mid-western and Far Western Development Region   | Rs. 800,000/-   |
| (f) If it is to be operated in any specific VDC  | Rs. 300,000/-   |
| 12. Trunk mobile radio   |                 |
| (a) In Kathmandu Valley  | Rs.500,000/-    |
| (b) In Pokhara and Biratbagar Sub-municipal Corporations and Birgunj, Bhairahawa, Bharatpur and Nepalgunj Municipalities                                       | Rs.250,000/-    |
| (c) In other areas   | Rs. 125,000/-   |
| 13. For other telecommunications service, the amount as prescribed by the Ministry, on recommendation of the Authority, by a notification in the Nepal Gazette |                 |

**Draft Telecommunications Regulation****Schedule-6(a)<sup>11</sup>***[STAYS, BUT ONLY RELATED TO EXISTING LICENCES]*

(Relating to clause (b) of sub-rule (1) of Rule 11)

**Fees for license**

Fees shall be charged as follows for the license to be issued pursuant to sub-rule (6) of Rule 10 of the Telecommunications Regulation, 2054 (1998) :-

<u>S N</u>	<u>Type of telecommunications service</u>	<u>Fees</u>
1.	Internet (including e-mail)	Rs. 100,000/-
2.	Fax mail	Rs. 40,000/-
3.	VSAT user	Rs. 100,000/-
4.	Local data network ( for commercial use)	Rs. 1,500,000/-
5.	Local telephone service	Rs. 50,000,000/-
6.	In-land trunk telephone service	Rs. 35,000,000/-
7.	International trunk telephone service	Rs. 62,500,000/-
8.	In-land telegraph service	Rs. 500,000/-
9.	International telegraph service	Rs. 2,600,000/-
10.	Telex service	Rs. 3,100,000/-
11.	Lease circuit service	Rs. 1,550,000/-
12.	Fascimile (telefax) service	Rs. 300,000/-
13.	Package switching data service	Rs. 300,000/-
14.	For other telecommunications service, the amount as prescribed by the Ministry, on recommendation of the Authority, by a notification in the Nepal Gazette.	

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<sup>11</sup> Inserted by the First Amendment.

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Note- The fee referred to in serial number 5 through 13 shall be for a period of ten years.

**Draft Telecommunications Regulation****Schedule - 7<sup>12</sup>***[TO BE DELETED?]*

(Relating to sub-rule (2) of Rule 12)

**Fees for renewal of license**

The fees shall be charged as follows for the renewal of license to be issued, pursuant to sub-rules (5) and (6) of Rule 10 of the Telecommunications Regulation, 2054 (1998) :-

<u>S. N.</u>	<u>Type of telecommunications service</u>	<u>Fees</u>
1.	Internet (including e-mail)	Rs. 270,000/-
2.	E-mail	Rs. 180,000/-
3.	Audio text/voice mail	Rs. 180,000/-
4.	Video text	Rs. 180,000/-
5.	Fax mail	Rs. 180,000/-
6.	VSAT	
	(a) VSAT network provider	Rs. 2,250,000/-
	(b) VSAT user	Rs. 225,000/-
7.	Audio conferencing	Rs. 45,000/-
8.	Pay phone	Rs. 2,700,000/-
9.	Prepaid calling card	Rs. 2,700,000/-
10.	Local data network ( for commercial use)	Rs. 2,250,000/-
11.	Radio paging network	
	(a) Throughout the Kingdom	Rs. 4,500,000/-

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<sup>12</sup> Amended by the First Amendment.

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(b) Eastern and Central Development Regions (except Kathmandu Valley)	Rs. 1,800,000/-
(c) Kathmandu Valley	Rs. 1,800,000/-
(d) Western Development Region	Rs.1,800,000/-
(e) Mid-western and Far Western Development Region	Rs. 720,000/-
(f) If it is to be operated in any specific VDC	Rs. 2,70,000/-
12. Trunk mobile radio	
(a) In Kathmandu Valley	Rs.450,000/-
(b) In Pokhara and Biratbagar Sub-municipal Corporations and Birgunj, Bhairahawa, Bharatpur and Nepalgunj Municipalities	Rs.225,000/-
(c) In other areas	Rs. 1,12,500/-
13. Local telephone service	Rs. 45,000,000/-
14. In-land trunk telephone service	Rs. 31,500,000/-
15. International trunk telephone service	Rs. 56,250,000/-
16. In-land telegraph service	Rs. 450,000/-
17. International telegraph service	Rs. 2,340,000/-
18. Telex service	Rs. 2,790,000/-
19. Lease circuit service	Rs. 1,395,000/-
20. Fascimile (telefax) service	Rs. 270,000/-
21. Package switching data service	Rs. 270,000/-
<sup>13</sup> 21A. Global mobile personal communication system	Rs.1,400,000/-

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<sup>13</sup> Inserted by notice in the Nepal Gazette dated 2058.10.8.

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22. For other telecommunications service, the amount as prescribed by the Ministry, on recommendation of the Authority, by a notification in the Nepal Gazette

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**[TO BE REMOVED] Schedule - 8**  
**(Relating to sub-rule (1) of Rule 13)**

**Application to be submitted for amendment to license**

To,  
The Nepal Telecommunications Authority,  
.....

As it is required to make the following amendments to the following matters mentioned in the license obtained by me from that Authority on ... .., I have hereby submitted this application, attaching herewith a duplicate copy of the license.

1. Matters mentioned in the license :-
  - (a)
  - (b)
  - (c)
  - (d)
  
2. Matters intended to be amended and reasons for such amendment:-
  - (a)
  - (b)
  - (c)
  - (d)

Seal of body corporate

Applicant's -  
Signature :  
Name :  
Date :

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**Schedule – 9**

**[TO BE RECONSIDERED BY THE CONSULTANT DEALING WITH LICENSING]**

(Relating to sub-rule (1) of Rule 14)

Application to be submitted for approval for sale or transfer of license

To,

The Nepal Telecommunications Authority,

.....

As I intend to transfer my title to the license obtained by me from that Authority on ....., by way of sale / otherwise to Mr. ...., aged ....., a resident of Ward No. .... V.D.C. / Municipality ..... District, due to ..... I hereby humbly request for approval to that effect.

Seal of body corporate

Of the person intending to sell, or transfer the title to, the license-

Signature :

Name :

Address :

Date :

As Mr..... intends to sell /otherwise transfer title to, the license for the operation of telecommunications service, to me as mentioned above, and I intends to buy the license / get the title thereto transferred to me in other manner, I humbly request for approval to get the title to the license transferred to me by way of sale or otherwise.

Seal of body corporate

Of the person intending to buy the license or get the title thereto transferred to him-

Signature :

Name :

Address :

Date :

Documents to be submitted with the application:

- (a) A duplicate copy of the license.

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- (b) In the case of an individual desiring to give / receive the license, a duplicate copy of the citizenship certificate.
- (c) Detail description on the reasons for selling, or transferring the title to, the license.
- (d) Terms and restrictions pertaining thereto mutually set between the persons desiring to give and receive the license.
- (e) The capital set aside by the person selling the license or transferring the title thereto in any other manner for the operation of telecommunications service, his technical competency and professional efficiency.
- (f) The plan of operations of the telecommunications service, made by the person intending to buy the license or get the title thereto transferred to him in other manner.
- (g) Other necessary matters.