

TELECOMMUNICATIONS ACT, 2053 (1997)

Date of Authentication and publication

2053-9-17 (1 January 1997)

An act No 18 of the year 2053

Preamble: Whereas, it is expedient to make the Telecommunications service reliable and easily available to the public, involve private sector as well in Telecommunications Service and to regularise and systematize such service;

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

Chapter - 1

Preliminary

1. **Short Title and Commencement:** (1) This Act may be called the "Telecommunications Act. 2053 (1997)."

(2) It shall come into force on such date as Government of Nepal by a notification published in the Nepal Gazette, may appoint. ¹

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

(a) "Telecommunications" means the act of emission, transmission or reception, through the agency of electricity or electromagnetism, of any sounds, signs, signals, writings, images or intelligence of any nature, by the wire, radio, optical or other electromagnetic systems, 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

¹. 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).

object used or to be used in connection with a Telecommunications System.

- (c) "Telecommunications System" means equipment or series of equipment used or to be used for the Telecommunications.
- (d) "Telecommunications Service" means a service relating to the acts of the 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, writings, images, sounds or intelligence have been subjected to rearrangement, computation or other change in any manner for their emission, transmission or reception.
- (e) "Authority" means the Nepal² Telecommunications Authority established pursuant to Section 3.
- (f) "Chairperson" means the Chairperson of the Authority.
- (g) "Member" means the Member of the Authority and the terms also includes the Chairperson.
- (h) "Licence" means the licence issued pursuant to Section 24 to operate the Telecommunications Service.
- (i) "Licencee" means a person having obtained the Licence to operate the Telecommunications Service pursuant to Section 24.
- (j) "Customer" means the person who receives the Telecommunications Service made available by the Licencee.
- (k) "Charge" means the fees to be realized from the Customer for the Telecommunications Service provided pursuant to this Act.
- (l) "Person" includes a corporate body established pursuant to the prevalent laws.

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

- (m) "Prescribed" or "As Prescribed" means prescribed or as prescribed in the Rules or Bye-laws framed under this Act.

Chapter - 2

Establishment and Formation of the Telecommunications Authority

3. **Establishment of Telecommunications Authority:** A Nepal Telecommunications Authority is established with a view to managing and regularizing the Telecommunications Service and making it reliable and easily available to the public.
4. **Authority to be an Autonomous and Corporate Body:** (1) The Authority shall be an autonomous and corporate body with perpetual succession.
- (2) The Authority shall have its own seal to carry out its functions.
- (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. **Formation of the Authority:** (1) The Authority shall consist of five Members including the Chairperson who are qualified and experienced, as prescribed in the financial, technical, market management, accounts and auditing or legal field relating to the Telecommunications Service.
- The Authority shall consist of five members including the Chairperson, who possess the prescribed qualifications and experiences in financial and technical,³ market management, accounts and auditing or legal field, relating to the telecommunications service.
- (2) Government of Nepal shall constitute a committee comprising of experts from the related sectors, to make recommendation for the appointment of the Chairperson and Members of the Authority and Government of Nepal shall on the recommendation of the said committee appoint the Chairperson and Members of the Authority.

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

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

(4) The Officer designated by the Chairperson from amongst the employees of the Authority shall act as the Secretary of the Authority.

6. **Office of the Authority:** The Central Office of the Authority shall be located in the Kathmandu Valley and the Authority may open branch offices well within Nepal, as *per* necessity.

7. **Meeting of the Authority and Decision:** (1) The meeting of the Authority shall be held as *per* necessity.

(2) The meeting of the Authority shall be held on such place date and time as specified by the Chairperson.

(3) The meeting of the Authority shall be presided over by the Chairperson and in his absence the meeting shall be presided over by a Member selected by the Members present at the meeting from among themselves.

(4) The presence of more than fifty percent Members shall be deemed to be completed a quorum for a 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 Chairperson shall exercise the casting vote.

(6) The decisions of the meetings of the Authority shall be attested by the Chairperson, and such decisions shall be circulated to all the Members by the Secretary of the Authority.

(7) Other procedures relating to the meetings of the Authority shall be as determined by the Authority itself.

8. **Tenure of the Chairperson and Members:** (1) The tenure of service of the Chairperson and Members shall be of five years.

(2) In case the committee pursuant to Sub-section (2) of Section 5 recommends for the reappointment of the Chairperson and Members showing

their performance to be satisfactory, Government of Nepal may reappoint him to the post of Chairperson and Member.

9. **To Remove the Chairperson and the Member from the Post:** (1)

Notwithstanding anything contained in Section 8, Government of Nepal may remove the Chairperson or Member from the post in the following circumstances -

- (a) Absence of competency to work,
- (b) Misconduct,
- (c) Failure to carry out the official duty assigned to him/fer, honestly,
- (d) Become mentally disorder or insane, or
- (e) Having direct or indirect ownership or personal interest in any firm or corporate body which operates the Telecommunications Service or System.

(2) Before removing the Chairperson or the Member from the post pursuant to Sub-section (1), he/she shall be provided a reasonable opportunity to submit his/her clarification.

10. **Vacancy of the Post of the Chairperson and the Member:** The post of the Chairperson and the Member shall be deemed to be vacant in the following circumstances: -

- (a) If his/her written resignation tendered to Government of Nepal is accepted,
- (b) If he/she completes his/her tenure pursuant to Section 8,
- (c) If he/she is removed from his/her post pursuant to Section 9,
- (d) If he/she is convicted of any criminal offences from the court, or
- (e) If he/ she dies.

11. **The Terms and Conditions of Service of the Chairperson:** (1) The Chairperson shall be the full time working chief executive officer of the Authority.

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

(3) After the appointment of a person as the Chairperson, his/her remuneration, facilities and other terms and conditions of service shall not be altered to his/her disadvantage.

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

12. **Employees of the Authority:** (1) The Authority shall consist of the employees as required for the operation of its functions.

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

(3) Notwithstanding anything contained in Sub-section (2), Government of Nepal may, at the request of the Authority, depute the employees of Government of Nepal or any corporate body to the Authority with the remuneration to be received from the Authority until the appointment of the employees of the Authority.

Chapter - 3

Functions, Duties and Powers of the Authority

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

- (a) To provide suggestions to Government of Nepal on the policy, plan and programme to be adopted by Government of Nepal for the development of the Telecommunications Service.
- (b) To make the Telecommunications Service reliable and easily available to the public.
- (c) To make necessary arrangement to avail basic telecommunications Service and facilities in all rural and urban areas throughout the Nepal.

- (d) To involve the national and foreign private sector investors in the operation of the Telecommunications Service.
- (e) To make arrangement for the coordination and healthy competition among the persons providing Telecommunications Service and facilities, so as to provide such service and facilities to all public in general.
- (f) To prescribe, fix and approve the standard and quality standard of the plant and equipment relating to the Telecommunications and the Telecommunications Service.
- (g) To regularise and systematize Telecommunications Service
- (h) To grant the license to operate the telecommunications service⁴
- (i) To approve and regularise the fees to be collected by a person having obtained Licence for providing the Telecommunications Service.
- (j) To perform the functions relating to the frequency in accordance with the policy determined by the Radio Frequency Policy Determination Committee.
- (k) To carry out or cause to carry out the research about the development and use of new technology in the field of Telecommunications.
- (l) To cause to develop the skilled human resource for the Telecommunications Sector.
- (m) To develop and extend or cause to develop and extended the Telecommunications Service in such a way that it protects the rights and interests of the consumers.
- (n) To develop or cause to develops Nepal as an International Transit for Telecommunications.
- (o) To carry out necessary and appropriate functions for the development and promotion of the Telecommunications Service.

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

14. **Determination of Quality and Standard of Service:** (1) The Authority shall determine the quality and standard of the machine, equipment and facilities relating to the Telecommunications and the Telecommunications Service. The Authority shall Prescribe the minimum standard to be maintained by a License in operating the Telecommunications Service.
15. **Power to Issue Orders or Directives:** (1) The Authority may, in view of the policy and guidelines of Government of Nepal, issue necessary orders or directives to the Licencee and it shall be the duty of the concerned person to comply with such orders or directives.
- (2) The Authority may require the particulars of the activities carried out by the Licencee and the particulars related to the Telecommunications Service operated by the Licencee and it shall be the duty of the concerned person to provide such particulars.
16. **Power to Settle Dispute:** (1) The Authority shall have the power to settle disputes between the Licencees or between the Licencee and the Customer relating to the Telecommunications Service. The method and procedure of the settlement of the 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 services provided by the Licencee, 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 Licencee provide information or particulars and documents required by the Authority or the person or body designated pursuant to Sub-section (2) in course of the inspection or investigation.
- (4) The procedures to be followed in course of inspection or investigation pursuant to this Section, the report thereof and the provisions relating to the execution of the report shall be as prescribed.

Chapter - 4

Special Powers of Government of Nepal

18. **Power of Government of Nepal to Operate or Cause to Operate the Telecommunications Service by itself:** Notwithstanding anything contained elsewhere in this Act, Government of Nepal may operate the Telecommunications Service by itself or cause it to be operated.
19. **Special Powers of Government of Nepal:** (1) In case it requires to stop the transmission of information or to control transmission system due to the state of emergency or national security, Government of Nepal may carry out the following acts: -
- (a) To take temporarily the Telecommunications Line and the Telecommunications System installed, operated or supervised by the Licencee under its possession,
 - (b) To order to tape the information, to trace the transmitter of the information or to stop such informations related to any specific subject, person or community.
- (2) After the expiry of the circumstance pursuant to Sub-section (1), the Telecommunications Line and Telecommunication System so possessed by Government of Nepal shall be returned to the concerned Licencee.
20. **Power to Issue Directives:** Government of Nepal may, from time to time, issue necessary directives to the Authority in connection with the diversification, extension and regularization of the Telecommunications Service in line with the Telecommunications policy of the country and it shall be the duty of the Authority to comply with such directives.

Chapters - 5

Provisions for Licence

21. **Prohibition to Operate Telecommunications Service without Licence:**

After the commencement of this Act, no one may operate the Telecommunications Service without obtaining a License.

22. **Notice to be Published to Submit Application for Licence:** (1) The Authority shall, before issuing any Licence relating to any Telecommunications Service other than those prescribed pursuant to Sub-section (2) of Section 23, determine the number of Licence to be issued for such service and types of Telecommunications and publish a public notice specifying the time limit to submit application for the Licence.

(2) Within the period of five years from the date of issue of the Licence of any Telecommunications Service pursuant to Sub-section (1), no other License shall be issued to operate the same Telecommunications Service.

Provided that, this Sub-section shall not bar the Authority from issuing the Licence to other person in case the Licencee fails to provide the Telecommunications service as prescribed in the Licence or on the basis of objective evaluation if it seems that the additional service for such Telecommunications Service is required.

23. **Application to be Submitted for Licence:** (1) The person, who desires to operate the Telecommunications Service pursuant to this Act and has capital, technical expertise and professional experience as prescribed, shall have to submit an application to the Authority, setting out the particulars as prescribed along with economic and technical study report as well as work plan in connection with the Telecommunications Service to be operated, within the time prescribed by the Authority pursuant to Section 22.

(2) Notwithstanding anything contained in Sub-section (1), an application may be submitted at any time for the license to operate the telecommunications service as prescribed by Government of Nepal by a

notification published in the Nepal Gazette on recommendation of the Authority.....⁵

(3) The persons, who have been operating the Telecommunications Service since before the commencement of this Act, shall be required to submit an application to the Authority for the Licence setting out the particulars relating to the service having been operated by them, within six months and shall have to receive the Licence within one year from the date of commencement of this Act.

24. **Provision of Licence:** (1) Upon the receipt of the application pursuant to Section 23, the Authority shall conduct necessary inquiry in this regard, and in course of inquiry, if it deems necessary to ask for an additional information or particulars, the Authority may ask for the additional information or particulars from such applicant.

(2) After the inquiry by the Authority pursuant to Sub-section (1), if it deems appropriate to issue the Licence, the Authority shall issue the Licence to the applicant upon receiving the fee as prescribed, other than the Licence to be issued pursuant to Sub-section (3) and (4).

(3) While making an inquiry pursuant to Sub-section (1), if only one person from among the applicants who submitted the application pursuant to Sub-section (1) of Section 23 is found to be qualified to operate such Telecommunications Service, the Authority may fix Licence fee, renewal fee as well as royalty by negotiation with such person and shall issue the Licence to him.

(4) While making an inquiry pursuant to Sub-section (1), if more than one persons are found to be qualified to operate such Telecommunications Service from among the applicants, the Authority may notify all of these persons for bidding in connection with the Licence fee, renewal fee as well as royalty and shall issue the Licence to the person who quotes maximum amount in the bidding.

⁵ .Deleted by the Act Amending Some Nepal Acts Relating to Communication, 2057 (2001).

(5) While issuing a Licence pursuant to Sub-section (2), the Authority shall issue the Licence within ninety days of the receipt of the application or of the receipt of them additional information or particulars if such information or particulars are required pursuant to Sub-section (1).

(6) While issuing a Licence pursuant to Sub-section (3) or (4), the Authority shall issue the Licence within one hundred and twenty days from the last day prescribed fold the submission of the application pursuant to Sub-section (1) of Section 23 or from the date of the receipt of the additional information or particulars, if such information or particulars are required pursuant to Sub-section (1).

(7) A person, who could not obtain the Licence within the time stipulated in Sub-section (5) or (6), may file a complaint to Government of Nepal within thirty days of the expiry of such time limit and the decision of Government of Nepal in such complaint shall be final.

24 A.⁶ 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 Government of Nepal 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 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,

⁶. Inserted by the Act Amending Some Nepal Acts Relating to Communications, 2057 (2001).

(e) To operate other telecommunications services as prescribed.

25. **Period of Licence and Renewal:** (1) The period of Licence shall be of twenty-five years at the maximum.

Provided that, the Licence shall not be issued for a period of more than ten years at a time.

(2) A Licencee desiring to have his/her Licence renewed shall be required to submit an application to the Authority for the renewal of the Licence before the expiry of the period of the Licence within the prescribed period. If an application is so made, the Licence shall be renewed for a period of not more than five years at a time.

(3) The Licencee pursuant to Sub-sections (3) and (4) of Section 24 shall deposit the renewal fee as agreed by him/her to the Authority for the purpose of the renewal of the Licence pursuant to Sub-section (2).

(4) The Licencee pursuant to Sub-section (2) of Section 24 shall deposit the renewal fee as prescribed to the Authority for the purpose of the renewal of the Licence pursuant to Sub-section (2).

(5) In case the Licence is not renewed within the time limit pursuant to Sub-section (2), such Licence shall *ipso facto* be invalid.

26. **Amendment to the Licence:** (1) In case a Licencee deems it necessary to make any amendment to any matter set forth in the Licence obtained by him/her, such Licencee shall submit an application to the Authority stating the reasons thereof.

(2) If the reasons for the amendment to the Licence mentioned in the application submitted pursuant to Sub-section (1) are found reasonable and appropriate, the Authority shall amend the Licence within thirty days of the receipt of such application, if it does not affect the substantial matters mentioned in the Licence, if it does not seem necessary to amend the Licence, a notification to that effect with reasons shall be given to the applicant.

(3) A fee as prescribed shall be required to deposit in the Authority for the amendment to the Licence pursuant to Sub-section (1).

(4) In case the Authority deems it necessary to make any amendment mentioned in any Licence the Authority may give notice to that effect to the concerned Licencee stating the reasons thereof.

(5) On the receipt of the notice pursuant to Sub-section (4), if the Licencee deems no such amendment is required to his Licence, such Licencee may submit an application to that effect to the Authority stating the reasons thereof within fifteen days of the receipt of such notice.

(6) Upon the receipt of an application pursuant to Sub-section (5) or upon the expiry of that time limits, the Authority shall decide whether to make or not to make amendment to the Licence and notify the Licencee thereof.

27. **Sale or Transfer of Licence:** (1) In case a Licencee desires to sell or transfer his Licence to any other person, the Licencee and the buyer or the transferee of the Licence shall have to submit a joint application to the Authority stating the reasons thereof along with the terms and conditions mutually agreed, for the approval.

(2) Upon the receipt of an application submitted pursuant to Sub-section (1), while making an inquiry by the Authority, if it deems appropriate to sell or transfer the Licence to the person mentioned in the application, the Authority shall grant approval for such sell or transfer within thirty days of the receipt of the application, and if it deems inappropriate to permit to sell or transfer, a notification with reason shall be given to the applicant.

(3) A fee as prescribed shall be required to be paid to the Authority for the approval to sell or transfer the Licence.

28. **Licence May be Cancelled:** (1) In case the Licencee fails to operate the Telecommunications Service within the time limit as specified in the Licence, the Authority may cancel such Licence.

(2) If the Licencee acts in contravention of this Act or the Rules made thereunder and the terms and conditions set forth in the Licence, the Authority

may issue an order to the concerned Licencee to improve on such acts specifying the time thereof.

(3) If the Licencee fails to improve the acts within the period specified pursuant to Sub-section (2), the Authority may cancel the Licence of such person.

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

(5) A Licencee not satisfied with the cancellation of the Licence by the Authority pursuant to Sub-section (3), may file a complaint to Government of Nepal within thirty-five days and the decision of Government of Nepal in such complaint shall be final.

29. **Terms and Conditions to be Complied With by the Licencee:** The terms and conditions other than those mentioned in this Act to be complied with by the Licencee shall be as prescribed.

30. **To Develop, Expand and Operate the Telecommunications Service in the Directed Area:** (1) The Licencee pursuant to Sub-sections (3) and (4) of Section 24 shall invest the prescribed percent of his/her total investment for the development, extension and operation of the Telecommunications Service in the rural area.

(2) The rural area, in which the Licencee is required to extend the Telecommunications Service pursuant to Sub-section (1), shall be as mentioned in the Licence and in case it is not mentioned in the Licence, it shall be as specified by the Authority from time to time.

(3) If any Licencee, on the basis of mutual agreement, wishes to develop, extend and operate the Telecommunications Service to be developed, extended and operated by other Licencee pursuant to Sub-section (1) and (2), the Authority may after making necessary inquiry, grant its approval.

(4) The Authority shall create a fund for the development, extension and operation of the Telecommunications Service in the rural area and the Licencee

shall deposit such amount, every year, out of the annual income received by him/her as specified by the Authority.

(5) The Authority shall use the amount deposited in the fund pursuant to Sub-section (4) for the development, extension and operation of the Telecommunications Service in the rural area subject to the policy of Government of Nepal relating to the Telecommunications.

(6) The Authority may designate any Licencee for developing extending or operating the Telecommunications Service pursuant to Sub-section (5) and such Licencee shall develop extend and operate the Telecommunications Service in the rural are as specified by the Authority.

31. **Interconnection and Use of Telecommunications System Allowed:** (1)

The Licencee shall be allowed to mutually connect the Telecommunications System developed by him/her with the Telecommunications System developed by other Licencee and use it.

(2) If a Licencee requests, to connect and use the Telecommunications System developed by another Licencee the Licencee shall be allowed to connect and use on the terms and conditions mutually agreed upon or on the terms and conditions determined by the Authority, if such agreement could not be reached.

32. **Royalty to be Paid:** (1) The Licencee pursuant to Sub-section (2) of Section 24 shall be required to pay royalty to Government of Nepal as prescribed.

(2) The Licencee pursuant to Sub-sections (3) and (4) of Section 24 shall be required to pay royalty to Government of Nepal as promised by him.

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

33. **To be Owned by Government of Nepal:** (1) 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 Government of Nepal after the expiry of the period of the Licence.

(2) The assets so owned by Government of Nepal pursuant to sub-section (1) may be purchased by the previous Licencee upon payment to Government of Nepal at a price fixed pursuant to Sub-section (3) and after obtaining the Licence once again, the Telecommunications Service may be operated.

(3) For the purpose of fixation of price mentioned in Sub-section (2), Government of Nepal may, in consultation with the Authority, constitute a committee consisting five members at the maximum.

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

Chapter - 6

Facilities to be Obtained by the Licencee

34. **Facilities Relating to Tax and Charges:** (1)⁷

(2) Government of Nepal may, by a notification published in the Nepal Gazette, exempt fully or partially, the customs duty, sales tax and other Charge to be levied on the import of such equipment relating to Telecommunications as mentioned in such notification.

35. **Foreign Exchange Facility:** (1) If foreign currency is invested as loan or share capital for the purpose of providing the telecommunications Service, Government of Nepal shall avail necessary foreign currency at the prevailing exchange rate for the purpose of payment of such loan, the interest there of or repatriation of the investment.

(2) If a Licencee is required to import the equipment necessary to operate the Telecommunications Service from abroad, Government of Nepal shall avail the foreign currency required for such import, at the prevailing exchange rate.

⁷ Deleted by the Income Act, 2058 (2002).

⁸(3) Government of Nepal 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 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 Licencee or his representative may install or keep and supervise the telecommunications Line on or upon any public or private land and for this purpose may fix a pole or mast and if the land consists any tree, the Licencee may keep anything or support on such tree or may cut the tree, if it creates problem, loss or damage or obstacle to the Telecommunications Line.

Provided that, -

(1) If the land, where such Telecommunications Line is installed or is to be installed, is a public land, no compensation shall be required to pay for such land, and if any loss or damage is caused to any public property constructed or installed on such land, the Licencee shall be required to repair and maintain or reconstruct so as to bring it in the previous position.

(2) If the land, where such Telecommunications Line is installed or is to be installed, is a private land, such line shall be installed at the proper and appropriate place without causing any loss or damage to such person and in case any loss or damage is caused to such person in course of installation, the Licencee shall be required to pay compensation.

(3) The status of the Licencee in the land where the Telecommunications Line is kept or installed, shall be as a user of the Telecommunications Line and he shall have no other rights on such land.

⁸ . Inserted by the Act Amending Some Nepal Acts Relating to Communication, 2057 (2001).

37. **Power To Inspect, Repair or Transfer the Telecommunications Line From One Place to Another Place:** The Licencee may transfer from one place to another place, inspect or repair and maintain the Telecommunications Line or equipment erected or installed by him and for this purpose he shall have the power to enter into the land where such Telecommunications Line or equipment exists.
- Provided that, if any loss or damage is caused to anyone in course of such repair and maintenance or improvement of the line, the Licencee shall pay compensation to the concerned person.
38. **Entrance to Other's House and Land:** In course of operation of the Telecommunications Service, if the Licencee is required to enter into anyone's premises, he shall enter into such premises only after giving a prior written notice to the concerned person. In case any loss or damage is caused due to such entrance, the Licencee shall pay compensation to the concerned person.
- Provided that, if there is sufficient ground to suspect that the Telecommunications Service is being unauthoritatively used or theft on any premises, the Licencee may enter into the concerned premises for the inspection of such matter, giving at written notice at once to the concerned person.
39. **Provisions Relating to Compensation:** (1) The amount of compensation to be paid by the Licencee pursuant to Sections 36, 37 and 38 shall be determined within fifteen days from the date of such event and a notice shall be given to the concerned person.
- (2) The amount of compensation to be paid pursuant to Sub-section (1) shall be proper and reasonable.
- (3) A person not satisfied with the amount of compensation determined pursuant to Sub-section (1), may submit an application accompanied with reasons to the Authority within fifteen days of the receipt of the notice thereof. The decision of the Authority in this regard shall be final.
40. **Use or Acquisition of Other's House and Land:** (1) If the Licencee requires to use or acquire others premises for the purpose of expansion or

distribution of the Telecommunications Service and fails to obtain or use the premises from the concerned person, the Licencee may submit an application accompanied with the details to the Authority for the obtaining or use of such premises.

(2) Upon receipt of an application pursuant to Sub-section (1), the Authority shall make necessary inquiry and upon such inquiry if it deems necessary and appropriate to acquire the premises as mentioned in the application, the Authority shall forward its recommendation thereof to Government of Nepal within thirty days of the receipt of the application.

(3) Upon the receipt of the recommendation of the Authority pursuant to Sub-section (2); Government of Nepal may provide such premises to the Licencee as it is provided to the corporate body pursuant to prevalent law. If it is government land, such land may be availed on lease for the period of the Licence.

Chapter - 8

Fixation and Realization of Service Charge

41. **Service to be Availed:** (1) If the Licencee has received deposit from the Customer to avail the Telecommunications Service, such service shall be availed within six months of the receipt of the deposit from the Customer, and if the Licencee fails to avail such service within that time, an interest at the rate of the ten percent shall be paid to the Customer from the date of receipt of the deposit.

Provided that, the service shall be availed within one year of the receipt of the deposit.

(2) The interest to be paid to the Customer pursuant to Sub-section (1) may be deducted from the service charge payable by the customer.

42. **Service Charge:** (1) The Licencee may levy and realize Service Charge for the Telecommunications Service availed by him to the Customer -

Provided that -

- (a) The rate of such Service Charge shall have to be approved by the Authority.
- (b) The rate of such Service Charge shall be published as directed by the Authority.
- (c) The rate of such Service Charge shall be proper and reasonable.

(2) For the purpose of Sub-section (1), the Licencee shall be required to prepare the list of Service Charge on the basis of guidelines issued by the Authority and shall submit the list stating the date of its enforcement; to the Authority at least three months in advance of such date.

(3) The Licencee shall not unduly discriminate on the service charge and other terms and conditions or give undue priority to anybody including him/herself or cause undue loss or damage to anybody.

43. **Service may be Stopped:** The Licencee may stop the Telecommunications Service availed to the customers on the following circumstances: -

- (a) If it requires to inspect, repair or extend or to do any other important work on the Telecommunications Line or the Telecommunications System,
- (b) If any Customer fails to pay the charge payable by him/her, for such Customer,
- (c) If any Customer uses the service unauthoritatively or in contravention of the terms and conditions, for such Customer,
- (d) If there appears such events as natural calamity or strike, lockout, riot or similar other events beyond the control.

Chapter - 9

Fund, Account and Audit of the Authority

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

- (a) Amount received from Government of Nepal.
- (b) Amount received as fee for the issuance and renewal, amendment sale or transfer of the Licence.
- (c) Amount received as grant from foreign government, organization or association.
- (d) Amount received from any other sources.

(2) The Authority shall obtain the approval of Government of Nepal before receiving any amount pursuant to Clause (c) of Sub-section (1).

(3) The amount of the fund of the Authority shall be deposited to any bank located within Nepal and such bank account shall be operated as specified by the Authority.

45. **Budget and Expenditure:** (1) The Authority shall cause to prepare its budget every fiscal year and approve it for the operation of the functions pursuant to this Act.

(2) All the expenditures of the Authority, shall be borne from the fund of the Authority, subject to the approved budget pursuant to Sub-section (1).

(3) In case the amount, received by the Authority every year pursuant to Clauses (b), (c) and (d) of Sub-section (1) of Section 44, becomes insufficient to carry out the functions pursuant to this Act, the Authority may request to Government of Nepal for such deficit amount, and in case the amount so provided by Government of Nepal is in excess the Authority shall pay such excess amount to Government of Nepal.

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

(2) The audit of the accounts of the Authority shall be done by the Auditor - General.

(3) Government of Nepal may, if it deems necessary, inspect or cause to inspect the accounts of the Authority at any time.

Chapter - 10

Punishment and Appeal

47. **Punishment:** (1) If a person contravenes the provisions of this Act or the Rules made thereunder or fails to uphold the orders or directives by the Authority, the Authority may award a fine of up to Fifty Thousand Rupees to such person, and if any loss or damage is caused to anybody due to such offence, the Authority may cause to realize the amount of such damage or loss or also the compensation thereof from the offender.

(2) If any person operates the Telecommunications Service without obtaining the Licence pursuant to this Act or operates the Telecommunications Service without complying with the terms and conditions mentioned on the Licence, the Authority may award a fine up to Fifty Thousand Rupees to such person and may also cause to stop such act.

(3) If a 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 of such loss or damage and may impose a fine according to the amount.

(4) If a person abuses; threatens or causes unnecessary harassment through the Telecommunications Service, the Authority may award a fine of up to Twenty Five Thousand Rupees to such person and may also cause to stop such service.

Provided that, before stopping the Telecommunications Service, the Authority shall provide the concerned person with proper opportunity of his clarification.

(5) If a person acts intentionally to cause adverse effect damage or cause any other loss or damage to the Telecommunications Line, Telecommunications System or the equipment or any other structure related to such

Telecommunications Line or Telecommunications System or induces for such acts or attempts to do such acts such person may be fined with an amount equal to loss or damage as well or punished with an imprisonment for a term not exceeding five years or with both punishment according to the degree of criminality .

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 appeal within thirty five days to the prescribed committee and the decision of such committee shall be final in regard to that appeal.

Chapter - 11

Miscellaneous

49. **Provisions on Determination of Radio Frequency Policy:** (1) There shall be a Radio Frequency Policy Determination Committee for the purpose of determining the policy relating to the radio frequencies and allocation comprising the Chairperson and the member as follows: -

- | | | |
|-----|---|----------------------|
| (a) | Minister or Minister of State,
Information and Communications | - Chairperson |
| (b) | Secretary, Ministry of Home | - Member |
| (c) | Secretary, Ministry of Defence | - Member |
| (d) | Secretary, Ministry of Tourism and
Civil Aviation | - Member |
| (e) | Secretary, Ministry of Information and
Communications | - Member |
| (f) | Chairperson, Nepal Telecommunications
Authority | - Member |
| (g) | At least Gazetted class one or expert
Officer equivalent there to designated
by Government of Nepal | - Member - Secretary |

(2) The functions, duties and powers of the committee constituted 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 different services.
- (c) To determine the pricing policy of radio frequency.
- (d) To determine the policy for international and multy purpose coordination of radio frequency.

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

50. **Formation onstitution of Sub-committee or Task Force:** (1) The Authority may, as it deems necessary, form sub-committee or task force for the operation of its function smoothly.

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

51. **Oath To be Taken:** Before assuming the office, the Chairperson and Members shall take oath before the Minister or Minister of State for information and Communications as mentioned in the Schedule.

52. **To Prepare and Implement the Guidelines:** (1) The Authority may prepare and implement the Guidelines on the following subjects: -

- (a) Regarding to the interconnection and use of the Telecommunications System developed by the Licencee.
- (b) Regarding to the fixation of Service Charge and other fees to be levied and realized for the Telecommunications Service availed by the Licencee.

53. **Acts Done by the Authority Not to be Invalid:** The acts done or actions taken by the Authority, shall not be invalid only due to the reason that the

post of a Member of the Authority has fallen vacant or any error in the formation of the Authority.

54. **Case not to be Initiated:** No case shall be initiated in any court for the acts or actions done in good faith in course of carrying the duty pursuant to this Act by the Authority or any Member or employees of the Authority or any person or office designated or delegated by the Authority.
55. **Annual Report:** (1) The Authority shall submit the annual report of its activities carried out during that year to Government of Nepal within three months of the expiry of every fiscal year.
- (2) The Authority shall publish the report submitted pursuant to sub-section (1) for the notification of the public in general.
56. **Delegation of Authority:** The Authority may, as per necessity, delegate some of the powers conferred upon it pursuant to this Act or the Rules made pursuant to this Act, to the Chairperson or sub-committee or task force constituted pursuant to Section 50 or staff of the Authority.
57. **Government of Nepal to be Plaintiff:** Government of Nepal shall be plaintiff in the cases pursuant to Sub-section (5) of Section 47 and such cases shall be deemed to be included in Schedule- 1 of the Government Cases Act, 2049 B S. (1992 A.D.).
58. **Liaison with Government of Nepal:** The Authority shall make liaison with Government of Nepal through the Ministry of Information and Communications.
59. **Existing Laws to Prevail:** This Act shall prevail on the matters provided for in this Act and in other matters the existing law shall prevail.
60. **Power to Remove Difficulties:** (1) If any difficulty arises in the implementation of this Act, Government of Nepal may, issue necessary order by a notification published in the Nepal Gazette, to remove such difficulties without any inconsistency with the provisions of this Act.

(2) Each order issued pursuant to Sub-section (1) shall be presented to the Parliament as soon as possible.

61. **Power to Frame Rules:** (1) Government of Nepal may frame necessary Rules for the implementation of the objectives of this Act.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), Government of Nepal may frame Rules on the following subjects.

- (a) Format of an application to be submitted for the Licence and particulars to be incorporated thereon, format of the Licence and terms and conditions, fee for the Licence and renewal fee, and royalty.
- (b) Format of an application to be submitted for the amendment to the Licence or sale or transfer of the Licence and particulars to be incorporated thereon and the fee payable for it.
- (c) The terms and conditions to be complied with by the Licensee during the operation of the Telecommunications Service and matters relating to the standard of service to be provided to the customers.
- (d) Method and procedure for the distribution of frequency.
- (e) Other necessary matters.

62. **Power to Make Bye-Laws:** The Authority may subject to the provisions of this Act and the Rules made there under, make necessary Bye-laws.

63. **Repeal and Saving:**

- (1) The Telecommunications Act, 2019 (1962 A.D.) is hereby repealed.
- (2) All the acts and actions done and carried out pursuant to the Telecommunications Act, 2019 (1962 A.D.) before the commencement of this Act, shall be deemed to be done and carried out pursuant to this Act.

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 Chairperson/ Member with allegiance to the Telecommunications Act, 2053 (1997 A. D.) without fear, favour, affection, ill will or greed and I will not in any circumstances other than in accordance with prevalent laws, disclose any matter which shall be known to me in course of performance of my duties.