



## **Radio Spectrum Regulations**



**16<sup>th</sup> of June 2021**

# Radio Spectrum Regulations 2021

## I. CITATION

These Regulations may be cited as the Somali Radio Spectrum Regulations 2021.

## 2. DEFINITIONS

In these Regulations, unless the context otherwise requires: -

**Applicant:** means a person who submits a request in terms of these regulations;

**Authorized frequency:** means the frequency assigned to a station by the National Communication Authority (NCA);

**Harmful interference:** means radiation or induction which: -

- (I) endangers the functioning of a radio-navigation service or of a safety service; or
- (II) obstructs or repeatedly interrupts an authorized radio or telecommunication service;
- (III) Any other form of jeopardy of the same function.

**Licensee:** means a person licensed under the 2017 Communication Law (Law No: 005 of 2017)

**Network:** means two or more stations operated by a person/persons and used or intended to be used in communication.

**Radio emission:** means any emission of electromagnetic energy of frequencies currently less than three hundred Gigahertz without continuous artificial guide or such other frequencies as the NCA may, from time to time, publish in the NCA website.

**Spectrum assignment:** means the authorization of specific frequencies or frequency pairs for use within a given allocation, at specified geographic location by the NCA to any licensee.

**Station:** means a transmitter, receiver, a combination of transmitters and receivers or any accessory thereto which is used or intended to be used for radiocommunication.

**Transmitter:** means anything, irrespective of its use, function or the purpose of its design, that is capable of emitting radio emission.

**User:** means any person or body of persons who uses or operates radio communication services.

## 3. PURPOSE AND OBJECT

- (1) The objectives of these regulations, derived from the National Communications Law (no. 5 of 2017), are as follows:
  - (a) Facilitating the development and use of all frequencies;
  - (b) Facilitating and creating modern technology based on communication services;

- (c) Managing communications services in the open market for free competition;
  - (d) Developing open markets, vibrant and free communications sectors in Somalia and improving the freedom of expression and exchange of ideas; and
  - (e) Facilitate and encourage investment in communications services, giving priority to the national companies.
- (2) In order to achieve these objectives, these regulations aim to:-
- (a) promote and support the orderly development and efficient operation of radio communication systems and services to meet the country's socio-economic, security and cultural needs;
  - (c) ensure proper planning, utilization and management of the spectrum resource in accordance with the National Communications Law, policy objectives of the government of Somalia, and international agreements;
  - (d) promote the efficient use of frequency spectrum resource through the adoption of latest technical advances and efficient spectrum allocation and management based on the operational requirements; and
  - (e) ensure the equitable and fair allocation and assignment of spectrum to benefit the maximum possible number of users.
- (3) In accordance with Article 38(3) of the National Communications Law (no. 5 of 2017), these regulations apply to all users of radio frequencies in Somalia, including without limitation:
- a. National Security Agencies;
  - b. Fire Department and Public Safety;
  - c. News Media Agency;
  - d. Communication companies; and
  - e. All other public sector national and local government ministries, departments and agencies, nongovernmental organizations, international organizations, private entities and individuals.

#### **4. GENERAL LICENSING CONDITIONS**

- (4) A person shall not possess, establish, install or use any radio communication station which requires licensing (IMT and non-IMT service) under this regulation in any place or on board any local vessel, aircraft or vehicle, unless that person has a valid license granted by the Authority.
- (5) A radio communication license is an administrative permission and shall not confer any ownership rights to the frequency on the licensee.
- (6) A licensee shall not transfer a radio communication license or the right to use assigned frequencies without the prior written consent of the NCA.
- (7) A licensee shall comply with the Recommendations of the International Telecommunication Union (ITU).
- (8) The Authority may suspend or terminate a radio communication license if the licensee fails to use the assigned radio frequencies within two (2) years of the granting of the radio frequency spectrum licence.
- (9) The Authority may exempt certain radio frequencies or certain uses of radio frequencies from the requirement of a radio communication license.

## 5. APPLICATIONS FOR RADIO COMMUNICATIONS LICENCES

- (1) The NCA may from time to time publish guidelines that shall specify eligibility criteria for persons to be granted spectrum licenses.
- (2) The NCA shall, when considering an application for a radio communications license, take into consideration: -
  - (g) The availability of the relevant radio frequency spectrum;
  - (h) The type of service and proposed location;
  - (i) The extent to which the proposed use can be satisfied by any other means of communication;
  - (j) Potential alternative uses for the relevant spectrum band;
  - (k) The economic value of the spectrum;
  - (l) The integrity and safety of radio communications and associated services which require protection from harmful interference;
  - (m) Technical advances that ensure the most efficient spectrum use.
- (3) The NCA may assign a frequency or frequencies to the applicant, and shall for that purpose take into account all technical data of the equipment and associated accessories that the applicant is proposing to use.

## 6. ASSIGNMENT OF FREQUENCIES

- (1) A person licensed to operate and provide radio communication systems and services shall apply to the NCA for the assignment of the necessary frequencies.
- (2) The NCA may assign frequencies to an applicant when it is satisfied that such assignment will not cause harmful interference to any station or licensee operating in accordance with the Somali National Frequency Allocation Table.
- (3) Where the NCA considers that there is or there likely will be more demand for radio frequencies in a given radio frequency band than will be available for licensing, it will carry out a competitive process to choose the person or persons that would make the most efficient use of the frequencies in light of the purposes in section 3 of these Regulations and the objectives of the National Communications Law (no. 5 of 2017).
- (4) Where the NCA is satisfied with an application, it may assign the applicant frequencies, which the applicant shall use in accordance with the prescribed technical and operating parameters.
- (5) Where the frequencies applied for by the applicant(s) are not available, the NCA may assign frequencies in an alternative frequency band.
- (6) The NCA may grant one month radio communication licenses for defined purposes such as for conduct of experiments, network trials and public events, and may extend these for a maximum of two more months,

## 7. OBLIGATIONS OF LICENSEE

- (1) A licensee who has been assigned/granted frequencies and/or bands for use shall:-
  - (a) Maintain and provide, at the NCA's request, an inventory of:
    - a. frequencies assigned;
    - b. frequencies actively used;
    - c. communications services or activities for which they are used; and
    - d. license under which the services or activities are conducted;

- (b) Maintain and provide, at the NCA's request, the following details for each site where radio communication equipment is installed:
  - a. antenna, transmission and related equipment employed, signal direction, radiation pattern and polarization;
  - b. equipment power levels and means of power supply;
  - c. tower, mast or other infrastructure, including form, height, weight-bearing capacity, capacity utilized, and whether shared or not;
  - d. means of security employed;
  - e. geographic location by latitude and longitude;
  - f. form of right to use the property, whether ownership, lease, informal permission or otherwise;
- (c) Take appropriate measures to eliminate unauthorized emissions, harmful interference or illegal use of the spectrum, including any measures the NCA may from time to time prescribe;
- (d) Optimize the utilization of frequency spectrum, including as the NCA may from time to time prescribe; and
- (e) Implement any other measures prescribed by the NCA from time to time.
- (2) A licensee shall not make material change to a licensed station or change the station parameters specified in the license or notified to the NCA without a written authorization from the NCA.
- (3) All licensees shall, unless exempted by the terms of authorization, transmit the assigned call sign at the end of each complete transmission.
- (4) The transmission of the call sign at the end of each transmission shall not be required in cases of projects requiring continuous, frequent or extended use of the transmitting apparatus, if, during the periods and in connection with the use, the call sign is transmitted at least once every thirty minutes.

## **8. SPECTRUM REFARMING**

- (1) The Authority may re-allocate and re-purpose radio frequency bands or re-assign radio frequencies as needed to implement changes in any national spectrum plan, and shall update the Somali National Frequency Allocation Table accordingly.
- (2) The NCA shall provide licensees with adequate prior notice of any intended changes to its national spectrum plan, or any re-allocation and re-purposing of radio frequency bands or re-assignment of radio frequencies, in order to minimize the disruption of radio communications and to permit licensees to make appropriate transitional arrangements.
- (3) The NCA may, where it considers it necessary, require a licensee to stop using a frequency band and migrate to a new frequency band.
- (4) The NCA shall consult with the licensee with respect to the technical, administrative and financial cost of migration, and shall implement the migration taking into account the anticipated benefit of the new use of the band and the burden of migration to the licensee involved.

## **9. SPECTRUM SHARING**

- (1) Radio frequency spectrum sharing is where two or more licensees have been granted radio frequency spectrum licences for all or part of the same frequency assignment.
- (2) The licensee may share an assigned frequency with other licensees provided that such sharing does not cause material interference or other material technical impairment to the radio transmission.
- (3) Two or more applicants may apply to the Authority for radio frequency spectrum licences for spectrum assignments on a shared basis in terms by writing to the Authority.

- (4) All radio frequency spectrum sharing agreements are subject to approval by the Authority, and to a non-discriminatory approach.
- (5) The NCA shall implement the sharing through an arrangement that shall not impose an unreasonable burden to the licensee involved.

## **I I. TYPE APPROVAL AND INSPECTION**

- (1) A licensee shall not use radio equipment that has not been duly type approved by the NCA.
- (2) The NCA may from time to time rely upon type approval of other agencies with effective type approval capability.

## **I 2. MONITORING & INSPECTION**

- (1) The NCA may from time to time monitor emissions from licensed stations to ensure compliance with these Regulations and the National Communications Law (no. 5 of 2017).
- (2) The licensee shall permit unlimited access by the NCA's authorized officers to the licensee's installations at reasonable notice times for the purposes of inspection and verification of operational parameters.
- (3) The owners and management agents of buildings shall:-
  - (a) require proof of licenses and authorization from the NCA before authorizing the installation of any radio communication systems on their premises;
- (4) Where the NCA, pursuant to a report made to it or on its own accord, is of the view that certain measures need to be undertaken to avoid or mitigate any interference, the NCA may require a licensee or a class of licensees, in writing, to take the measures specified.

## **I 3. RADIO SPECTRUM MANAGEMENT & MONITORING FACILITIES**

Where the Authority determine that a radio operation or structure may cause harmful interference, the Authority may restrict the installation or operation of radio communications apparatus or erection of structures within a specified area from the Authority's radio monitoring facilities.

## **I 4. DISPOSAL OF UNCOLLECTED GOODS**

- (1) The NCA may disable or confiscate any radio communication apparatus or stations operated in contravention of the conditions of its license or in contravention of the Act (Law) and these Regulations.
- (2) The confiscated equipment or apparatus may, if not collected by a licensee, be disposed of in accordance with laws governing disposal of uncollected goods.

## **15. VIOLATIONS**

- (1) A licensee who uses any radio communication station and radio frequencies without the required license or for or in furtherance of unlawful conduct violates the Communications Law (no. 5 of 2017) and these regulations.
- (2) Any person who, upon receiving a request for information concerning the use of frequency spectrum from the NCA, fails to disclose the information or gives false or misleading information violates the Communications Law (no. 5 of 2017) and these regulations.
- (3) The NCA may fine any telecommunications operator that violates these regulations an amount of up to 10,000 USD for each violation, or in the case of a continuing violation, 10,000 USD for each day that the violation continued, up to a total of 1% of its annual revenues.
- (4) If a licensee fails to comply with these regulations, the NCA may:
  - a. actively prevent the licensee from enjoying the uninterrupted use of the radio frequencies, including through emitting signals causing interference to the licensee's radio communication operations;
  - b. order the dismantling of any telecommunications equipment, including the cell site, tower, mast or other infrastructure, failing which the NCA may instruct national security and police forces to take such measures; and
  - c. take such other measures as the NCA may require under the Communications Law (no. 5 of 2017).

## **16. SPECTRUM CAPS**

- (1) The Authority may prescribe the minimum or maximum number or amount of radio communication channels or frequencies (in the case of a maximum, a Spectrum Cap), which any user or licensee may be granted.
- (2) When setting a Spectrum Cap, the Authority will take into account:
  - (a) the amount of radio frequencies licensed and available for licensing in relevant spectrum bands;
  - (b) the amount of relevant radio frequencies licensed to other licensees;
  - (c) the market power of licensees; and
  - (d) the risk to competition of one or more related licensees accumulating radio frequency licenses.

## **17. RADIO FREQUENCY SPECTRUM LICENCE EXEMPTION**

- (1) Possession of radio apparatus and/or use of radio frequency spectrum for which a radio frequency spectrum licence is not required in terms of section 31(6) of the Act is as stated in the Authority's List of Apparatus exempt from radio frequency licences.
- (2) Licence-exempt radio frequency spectrum users must comply with the specifications as stated in in the said Authority's List of Apparatus exempt from radio frequency licences.

## **18. SPECTRUM DISPUTE RESOLUTION**

- (1) A dispute between licensees regarding any matter pertaining to radio frequency spectrum shall first be attempted to be resolved by the parties.

- (2) If an undertaking provided by any one of the parties has been registered with the NCA, the parties may then adopt the conditions of the undertaking in resolving the dispute.
- (3) The parties may seek a resolution of the dispute by the NCA if they have failed to reach an agreement in the dispute or if they dispute the implementation of an undertaking registered with the NCA.
- (4) Both parties should make every attempt in good faith to reach a solution using "Alternative Dispute Resolution" (ADR) before approaching the Authority, including mediation and arbitration.
- (5) The parties may approach the Authority to assist in the appointment of a mediator or arbitrator who is acceptable to all parties.
- (6) In the case of mediation:
  - a. The mediator shall be a neutral individual with no interest in either party or the outcome;
  - b. The mediator shall facilitate confidential negotiations between the parties;
  - c. If the parties reach agreement, they shall lodge an undertaking with the NCA;
  - d. The parties will share the cost of the mediator and any expert advice that may be required.
- (7) In the case of arbitration:
  - a. The parties will agree to appoint a neutral individual with no interest in either party or the outcome;
  - b. If the parties fail to agree on the arbitrator, the NCA will appoint the arbitrator;
  - c. The parties will provide detailed information to the arbitrator enabling him to reach a decision on the dispute;
  - d. The parties will comply with the arbitrator's instructions as to the process and information he requires;
  - e. A copy of the arbitrator's decision must be furnished to the NCA;
  - f. The parties will respect and implement the arbitrator's decision on the disputed matter;
  - g. The arbitrator's decision will be binding on the parties and must be implemented in accordance with its terms; and
  - h. The NCA will determine which party will bear the cost of the arbitrator and any expert advice that may be required.
- (8) The NCA, may at its own discretion, reject any dispute application where there has not been any clear and documented attempt to adopt mediation or arbitration before referring the dispute to the NCA.
- (9) Where licensees are unable to reach an agreement following ADR process, either one of the licensees may declare a dispute by informing the Authority in writing, indicating the subject matter of the dispute.
- (10) In resolving the dispute, the NCA may decide as follows:
  - a. Direct the removal of radio apparatus or otherwise require its technical configuration to be adjusted;
  - b. Impose penalties on one or more of the licensees should it be ascertained that the said licensees are in contravention of their licence conditions, regulations or Act (Law);
  - c. Suspend or cancel radio frequency spectrum licences in accordance with the provisions of these regulations; or
  - d. impose other terms and conditions as required.
- (11) Nothing shall prevent the NCA intervening to determine the dispute if it considers it a matter of regulatory importance and unsuitable for resolution by a mediator or arbitrator.