

論中國大陸電信法草案 對現行頻譜法規範之影響

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摘 要

由於中國大陸電信業至今並無單一且整體性的法律規範之，因此常產生頻譜法制的適用性衍生之爭議，目前中國大陸在法律除以物權視之外，僅就頻譜的指派、分配以國有資源定調其性質。然而，頻譜所生之問題與其影響層面過於廣泛，若電信法的制定造成原有頻譜使用上的爭議，則電信法的施行是否真如其所預期的值得等待？本文透過中國大陸電信法草案公布後，所造成頻譜法制的可能性影響及對於電信市場的衝擊做一論述。藉由法社會學中歷史層面的分析與比較兩者之差異性及帶來的效應，對中國大陸即將施行之電信法提出個人見解與討論。

關鍵詞：中華人民共和國電信法、頻譜、電信業、科技法制、電信條例

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On How PRC Telecommunication Act Draft Effect Spectrum Law

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Abstract

Without a sole and comprehensive law on PRC Telecommunications, the controversy about the applicability of the spectrum law is aroused. Currently, the law considers the rights over a spectrum as rights of thing, and a spectrum is defined as a state-owned capital through its assignment and allocation. However, a spectrum has a wide influence. Once the telecommunication act arouses the controversy on the utilization of former act, would implementation on the spectrum law be worthy expecting as what we anticipated? The study will elucidate the possible influences and the impacts on the telecommunication market after PRC passed the telecommunications act draft. By means of analyzing historical phases in sociology of law, comparing the differences between the Telecommunication Act Draft and the spectrum law, and discussing the impacts brought by both of them, the study will include personal opinions and discussions on PRC's imminent implementation of the Telecommunications Act.

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Keywords: PRC Telecommunication Act, Spectrum, Telecommunication Industry, Legal System of Science and Technology, Regulation on Telecommunication