

Draft Indian Telecommunication Bill, 2022

The Department of Telecommunications (“DoT”) vide its notification dated September 21, 2022, has released the draft Indian Telecommunication Bill, 2022 (“Draft Bill”). The Draft Bill now replaces outdated concepts under the existing framework. Further, the Draft Bill seeks to replace the following 3 (three) laws:

1. Indian Telegraph Act, 1885;
2. Indian Wireless Telegraphy Act, 1933; and
3. Telegraph Wires (Unlawful Possession) Act, 1950.

However, with a view to ensure smooth transitioning to the new framework, the Draft Bill provides for continuity of actions taken under the repealed laws. It also provides that rules under the repealed laws would continue till such time that new rules are formulated.

In July 2022, a Consultation Paper titled ‘Need for a new legal framework governing Telecommunication in India’ was published that sought comments from the stakeholders and industry associations. Upon examination of the comments received, the following key themes among others have emerged based on which the Draft Bill is drafted:

1. Recognition of the need for a new legal framework that is future-ready;
2. The need for updating the nomenclature and definitions of relevant terms in the telecommunication legal framework;
3. Need for legal certainty regarding spectrum management including issues relating to the use, allocation, and assignment, based on the underlying principle that spectrum is a natural resource that needs to be assigned in a manner that best subserves the common good;
4. Alignment of telecommunication standards with international standards and best practices

It is interesting to note that the term “telecommunication services” has been widened to include over-the-top communication services, satellite-based communication services, internet and broadband services, in-flight and maritime connectivity services, interpersonal communications services, machine to machine communication services, among others.

The Draft Bill grants exclusive privilege to the central government (“Government”), to provide telecommunication services, establish, operate, maintain, and expand telecommunication network and telecommunication infrastructure and also to use, allocate and assign spectrum. The Government will be able to utilise this exclusive privilege by granting the following:

1. Licenses for telecommunication services or telecommunication networks;

2. Registrations for establishing telecommunication infrastructure;
3. Authorization for the possession of wireless equipment; and
4. Assignment of spectrum.

An entity providing telecommunication services and telecommunication networks will be required to obtain a license. However, such an entity providing such services under the current law will be entitled to operate under its existing terms and conditions till it migrates to a set of new terms and conditions.

Similarly, while an entity providing telecommunication infrastructure will be required to obtain only a registration and not a license, an entity providing such services under existing laws will be entitled to operate under existing terms and conditions for a period of 5 (five) years or optimally migrate to a set of new terms and conditions. For possession of wireless equipment, an entity will be required to obtain an authorization.

Accordingly, the Draft Bill provides that the terms and conditions of a license, registration, authorisation, or assignment, as the case may be, will not be modified with retrospective effect to the detriment of the relevant entity.

Assignment of spectrum is to be done primarily through auction and an administrative process for certain specified functions relating to the Government and public interests. The Government may also notify a National Frequency Allocation Plan for the use and allocation of spectrum.

To enable effective utilization of spectrum, following provisions have been included:

1. Technology agnostic use
2. Re-farming and re-purposing
3. Sharing, trading, leasing, and surrender of spectrum assigned
4. Returning unused spectrum

Where there is a breach of terms and conditions of a license, registration, authorization, or assignment granted, the Government has been empowered to undertake any actions mentioned in the Draft Bill, after giving a reasonable opportunity of being heard. The Government is also required to take into consideration the nature, gravity and duration of breach, the number of persons or entities affected, the level of harm suffered by them, intentional or negligent character of the breach, repetitive nature of the breach, etc.

A framework for 'voluntary undertaking' has been laid down which is a mechanism through which a licensee, registered entity, or assignee may submit an undertaking to address any breach of terms and conditions. Such a voluntary undertaking may include an undertaking to take specified action within a specified time, an undertaking to refrain from taking specified action, and an undertaking to publicise the voluntary undertaking.

The Draft Bill provides for the right of appeal before the appellate authority. It also creates an enabling provision for the Government to set up an alternate dispute resolution mechanism such as arbitration, mediation or other process of dispute resolution.

Since an effective mechanism for obtaining Right of Way ("**RoW**") will be essential for rapid roll-out of newer technologies such as 5G, the Draft Bill provides for a robust regulatory framework within the federal structure, to obtain RoW in a uniform, non-discriminatory manner, for establishment of telecommunication infrastructure.

The framework for mergers, demergers and acquisitions, or other forms of restructuring has been simplified, subject to provisions of the applicable law (Companies Act, 2013), by only requiring an intimation to the Government.

A licensee or assignee undergoing insolvency proceedings can continue to operate if it continues to provide the telecommunication service, does not default on the payment of any dues under the license or assignment, and complies with any additional or modified terms and conditions of license. If such licensee or assignee is unable to comply with these requirements, then the assigned spectrum will revert to the control of the Government.

In the event there is a default payment by a licensee, registered entity or assignee, of any amount payable under this Act, and the Government determines that there exist extraordinary circumstances, it may take measures such as (a) deferment of the payment of such amounts (b) conversion of part or all of the amounts payable by the licensee, registered entity or assignee, into shares in the licensee, registered entity or assignee (c) write-off of such amounts or (d) relief from payment of such amounts.

The Draft Bill empowers the Government to prescribe standards in order to ensure quality and reliability of telecommunication. It also provides an enabling framework for the Government to address any situations of public emergency, public safety, or national security concerns.

The Universal Service Obligation Fund created under the Indian Telegraph Act, 1885, will now be referred to as the “Telecommunication Development Fund”, which will be under the control of the Government, and will be required to discharge functions as laid down in the Draft Bill.

In order to encourage and facilitate innovation and technological development in telecommunication, the Government is empowered to create a regulatory sandbox – a framework of special terms and conditions of a license, registration, authorization or assignment that allows persons to conduct live testing of products and services in a controlled environment under the supervision of the Government.

The Draft Bill goes on to define a ‘*specified message*’ and empowers the Government to prescribe measures for protection of users from these specified messages by obtaining the prior consent of users for receiving certain messages or class of messages, by preparing and maintaining one or more registers, titled “Do Not Disturb” to ensure that users do not receive specified messages without prior consent. The citizens of India are duty bound to ensure that in the interest of the sovereignty, integrity or security of India, friendly relations with foreign states, public order, or preventing incitement to an offence to not furnish any false particulars, suppress any material information or impersonate another person while establishing identity for availing telecommunication services.

The Government is also empowered to prescribe through rules the manner of certification of persons to install and operate a station operated by an amateur for amateur services.

Lastly, the Draft Bill consolidates and updates the various provisions on penalties and offences under the existing law. The decriminalization of certain offences by removing imprisonment, and levying only fines, as well as compounding of multiple offences is said to help in the development of the telecom ecosystem. It also seeks to eliminate the obsolete and redundant penalties such as penalty for opposing establishment of telegraphs or railway land, trespass in telegraph office or obstruction, etc.

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