UPDATES

# Government notifies sections of the Telecommunications Act, 2023

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***This update covers:***



The Telecommunications Act, 2023 is being enforced in a staggered manner to facilitate a calibrated transition to the new regime and prepare the sector for major reforms. This update provides an overview of the key changes introduced through the provisions recently notified by the government.

The central government has recently brought into force various provisions (**Notified Sections**) of the Telecommunications Act, 2023 (**Telecom Act**).[1]

The Notified Sections bring into effect a slew of changes, including a new framework on '*Right of Way*' (**RoW**) and establishing the '*Universal Service Obligation Fund*' (i.e., Digital *Bharat Nidhi* (**DBN**)). Separately, the central government has released draft rules in relation to these sections, namely the draft Telecommunications (**Digital Bharat Nidhi**) Rules, 2024 (DBN Draft Rules) and the draft Telecommunications Right of Way Rules, 2024 (**RoW Draft Rules**) for public consultation. Notably, the Notified Sections:

1. empower the central government to: (a) take action in case of emergencies and notify standards, directions and measures in relation to import-export, encryption, and other domains, (b) set out measures to protect users from unsolicited communications, (c) ensure optimal

[1] The central government has notified sections 1, 2, 10 to 30, 42 to 44, 46, 47, 50 to 58, 61 and 62 on 26 June 2024. Subsequently, sections 6 to 8, 48 and 59(b) were notified on 5 July 2024.

and technologically neutral usage of spectrum, and (d) specify penalties and offences under the new law, including a prohibition on the use of equipment that blocks telecommunication, among others; and

2. introduce measures to enhance innovation and technological development in the telecom sector.

The Telecom Act, which is set to replace the Indian Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933 was enacted on 24 December 2023 and provided for a phased implementation of the law. (To read our detailed update on all provisions of the Telecom Act, click here.) A brief overview of the regulatory changes introduced by the Notified Sections is provided below.

## 1 Spectrum Usage [Sections 6-8]

The Telecom Act introduces new provisions to promote optimal use of spectrum. As compared to the present regime where the process for allocation of spectrum is carried out through auctions, the Telecom Act provides a framework for spectrum assignment through both auctions and administrative allotment. The Notified Sections empower the central government to prescribe terms and conditions, and fees to enable the utilisation of spectrum in a flexible, liberalised, and technologically neutral manner. They permit the sharing, trading, leasing and surrender of assigned spectrum and allow the government to assign already-assigned spectrum to other '*secondary assignees*' to the extent such assignment does not hinder the usage of the spectrum by the '*primary assignee*'. These provisions increase the central government's powers in relation to spectrum utilisation including implementation, monitoring and enforcement mechanisms, terminating assignment or prescribing further terms and conditions on certain grounds. They also expressly set out the penalties for contravention of the terms of spectrum assignment.

The new provisions on administrative allocation provide greater transparency and are likely to help a greater number of entities in the market to utilise spectrum for services such as ground stations, space research and applications, and community radio stations, among others.

Delegated legislation under these provisions, such as the terms of spectrum utilisation to be prescribed by the central government, is awaited and will add further colour.

## 2 Right of Way [Sections 10-18]

Presently, the Indian Telegraph Right of Way Rules, 2016 (**RoW Rules 2016**) regulate the manner in which entities may apply for and obtain RoW for laying down telegraph infrastructure. The Telecom Act now introduces a consolidated framework for facility providers (i.e., central government or any authorised entities) to obtain RoW for telecommunication networks on public property and from private persons. RoW must be provided in a non-discriminatory and non-exclusive manner. Public entities who own, control or manage such infrastructure projects are now required to create an online application process to enable facility providers to make an application to install telecommunication networks through common ducts, conduits or cable corridors established in such projects.This appears to be in line with the central government's PM Gati Shakti vision, which aims to streamline the process of obtaining approvals to set up infrastructure projects across different ministries. The Telecom Act and the Draft RoW Rules also provide further specifications in relation to establishing telecom infrastructure over private property, including the manner in which the facility provider is required to enter into a mutual arrangement with the person who owns/controls or manages such private property in order to obtain RoW over such property. The Telecom Act also clarifies that the telecommunication network is distinct from the property on which it is installed and therefore will not be subject to any liens, encumbrances or liquidation in relation to the property. The Draft RoW Rules specify how an entity may make an application and obtain RoW and the manner and time-period within which the permission must be granted. They also provide detailed terms and conditions in relation to how access to common ducts and cable corridors must be provided in an open and non-discriminatory manner and clarify the legal rights to property where any overground or underground telecommunication network is placed.

## 3 Standards and security measures [Sections 19-23]

A range of sections that allow the central government to establish standards, conformity assessment measures, and security measures in relation to the telecommunication sector have been notified. While powers in relation to establishing standards and security measures exist under the present telecom regulatory framework as well, the notified sections of the Telecom Act add new powers to prescribe standards. Notably, the Notified Sections enable the central government to prescribe rules to protect the cyber security of telecommunication networks and telecommunication services. They also expand the government's powers by providing a broad right to the central government to issue directions in relation to use, standards, import, export and control over telecommunication services and infrastructure. These rules and directions, as and when issued, may impact various stakeholders in the telecommunication industry, including original equipment manufacturers and operators of telecom networks and services.

## 4 Digital Bharat Nidhi [Sections 24-26]

The Universal Service Obligation Fund established under the Indian Telegraph Act, 1885 has now been renamed the Digital Bharat Nidhi (**DBN**). It is expected to further the existing central government scheme to promote access to services in underserved areas and facilitate research and development (**R&D**) in the telecommunication sector. The DBN Draft Rules give the central government the power to appoint an '*administrator*' for the DBN, among others. The administrator is provided certain powers and functions including the ability to select DBN implementers through a bidding process, enter into agreements with DBN implementers, settle claims and disputes with DBN implementers, and determine the funding to be granted from the DBN to the DBN implementers. DBN implementers receiving such funding will have to ensure that the telecommunication networks that are set up and that operate through such funding are open to all in a non-discriminatory manner.

The Notified Sections and the DBN Draft Rules expand the purposes for which the funds may be used, such as:

a. improving affordability of telecom services in underserved rural, remote, and urban areas,

b. introducing next-generation telecom technologies in such areas,

c. developing and establishing relevant standards to meet national requirements and their alignment with international standardisation bodies,

d. promoting sustainable and green technologies in the telecom sector, and

e. encouraging start-ups in the telecom sector.

## 5 Telecommunication regulatory sandbox [Section 27]

The newly introduced provisions allowing for the creation of regulatory sandboxes in the telecommunication sector have now been brought into force. This would provide a live testing environment where new products, services, processes and business models in the telecommunication sector may be deployed on a limited set of users, with relaxations from certain provisions of the Telecom Act. This is in line with regulatory sandboxes that have been introduced by other regulators in order to promote innovation and development in sectors such as banking, finance, and insurance. This appears to be the first legislative recognition of a regulatory sandbox at the statutory level.

## 6 Unsolicited communications [Section 28]

In line with existing regulations issued by the Telecom Regulatory Authority of India (**TRAI**) on the subject, the central government is now also empowered to protect users from unsolicited commercial communications by framing rules to introduce measures such as requiring prior consent of users for specified messages and maintaining a '*do not disturb*' registry. Any rules issued under this section are likely to draw from, and be read harmoniously with, the existing regulatory framework established by TRAI, since the Telecom Act provides that the two frameworks will run in consonance. However, the precise interplay of this provision with TRAI's existing powers to regulate unsolicited commercial communication will become clearer once the rules are introduced.

## 7 Digital dispute resolution [Section 30]

Taking a digital-first approach, the central government is now empowered to set up online dispute resolution mechanisms to resolve disputes between users and authorised entities. The Notified Sections require authorised entities to participate through such means.

## 8 Offences and related provisions [Sections 42-44, 48]

Offences under the Telecom Act are cognizable and non-bailable. Depending on the nature of the offence, the offender may face imprisonment of up to three years and more stringent fines which may extend to INR 2 crore (approx. USD 240,000) or both. One such notified offence is the possession or usage of equipment blocking telecommunication unless otherwise permitted, which may result in three-year imprisonment and/or a fine of up to INR 50 lakh (approx. USD 60,000).

## 9 Changes to TRAI's regulatory structure [Section 59(b)]

The Telecom Act modifies the Telecom Regulatory Authority of India Act, 1997, by revising the manner in which members to TRAI are appointed. Members no longer need to have previously served as the Secretary and/or Additional Secretary for three years. It also provides greater clarity as to the eligibility of persons from the private sector, provided they have professional experience and have served as a board member or chief executive of a company in the areas of telecommunication, industry, finance, accountancy, law, management or consumer affairs.

The full impact of the Telecom Act may not be seen until all provisions have been notified. For instance, the Notified Sections 6-8 depend on the notification of Section 4, which is the enabling provision for the assignment of spectrum. Similarly, key provisions such as Section 3 which pertains to '*authorisation*' to provide telecom services, and Sections 31-41 which address civil contraventions such as breach of authorisation or assignment terms, are also yet to be notified.