



**AZB & PARTNERS**  
ADVOCATES & SOLICITORS

**Update – Staggered Enforcement of the Telecommunications Act, 2023**

On December 24, 2023, the Telecommunications Act, 2023 (Telecom Act) was enacted by way of publication in the Official Gazette after receiving Presidential assent.

The Telecom Act seeks to amend and consolidate laws relating to development and operation of telegraphs and telecommunication networks, possession of radio equipment, and repeal the current enactments namely the Indian Telegraph Act, 1885 and Indian Wireless Telegraphy Act, 1933 and the rules framed thereunder, and amend provisions of the Telecom Regulatory Authority of India, 1997 (Current Laws). Part III of the Indian Telegraph Act, 1885 will continue to apply to laying of transmission lines under the Section 164 of the Electricity Act, 2003.

As per its provisions, the Telecom Act may be brought into force fully or in a phased manner, i.e. different dates may be appointed for enactment of varied provisions. Pursuant to the aforementioned enablement, the Department of Telecommunications, Ministry of Communications, Government of India (DoT) has by way of a notification dated June 21, 2024 published in the Official Gazette (Gazette Notification), appointed June 26, 2024 as the date (Appointed Day) on which the Sections 1, 2, 10 to 30, 42 to 44, 46, 47, 50 to 58, 61 and 62 of the Telecom Act will come into force (Notified Provisions). We have discussed below the salient provisions of the Telecom Act, including those that have now been notified.

**The Key Highlights of the Telecom Act**

**1. Extra-territorial applicability**

- 1.1. It extends its applicability to offences or contravention committed outside India if the activity involves a:
- (a) telecommunication service provided in India, or
  - (b) telecommunication network or equipment located in India.

This provision has been notified by way of the Gazette Notification and will come into force on the Appointed Day.

**2. Who is impacted by the Telecom Act?**

- 2.1. As per the Telecom Act, an authorisation from the Central Government, in this case being the DoT will be required by persons who:
- (a) provide 'telecommunication service' – which is a term broad enough to cover *any telecommunication service* that entails transmission, emission, or reception of messages by wire, radio, optical or other electro-magnetic systems,
  - (b) establish, operate, maintain, or expand 'telecommunication network' - which is defined to include telecommunication equipment or infrastructure such as terrestrial, satellite or submarine networks, used for providing telecommunication services, and
  - (c) possess radio equipment.
- 2.2. The DoT can prescribe varied authorisation conditions for different types of telecommunication services, telecommunication network, or radio equipment. It can also

grant exemptions from authorization, if necessary, in public interest. Therefore, if an entity is subject to an authorization, it can expect reduced or expanded conditions of compliance, and not necessarily exemptions. Expectedly, it would be difficult to justify public interest exemptions for routine and/or commercial-oriented telecommunication operations. The DoT may grant exemptions for certain types of telecommunication equipment as well.

2.3. In view of the above scope, the following category of entities will be impacted by the Telecom Act:

(a) Existing license holders – The Telecom Act will apply to telecommunication service providers providing telephone and similar services, operating telecommunication network (TSPs), and persons in possession of the radio equipment, i.e. those who were already regulated under the Current Laws. Such license holders can continue to undertake their business based on licenses / permissions / registrations issued under Current Laws, for the prescribed time under such licenses, or if no time is provided, until 5 years from the day to be notified by the DoT.

(b) Exempted entities – If any entities are operating under exemptions granted under the Current Laws, those will continue to be valid unless DoT notifies otherwise.

(c) Over-the-top (OTT) service providers – This is a contentious issue that was subject to extensive engagements between the industry and the DoT. The earlier draft of the telecommunication bill expressly included OTT providers in the definition of 'telecommunication service' which would have led to such entities being subject to authorizations and related conditions, however the Telecom Act no longer retains such inclusion. Having said that, the definition of 'telecommunication' continues to include *all mediums of communicating a message*, particularly transmission and reception of message through amongst others, electromagnetic systems, being the backbone of Internet technology relied upon by OTT players (including social media apps, video and media apps, voice call service) to disseminate their service. This overbroad definition has caused some concerns within the OTT industry.

The definition being as it is, it may be possible to take a view that since most OTT technologies cannot independently transmit or enable reception of any message – as this is made possible through a combination of the Internet network and the mobile/computer device, OTTs are not in fact in the business of providing any telecommunication service. Further, the official clarification issued by the Information Technology Minister, Ashwini Vaishnav on December 22, 2023, that the Telecom Act does not regulate the OTT industry and said industry will continue to be regulated by the Ministry of Electronics & Information Technology (MeitY), has provided further clarity on the regulator's position. Having said the above, given the wording mentioned above, case-specific OTT technological capabilities, and any activities where OTT players invest in expanding telecommunication networks in connection with their service will need to be examined closely for possible regulatory exposure.

(d) Manufacturers / importers of telecommunication equipment – The DoT may impose standards and conformity assessment measures for manufacture, import, distribution, or sale of such equipment.

### 3. Biometric verification for use of telecommunication services

3.1. The DoT can notify telecommunication services, the use of which will be subject to biometric-based verification to be implemented by the authorized entity. This provision seems to target instances of SIM-based fraud, an area that was being dealt with by the DoT by ad-hoc notifications, orders, so far.

- 3.2. Biometric verification data however is a sensitive dataset, that requires proportionality assessment prior to collection, and maintenance of secure storage and processing procedures by authorized entities engaged in its collection.
- 3.3. Given that biometric verification is already a recognized form of verification for certain regulated sectors such as banking, tax, the DoT may consider prescribing the authentication mechanism associated with Aadhaar by the Unique Identification Authority of India (UIDAI) as an acceptable mode of verification for purposes of the Telecom Act as well. This may address user security concerns, since the UIDAI platform has undergone some form of proportionality assessment and is already subject to security safeguards. This will also help ensure that duplicitous biometric datasets, and corresponding verification procedures, are not introduced afresh for their limited use for the purposes of the telecom sector.

#### 4. Spectrum

- 4.1. The DoT will continue to assign spectrum for telecommunication services through auction and, in some identified cases, through an administrative process i.e. without holding an auction. Conditions applicable to use of spectrum, including frequency range, pricing, fees, payment mechanism, etc will be notified by the DoT from time to time.
- 4.2. **Administrative process** – The Telecom Act lists specific entries under the First Schedule, where an administrative process will be applicable for allocation of spectrum. This list may be updated from time to time, whenever the DoT considers it fit to conduct an administrative process to serve public interest, or where auction is not preferable for economic or technical reasons.

Amongst other use cases, spectrum for satellite-based services such as NLD, ILD, DTH, mobile satellite services and Global Mobile Personal Communication by Satellites (GMPS) will be allocated through an administrative process. Predictability, the DoT may exercise more discretion in such allocations. Many satellite-based service providers, such as Starlink and Jio have obtained the GMPS license for their business in India, and this change will help this industry in ramping up their operations. Other use cases under the First Schedule include space research and application, in-flight and maritime connectivity, etc. The non-auction route for allocation of spectrum for space technology is consistent with international practices.

- 4.3. **Exemption from assignment** - The DoT may exempt from assignment,
  - (a) certain persons, or
  - (b) specific usages within specific frequencies and parameters if it feels it is necessary in public interest.

Further, any spectrum-related exemptions granted prior to notification of the Telecom Act, will continue to be valid.

- 4.4. **Efficient use of allocated spectrum** – To bring in efficiency, DoT may ask assignees to harmonize (rearrangement of a frequency range) or re-farm (repurposing of a frequency range for another use) spectrum, as well as re-assign allocated spectrum to a secondary assignee, in a manner that will be prescribed under rules.
- 4.5. **Termination of allocated spectrum** – The DoT now has powers to terminate assigned spectrum if it remains unutilized for 'insufficient reasons' for a prescribed period. The term 'insufficient reasons' is not defined under the Telecom Act and could lead to operational issues for entities taking extended time to develop infrastructure for use of spectrum, or those undergoing financial constraints. It would be beneficial for the DoT to clarify the

scope of reasons, along with the efflux of time, which will trigger a termination event of such nature.

## **5. Right of way**

- 5.1. This too is an area that was being dealt with by the DoT through orders, and directions from time to time. The Telecom Act brings in provisions that will support infrastructure development activities that require right of way access, particularly onto private property. These changes will benefit the digital infrastructure expansion and roll-out of 5G technology in India.
  - 5.2. Facility providers, who will be entities authorized by the DoT and will include contractors or sub-contractors of such entities, will be able to enter into agreements with property owners to establish, operate or maintain telecommunication networks. The facility providers will manage right of way operations for different types of property as follows:
    - (a) for public property – they must apply for permission from the relevant public entity, and conduct survey and installation work within the scope of such permission.
    - (b) for private property – They must apply for permission from the property owner, who can then review such request and enter into an agreement for grant of right of way, subject to agreed price and other conditions. The DoT can issue rules governing procedures for entering the property, maintaining the telecommunication network, and the objections that can be raised by property owners. The DoT may also overrule any refusals for grant of right of way by private property owners, if it determines access is necessary for public interest. In such cases where DoT weighs in, the property owners will still be entitled to be compensated. It has been clarified that facility providers will not have any right or title over the property where any telecommunication network has been established.
  - 5.3. In case of any damage caused to any type of property, the facility providers will be liable to restore the property or pay compensation as may be mutually agreed. There are various detailed procedures described under the Telecom Act, relating to:
    - (a) non-discriminatory and non-exclusive access to right of way,
    - (b) restrictions on sealing / preventing access to any telecommunication network,
    - (c) manner of requesting removal of telecommunication network installed onto any property, and
    - (d) forum for resolution of disputes relating to right of way.
  - 5.4. The aforementioned provisions dealing with right of way have been notified by way of the Gazette Notification and will come into force on the Appointed Day. The manner in which the aforesaid provisions will be operationalized, such as the manner of grant of permission by public entities and timelines thereto; the maximum compensation that may be provided to owners/ occupiers of property; procedure to be followed by facility providers to enter, survey, establish and operate the telecommunication network; the manner of resolving objections raised by owner/ occupier; terms and conditions including fees and charges applicable to open access by facility providers of infrastructure projects notified by DoT which requires establishment of common ducts or conduits or cable corridors for installation of telecommunication network, etc., will be prescribed by way of Rules which are yet to be published or notified by the DoT.
- ## **6. Powers of the DoT for reasons of public emergency, public safety, national security, public order, and to prevent incitement for commission of an offense**

- 6.1. ***Imposition of standards*** – The DoT can notify standards and conformity measures in respect of telecommunication services, telecommunication network and equipment on aspects such as encryption and data processing, cyber security, telecommunication security, manufacture, import and sale of equipment.
- 6.2. ***Powers during public emergency & public safety, or on other grounds*** – The following powers may be exercised by the Central or State Government, or their specially authorized officers:
  - (a) take temporary possession of telecommunication service or network or direct priority routing of certain messages, in times of public emergency or for reasons of public safety,
  - (b) if considered necessary in interest of sovereignty of India, defence and security, friendly relations with foreign State, public order, or to prevent incitement for commission of an offense, and for reasons to be recorded in writing and subject to safeguards as may be prescribed, the Central or State Government or their authorized officers may direct for transmission of any messages (or class of messages) between any person(s), and relating to any particular subject, to and from any telecommunication networks and services, to be restricted, intercepted, or disclosed to the relevant officers. This provision also enables suspension of telecommunication services altogether.
- 6.3. ***Measures for national security*** - Similarly, the DoT may, in interest of national security, for friendly relations with foreign State or in times of war, issue directions for adoption of standards applicable to telecommunication services or equipment, suspend or remove or prohibit use of specific telecommunication equipment or services from notified countries, or take control of any or all of any telecommunication service or any network connected to such service.
- 6.4. As a result of the above provision, even if OTT's are not considered to be within the scope of the Telecom Act, it would be possible for DoT to issue aforementioned directions onto TSPs which ultimately impacts the continuance of OTT operations within the telecommunication network supported by such TSPs.
- 6.5. Further, from further review of the interception – related provisions, the manner in which 'class of messages' or messages on any particular subject may be restricted or intercepted is not clear, especially if such interception orders are issued by the DoT onto TSPs but are intended for encrypted communications flowing through OTT applications riding on the TSP network, as such applications essentially enable secondary transmission of such messages. Clarification from the DoT in this regard can define the scope. Given the expansive powers granted to the DoT under the Telecom Act, and in the interest of ensuring access to continued telecommunications service for varied use cases, it may also help for DoT to clarify the scope of 'public safety' and detail the procedural safeguards to be met prior to suspension of telecommunication services, under the upcoming rules.
- 6.6. Such clarificatory measures will streamline the methods by which messages and communication networks can be suspended, controlled, or restricted, and meet the overall objective of the Telecom Act, which is to enable ease of doing business and attract investor interest, within the telecom industry.
- 6.7. The aforementioned provision empowering the DoT to notify standards and conformity assessment measures in respect of various aspects of telecommunication network, equipment and services and to take measures during any public emergency, etc., have been notified by way of the Gazette Notification and will come into force on the Appointed Day.

## **7. Critical Telecommunication Infrastructure**

- 7.1. The DoT can, by assessing the economic or national loss resulting from any disruption, notify any telecommunication network, in whole or in part, as critical telecommunication infrastructure (**CTI**). CTIs will be subject to specific standards, security practices, and upgradation requirements.
- 7.2. Under the powers granted to MeitY under Section 70(1) of the Information Technology Act, 2000 (**IT Act**), computer resources of network elements of TSPs have already been declared as Critical information infrastructure (**CII**). Such network elements are subject to additional information & security practices that are prescribed and monitored by the National Critical Information Infrastructure Protection Centre. Given that the Telecom Act has now authorized DoT to separately declare, possibly *all or any other* elements of a telecommunication network as CTIs, it is important for the rules to remove any regulatory and/or technical requirement overlap for security procedures applicable for telecommunication networks, that are designated as CTI and/or CII. The DoT may also clarify if the telecommunication sector CTIs will be monitored by a separate regulatory body.
- 7.3. The aforementioned provision empowering the DoT to declare any telecommunication network as CTI have been notified by way of the Gazette Notification and will come into force on the Appointed Day. The standards, security practices and procedures to be implemented for such CTI will be prescribed by way of Rules which are yet to be published or notified by the DoT.

## **8. Consent of users for sending marketing messages**

- 8.1. The DoT may issue rules that require obtaining prior consent for receipt of specified messages by users, and creation of 'Do Not Disturb' registers for users who do not consent to receive such messages. Specified messages are classified as marketing, promotional, solicitation or advertising related messages.
- 8.2. In India, there are existing regulations that govern sending of commercial communications (including promotional, service, and transactional messages) using the telecommunication network. The Telecom Commercial Communications Customer Preference Regulations, 2018 (**TCCCPR**), issued under the Telecom Regulatory Authority of India Act, 1997, already mandate entities to implement preference (recorded in a central 'Do Not Disturb' register) and consent mechanisms for sending voice calls and SMS. In addition, the Digital Personal Data Protection Act, 2023, will bring in primarily a consent-based framework for processing of any personal data of a user through electronic means.
- 8.3. It appears that while the Telecom Act will require authorized entities to obtain a specific consent for specified messages sent through any mode (whether SMS, emails, app), such authorized entities will separately need to address incremental consent requirements arising under the aforementioned laws as well.
- 8.4. The aforementioned provision enabling the DoT to provide for measures for protection of users in relation to telemarketing messages and which prescribes duties of users, have been notified by way of the Gazette Notification and will come into force on the Appointed Day. We will need to wait for notification of Rules to understand the measures and the mechanism to be followed by authorised entities or other covered entities in this regard.

## **9. Reduced Penalty for authorized entities, enhanced penalties for unauthorized activities**

- 9.1. All proceedings against authorized entities will be adjudicated by an 'Adjudicating Officer' (AO), and then forwarded to the 'Designated Appeals Committee' (DAC), and finally the Telecom Disputes Settlement and Appellate Tribunal (TDSAT). No civil court will have jurisdiction.
- 9.2. The AO can either act on a complaint, or proceed *suo moto*, against authorized entities who are in breach of the scope of their authorization.
- 9.3. Post an inquiry, an authorized entity may be subject to civil penalty that can range from a written warning to a fine of up to INR 5 crores, for a non-severe and severe breach respectively. This is significantly reduced from the range of penalties earlier provided under the unified license that could extend up to INR 50 crores.
- 9.4. While imposing penalties, the AO will consider factors such as nature, gravity, duration of the breach, number of persons affected, revenue loss to the Central Government, any other aggravating or mitigating factors relating to the contravention.
- 9.5. ***Voluntary undertaking*** – The Telecom Act brings in a process of submitting a voluntary undertaking, whereby an authorized entity may, prior to any notice or initiation of an inquiry, approach the AO on a voluntary basis and submit details of the contravention and mitigation measures, if any. This will bar initiation of any inquiry proceedings and will be considered by the AO for deciding quantum of civil penalty that may be imposed for the contravention.
- 9.6. ***Penalty imposed on unauthorized entities / persons*** – Chapter IX of the Telecom Act prescribes significantly stricter penalties for provision of unauthorized telecommunication services, establishing of an unauthorized telecommunication network, damage to CTIs, or unauthorized access or unlawful interception. Other offenses include possession of radio equipment without authorization, use of blocking equipment, misuse of telecommunication identifiers, and enhanced penalties for offences committed during the pendency of an order issued on grounds of national security, etc.
- 9.7. All offences listed under Chapter IX are non-bailable and cognizable. The aforementioned provision relating to offences and powers of the DoT to conduct searches and call for information/documents in relation to any pending or anticipated proceedings have been notified by way of the Gazette Notification and will come into force on the Appointed Day.

## 10. Miscellaneous

- 10.1. ***Certification to operate certain radio equipment*** – The DoT is empowered to grant a certification to any person to operate a radio equipment on notified classes of vessels such as those registered under the Merchant Shipping Act, 1958, aircrafts registered under the Aircraft Act, 1934, etc. This provision has been notified by way of the Gazette Notification and will come into force on the Appointed Day. The terms and conditions relating to such certification are expected to be prescribed under the Rules to be notified under the Telecom Act.
- 10.2. ***Certification for amateur station*** – The DoT is empowered to grant a certification to any person to install and operate an amateur station, i.e., a radio station for the purpose of self-training, intercommunication and technical investigations carried out by a duly authorized person solely with a personal aim and no pecuniary interest. This provision has been notified by way of the Gazette Notification and will come into force on the Appointed Day. The manner of certification including qualifications and terms and conditions for grant of such certification are expected to be prescribed under the Rules to be notified under the Telecom Act.

- 10.3. **Blocking** – The Telecom Act expressly prohibits any person from possessing or using equipment that blocks telecommunications, unless specifically permitted by the DoT. Similar restrictions existed under the Current Laws, however now such activity is subject to stricter punishment.
- 10.4. **Access to Traffic data** – To protect cyber security of networks, DoT can prescribe measures such as collection, analysis, and dissemination of 'traffic data', which can include any data generated, transmitted, received, or stored in telecommunication networks – such as type, duration, or time of a telecommunication.
- 10.5. **Cyber security measures** – The DoT may bring rules to ensure cybersecurity of telecommunication networks and telecommunication networks. In India, it is mandatory for cyber security incidents to be reported to CERT-In and similar cybersecurity reporting has been separately introduced under the Digital Data Protection Act, 2023, scope of which is pending clarification under the rules. With the Telecom Act, there are concerns that entities operating under the digital sector may be required to undertake cybersecurity compliance before different regulators. It is suggested for the DoT to be cognizant of such concerns, while introducing cyber security measures including incident reporting, if any, under forthcoming rules of the Telecom Act.

The aforementioned provisions that empower the DoT to provide for cybersecurity measures including relating to analysis of traffic data have been notified by way of the Gazette Notification and will come into force on the Appointed Day.

- 10.6. **Online resolution of disputes, and user complaints** – All TSPs must set up an online mechanism for addressing user complaints. The DoT will require disputes between users and TSPs to be settled through an online dispute resolution mechanism, that can be set up either by the DoT or can be a TSP-setup approved by DoT. These measures will not impact consumer rights under the Consumer Protection Act, 2019. This provision has been notified by way of the Gazette Notification and will come into force on the Appointed Day.
- 10.7. **Regulatory Sandbox** – In the interest of encouraging innovation and technological development in the telecommunications sector, the Telecom Act has empowered the DoT to create regulatory sandboxes for live testing of new products, services, and processes with a limited set of users for a specified period of time, with relaxations from requirements applicable to such offerings. These provisions have been notified by way of the Gazette Notification and will come into force on the Appointed Day.
- 10.8. **Digital Bharat Nidhi** – The currently constituted 'Universal Service Obligation Fund' has been recharacterized as 'Digital Bharat Nidhi'. All sums payable pursuant to an authorization will be credited into the Digital Bharat Nidhi. The sums received under Digital Bharat Nidhi will first be credited into the Consolidated Fund of India, from which the relevant amount of funds is credited back into the Digital Bharat Nidhi. This provision has been notified by way of the Gazette Notification and will come into force on the Appointed Day.
- 10.9. **TSPs undergoing insolvency** – This provision is no longer there in the Telecom Act, which will provide expected relief to counter-parties continuing to do business with entities undergoing insolvency proceedings in India.

## 11. Concluding Remarks

- 11.1. Recent developments in India, such as the planned entry of satellite communication services, Government concerns relating to imports and use of unregulated telecommunication equipment within existing networks, inefficient processes surrounding



spectrum allocation and subsequent under-utilization, SIM-fraud, as well as rapid advancement of telecommunication technologies, required an overhaul of the erstwhile telecommunication regulations in India. The Telecom Act is part of a broader objective of the Central Government to update existing laws onto current state of technology, support India's 5G roll-out, ensure more efficient utilization of spectrum, and bring in emerging issues relating to telecommunication security & diversified telecommunication service structures within the scope of regulation and/or oversight. It also intends to make the telecom sector more investor-friendly, with lesser penalties and simplified operations.

- 11.2. While OTT players have received some relief following clarifications from the DoT on the intended scope of the Telecom Act, they can expect content regulation & moderation, and intimation requirements to be introduced under the laws proposed to be made applicable to the broadcasting sector, currently undergoing a consultative process through the draft Broadcasting (Services) Regulation Bill, 2023.
- 11.3. With the Gazette Notification, the Government of India has commenced the process of implementation of the new Telecom Act. It may be noted that operationalization of the Notified Provisions will be covered under the Rules that are pending publication and notification, which is likely to take place pursuant to a consultative process. It is pertinent that the provisions granting rule making powers to the DoT have been notified and will come into force on the Appointed Day. To provide consistency to the stakeholders in the meantime, the DoT has brought into force the grandfathering provisions under the Telecom Act that validate the acts taken, and the rules and orders existing prior to the Appointed Day, unless such rules are inconsistent with the Telecom Act or are superseded by any Rules that may be notified thereunder.

\*\*\*