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Update – Draft Telecommunications Right of Way Rules, 2024

On July 9, 2024, the Department of Telecommunications, Ministry of Communications, Government of India ("**DoT**") released the draft Telecommunications Right of Way Rules, 2024 ("**Draft RoW Rules**") for public consultation.

The Draft RoW Rules have been proposed under the recently enforced enabling Sections 11, 12, 15, and 56 of the Telecommunications Act, 2023 ("**Telecom Act**"). The Draft RoW Rules are slated to replace the Indian Telegraph Right of Way Rules, 2016 ("**2016 Rules**") notified under the Indian Telegraph Act, 1885 with an objective of promoting ease of doing business.

The Draft RoW Rules propose to regulate permissions for right of way for telecommunication networks and are presently open for public consultation and feedback for a period of thirty days. The Draft RoW Rules seek to address the lacunae in the 2016 Rules viz., inconsistent approach by local bodies in terms of imposition of higher charges & timelines for grant of permission, differential validity period of permission, etc., to simplify the procedures to facilitate faster and easier deployment of telecommunications infrastructure to enable a more efficient 5G rollout.

We have discussed below some of the key highlights of the Draft RoW Rules.

Key Highlights of the Draft RoW Rules, 2024

1. Expansion of scope of Applicant and Public Entities

- 1.1 The Telecom Act expands the scope of the persons who can apply for right of way permission by replacing the term 'licensee' as used under the 2016 Rules with the term 'facility providers'. Facility providers can be the Central Government or entities authorized by the DoT under the Telecom Act and include their contractor or sub-contractor or agent.
- 1.2 This expansion in scope will likely reduce the effort of telecom licensees to apply for such permissions across sites and locations in India, as the same can be routed through authorized third parties.
- 1.3 The Telecom Act also expands the scope of the entities which may provide right of way over public property, subject to the provisions of the Telecom Act and the Draft RoW Rules. Unlike the 2016 Rules, the Telecom Act and the Draft RoW Rules use the term "public entities" which includes not just the Central and State Governments and any authority, body or company established by them but also any non-government entity vested with ownership, control or management of any public facilities as notified by the Central Government.

2. Permission for Right of Way over Public Property

2.1 Single Window Clearance:

- (a) Akin to the system introduced by the 2022 amendment to the 2016 Rules, the Draft RoW Rules provide for a single window clearance portal for obtaining right of way permissions from public entities in respect of public property in order to reduce multiplicity of compliance and facilitate faster approvals. The Gati Shakti Sanchar

Portal of Ministry of Communications currently operates such single window portal, which will continue.

- (b) The Draft RoW Rules clarify that all applications, notifications, clarifications, permissions, objections, or rejections under the Draft RoW Rules will be made via this portal.
- (c) Similar to the position under the 2016 Rules, every public entity is required to notify on the portal the officer (by designation) who will be the nodal point for the purpose of the Draft RoW Rules.

2.2 Streamlining of Timelines:

- (a) The application process in terms of supporting documents (such as details of nature and location, space required, mode and time duration for execution of work, inconvenience likely to be caused to public and measure proposed to mitigate such inconvenience, measures to ensure public safety, certification by structural engineer, etc.,) remain similar as under the 2016 Rules. However, under the Draft RoW Rules, clear timelines have been fixed to streamline the entire application process for grant of permission for right of way by public entities for establishing underground and overground telecommunication infrastructure including usage of street furniture for installation of small cells and telecommunication lines.
- (b) These fixed timelines and additional clarifications to the application process are a welcome addition lauded by the industry (according to press reports) in anticipation of faster approvals and include the following:
 - (i) Public entity must seek clarifications or further documents through the portal in one consolidated requisition within thirty calendar days from receipt of the application;
 - (ii) Public entity must upload reasons for rejection of an application on the portal within forty-five days from receipt of application and the facility provider may respond within fifteen calendar days to counter the reasons cited and proposed mitigations which should be accepted or rejected within seven calendar days;
 - (iii) Public entity must grant permission within sixty-seven calendar days of receiving the application;
 - (iv) Public entity must refund eighty percent of the application fees paid within fifteen calendar days of said rejection (no administrative fees are payable for application for use of street furniture to install small cells and telecommunication lines and fees for other applications for establishing underground and overground telecommunications network are capped at a prescribed ceiling); and
 - (v) Deemed approval in case there is no grant or rejection received within the given timelines, and requirement for the public entity to upload on the portal the terms and conditions of such deemed approval within seven days.

2.3 Compensation:

- (a) For use of public property under which the overground telecommunication network is proposed to be established, the public entity may charge compensation for the value

of the public property from the facility provider, not exceeding the prescribed amount. As per the Schedule to the Draft RoW Rules, such amounts can be charged where the establishment of such telecommunication network renders the public property unlikely to be used for any other purpose, and may be charged either once or annually, at the rates determined by the public entity by general order.

- (b) For usage of street furniture for installation of small cells and telecommunication line, similar to the 2016 Rules, nominal ceiling rates have been prescribed under the Schedule to the Draft RoW Rules.
- (c) Similar to the 2016 Rules, no compensation will be payable for:
 - (i) Establishment of underground telecommunication network;
 - (ii) Establishment of temporary overground telecommunication network (wherein the underground telecommunication should be restored within sixty calendar days of notification of damage to the public entity);
 - (iii) Establishment of poles for installation of small cells and telecommunication line; and
 - (iv) Deployment of small cells on buildings or structures under the ownership, control or management of public entities.

2.4 Restoration:

- (a) Akin to the 2016 Rules, at the option of the public entity, the facility provider may be required to restore any property which is damaged as a result of the works relating to right of way for underground or overground infrastructure or pay compensation for damage as may be mutually agreed, capped at the amounts specified in Part 2 of the Schedule to the Draft RoW Rules.
- (b) Where the public entity seeks restoration, the grant of permission to the facility provider will be subject to provision of an undertaking and a bank guarantee not exceeding the prescribed amount. This position is similar to the 2016 Rules.

2.5 Obligations of facility provider: A facility provider who has been granted right of way should ensure, amongst others, that all required payments are made, terms and conditions of permission are adhered to, implement measures to ensure public safety, and provision for real time information of underground telecommunication network through positional intelligence.

2.6 Power to inspect or monitor execution of works: Similar to the 2016 Rules, the public entity retains the power to monitor or inspect the execution of works by the facility provider to ascertain compliance with the conditions of grant of permission and impose additional conditions as required. The public entity can also terminate the permission in case of default in payments by the facility provider and has the power to forfeit the bank guarantee or withdraw permission in case of willful violation of conditions for grant of permission.

3 **Right of Way over Private Property**

3.1 Agreement with owner/occupier:

- (a) Unlike the 2016 Rules, the Draft RoW Rules introduces a detailed process for any facility provider desirous of seeking to set up telecommunication network over any immovable property other than public property (which includes private property). In

this regard, the Draft RoW Rules require facility providers to obtain prior consent and enter into mutual agreement with the person who has ownership, control, or management over such property.

- (b) The Draft RoW Rules provide certain terms that are required to be part of such an agreement such as time and manner of entry, consideration payable, steps to be taken in the event of any damage to the property including restoration or compensation, and other measures to mitigate inconvenience and enhance safety. The Draft RoW Rules clarify that such an agreement is not required to be registered under the Registration Act, 1908.

Pertinently, the Telecom Act has brought in much needed relief to property owners by expressly excluding the telecommunication network installed on any property from being considered as part of such property for the purposes of any transaction, property tax, levy, cess, fees or duties applicable on such property.

- (c) While the facility provider does not require any permission from the public entity for such right of way over private property, it should notify the relevant public entity in advance in case of establishment of mobile tower or pole over such property. This position remains the same as under the 2016 Rules.

3.2 Right of Way in Public Interest:

- (a) The Draft RoW Rules also prescribe the mechanism through which the facility provider can request the District Collector or other designated officer to determine provision of right of way by the private property owner/ occupier in public interest (subject to terms and conditions including compensation), where it is unable to reach an agreement with such private owner.
- (b) The abovementioned request is required to be examined and rejected within thirty days or a notice must be sent to the owner of the property for a response who will have fifteen days from its receipt to present their concerns in writing. A decision is required to be made by the relevant authority within 60 days.
- (c) As per press reports, the industry has welcomed this move as it is expected to address challenges such as denial of access by private owners. However, given what is considered to be 'public interest' may be subject to differential interpretation by various local bodies, this may be concerning for private citizens who own or occupy such private property.

4 **Common Duct and Cable Corridor for all Facility Providers**

- 4.1 The Telecom Act enables the Central Government to notify certain infrastructure projects that may require establishment of common ducts or conduits or cable corridors for installation of telecommunication network. Such telecommunication networks are required to be made available on an open access basis to facility providers.
- 4.2 The Draft RoW Rules requires the public entity having ownership or control or management over such a project to provide an online application process to enable open access to facility providers on a non-discriminatory basis, subject to payment of charges based on prevailing market rights and based on the principle of cost recovery over a minimum period of twenty five years.
- 4.3 This has been seen as a crucial initiative to strengthen the essential infrastructure required for

last mile connectivity and appears to lay the foundation for expanding digital public infrastructure in India.

5 Removal and Relocation of existing Telecom Networks

- 5.1 By way of departure from the 2016 Rules, the Draft RoW Rules allow any person having control or ownership or management over a property to request the facility provider to remove, relocate or alter the underground or overground telecommunication network placed on such property for a reasonable, expedient and necessary cause. Under the 2016 Rules, such an enablement was granted to the appropriate authority.
- 5.2 Within thirty calendar days of receipt of such notice, the facility provider is required to provide a detailed plan for the removal, relocation, or alteration as applicable and the expense of such works to such property owner. While the cost of such removal, etc., should be borne by the facility provider, the property owner is required to defray such expenses from the compensation that the person may have received from the facility provider.
- 5.3 All required work should be completed by the facility provider within a period of sixty calendar days from the date of request.

6 Dispute Resolution

- 6.1 Unlike the 2016 Rules, the dispute resolution mechanism has been provided under the Telecom Act.
- 6.2 As per the Telecom Act, any dispute relating to compensation will be adjudicated by the jurisdictional District Judge and any other dispute will be adjudicated by the jurisdictional District Magistrate.

7 Concluding Remarks

- 7.1 The reforms relating to right of way have been brought about in a phased manner by way of multiple amendments to the 2016 Rules, reacting to challenges highlighted by the industry stakeholders.
- 7.2 The Draft RoW Rules appears to build on the existing regime under the 2016 Rules and introduce certain significant provisions to ease the process of obtaining right of way permissions which has been classified by the Minister of Communications as one of the four basic ingredients for ensuring faster rollout of 5G services across the country, along with allocation of spectrum, co-operative federalism and rollout of services. The right of way framework under the Telecom Act appears to be geared towards reducing cost and timelines to benefit the expansion of telecommunication infrastructure.
