

September 2022



## Indian Telecommunications Bill, 2022

### Introduction

On September 21, 2022 the Central Government's Ministry of Communications released a draft "Indian Telecommunication Bill, 2022" ("[Bill](#)"), along with an [Explanatory Note](#) for public comments. Comments on the Bill can be sent till [October 20, 2022](#).

The Bill has been released pursuant to a public [consultation process](#) initiated in July 2022 for the purpose of developing a modern legal framework for telecommunication. The Bill, once enacted, will replace the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933 and the Telegraph Wires (Unlawful Possession) Act, 1950, and amend the Telecom Regulatory Authority of India ("[TRAI](#)") Act, 1997.

The Bill is a part of a larger endeavor of the Central Government to reform the legal framework regulating the digital and communications industry. Reportedly, the Government will also soon be initiating public consultations on the "Digital India" and Data Protection Bills, which may replace the Information Technology Act, 2000 ("[IT Act](#)"), and introduce a comprehensive data protection regime respectively.

### Key Highlights of the Bill

- **Expanded Definition of Telecommunication Services:** In addition to including traditional telecom services such as internet and mobile services, satellite based communication and electronic mail, voice, video and data communication services, in-flight and maritime connectivity services, the definition of "telecommunication services" also includes services such as "broadcasting services" and over-the-top (OTT) communication services, etc. Some of these services are currently regulated under disparate rules/guidelines/ laws. The Bill will provide a statutory basis to regulate the above mentioned services. Apart from these,

the Central Government may also notify other services as telecommunication services. (S. 2(21))

- **Power to Grant Licenses and Registrations:** Under the Bill (S. 3(2)), the Central Government can grant:
  - **Licenses** for providing telecom services or "establishing, operating, maintaining and expanding" telecom networks.
  - **Registration** for providing telecom infrastructure.
  - **Authorisation** for possessing wireless equipment.
  - **Assignment** of spectrum.

The Bill empowers the Central Government to grant exemptions from the requirement of license, registration, authorisation, or assignment (S. 3(3)).

- **Existing Licenses, Registration, Authorisation, and Assignment:** The Bill specifies that the terms and conditions under which any license, registration, authorisation, or assignment has been granted will not be retrospectively modified to the detriment of an entity, except for some limited reasons such as public emergency, public safety or national security (S. 4(2)).
  - Existing licensees can either continue to operate under their licenses for the duration specified under such licenses, or migrate to new licensing terms and conditions. Similarly, existing providers of telecom infrastructure can either continue under that registration for 5 years, or migrate to new terms and conditions (S. 4(3)-(4)).
- **Assignment of Spectrum:** The Bill empowers the Central Government to allocate spectrum through: (i) auction, (ii) administrative process (for government functions, or purposes specified under Schedule 1) or (iii) in any other manner that may be prescribed. Existing administrative assignments will continue to be valid for the remaining duration, or 5 years, whichever is earlier. Similarly, existing



# Regulatory Updates

exemptions for specific usages and frequencies will continue (S. 5(2), (4)-(5)).

- **Mergers, Demergers, and Acquisitions:** Any licensee or registered entity can merge, demerge, acquire, or restructure as per applicable law, after providing **notice** to the Central Government. The resultant entity will have to comply with the terms and conditions (including fees and charges) applicable to the licensee or registered entity, and any other prescribed terms and conditions (S. 19).
- **Insolvency and Bankruptcy:** Any licensee or assignee of the spectrum can continue to operate after becoming subject to insolvency proceedings if they: (i) can continue to provide, operate, or utilize the telecom service, telecom network, or spectrum respectively, (ii) do not default on payment of any dues payable by them, and (iii) comply with any additional / modified prescribed terms and conditions. If these conditions cannot be complied with, the assigned spectrum will revert to the Central Government (S. 20).
- **Action Against Breach of Terms and Conditions:** Central Government may take certain actions for breach of terms and conditions including: (i) impose monetary penalty, (ii) issue directions to prevent a breach, and (iii) issue directions to curtail/revoke/suspend/vary the terms and conditions. These actions will depend on specified factors such as nature, gravity, and duration of the breach etc. The monetary penalty will depend on the categorisation of the breach as specified under Schedule 3. For e.g., penalty for a severe breach can be upto INR 5 crores, while penalty for a minor breach can be upto INR 1 lakh. (S. 7)
- For a breach of terms and conditions, a licensee, registered entity or assignee may submit a voluntary undertaking to the Central Government to take or refrain from taking a specific action. If the undertaking is accepted by the Government, no proceeding will be undertaken against the entity for that breach. (S. 8)
- **Dispute Resolution:** The Bill provides for the right of appeal before a prescribed appellate authority, against the Central Government's action for breach. It also enables the Government to set up an alternate dispute resolution mechanism (such as arbitration, mediation or another process) (S. 10 and 11). Details of this dispute resolution mechanism will be important to note in light of the existing mechanism of the Telecom Disputes Settlement and Appellate Tribunal.
- **Enforcement and Compounding:** Schedule 3 provides the punishment for offenses under the Bill (for e.g., providing telecom service without a license or negligently causing damage to telecom infrastructure) and also clarifies whether they are cognisable and compoundable. The offenses are punishable with fine, imprisonment or suspension of the telecom service (or a combination of any of these). If the offense is committed by a company, the employee (except an Independent Director) responsible for the conduct of the business relating to the offense will be liable (S. 47 and 48; Chapter 11). The Bill introduces compounding of offenses for telecom companies and the procedure (S. 49).
- **Public Safety, Emergency and National Security Measures:** Central or State Governments may direct time bound suspension of transmission of messages or provision of telecom networks/services, interception and disclosure of data on specific grounds (for e.g. security of India, friendly relations with foreign states, public order, preventing incitement to an offense). Central or State Government may take temporary possession of telecom services, network or infrastructure, or provide a priority call routing scheme in the event of a public safety or public emergency (S. 24; Chapter 6). Central Government may also take measures as necessary, such as issuing directions on applicable standards, procurement of telecom equipment, etc., in the interest of national security, friendly relations with foreign states or in the event of war (S. 25; Chapter 6).
- **Simplifying 'Right of Way' for telecom infrastructure:** The Bill provides a broad framework for obtaining right of way for telecom infrastructure in both public and private properties. It mandates that right of way will be provided in a non-discriminatory manner. The Central Government may prescribe: (i) the specific procedure including timelines for approval, (ii) the appropriate authority for dispute resolution, relevant procedure, appellate authority, etc. with respect to right of way (Chapter 4).
- **User Identification and Sender Identification:** Entities granted a license under the Bill will be required to unequivocally identify the person to whom it is providing services, as per the prescribed verifiable mode of identification. Further, the identity of the sender of a message using telecom services must be made available to the recipient, in the manner prescribed by the Central Government, to confront cyber fraud (S. 4(7) and (8)).
- **Unwanted Advertising or Promotional Messages:** The Central Government can prescribe several measures to protect users from unwanted advertising or promotional messages. These include measures relating to obtaining prior consent for receiving such messages, maintaining 'Do Not Disturb' registers to ensure such messages are not received without prior consent and establishing reporting mechanisms for users (S. 33).
- **Enabling innovation and technological development:** The Bill enables the Central Government to create a "regulatory



# Regulatory Updates

sandbox”, which will allow live testing of products and services in a controlled and supervised environment (S. 32). Additionally, the Bill enables new technologies to be deployed in the assigned spectrum to enable utilisation of the spectrum in a liberalised manner (S. 5(7)).

- **Creation of security interests:** The Central Government is empowered to prescribe the security interest that a licensee or a registered entity can provide to the lenders financing them, and the terms and conditions of such security interest (S. 35).

## Key Observations

- **Interplay with Existing Cable TV Framework:** The Bill enables licensing of broadcast services, but does not refer to the existing framework under Cable Television Networks (Regulation) Act, 1995, which has historically been administered by a different agency - the Ministry of Information and Broadcasting. (S. 2(21)).
- **Lack of definition of ‘OTT’ communication services:** The Bill does not define OTT communication services which are included in “telecommunication services”. Therefore, it is unclear which OTT services are intended to be licensed. A broad application of licensing requirements to Internet-based apps would cause significant concerns across industries.
- **Overlap of takedown powers with IT Act:** Governments’ power to direct time bound suspension of transmission of messages or provision of telecom networks/services, interception and disclosure of data in specific situations under the Bill may overlap with their existing takedown/surveillance powers under IT Act, as telecom licensees (such as internet services providers) already qualify as intermediaries under IT Act.
- **Subsequent standards and conditions to implement the Bill’s principles:** Several provisions of the Bill note that

the Central Government will further prescribe standards or conditions to clarify implementation and enforcement of the Bill. For e.g., prescribing or notifying (i) standards with respect to telecom equipment, telecom services etc. (S. 23); (ii) civil liabilities for persons causing damages to telecom networks or infrastructure (S. 38); and (iii) conditions of grant of licenses, registration, authorisation or assignment including the payment of fees (S. 4(1)).

- **Modifying TRAI’s Powers:** Certain provisions of the TRAI Act have been amended to dilute TRAI’s regulatory functions. For e.g. the Bill repeals provisions which require the Central Government to consult TRAI on need and timing of introducing a new service provider or refer back TRAI’s recommendation which it disagrees with. On the other hand, the Bill empowers TRAI to pass directions to licensees to abstain from predatory pricing. It will be important to note how this interplays with the Competition Commission of India’s powers (S. 46).

Please get in touch with the SAM attorney you regularly work with or with Shahana Chatterji at [shahana.chatterji@amsshardul.com](mailto:shahana.chatterji@amsshardul.com) or Shashank Mishra at [shashank.m@amsshardul.com](mailto:shashank.m@amsshardul.com) if you would like to discuss any aspect of the Bill in more detail.

**Disclaimer:** This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.

**Authors:** Shahana Chatterji, *Partner*; Shashank Mishra, *Principal Associate*; Puneeth Nagaraj, *Principal Associate*; Akshi Rastogi, *Senior Associate*; Varsha Rao, *Senior Associate*; and Parv Kaushik, *Associate*.

