

ERGO

Analysing developments impacting business

TELECOMMUNICATIONS BILL 2022: AN OVERHAUL OF THE REGULATORY FRAMEWORK

23 September 2022

Introduction

The Department of Telecommunication (**DoT**) issued the '*Draft Indian Telecommunication Bill, 2022*' (**Bill**) on 21 September 2022. The Bill seeks to override three legislations (i.e., the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, and the Telegraph Wires (Unlawful Possession) Act, 1950). The public consultation for the Bill is open till 20 October 2022.

The salient features¹ of the Bill are as follows:

- **Licensing regime to continue:** The Bill proposes to continue regulating the telecommunications sector through the licensing regime as is the case at present. It appears that a new set of license terms will be rolled out by DoT as there is an option given to the existing licensees under the Bill to either continue with the current licensing terms for the remaining duration of their license or migrate to new terms.
- **Definition of telecommunication services:** In addition to voice, data and internet, the definition of '*telecommunications services*' now includes e-mail, interpersonal communication services, over-the-top (**OTT**) communication and broadcasting services. Notably, since the Bill proposes that a license will be required for providing '*telecommunication services*', this will have wide ramifications, as many more companies providing the services described above are likely to fall within the ambit of the Bill.
- **Infrastructure providers:** The registration requirements for providers of '*telecommunication infrastructure*' (currently known as '*IP-I*' entities) has been proposed to continue in the Bill. Notably, submarine cables are now part of '*telecommunication infrastructure*' requiring registration. It is clarified in the Bill that any casing, coating, tube or pipe enclosing the submarine and any appliance connected for insulating the submarine cable will also be part of '*telecommunication infrastructure*' and consequently require registration, in contrast to the current regime relating to IP-I entities. It seems that the DoT may formulate new rules for '*telecommunication infrastructure*' as the Bill gives an option to existing IP-I entities to continue their current registrations up to a

¹ Please note that this is only a highlight of the Bill and does not cover all provisions of the Bill.

maximum of 5 years from the date notified by DoT, after which mandatory migration to new terms and conditions is prescribed.

- Stricter Know-Your-Customer (KYC) and caller-ID norms: It is expected that the norms for KYC and caller-ID requirements will be made more stringent under the Bill, as it requires (a) the licensee to identify the sender of a message / call through a verifiable mode, and (b) ensure that identity of any person sending a message is made available to the person receiving such message / call. Notably, this may have privacy implications, especially for OTT communication service providers. It will be interesting to see how this issue is addressed in the new privacy law that may unfold in the near future.
- Authorization for possession of 'wireless equipment': The Bill also proposes that possession of wireless equipment (e.g., telecom equipment used in wireless communication or wireless transmitters for broadcasting or emission of wireless communication) will require an 'authorization' (or an exemption thereof). With limited information on this aspect and wide definition of wireless equipment, it will be important to get further clarity regarding the authorization requirements.
- Spectrum management: The Bill sets out that spectrum allocation can be either through 'administrative process' (i.e., assignment without auction) or auction (through competitive bid process). Importantly, any spectrum already assigned through administrative process will continue to be valid only for 5 years from the date notified by DoT or the date of expiry of such assignment, whichever is earlier. For efficient use of spectrum, the DoT has the right to re-farm (i.e., repurposing for a different use) or harmonize (i.e., rearrange) any frequency range subject to payment of fees / charges by DoT. Further, DoT may establish a monitoring mechanism to track compliance of spectrum utilization terms. Sharing, leasing and trading of spectrum have been recognized under the Bill.
- Voluntary undertakings: The Bill has introduced a new concept of 'voluntary undertakings'. To this end, the licensee or registered entity has an option to voluntarily disclose any breach of the license or registration terms by giving an undertaking that specified action will be taken by such entity. Once the voluntary undertaking is accepted by the DoT, it shall bar any proceedings against such entity.
- Right of way (RoW): A telecommunication infrastructure provider / licensee has a right to obtain RoW in public property. For RoW relating to private property, if the telecommunication infrastructure provider / licensee fails to achieve RoW requested, DoT has the right to acquire such RoW to maintain telecommunication infrastructure after following due procedure.
- Restructuring / insolvency: The existing merger and acquisition guidelines which require multiple permissions from DoT have now proposed to be simplified under the Bill with the requirement to provide notice to the DoT for any merger / acquisition / demerger. Further, where insolvency proceedings are ongoing, the licensees are permitted to operate as long as the licensee is able to continue providing telecom services using assigned spectrum and does not default in any payment under the license and complies with any modified terms prescribed by DoT. In case the licensee fails to comply with the above conditions, the spectrum assigned to such licensee will revert to DoT. Upon consideration, the licensee may be permitted to continue using the spectrum subject to compliance with prescribed conditions.

- Offences and penalties: Under the Bill, offences and penalties have been classified as 'cognizable' and 'non-cognizable' and compounding of certain offences is also prescribed. Gradation of penalty in case of breach of license terms is also prescribed based on certain parameters. This will ensure that excessive penalties are not imposed, and a reasonable assessment is carried out before imposing them.

Comment

The issuance of the Bill beckons the hope of a transformation in the telecom regulatory space. With the ongoing consultation process, various stakeholders will get an opportunity to voice their concerns and provide their suggestions. This process will likely culminate in a holistic law that will govern telecommunications in India.

The Bill introduces forward looking concepts such as regulatory sandbox, compounding of offences and voluntary undertakings. Also, the Bill stipulates protection of users from certain messages relating to advertising and promotion of goods / services. The DoT is empowered to take certain measures to protect users including by ensuring consent is obtained, preparing 'Do not disturb' registers and implementing mechanism to report such messages which are in contravention. It will be interesting to follow how provisions relating to such messages in the Bill will interplay with Telecom Regulatory Authority of India's Telecom Commercial Communications Customer Preference Regulations, 2018 which covers the same subject matter. Further, to avoid any overlap between Information Technology Act, 2000 and the Bill with respect regulation of OTTs will need to be addressed cautiously. Introduction of certain provisions, such as protection of DoT and its officers against actions taken in good faith will ensure quick decision making and expected to help grow the telecom ecosystem in the long run.

- Harsh Walia (Partner), Abhinav Chandan (Partner), Shobhit Chandra (Counsel) & KCO TMT Team

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).