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WAY FORWARD FOR RIGHT OF WAY: NEW RULES NOTIFIED UNDER THE TELECOM ACT

18 July 2024

On 11 July 2024, the Government of India through the Department of Telecommunications (DoT) published the draft Telecommunications Right of Way Rules, 2024 (Draft Rules) in the Official Gazette. The Draft Rules have been published pursuant to the enactment of the provisions relating to Right of Way (RoW) under the Telecommunications Act, 2023 (Telecom Act) and are aimed at relaxing the regulatory burden for establishing telecom networks. These Draft Rules have been published for information of all persons likely to be affected by it and will be taken into consideration after expiry of 30 days from the date of its publication in the Official Gazette. Any objections or suggestions in respect of the Draft Rules can be submitted to DoT within this period of 30 days.

Salient features of the Draft Rules

- **Scope and applicability.** The Draft Rules will be applicable to RoW for telecommunication networks. It sets out powers of a 'public entity' (i.e., any government body or entity vested with the control of public facility) in relation to an application made by a 'facility provider' (which includes the Central Government and authorised entities such as telecom service providers) seeking RoW for laying down and deploying telecommunications network. Notably, a web/ mobile based portal is also envisaged to be notified by the government for the purposes of facilitating all applications, permissions, clarifications etc. For clarity, RoW permission granted to a facility provider will be valid until the term of its authorisation unless it is terminated earlier.
- **Appointment of nodal officer.** Every public entity is required to notify a nodal point of contact on the portal, within 30 days of notification of the Draft Rules. Any replacement of this nodal officer should also be promptly updated on the portal.
- **Establishing underground / overground telecom network in public property.** A facility provider seeking RoW permission for establishing underground telecom network in public property may submit an application on the portal to the relevant public entity, along with the supporting documents. Thereafter, the public entity may either grant or reject the application, on the portal. In case the public entity fails to grant or reject the application within the prescribed timelines, permission shall be deemed to be granted. Additionally, in the event of any damage to the property due to activities relating to RoW, the facility provider may either restore the property to the state as it existed or pay a mutually agreed compensation, capped at a prescribed amount. Notably, no compensation can be charged by the public entity for establishment of underground telecom network for public property. However, in case

of overground telecom network, a compensation for the value of the property may apply where the public property cannot be used for any other purpose.

- **Establishment of temporary overground telecom network:** In the event of any damage caused to an existing overground telecom network, a facility provider may temporarily establish overground telecom network in the prescribed manner, in order to promptly restore telecom services. Pertinently, no RoW permission is required for temporary establishment of overground telecom network for such purposes.
- **Obligations of facility provider:** Upon being granted the RoW permission, the facility provider shall pay all the amounts prescribed under the Draft Rules and comply with the specified terms and conditions. Additionally, measures must be implemented to ensure public safety and mitigate public inconvenience. Such facility provider may also use appropriate technology to provide real-time information of all underground telecom network.
- **Telecom network in property other than public property:** A facility provider that wishes to enter any immovable property other than public property shall obtain prior consent from the owner (including a person who controls or manages such property) of such property. No charges or compensation can be levied by a public entity for establishment of telecom network in such properties. In case of establishment of a mobile tower or pole, the facility provider must submit requisite information on the portal to the relevant public entity along with the prescribed documents. Further, in case the facility provider fails to reach an agreement with the owner of the property other than public property, the Central Government may permit RoW if it is necessary in the public interest.
- **Common duct and cable corridor:** Where the Central Government notifies an infrastructure project which requires establishment of common ducts, conduits or cable corridors (collectively, Ducts) for installation of telecom network, the relevant public entity managing the project should enable facility providers to apply online for installation of telecom network through such Ducts. Ducts must be available for installing the telecom network on a non-discriminatory and open access basis.

Comments

The RoW Draft Rules marks a milestone in India's telecom infrastructure landscape. It introduces a simplified and standardised application process for permissions, with defined timelines for approvals and therefore reducing administrative delays and accelerating the deployment of telecom infrastructure. Enabling open and non-discriminatory access to Ducts also optimises the utilisation of resources. Such balanced and streamlined regulations have the potential to increase foreign and domestic investments in this sector and have an impact on overall network coverage and quality of service which is essential for the roll-out of new 5G technologies.

As the telecom industry navigates this transition to the new Telecom Act, it will be interesting to witness the relevant players leveraging these opportunities and effectively integrating them into strategic planning to further India's telecommunication advancements.

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