

ERGO

Analysing developments impacting business

GOVERNMENT PUBLISHES RULES FOR TEMPORARY SUSPENSION OF TELECOMMUNICATION SERVICES

25 September 2024 On 28 August 2024, the Ministry of Communications published the draft Temporary Suspension of Telecommunication Services Rules, 2024 (Rules). These Rules have been introduced under the recently enacted Telecommunications Act, 2023 (Telecom Act), replacing the earlier Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 and its amendment in 2020 (collectively, 2017 Rules) that were published due to the powers under the Indian Telegraph Act, 1885 (Telegraph Act). The Rules will be taken into consideration after 30 days from its publication, and stakeholders can provide objections or suggestions in the interim.

Background

The Rules are framed under Section 20(2)(b) of Telecom Act that empowers the Central Government to temporarily suspend telecommunication services on the occurrence of any public emergency, or in the interest of public safety, or in the interest of the sovereignty and integrity of India, or for preventing incitement to the commission of any offence. Notably, even after the Rules come into effect, existing orders for suspension passed under the 2017 Rules will remain valid until their designated expiry date, ensuring a smooth transition between regulatory regimes. It is noteworthy, that the Rules essentially reproduce the same procedure for suspending telecom services that was set out under the 2017 Rules, and do not propose to bring about radical changes.

Key features of the Rules

1. **Competent Authority for suspension orders:** Similar to the 2017 Rules, the power to issue a temporary suspension order under the Rules is strictly limited to a "Competent Authority," defined as the Union Home Secretary in the case of the Central Government, or the Secretary to the State Government in-charge of the Home Department in the case of a State Government. The Rules include a notable proviso for exceptional circumstances where the Competent Authority is unable to issue the suspension order directly. In such cases, an officer of the rank of Joint Secretary or higher, duly authorised by the Competent Authority, may issue the order. However, the order must be confirmed by the Competent Authority within 24 hours, failing which the order ceases to exist. This provision ensures that emergency suspension orders can be passed rapidly while maintaining accountability at the highest levels of government.
2. **Clear limitations on suspension orders:** Suspension orders can be passed to shut down internet services, which being one of the most widely used means of communication in the present day, would in turn lead to stifling of fundamental freedoms of speech, expression and information. However, the Rules impose the following limitations on suspension orders that would effectively ensure that restrictions on fundamental freedoms, if any, are reasonable.
 - a. **Defined geographic area:** Suspension orders must explicitly state the geographic area affected by the order. This ensures that suspensions are localized and do not affect broader regions unnecessarily.

- b Specified duration: The duration of the suspension is limited to a maximum of 15 calendar days. This temporal limitation ensures that suspensions do not become indefinite, thus protecting businesses and citizens from long-term disruptions in telecommunication services.
3. **Publication of reasoned suspension orders**: The Rules require that every suspension order should be published, which further enhances transparency in this process. Each order must clearly state the reasons for the suspension and be communicated to the relevant parties, ensuring that the rationale behind each suspension is publicly available.
4. **Designation and role of Nodal Officers**: To facilitate the effective implementation of suspension orders, the Rules mandate that each authorized telecommunications service provider must designate a Nodal Officer for every service area or state. Such designation was also required under the 2017 Rules. Nodal Officers are responsible for receiving and implementing suspension orders, and they must be notified of the orders in writing or through secure electronic communication. These designated points of contact ensure swift and efficient implementation of such directives.
5. **Review committee and oversight mechanism**: The review committee mechanism established under the 2017 Rules remains a critical component of the Rules. Representatives from both the Central and State Governments, as prescribed, will comprise these review committees (Committees).

The Committees are tasked with reviewing any suspension orders within 5 calendar days of issuance. If the Committee finds that the suspension order does not comply with the provisions of Section 20(2)(b) of the Telecom Act, it may set aside the order. This provides an essential layer of oversight, helping to ensure that suspensions are justified, limited in scope, and compliant with the law.

Comments

In contrast to the Telegraph Act, the Telecom Act sets out grounds pursuant to which suspension orders can be passed following the procedure laid down under the Rules. Such grounds include public emergency, public safety, sovereignty and integrity of India, etc. Therefore, the Committee constituted under the Rules would be able to verify the legality of the orders against the parameters outlined in the Telecom Act, as opposed to the committee under the 2017 Rules that was not given such contours of operation. This provides a necessary system of checks and balances over the suspension orders. The Rules bring enhanced clarity and procedural safeguards to the process of telecommunications suspensions. For telecommunications service providers, the introduction of strict limitations on the geographic scope and duration of suspensions provides a degree of certainty and predictability. By requiring publication of all suspension orders, the Rules increase transparency in the government's actions that have the potential to restrict the fundamental rights enshrined under the Constitution of India i.e., right to freedom of speech and expression, and right to information. Publication of reasoned orders will go a long way in aiding courts to test whether such restrictions on fundamental rights are reasonable.

As these Rules come into force, it will be essential to monitor their practical application, particularly in light of past controversies regarding the suspension of services in various parts of the country. The effectiveness of the review mechanism and the adherence to the temporal and geographic limitations imposed by the Rules will be critical in determining the overall success of this regulatory framework.

- Harsh Walia (Partner); Abhinav Chandan (Partner); Shobhit Chandra (Counsel) and Khyati Goel (Associate)

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](#).