

# The Telecommunications Act, 2023

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# The Highlights

- ❑ **An adaptive and future ready regulatory liberalized framework:** will ensure adaptability to evolving technologies;
- ❑ **Clarity in processes for Authorization** for Telecom Services & Networks; and **Assignment of Spectrum;**
- ❑ **Streamlines framework for Right of Way** to lay Telecommunication Networks over both Public & Private properties (adding to efficiency of roll out of telecom networks & services);
- ❑ **Adjudicatory mechanism made business-friendly;** concept of Voluntary Undertaking;
- ❑ **Rationalising Penalties, with focus on Civil Penalties,** while confining imprisonment to only egregious offences.

## What it replaces

### The Telecommunications Act replaces the trio of laws:

- Indian Telegraph Act, 1885;
- Indian Wireless Telegraphy Act, 1933;
- Telegraph Wires (Unlawful Possession) Act, 1950

# Key Milestones in Telecom Liberalisation in India

1984: Subscriber terminal equipment manufacture opened for private sector

1991: Telecom equipment manufacture opened for private sector

1992: Value added services opened up for private sector investment: (a) electronic mail, (b) voice mail, (c) data services, (d) audio text services, (e) video text services, (f) video conferencing, (g) radio paging and (h) cellular mobile telephone.

1994: New Telecom Policy- first major step towards deregulation, liberalization.

1997: TRAI Act establishing the Telecom Regulatory Authority of India

1999: National Telecommunications Policy, replacing the 1994 policy

2000: Telecom Disputes and Settlement Appellate Tribunal (TDSAT) established through amendments to the TRAI Act

2003: TRAI recommendations on Unified Access Service License (UASL), followed by DoT issuance of UASL guidelines

2008: 2G licenses on first come-first serve basis

2012: Supreme Court striking down 122 2G licenses, leading to significant reform in spectrum assignment process

# Key Judicial pronouncements

- Significant role played by the Judiciary in interpreting/ clarifying the legal framework since liberalization.
- Judicial pronouncements span a wide array of issues, for e.g.:
  - **Spectrum Assignment:** 2G Judgment (*CPIL v. UOI, 2012*); *In re Special Reference (2012)*
  - **Adjusted Gross Revenue (AGR):** *UOI v. AUTSPI (2011; 2019; 2020; 2021)*;
  - **Right of Way** related aspects;
  - **Taxation**
  - **Bankruptcy regulations**
  - **Lawful Interception/ Temporary Suspension**
  - **Role of TRAI**

# Key Features of the Telecommunications Act, 2023

# Authorisation

## Authorisation mandatory for:

- Providing Telecommunication services,
  - Establish, operate, maintain or expand telecommunication network, or
  - Possess radio equipment subject to such
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- Different terms and conditions, including fees or charges, can apply for different services, networks, equipment.
  - No one-size-fits-all approach.
  - Exemptions possible; existing exemptions would continue
  - Existing telecom licenses: Option to continue for duration granted; or migrate to new authorisation regime.

# Assignment

- Spectrum vests with the Central Govt. which shall own on behalf of the people of India
- Auction of spectrum: default process, except for items in Schedule
- Items under First Schedule can be granted spectrum through Administrative assignment. Examples:
  - National security, Defence, Public broadcasting, Safety in public transport services; Conservation of natural resources/wildlife, etc.
  - Meteorological purposes
  - Amateur stations, navigation, telemetry
  - Space research, launch vehicle operations
  - Certain specified satellite services
  - Testing, trial, demonstration purposes
- Consistent with International practices.



## Assignment (cont'd)

- **Refarming & Harmonisation:** Enabling provisions for efficient use of spectrum
- **Technologically neutral use of spectrum**
- **Optimal use of spectrum:** Enabling powers to redress unutilised use

# Right of Way

- Efficiency of roll-out- fundamental to telecom services.
- With network infrastructure evolving into small cells, modules, there is no need for any major access requirements or land acquisition
- Provisions to streamline RoW in Public & Private properties

# Public Safety, National Security

- Rules under the earlier Telegraph Act on interception & suspension of telecommunication services, had been refined pursuant to the judgments of the Supreme Court in *PUCL v. UOI* (1997), *Anuradha Bhasin* (2020) & *Puttuswamy* (2017)
- The framework under the new Act is based on the Constitutional safeguards as laid out by the courts
- **Additional provisions:**
  - National Security: Enabling framework to notify trusted sources
  - Notification of specific Telecom Networks as Critical Public Infrastructure: Specific standards, origin-specific requirements.

# User Protection

- Provisions to contemplate steps taken by TRAI with regard to:
  - Prior consent for specific category of messages offering, advertising or promoting goods, services, interest in property, business opportunity, employment opportunity or investment opportunity,
  - Do-Not-Disturb mechanism
  - Ability of users to report malware/ contravention of obligations on specified messages
  
- Online Dispute resolution mechanisms between users & authorised entities

# Digital Bharat Nidhi /Universal Service Obligation Fund (USOF)

- Renaming of USOF & Expansion of its Objectives
- Other than serving rural & underserved areas, following added to uses of the fund:
  - Support R& D activities
  - Pilot projects/ consultancy services for achieving its objectives

# Regulatory Sandbox: A unique feature

## Live testing environment where:

- new products, services, processes and business models may be deployed
- on a limited set of users,
- for a specified period of time, with certain relaxations from the provisions of this Act.

- A unique feature of the law that will enable testing of new technologies for telecom services

RBI & SEBI have put in place sandbox frameworks for testing of financial technology and products; but this is the first time such an enabling framework has been put in place for the telecom sector.

# Adjudication mechanism

- 2-tier dispute resolution framework within the DoT to deal with Breach of Terms & Conditions of Authorisation or any Contraventions:
  - Adjudicating Officer
  - Designated Appeals Committee
- Factors for consideration while assessing penalties:
  - Nature, gravity & impact of the contravention
  - Whether repetitive, or intentional or negligent
  - Action of the authorised person w.r.t remedial actions
- Voluntary Undertakings: Voluntary Disclosure of the contravention & mitigation measures
- **Overall: A Business friendly approach**
- Appeals would lie to the TDSAT or Civil Courts, as the case may be

# Offences

- Civil Penalties for most contraventions:
  - Second & Third Schedule provide details of Civil Penalties for Breach of Terms & Conditions of Authorisation & Other contraventions
- Imprisonment only for egregious offences, e.g.:
  - Providing services/ network without authorisation
  - Unlawful interception
  - Impersonation
  - Unlawful use of telecom identifiers/ tampering with such identifiers
  - Violating National security



## Next steps

- Rule making & effective implementation
- Institutional set up for Adjudication to ensure effective implementation of its business friendly approach

# Thank you!



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