



Tax alert: **The Telecommunications Bill, 2023**

22 December 2023

The Telecommunications Bill, 2023, has been passed in both Houses of Parliament, by the Lok Sabha on December 20, 2023, and by the Rajya Sabha on December 21, 2023. The Bill amends and consolidates laws relating to the development, expansion and operation of telecommunication services and telecommunication networks.

The Bill also attempts to regulate activities related to telecommunications and introduces changes to existing regulatory mechanisms governing the sector, related to the authorisation of services network and equipment, assignment of spectrum, user protection, dispute resolution, penalties and adjudication of contraventions related to authorisation or assignment as granted under the Bill, among others.

The Bill repeals the Indian Wireless Telegraphy Act, 1933, the Telegraph Wires (Unlawful Possession) Act, 1950 and the Indian Telegraph Act, 1885, excluding the provisions of Part III for cases pertaining to laying down of transmission lines under section 164 of the Electricity Act, 2003. It also amends the Telecom Regulatory Authority of India (TRAI) Act, 1997.

In a nutshell

Key aspects of the Act are as captured below:



- Any person or entity intending to provide telecommunication services, network or equipment would require authorisation from the central government.
- Spectrum to be assigned by auction, except for specified uses, where it will be allocated on an administrative basis. Spectrum to be utilised in a flexible, liberalised and technologically neutral manner.



- Provides user safeguards such as consent requirements, Do-Not-Disturb registers, and reporting mechanisms.
- Provides a mechanism to exercise the right of way for laying telecom infrastructure in public and private property.
- Renames the Universal Service Obligation Fund as Digital Bharat Nidhi and allows its use for research and development.



- Specifies civil penalties against breach of terms and conditions of authorisation or assignment.
- Outlines penalties for offences for unauthorized provisioning of telecom services, network establishment, or damage of critical infrastructure.



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Key highlights:

1. Authorisation for Services/Network/Equipment and Assignment of Spectrum:

- The Bill enables the central government to authorise any person intending to –
 - provide telecommunication services;
 - establish, operate, maintain, or expand telecommunication network; or
 - possess radio equipment.
- The government may grant exemptions from authorisation (including exemptions granted prior to the Act, under the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933).
- Allow authorised entity to identify the person to whom it provides telecommunication services through use of any verifiable biometric based identification.
- Assign the spectrum, either through auction or on administrative basis (where such allocation on administrative basis shall be conducted for matters relating to national security, law enforcement and crime prevention, public broadcasting services, certain satellite-based services, and others) and notify a National Frequency Allocation Plan from time to time.
- Allow sharing, trading, leasing and surrendering of spectrum, as well as re-alignment of frequencies to enable optimal authorisation, with specified conditions.

2. Key Definitions:

Some of the key terms defined under the Bill are:

- “message” means any sign, signal, writing, text, image, sound, video, data stream, intelligence or information sent through telecommunication
- “spectrum” means the range of frequencies of Hertzian or radio waves
- “telecommunication” means transmission, emission, or reception of any messages, by wire, radio, optical or other electro-magnetic systems, whether or not such messages have been subjected to rearrangement, computation, or other processes by any means in the course of their transmission, emission or reception
- “telecommunication equipment” means any equipment, appliance, instrument, device, radio station, radio equipment, material, apparatus, or user equipment, that may be or is being used for telecommunication, including software and intelligence integral to such telecommunication equipment; and excludes such equipment as may be notified by the central government
- “telecommunication identifier” means a series of digits, characters and symbols, or a combination thereof, used to identify uniquely a user, a telecommunication service, a telecommunication network, elements of a telecommunication network, telecommunication equipment, or an authorised entity
- “telecommunication service” means any service of telecommunication
- “user” means a natural or legal person using or requesting a telecommunication service but does not include person providing such telecommunication service or telecommunication network.

3. Right of Way for Telecommunication Network:

- The Bill allows and recognizes Right of Way for Telecommunication Network. In this regard, the Act provides that facility providers may seek right-of-way permissions for telecom networks on public or private property by applying to the respective authorised entity in charge defined as “public entity”.

- In this regard, the term “facility provider” and “Public entity” are defined as under:
 - “facility provider” as the central government, authorised entities, contractors, subcontractors, or agents working for them
 - “Public entity” may include central government, state government, local authority, body constituted under statute or non-government entity vested with ownership or control over public facility
- Further, the central government may specify projects needing shared ducts or cable corridors for telecom infrastructure.

4. Standards, Public Safety, National Security, and Protection of Telecommunication Networks:

- The central government has been vested with powers to set standards and assessment measures for telecom equipment, identifiers, networks, services, security (including intrusion prevention), cyber security, encryption, and data processing.
- Further, the central government may temporarily take over telecom services or networks during emergencies, intercept, or block messages; government press messages for publication in India to not be intercepted unless transmission is prohibited.
- For cybersecurity, the central government may notify rules, measures, and traffic data collection for telecom networks.
- Any network impacting national security, economy, public health, or safety may be declared as Critical Telecommunication Infrastructure.

5. Digital Bharat Nidhi:

- The existing Universal Service Obligation Fund is converted to the Digital Bharat Nidhi.
- The sums of money received by the Digital Bharat Nidhi, would be exclusively used to promote access/delivery of telecommunication services in rural, remote and urban areas; support R&D of telecommunication services, technologies, and products; pilot projects, consultancy assistance and advisory support, etc.

6. Innovation and Technology Development:

- The central government may create one or more regulatory sandboxes to encourage and facilitate innovation and technological development in telecommunication.

7. Protection of Users:

- The Act defines “specified message” as messages related to goods, services, property, business, employment, or investment opportunities.
- The central government will introduce user protection measures like consent requirements, Do-Not-Disturb registers, and reporting mechanisms for malware or specified messages.
- Telecommunication service providers to create an online grievance system and outline grievance redressal procedures.
- Users to provide accurate information and comply with Act requirements for telecom services.
- The central government to establish online dispute resolution methods for user-entity conflicts.
- These terms and conditions to not override user rights outlined in the Consumer Protection Act, 2019.

8. Adjudication of certain contraventions:

- The central government will appoint an adjudicating officer, not below the rank of Joint Secretary.
- In case of breach of any terms and conditions of authorisation or assignment, the Adjudicating Officer may conduct an inquiry and issue a written order.
- This could involve directing entities to abstain from the provision of services, impose civil penalties, or make recommendations to the government regarding suspension or curtailment of authorisation.
- Factors considered for penalties include the breach's nature, seriousness, and duration, among others.
- The orders of the adjudicating officer may be appealed before the Designated Appeals Committee within 30 days. Members of the committee to be officers of the rank of at least Additional Secretary.
- Appeals against the orders of the committee, in connection to breach of terms and conditions, may be filed with TDSAT (Telecom Disputes Settlement and Appellate Tribunal) within 30 days.

9. Offences and penalties:

- Violation of the terms and conditions of authorisation is punishable with a civil penalty, ranging from a written warning to a maximum of INR 5 crore.
- Unauthorized provisioning of telecom services, network establishment, or damaging critical infrastructure may lead to imprisonment up to 3 years, a fine up to INR 2 crore, or both.
- Accessing telecom networks/data, transferring data without permission, interception of messages against national security measures may lead to imprisonment up to 3 years, a fine up to INR 50 lakh, or both.
- Actions including possessing equipment blocking telecom, unauthorised usage of identifiers, tampering with identifiers, having radio equipment without authorisation, obtaining identifiers through fraud, or causing damage to non-critical telecom networks can result in imprisonment up to 3 years, a fine up to INR 50 lakh, or both, along with liability for compensation for damages caused.
- Any authorised officer may search any building, vehicle, vessel, aircraft or place in which he has reason to believe that any unauthorised telecommunication network or telecommunication equipment or radio equipment is kept or concealed and take possession.
- An authorised officer may request an authorised entity/assignee to furnish information, document, in relation to a pending or apprehended civil or criminal proceedings.

10. Interplay with the Digital Personal Data Protection Act, 2023:

- Section 19(f) of the Telecom Bill allows the central government to notify standards and conformity assessment measures with respect to encryption and data processing in telecommunication services.
- The Telecom Bill prescribes a punishment of 3 years or fine which may extend to INR 50 lakh or both, for any person who gains or attempts to gain unauthorised access to '*data of an authorised entity*'. The Telecom Bill defines '*data of an authorised entity*' as data which includes subscriber data records, which includes personal data.

11. Repeal and Savings:

- The previous Acts - Indian Telegraph Act of 1885, Indian Wireless Telegraphy Act of 1933, Telegraph Wires (Unlawful Possession) Act of 1950 stand repealed.
- However, anything previously done under those laws is considered to have been done in compliance with the new Act.
- The provisions of Part-III of the Indian Telegraph Act, 1885 to continue to apply to all cases pertaining to

laying down of transmission lines under section 164 of the Electricity Act, 2003.

- Previous rules and orders not conflicting with the new Act are considered valid and will remain until new rules are established.
- Executive actions related to spectrum assignment or telecom services under the previous Acts are valid under the new law and no legal proceedings would challenge them.

12. Miscellaneous provisions:

- The Government may set conditions for security interests for lenders financing authorized entities.
- Certification may be granted for radio equipment operation on vessels or aircraft.
- Unauthorised possession or use of telecom blocking equipment is prohibited.
- The central government may establish rules for certifying individuals to operate amateur stations.
- The Act covers offenses or violations outside India if they involve a telecommunication service in India or telecom equipment/network based in India.
- The implementation of the Act to be digital by design.
- No employee of the authorised entity to be compelled to appear as witness in any legal proceeding to which such authorised entity is not a party.
- The privilege of the central government to grant authorisation or assignment under this Bill are subject to maritime laws and applicable international laws as accepted and ratified by India.
- The government may amend provisions under penalty/civil penalty not exceeding INR 10 crores.
- The Act incorporates amendments made to the Telecom Regulatory Authority of India Act, 1997, across key sections, in accordance with the proposed Telecommunications Act, 2023.

Key takeaways:

The Telecommunications Bill, 2023 provides powers to the central government to authorise any person to lay telecommunication infrastructure, operate telecommunication network, possess radio equipment and provide telecommunication services. The Bill has further brought in provisions to provide clarity on spectrum allocation, introduced measures for protection of users and their duties, and brought in penal consequences with respect to different categories of offences. Some clarification may be required regarding the applicability of the law on varied types of services using telecom infrastructure.



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