

Evolution and Regulation of Telecommunication and Internet in India: A Study of the Policy governing the development of telecommunication and internet in India

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Poonam Chauhan*

<https://orcid.org/0000-0002-6786-4845>

Jaya Mathew**

<https://orcid.org/0000-0001-6702-1859>

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Abstract

[Purpose] To examine the advancement of nation-wise internet access in the context of policy and regulations that facilitated the transformation of Indian telecommunication. It analyzes government policies on the development of internet infrastructure, technical standards, content, security and digital inclusion.

[Methodology/Approach/Design] Review of Indian regulations and Policy measures governing the evolution of internet and telecommunication sector. Study of Telecom Regulatory Authority of India Act, 1997 and subordinate legislations. The study of draft Indian Telecommunication Bill, 2022.

[Findings] The evolution of the Internet is credited with progressive convergence of the telecommunications, information technology, and broadcast media. This has led to new paradigms of competition, price wars, contesting licensing and tariffs agreements. The paper attempts to illustrate the regulations that govern these evolving paradigms.

[Practical Implications] The Indian telecom sector has more than one billion subscribers and makes significant contribution to GDP of the nation. The Indian government has agreed upon a multi-stakeholder's approach for internet governance in India. The policy reflects a supportive stand on net neutrality and is shaping digital surveillance on the matters of national security.

[Originality/Value] This paper is a unique attempt to describe the policy and legislations that govern the fast-growing sectors of internet and telecommunication in India. The restructuring of the regulatory and legal framework for telecommunication sector is being undertaken by the government to protect the consumer and national interest.

Keywords: Internet Regulations. Telecommunication Policy. OTT Media.

* Associate Professor of International Business in the Department of Marketing and International Business at KJ Somaiya Institute of Management, Somaiya Vidyavihar University, Mumbai, India. Address: KJ Somaiya Institute of management, Somaiya Vidyavihar University, Mumbai, India. E-mail: poonam@somaiya.edu.

** Associate Professor of Law in the Department of Finance and Law at KJ Somaiya Institute of management, Somaiya Vidyavihar University, Mumbai, India. E-mail: jayamathew@somaiya.edu.

INTRODUCTION

The rapid proliferation of internet poses unique challenges to regulators. They have to bring not only the internet infrastructure but also the content under the ambit of the law. Any form of legislation on the internet generates strong opposition. Self-regulation has been determining mode of internet governance. The purpose of self-regulation is to build a dynamic environment that encourages innovation in internet technology. The law among countries ranges from extremely liberal to highly conservative. Technically, the internet operates in borderless space, making it difficult to be governed by the national state (Marcel Machill et.al. 2002; Yaman,2006; Münkler, 2018; Nelson,2018).

In India, the total number of telephone subscribers 1,178.41 million at the end of 2021. Total internet subscribers increased from 795.18 million at the end of Dec-2020 to 829.30 million at the end of Dec-2021 indicating dynamic growth in access to internet. During the same period Broadband subscriber base has also increased from 747.41 million to 792.08 million (TRAI, 2021).

The internet users are projected to grow to 1.5billion users by 2040. India was ranked second largest online market worldwide in 2019, coming second only to China (Bassuroy T, 2022).

The paper presents an original analysis of the Indian regulations and policy measures shaping the growth of telecom and internet technology in the country. The review of literature integrates the development of technological infrastructure, the advent of smartphones, growth in internet adoption and usage along with the challenge of governing disruptive Over the Top platforms in the country. The paper examines government justification for expanding digital surveillance.

EVOLUTION OF TELECOM INFRASTRUCTURE AND POLICY

Reforms in Telecom Policy of government ushered the era of the Internet in India. Department of Electronics (DoE) founded the Education Research Network (ERNET) in 1986. The program had support from the government and the United Nations Development Program (UNDP). It involved eight premier institutions like NCST (National Centre for Software Technology) Bombay, IISc (Indian Institute of Science) Bangalore, five IITs (Indian Institutes of Technology) and the DoE, New Delhi. Together they developed net-working capability in the country. (ERNET India, 2018)

The second phase of the reform process began by New National Telecom Policy in 1994, which facilitated the auction of wireless spectrum and setting of new Tele-density targets. (DoT, 2002)

In 1995, VSNL(Videsh Sanchar Nigam Ltd) formally launched the Internet for the Indian public via dial-up services in six cities. VSNL had the monopoly as private players were not permitted at that time. However, in 1999 the National Telecomm Policy was revised to open up the sector for private participation. (DoT, 1999). The objective of the policy was to provide universal access to telecom service to all villages at reasonable prices and ensure India's emergence as a manufacturing/export base of telecom equipment. The following years saw the exponential growth in the telecom sector. The private telecom companies focused on wireless technology and cellular phone connections creating four million subscribers by 2001. (Subramanian, 2013).

In 2004, the broadband policy was announced by the government. The objective was to ensure the success of broadband speed to facilitate internet penetration. It defined broadband as "an always-on Internet connection with a download speed of 256 kbps (kilobits per second) or above." The government recognized the prospective contribution of broadband service in GDP growth. The high-speed access to web-based communication in meeting societal goals e-education, entertainment, e-governance, and employment generation (broadband policy,2004). In 2010, the government auction of 3G spectrum and later 4G spectrum fast-tracked the wireless broadband market with the private sector.

The expansion of internet infrastructure gave India the power of instant communication. In subsequent years it opened possibilities for social media, OTT(Over the Top) and technology-enabled business platforms. Industry experts believe that such a transformation in India will continue. (Uckelmann et al., 2011).

Advancement in Broadband Application and Smartphone Penetration

Social networking site Facebook launched its India operations from Hyderabad in 2010 integrating the internet into the lives of many people. It gave pace to adoption of online media for personal and business interactions. (Chauhan and Pillai, 2013). It acquired 300 million users in the country with approximately 200 million users for its WhatsApp service. The usage gained momentum with the introduction of What's app messaging application, Twitter for 140-character post, YouTube video sharing, Linked In for professional networking and Instagram for photo and video sharing. (IANS,2019)

With the advent of OTT(Over the Top) platforms such as Amazon Prime, Netflix, Hotstar, ALT Balaji and Voot, it became easy to access the content from different devices that support streaming services such as smartphones, Television, desktop and laptop, gaming consoles and set-top boxes. (Izardar, 2019).The

monthly data consumption of Indians increased four times from 2016 to December 2018. The average monthly consumption is 10GB led by 4G data consumption and the active 4G enabled handset crosses 300 million. (Business Standard,2019)

Policy for OTT platforms - OTT provide diverse business services and cannot fit into classic definition of electronic communication and information technology.

India became the second largest smart phones market in the world with over four hundred million users. (Premjital, 2017)The 4G connectivity has given a boost to the penetration of smart phones in the nation. About thirty-eight percent of the Indian population uses smartphones and is expected to reach ninety percent by 2020 (Eros international plc reports, 2016)

INTERNET SECURITY AND SURVEILLANCE

In 2003, CERT-IN (The Indian Computer Emergency Response Team) under the Department of Information Technology, Ministry of Communications and Information Technology was constituted by the Government of India with the objective of securing cyber space. The mission is “to enhance the security of India’s communications and Information Infrastructure through proactive action and effective collaboration”. CERT-IN is the agency that accepts and reviews requests to block access to specific websites. CERT-IN is conferred with advisory powers, and it is often consulted by the Police, Courts, Human Rights Commissions, Intelligence agencies, government departments, etc. and it is empowered to review complaints against publishing obscene content and serve as the sole authority to issue blocking and filtering instructions to the Department of Telecommunications (DOT). Conferring exclusive power upon CERT-IN in matters of filtering and blocking as well as the absence of review or appeal in this process has been criticized by many. (Notification regarding the status of CERT-IN, 2009)

Though conferring arbitrary powers upon CERT-IN through executive order was often argued as an encroachment of individual rights, internet censorship was rare and sporadic until 2008. However, in 2008 following the Mumbai terrorist attack, the Government strengthened the IT laws by way of IT Act, 2008 and the same was enforced at the beginning of 2009. The IT Act, 2008 expanded the government’s censorship and monitoring capabilities. As a result, incidents of directing the private companies to remove information from the websites, blocking access to internet content and removing content from the websites on the ground that such information may endanger the public order or national security have become common.

The legal framework governing the internet ecosystem in India has seized the public discourse with media focusing on censorship and surveillance.

During, 2019 general elections in India, social media platforms had to abide by IT guidelines formulated by the Indian government to remove unlawful content that can affect “sovereignty and integrity of India”.(IANS, 2019)

REGULATORY ENVIRONMENT

Department of Telecommunication under central government is responsible for policy, licensing and coordination matters related to telephone, wireless, data and other like form of communication. It is responsible for administration of law –The Telecom and Regulatory Authority of India, Act 1997,(24 of 1997).

Regulating the Telecomm Sector

The entry of private service providers required independent regulation. The Telecom Regulatory Authority of India (TRAI) was, thus, established with effect from 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services. Its objective is to provide a fair and transparent policy environment which facilitates fair competition. (TRAI Act,1997).

The Telecom and Regulatory Authority of India, Act (TRAI) were amended by an ordinance, effective from 24 January 2000, establishing a Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT) to take over the adjudicatory disputes’ functions from TRAI. a Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT) has the jurisdiction to try any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI (TRAI,2017).

The National Telecom Policy, 2012 was designed

“to ensure equitable and inclusive economic growth by laying special emphasis on providing affordable and quality telecommunication services in rural and remote areas. This Policy has the vision Broadband on Demand and envisages leveraging telecom infrastructure to enable all citizens and businesses, both in rural and urban areas, to participate in the Internet and web economy thereby ensuring equitable and inclusive development across the nation.”(NTP-2012, 2012)

Thus, TRAI has shaped the growth in Telecommunication and Broadcasting sector in the country. It has initiated various measures to ensure the quality of services, affordable tariffs and choice to the consumers. The Authority has enabled India to play a leading role in the emerging global information society. (TRAI-Activity Report, 2018)

Regulating the Internet

As the use and number of people on the internet increased exponentially in the country, its misuse also repeated largely. And the need for cyber law that encompasses all activities which occur on or with the internet was felt which led to the passing of The Information Technology Act, 2000 in India.

The Indian Parliament passed The Information Technology Act based on the model law on E-Commerce adopted by the United Nations Commission in June 2000 (IT Act, 2000)

The Act aims at giving legal recognition to E transactions, digital signature as a valid signature to accept agreements online, keeping accounting books in electronic form by bankers, protecting online privacy and stopping of cybercrimes. With the passing of IT Act followed by amendments in the prevailing acts such as The Indian Penal Code, The Indian Evidence Act, The Banker's Book Evidence Act, The Reserve Bank of India Act, almost all online activities came under the scrutiny. (Kiran Sharma, 2019)

The Information Technology Act confers jurisdiction upon the courts to try offenses committed outside India by any person if the act or conduct constituting the offense or contravention involves a computer, computer system or computer network located in India. In *SMC Pneumatics (India) Private Ltd. Vs. Jogesh Kwatra* ;(1999) 4 SCC 567, when a company's reputation was being defamed through emails, the Honorable High Court of Delhi assumed jurisdiction and passed an ex-parte injunction. However, it is pertinent to note that India has not yet ratified the convention on cybercrimes. Experts are of the view that signing this treaty may help the country in resolving the jurisdictional controversies that may arise in cybercrime cases. (Lexwisdom, 2012)

Policy on Net Neutrality

The term net neutrality was introduced by Tim Wu as

“an Internet that does not favor one application (say, the World Wide Web), over others (say, email). It is best to understand network neutrality as an end, and open access and broadband discrimination as different means to that end.” (Wu, 2003).

The proponents of net neutrality suggest that internet service provider should treat all data from all content providers as same and not try to discriminate, block, and filter it. (Tripuraneni, 2016; Mukherjee et.al, 2016). This principle contributes significantly to creating competitive innovation environment for an open and free internet.

In India, the debate on net neutrality was most publicized in 2015. Consequently, the Department of Telecommunication (DoT) constituted a six-member committee on Net Neutrality in January 2015 to recommend overall policy including regulatory and technical responses. (Dot,2018). Further, TRAI released consultative paper inviting public opinion with regards to regulation of free availability and access of content(text, voice, and media) on the internet by various service providers. The Authority gave an extension of time for comments and counterclaims till April'2017. This culminated in the adoption of strongest net neutrality rules in the country, that prohibit any form of data discrimination regarding "blocking, degrading, slowing down or granting preferential speed to any content". Any violation of rules will be imposed with a stringent penalty. (TRAI, 2017).

Regulating Over the Top (OTT) and Broadcast Applications

Over the Top refers to the content service providers using the internet for streaming the audio-video content. The leading firms taking advantage of infotainment innovation are Netflix, Amazon Prime, Hotstar, ALT Balaji and Voot. (Sashidhar,2017). This has caused disruption for telecommunication and television broadcast platforms. The viewer can watch content from any device like smartphones, tablets, or television screens. OTT makes the content available at a lower cost than traditional media. (Izardar, 2019).

The Telecomm operators put pressure on the government to subject OTT players to regulation obligation and licensing. They considered OTT players as "Free Riders" and filed complained about "regulatory imbalance" with TRAI. (Panday,2017; Abbas, 2019).

In response, Sony Pictures Network pointed out that OTT players were already governed by local laws in India.

"In light of the entire set of regulations governing the OTT platforms coupled with judicial interventions from time to time, there are sufficient checks and balances in place to ensure that content provided on such platforms are not in violation of law of the land,"

it said in its submission. This received support from The Internet and Mobile Association of India (IAMAI), Broadband India Forum and the Asia

Internet Coalition. They argued that OTT constitutes an application layer that rides on the bandwidth provided by the Telecom sector. (Sangani, 2019). The broadcasters pointed out that telecom service providers have access to a public resource and exclusive rights to operate a network which comes with attendant privileges such as the right of way.

Telecom and Regulatory Authority of India have begun consultation for Regulatory Framework for OTT services. The Telecom controls the critical infrastructure governing access to the internet, which has been recognized by India's telecom policies as a basic public right. Telecom Regulatory Authority of India Chairman has assured that the regulator has also studied the European Electronic Communications Code and will keep global best practices in mind while formulating its draft regulations on OTT. (Sharma R.S, 2019)

AN OVERVIEW OF INDIAN TELECOMMUNICATION BILL 2022

Considering telecommunications as a key driver of economic and social development, the Government of India released the draft Indian Telecommunications Bill in September 2022 to ensure availability of affordable, reliable, secure and universal telecommunication services. With the passage of the bill, three obsolete laws, the Indian Telegraph Act of 1885, the Indian Wireless Telegraphy Act, 1933 and the Telegraph Wires (Illegal Possession) Act, 1950 will be repealed.

The bill is arranged in 12 chapters and 5 schedules. The introduction itself refers to the spectrum as a valuable and inexhaustible natural resource. Chapter 3, which deals with licensing, registration, authorization and assignment of spectrum, also confers exclusive privilege to the Central Government to provide telecommunication services, to establish, operate, maintain, expand telecommunication network and telecommunication infrastructure and also to use, allocate and assign spectrum in the country.

Section 2 (21) of the bill expands the definition of “telecommunication services” to include Over the Top (OTT) communication services as well, as a result of which Over the Top (OTT) telecommunication services also may be subject to the same licensing conditions as Telecom Service Providers (TSP).

Section 4 of the bill lays down that the primary means for allocation of spectrum shall be auction. In fact, this provision confirms the order of the Hon'ble Supreme Court in Centre for Public Interest Litigation V. Union of India & Ors (Writ Petition No. 382 of 2014 decided on November 26, 2021). Section 24, 25 & 26 of the Bill empowers the Government to temporarily take over any telecommunication services, telecommunication network or telecommunication infrastructure from the licensee or registered entity, the government can also

direct the suspension of such services in the event of any public emergency or in the interest of public safety.

Section 27 proposes to rename The Universal Service Obligation Fund as the Telecommunication Development Fund and the grants and the loans from the Government will be credited in this fund. And the fund will be utilised for promoting access to and delivery of telecommunication services in underserved rural, remote and urban areas, to support introduction of new telecommunication services, technologies, and products etc. (Section 28 & 29).

Section 32 proposes to set up a Regulatory Sandbox under the supervision of the Central Government which shall be a framework of special terms and conditions of a license, registration, authorization or assignment.

The bill recognises the globally established privilege of central government for grant of licenses for telecommunication services or networks, registration for establishing telecommunication infrastructure, authorization for the possession of wireless equipment and assignment of spectrum. The bill provides uniform nondiscriminatory regulatory framework.

CONCLUSIONS

The discussion on Internet governance has become more participatory in nature. It is no longer restricted to politicians and government officials. It reaches out to participating companies and community at large within the country. This paper examined the telecom, broadband, internet applications and content have integrated with overlapping stakeholder's interest and concern. The approach of consultative papers for creating regulatory framework gives credence to a robust institutional landscape in India. The government is committed to a multi-stakeholder approach to harness the benefits of the internet for all.

The government is facing conflicting pressure of free internet for gaining societal objectives and controlling the internet for national security and sovereignty. It facilitates and monitors the innovations and technological developments in telecommunications. The government has to respond with long term vision of providing a stable environment for business and development. The legal framework has to adapt to rapidly evolving internet technology, securing fair competition, sustainable innovations, and consumer protection. The government policy provides framework for regulatory certainty. This supports in leveraging the internet and emerging technology for the growth and prosperity of the nation.

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Contact:

Universidade de Brasília - Faculdade de Direito - Núcleo de Direito Setorial e Regulatório
Campus Universitário de Brasília
Brasília, DF, CEP 70919-970
Caixa Postal 04413

Phone: +55(61)3107-2683/2688

E-mail: getel@unb.br

Submissions are welcome at: <https://periodicos.unb.br/index.php/RDET>

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Indian Telecommunication Bill, 2022

Considering telecommunication is a key driver of economic and social development, and telecommunication infrastructure and telecommunication network are important parts of public infrastructure, and it is necessary to ensure availability of affordable, reliable, secure and universal telecommunication services; and

Considering spectrum is a valuable and inexhaustible natural resource, has an element of public good, and it is vital to ensure efficient management and use of the spectrum;

This Act consolidates and amends the laws governing provision, development, expansion and operation of telecommunication services, telecommunication networks and telecommunication infrastructure and assignment of spectrum and for matters connected or incidental thereto;

Be it enacted as follows:

Chapter 1: Short Title, Extent and Commencement

1. Short title, extent and commencement

- (1) This Act may be called the Indian Telecommunication Act, 2022. (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Chapter 2: Definitions

2. Definitions

In this Act, unless there is something repugnant in the subject or context:

- (1) “allocation” (of a frequency band) means an entry in the Frequency Allocation Table of a given frequency band for the purpose of its use by one or more terrestrial or space radiocommunication services or the radio astronomy service

under specified conditions, and “Frequency Allocation Table” means the table of frequency allocations under the NFAP;

(2) “appointed date” means such date as the Central Government may, by notification appoint under sub-section (3) of Section 1;

(3) “assignment” of a radio frequency or radio frequency channel means the authorization for a radio station to use a radio frequency or radio frequency channel under specified conditions, and the term “assignee” means any entity granted such authorization under sub-section (2) of Section 5;

(4) “broadcasting services” means a telecommunication service intended to be received by the general public either directly or indirectly;

(5) “customer equipment” means equipment deployed on the premises of a person, other than the equipment of the licensee or registered entity, to originate, route or terminate telecommunication, or equipment used by such person for accessing telecommunication services;

(6) “entity” means a person, association of persons, firm, company or cooperative society, by whatsoever name called or referred to and engaged or intending to be engaged in providing telecommunication services, telecommunication network or telecommunication infrastructure, or using the spectrum or operating an earth station;

(7) “license” means a license, approval, authorization, permission by whatever name called, granted under this Act for providing:

(a) telecommunication services (including only such broadcasting services as specified under sub-clause (c) below);

(b) telecommunication network; and

(c) broadcasting services in Schedule 2 and any other broadcasting services as may be notified by the Central Government as requiring a license;

(8) “licensee” means the holder of the license and shall include any successors or assignees;

(9) “message” means any sign, signal, writing, image, sound, video, data stream or intelligence or information intended for telecommunication;

(10) “NFAP” shall mean National Frequency Allocation Plan issued from time to time, by the Central Government to provide guidance for the use of the spectrum;

(11) “notification” means a notification published in the Official Gazette; (12) “prescribed” means prescribed by rules made under this Act;

(13) “registered entity” means an entity registered under the provisions of this Act for providing telecommunication infrastructure;

- (14) “Schedule” means a schedule under this Act;
- (15) “spectrum” means the range of frequencies of radio waves;
- (16) “station” means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary for carrying on radiocommunication services or radio astronomy services;
- (17) “telecommunication” means a 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;
- (18) “telecommunication equipment” means any equipment, appliance, instrument, device, material or apparatus, including customer equipment, that can be or is being used for telecommunication, and includes software integral to such telecommunication equipment;
- (19) “telecommunication infrastructure” means the infrastructure used or capable of being used for the purpose of telecommunication, as listed in Schedule 5;
- (20) “telecommunication network” means a system or series of systems of telecommunication equipment, or telecommunication infrastructure, or both, including terrestrial or satellite networks or submarine networks, or a combination of such networks, used or intended to be used for providing telecommunication services, but shall not include customer equipment;
- (21) “telecommunication services” means service of any description (including broadcasting services, electronic mail, voice mail, voice, video and data communication services, audiotex services, videotex services, fixed and mobile services, internet and broadband services, satellite based communication services, internet based communication services, in-flight and maritime connectivity services, interpersonal communications services, machine to machine communication services, over-the-top (OTT) communication services) which is made available to users by telecommunication, and includes any other service that the Central Government may notify to be telecommunication services;
- (22) “user” means any person using a telecommunication service;
- (23) “wireless equipment” means any telecommunication equipment used or capable of use in wireless communication, including any wireless transmitter that is capable of use for broadcasting or emission of wireless communication;
- (24) “wireless communication” means any telecommunication without the use of wires, including optical fibre, continuous electrical conductors, or similar modes, between the transmitting and the receiving apparatus.

Chapter 3: Licensing, Registration, Authorization and Assignment

3. Exclusive Privilege

- (1) The Central Government shall have the exclusive privilege, within India, to:
 - (a) provide telecommunication services;
 - (b) establish, operate, maintain and expand telecommunication network and telecommunication infrastructure; and
 - (c) use, allocate and assign spectrum.
- (2) The Central Government may exercise its privilege under sub-section (1) by granting to any entity, in the manner as may be prescribed:
 - (a) license for providing telecommunication services or establishing, operating, maintaining and expanding telecommunication networks;
 - (b) registration for providing telecommunication infrastructure; (c) authorization for the possession of wireless equipment; or (d) assignment of spectrum.
- (3) The Central Government, if it determines that it is necessary in the public interest to do so, may exempt from the requirement of license, registration, authorization or assignment under sub-section (2), in the manner as may be prescribed.

4. Licensing, Registration, Authorization and Assignment

- (1) The grant of license, registration, authorization or assignment under sub-section (2) of Section 3, shall be subject to terms and conditions, including payment of entry fees, license fees, registration fees or any other fees or charges by whatever name called, as may be prescribed.
- (2) The terms and conditions referred in sub-section (1) shall not be modified with retrospective effect to the detriment of a licensee, registered entity or assignee except in exercise of powers under Sections 24 and 25 of this Act.
- (3) Any entity providing telecommunication services or telecommunication network, under a license granted prior to the appointed date, shall be entitled to continue to operate under the terms and conditions and for the duration as specified under such license or to migrate to the new set of terms and conditions, as may be prescribed.
- (4) Any entity providing telecommunication infrastructure under a registration granted prior to the appointed date, shall be entitled to continue to operate on the terms and conditions of such registration for a period of five years from the appointed date, or to migrate to the new set of terms and conditions, as may be prescribed.

(5) The possession of wireless equipment shall require an authorization or any exemptions from such authorization, as may be prescribed.

(6) The possession and use of any equipment that blocks telecommunication is prohibited, unless authorized by the Central Government for specific purposes.

(7) Any entity which is granted a license under sub-clause (2) of Section 3, shall unequivocally identify the person to whom it provides services, through a verifiable mode of identification as may be prescribed.

(8) The identity of a person sending a message using telecommunication services shall be available to the user receiving such message, in such form as may be prescribed, unless specified otherwise by the Central Government.

5. Spectrum Management

(1) The Central Government shall assign the spectrum to best subserve the common good and ensure wide-spread access to telecommunication services, and may notify a National Frequency Allocation Plan (NFAP) for the use and allocation of spectrum.

(2) The Central Government may assign spectrum for telecommunication through:

(a) auction;

(b) administrative process for governmental functions or purposes in view of public interest or necessity as provided in Schedule 1; or

(c) in any other manner as may be prescribed. For the purposes of this Section:

“auction” means the competitive bid process for assignment of spectrum; “administrative process” means assignment of spectrum without holding an auction.

(3) The Central Government may prescribe such terms and conditions as may be applicable, for assignment of spectrum under sub-section (2), including the frequency range, methodology for pricing, price, fees and charges, payment mechanism, duration and procedure for the same.

(4) Any spectrum assigned through the administrative process prior to the appointed date, shall continue to be valid on the terms and conditions on which it had been assigned, for a period of five years from the appointed date, or the date of expiry of such assignment, whichever is earlier.

(5) The Central Government, if it determines that it is necessary in the public interest to do so, may by notification exempt specific usages within specified frequencies and parameters, from the requirements of sub-section (2). Any exemptions granted prior to the appointed date, shall continue under this Act, unless otherwise notified by the Central Government.

Illustration: With effect from 28.01.2005, the Central Government has done away with the requirement of a license for use of low power wireless equipment in the frequency

band 2400 MHz to 2483.5 MHz . Such exemption shall continue under this Act unless otherwise notified.

(6) The Central Government may, to enable more efficient use of spectrum, re-farm or harmonize any frequency range assigned under sub-section (2), subject to the terms and conditions, including payment of fees and charges, as may be prescribed.

For the purpose of this sub-section:

“re-farming” means repurposing of a frequency range for a different use, other than that for which it may currently be used by an existing assignee; and

“harmonization” means rearrangement of a frequency range.

(7) The Central Government may, to enable the utilization of the spectrum in a liberalized and technologically neutral manner, notify that an assignee of a spectrum may deploy new technologies in such spectrum, subject to such terms and conditions, including applicable fees and charges, as may be prescribed.

(8) The Central Government may, to promote optimal use of the available spectrum, assign a particular part of a spectrum that has already been assigned to an entity (“primary assignee”), to one or more additional entity/ entities (“secondary assignees”), where such secondary assignment does not cause harmful interference in the use of the relevant part of the spectrum by the primary assignee, subject to the terms and conditions as may be prescribed.

(9) The Central Government, after providing a reasonable opportunity of being heard to the assignee concerned, if it determines that spectrum that has been assigned, has remained unutilized for insufficient reasons for a prescribed period, may terminate such assignment, or a part of such assignment, or prescribe further terms and conditions relating to spectrum utilization.

(10) The Central Government may establish by notification, a monitoring and enforcement mechanism to ensure adherence to terms and conditions of spectrum usage and enable interference-free use of the assigned spectrum.

6. Sharing, Trading, Leasing and Surrender of Spectrum

The Central Government may permit the sharing, trading, leasing and surrender of spectrum assigned under sub-section (2) of Section 5, subject to the terms and conditions, including applicable fees or charges, as may be prescribed.

7. Breach of Terms and Conditions

(1) In case of breach of any of the terms and conditions of license, registration, authorization or assignment granted under this Act, the Central Government may, after providing an opportunity of being heard to the party concerned, do any one or more of the following:

- (a) direct such licensee, registered entity or assignee to do or abstain from doing any act or thing to prevent such breach or for such compliance;
- (b) suspend such license, registration, authorization or assignment for a specified period;
- (c) curtail the period of such license, registration, authorization or assignment;
- (d) revoke such license, registration, authorization or assignment;
- (e) vary such license, registration, authorization or assignment; or
- (f) impose a penalty as specified in Schedule 4 after determining the category of severity of such breach.

(2) In respect of any action to be taken pursuant to sub-section (1), the Central

Government shall have due regard to the following factors, namely:

- (a) nature, gravity and duration of breach taking into account the nature, scope and purpose of breach concerned;
- (b) number of persons or entities affected, and the level of harm suffered by them;
- (c) intentional or negligent character of the breach;
- (d) repetitive nature of the breach;
- (e) action taken by the licensee, registered entity or assignee to mitigate the breach;
- (f) revenue loss caused to the Central Government; and
- (g) any other aggravating or mitigating factors relevant to the circumstances of the case, such as, the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the breach.

(3) Any suspension, curtailment, revocation or variation under sub-section (1), may be reversed if the substantial violation is remedied to the satisfaction of the Central Government.

8. Voluntary Undertaking

(1) At any stage, a licensee, registered entity or assignee may give, and the Central Government may accept, in the manner as may be prescribed, a voluntary undertaking in respect of any breach of terms and conditions of license, registration, authorization or assignment granted under this Act.

(2) Such voluntary undertaking may include an undertaking to take specified action within a specified time; an undertaking to refrain from taking specified action; and an undertaking to publicise the voluntary undertaking.

(3) The Central Government may accept such voluntary undertaking and with the agreement of the relevant licensee, registered entity or assignee, vary the terms included in such voluntary undertaking. Acceptance of voluntary undertaking by the Central Government shall constitute a bar on proceedings under this Chapter.

(4) When a licensee, registered entity or assignee fails to comply with any terms of the voluntary undertaking, the Central Government may, after giving such person a reasonable opportunity of being heard, proceed with imposition of penalty under Section 7.

9. No refund of fees

(1) An entity shall not be entitled to the refund of any such amounts paid in respect of or under a license, registration, authorization or assignment granted under this Act, if the same is suspended, curtailed, revoked or varied.

(2) In the event an entity surrenders the license, registration, authorization or assignment granted under this Act, then any amounts paid in respect thereof, may be refunded subject to such deductions, as may be prescribed.

10. Appeal

Any person aggrieved by any action under this Chapter may prefer an appeal to the appellate authority as may be prescribed, within thirty days of the action and the appellate authority may pass such orders expeditiously as deemed fit under law.

11. Alternate Dispute Resolution

If the Central Government is of the opinion that any dispute, or class of disputes, under this Chapter may be resolved more appropriately by arbitration, mediation or other process of dispute resolution, then the Central Government may establish a suitable mechanism for resolution of such disputes.

Chapter 4: Right of Way for Telecommunication Infrastructure

12. Definition of terms used in this Chapter

For the purpose of this Chapter:

(1) “facility provider” means the Central Government or any licensee or registered entity, including any contractor or sub-contractor or agent working for the Central Government or licensee or a registered entity, and shall include any successors or assignees;

(2) “public entity” means the Central Government, respective State Governments, local authority or such authority, body, company or institution incorporated or established by the Central Government or the State Government, or under any statute, in respect of property, under, over, along, across, in or upon which underground or over-ground or under-sea telecommunication infrastructure is to be established or maintained, vested in, or under, the control or management of such authority;

(3) “public property” means any property, whether immovable or movable, including any machinery, which is owned by, or in the possession of, or under the control of any public entity.

13. Right of way for telecommunication infrastructure in public property

(1) Any facility provider may submit an application to a public entity under whose ownership, control or management the public property is vested, to seek permissions for right of way for telecommunication infrastructure under, over, along, across, in or upon such public property. On receipt of an application from a facility provider, the public entity shall, subject to terms and conditions, grant permissions for all or any of the following acts, namely:

- (a) survey such property for the purpose of assessing the feasibility for establishing telecommunication infrastructure; or
- (b) enter the property from time to time to establish, operate, maintain, repair, replace, augment, remove or relocate any telecommunication infrastructure.

Illustrations:

- (a) A Ministry of the Government of India owns certain land or is in possession of certain land, or has certain land under its control. This will be public property and the relevant Ministry a public entity.
- (b) A road, lane, land, building, water pipeline or any other property owned by, or in the possession of, or under the control of a municipal authority is a public property and the municipal authority is a public entity.
- (c) Any land, building or other property vested with a statutory authority is a public property, and the statutory authority is a public entity.
- (d) Any land, building or other property owned by, or in the possession of, or under the control of a Government company is a public property, and the Government company is a public entity.
- (e) Any land, building or other property owned by, or in the possession of, or under the control of a society or a research institute under the control of the Government is a public property, and such society or research institute is a public entity.

(2) The public entity shall grant permission under sub-section (1) in an expeditious manner, and within the timelines, as may be prescribed.

(3) The public entity granting permission under sub-section (1), shall be entitled to collect fees for such right of way granted, which shall not exceed the amount, as may be prescribed.

(4) Any rejection of an application under sub-section (1) shall be based only on substantive grounds.

(5) The provisions of this Section shall also be applicable to any public property vested for infrastructure projects or class of infrastructure projects notified under Section 17, in respect of which, applications under sub-section (1) shall be made to the public entity granting the concession or contract for such projects.

Illustrations:

(a) National Highways Authority of India (NHAI) has granted a concession agreement to a non-government entity to build, operate and transfer a section of the national highway. The national highway is a class of infrastructure project notified under section 17 of this Act. NHAI is the relevant public entity for purposes of sub-section (1) of this Section.

(b) Airport Authority of India (AAI) has granted a concession agreement to a non-government entity to build, operate and transfer an airport. The airport is a class of infrastructure project notified under section 17 of this Act. AAI is the relevant public entity for purposes of sub-section (1) of this Section.

(c) A department of a State Government has granted a concession agreement to a non-government entity to build, operate and transfer a sea-port. The sea-port is a class of infrastructure project notified under Section 17 of this Act. The relevant department of the state government which granted the concession agreement is the relevant public entity for the purposes of sub-section (1) of this Section.

(6) Any works on the property in which telecommunication infrastructure has been established, which necessitates the alteration, removal or relocation of the telecommunication infrastructure, shall be subject to prior notice to the appropriate authority and the relevant licensee or registered entity, terms and conditions, including the applicable fees and charges payable to the facility provider, as may be prescribed.

14. Right of way for telecommunication infrastructure on property not covered under Section 13

(1) Any facility provider may submit an application to the person under whose ownership, control or management the property not covered under Section 13 is vested, to seek right of way for telecommunication infrastructure under, over, along, across, in or upon such property. On receipt of an application from a facility provider, such person may enter into an agreement, specifying such consideration as mutually agreed, for:

(a) undertaking of surveys as may be required by the facility provider for the purpose of assessing the feasibility for establishing telecommunication infrastructure; or

(b) establishing, operating, maintaining, repairing, replacing, augmenting, removing or relocating any telecommunication infrastructure by the facility provider.

(2) The Central Government may prescribe the procedure to be followed by a facility provider to enter, survey, establish, operate, maintain, repair, replace or relocate the telecommunication infrastructure, including the notice period, the manner of issuance of notice, the framework governing objections by owner or occupier of the property and the manner in which such objections would be resolved.

(3) In the event the person under sub-section (1) does not provide the right of way requested, and the Central Government determines that it is necessary to do so in the public interest, it may, either by itself or through any other authority designated by the Central Government for this purpose, proceed to acquire the right of way for enabling the facility provider to establish, operate, maintain such telecommunication infrastructure, in the manner as may be prescribed.

15. Non-discriminatory and non-exclusive grant of right of way

Any person providing right of way under Section 13 or Section 14, shall ensure grant of right of way to the facility providers in a non-discriminatory manner and, as far as practicable, on a non-exclusive basis.

Illustrations:

(a) A public entity has granted a facility provider “A” right of way on certain terms over the public property in its possession. If another facility provider “B” applies for right of way to the public entity in respect of the same property, such public entity will have to provide “B” right of way on the same terms, subject to availability of space to place the telecommunication infrastructure of “B” on such public property.

(b) XYZ, a person under Section 14, has granted a facility provider “A” right of way on certain terms over the property in its possession. If another facility provider “B” applies for right of way to XYZ in respect of the same property, XYZ will have to provide “B” right of way on the same terms, subject to availability of space to place the telecommunication infrastructure of “B” on such property.

16. Telecommunication infrastructure distinct from property on which it is installed

(1) A facility provider shall not have any right, title or interest in the property on which telecommunication infrastructure is established, except the right to use the property as provided under Section 13 or Section 14.

(2) The telecommunication infrastructure installed on any property, shall not be subject to any claims, encumbrances, liquidation or the like, relating to such property.

(3) The telecommunication infrastructure installed on any property, shall not be considered as part of such property for the purposes of any transaction related to that property, or any property tax, levy, cess, fees or duties as may be applicable on that property.

Illustrations:

(a) A tower is installed on land to enable hoisting and installation of telecommunication and wireless equipment used in telecommunication network. A diesel generator set and supporting operation equipment are installed on the land near the tower to support the working of the telecommunication equipment hoisted or installed on the tower. The tower, the telecommunication and wireless equipment, the diesel generator and supporting equipment are all telecommunication infrastructure and are not part of the land on which they are installed.

(b) A tower is installed on the roof of a building to enable hoisting and installation of telecommunication and wireless equipment used in a telecommunication network. A diesel generator set and supporting equipment are installed on the roof to support the working of the telecommunication equipment. The tower, the telecommunication and wireless equipment, the diesel generator and supporting equipment are all telecommunication infrastructure and are not part of the building on whose roof they are installed. Such telecommunication equipment shall not be subject to claims, encumbrances, liquidation or the like that are applicable to such building.

(c) A telecommunication equipment with supporting device to monitor its functioning and operations is installed on side of a wall of a building as part of a telecommunication network. The telecommunication equipment and supporting device are telecommunication equipment and are not part of the building on whose wall they are installed. Such telecommunication equipment shall not be subject to property tax levied on such building.

17. Power of Central Government to establish common ducts and cable corridors

The Central Government may notify infrastructure projects or class of infrastructure projects, whether being developed by a public entity by itself, through a public private partnership or by any other person, that shall require establishment of common ducts or conduits or cable corridors, for installation of telecommunication infrastructure. Such telecommunication infrastructure shall be made available on open access basis to facility providers, subject to terms and conditions, including fees and charges, as may be prescribed.

Illustrations:

(a) Roads, bridges, highways, ports, airports, roads, inland waterways, canals, townships, Special Economic Zones, townships are a class of infrastructure projects.

(b) A Ministry of the Government of India enters into a concession agreement with a non-government entity to build, operate, maintain an infrastructure facility for a period of time and then transfer the facility to a nominated authority or government agency at the end of the term of the concession agreement. This is an infrastructure project.

18. Dispute resolution relating to this chapter

The Central Government may prescribe the procedure, the appropriate authority, the appellate authority, and terms and conditions, including time period for resolution of disputes, arising under the provisions of this chapter.

Chapter 5: Restructuring, Defaults in Payment and Insolvency

19. Mergers, demergers and acquisitions

(1) Any licensee or registered entity may undertake any merger, demerger or acquisition, or other forms of restructuring, subject to provisions of applicable law, after providing notice to the Central Government of the same.

(2) The entity that emerges pursuant to such merger, demerger or acquisition or other forms of restructuring shall comply with the terms and conditions, including fees and charges, applicable to the licensee or registered entity referred in sub-section (1), and such other terms and conditions, as may be prescribed.

20. Specific conditions in event of insolvency and bankruptcy of licensees or assignees

(1) The provisions of this Section shall apply to the insolvency, bankruptcy and winding up of licensees or assignees, to achieve the larger public interest of enabling availability of telecommunications services in India or any part of India by ensuring efficient use of assigned spectrum.

(2) A licensee, or assignee that becomes subject to any insolvency proceedings may continue to operate under the terms and conditions specified under such license or assignment, if such licensee, or assignee meets the following conditions cumulatively:

- (a) continues to provide telecommunication services or operate the telecommunication network or utilise the assigned spectrum, as the case may be;
- (b) does not default in the payment of any dues under such license, or assignment, including any fees, charges, and other amounts payable under such license or assignment of spectrum; and
- (c) complies with such additional or modified terms and conditions, as may be prescribed.

For the purpose of this Section, a licensee, or assignee shall be considered to be subject to any insolvency proceedings from the “insolvency commencement date” or “pre-packaged insolvency commencement date”, as the case may be, as defined in the Insolvency and Bankruptcy Code, 2016.

(3) In the event the licensee, or assignee that has become subject to insolvency proceeding, fails to comply with the conditions stated in sub-section (2), then the spectrum, if any, assigned to such entity shall revert to the control of the Central Government, and the Central Government may take such further action, as may be prescribed, which may include allowing such licensee, or assignee to continue to use the spectrum, subject to placing the revenue of such entity in a separate designated account with license fee and charges applicable being paid first in priority during such period.

(4) The resolution professional appointed under the Insolvency and Bankruptcy Code, 2016 for a licensee, or assignee shall have the obligation to ensure compliance with this Section and shall provide a notice of thirty days to the Central Government prior to the date on which it either expects not to be able to comply with the conditions stated in sub-section (2), or it intends to shut down or suspend, either wholly or in part, the provision of telecommunication services, availability of the telecommunication network or use of spectrum by such licensee, or assignee.

(5) Upon receipt of a notice under sub-section (4), the Central Government may, in order to ensure (a) national security, (b) consumer interest, or (c) the security, reliability and continued supply of telecommunication services or availability of telecommunication network in India or any part of India, may by notification, direct that the license, or assignment or any identified business or property of a licensee, or assignee, that is subject to such insolvency proceedings, would be managed by such person or entity, and for such period, as may be notified in this regard.

21. Special framework governing defaults in payment by licensees, registered entities or assignees

In the event there is a default payment by a licensee, registered entity or assignee, of any amount payable under this Act, and the Central Government determines that there exist extraordinary circumstances, including financial stress, consumer interest, maintaining competition in the sector, or reliability and continued supply of telecommunication services or availability of telecommunication network or telecommunication infrastructure in India or any part of India, it may, notwithstanding any other law for the time being in force, by notification, take such measures subject to such terms and conditions as it may deem fit. Such measures may include:

- (a) deferment of the payment of such amounts or part thereof;
- (b) conversion of part or all of the amounts payable by the licensee, registered entity or assignee, into shares in the licensee, registered entity or assignee;
- (c) write-off of such amounts or part thereof; or

(d) relief from payment of such amounts or part thereof.

22. Power to waive fee, interest, additional charges, penalty or grant exceptions

The Central Government may, with respect to any license, registration or assignment, whether granted prior to, or after the appointed date, under such mitigating circumstances, including, inter alia, interest of consumers, ensuring competition, reliability and continued supply of telecommunication services, or availability of telecommunication network or telecommunication infrastructure in India or any part of India, or any circumstance of public interest or national security, by notification:

(a) waive in part or full any fee, including entry fees, license fees, registrations fees or any other fees or charges, interest, additional charges or penalty or damages payable by a licensee, registered entity, assignee or a class thereof; or

(b) grant exceptions from the provisions of this Act or rules to a licensee, registered entity, assignee or a class thereof.

Chapter 6: Standards, Public Safety and National Security

23. Power to prescribe standards

The Central Government may, from time to time, issue standards, as may be prescribed, in respect of:

(a) telecommunication equipment, telecommunication services, telecommunication network and telecommunication infrastructure;

(b) manufacturers, importers and distributors of telecommunication equipment; or

(c) reliability of the provision of any telecommunication services to the public.

24. Provisions for Public Emergency or Public Safety

(1) On the occurrence of any public emergency or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central or a State Government, may, if satisfied that it is necessary or expedient so to do, by notification:

(a) take temporary possession of any telecommunication services, telecommunication network or telecommunication infrastructure from a licensee or registered entity; or

(b) provide for a priority call routing scheme to ensure that calls of persons responsible for response and recovery during public emergency, including disaster management, are routed on priority.

(2) On the occurrence of any public emergency or in the interest of the public safety, the Central Government or a State Government or any officer specially

authorized in this behalf by the Central or a State Government, may, if satisfied that it is necessary or expedient to do so, in the interest of the sovereignty, integrity or security of India, friendly relations with foreign states, public order, or preventing incitement to an offence, for reasons to be recorded in writing, by order:

(a) direct that any message or class of messages, to or from any person or class of persons, or relating to any particular subject, brought for transmission by, or transmitted or received by any telecommunication services or telecommunication network, shall not be transmitted, or shall be intercepted or detained or disclosed to the officer mentioned in such order; or

(b) direct that communications or class of communications to or from any person or class of persons, or relating to any particular subject, transmitted or received by any telecommunication network shall be suspended.

(3) Press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under sub-clause (a) of sub-section (2).

(4) The actions specified under sub-section (1), sub-section (2) and sub-section (3) shall be maintained for so long as the public emergency exists or the interests of public safety requires the taking of such action.

25. National Security, External Relations or War

(1) The Central Government may, may, if satisfied that it is necessary or expedient to do so, in the interest of national security, friendly relations with foreign states, or in the event of war, by notification take such measures as are necessary in the circumstances of the case, including issuing directions in respect of the following:

(a) use of telecommunication equipment, telecommunication services, telecommunication network and telecommunication infrastructure;

(b) standards applicable to manufacturers, importers and distributors of telecommunication equipment;

(c) standards to be adopted by licensees, registered entities or assignees;

(d) procurement of telecommunication equipment from notified sources;

(e) suspension or prohibition of the use of specified telecommunication equipment from specified countries or specified persons;

(f) taking over the control and management of, or suspending the operation of, or entrusting any authority of the Government to manage any or all of any telecommunication services, or any telecommunication network or telecommunication infrastructure connected with such telecommunication services; or

(g) take any other action that the Central Government deems expedient to do so in the interest of national security.

26. Power to give directions in public interest

If it appears necessary or expedient to do so in the public interest, the Central Government may direct any licensee to transmit in its telecommunication services or

telecommunication network, specific announcements, in such manner as may be specified.

Chapter 7: Telecommunication Development Fund

27. Establishment of Telecommunication Development Fund

(1) The Universal Service Obligation Fund created under the Indian Telegraph Act, 1885, shall, from the appointed date, be referred to as the “Telecommunication Development Fund”, which shall be under the control of the Central Government, and shall discharge functions as set forth in this Act and terms and conditions as may be prescribed.

(2) The following amounts shall be credited to the Telecommunication Development Fund

- (a) any sums of money paid under Section 28;
- (b) any grants and loans made by the Central Government under Section 30.

(3) The balance to the credit of the Telecommunication Development Fund shall not lapse at the end of the financial year.

28. Payment of contribution by licensee, registered entity or assignee

The payments made, if any, for the grant of a license, registration or assignment under Section 4 and Section 5 shall include such sum attributable to the Telecommunication Development Fund, as may be determined by the Central Government. All amounts payable under licenses granted prior to the appointed date towards the Universal Service Obligation, shall be deemed to mean amounts payable towards the Telecommunication Development Fund.

29. Crediting of sum to Consolidated Fund of India

The sums of money received towards the Telecommunication Development Fund under Section 27, shall first be credited to the Consolidated Fund of India, which shall be appropriated by the Central Government, in accordance with law made by the Parliament, to the Telecommunication Development Fund from time to time for being utilised to meet any or all of the following objectives:

- (a) support universal service through promoting access to and delivery of telecommunication services in underserved rural, remote and urban areas;
- (b) research and development of new telecommunication services, technologies, and products;
- (c) support skill development and training in telecommunication;
- (d) support pilot projects, consultancy assistance and advisory support towards provision of universal service under sub-clause (a) of this Section; and

(e) support introduction of new telecommunication services, technologies, and products.

30. Grants and loans by the Central Government

The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants and loans such sums of money as the Central Government may consider necessary to the Telecommunication Development Fund.

31. Administration of Fund

The Telecommunication Development Fund shall be administered in a manner, as may be prescribed.

Chapter 8: Innovation and Technology Development

32. Regulatory Sandbox

The Central Government may, for the purpose of encouraging and facilitating innovation and technological development in telecommunication, create a Regulatory Sandbox, in such manner as may be prescribed.

For the purpose of this sub-section, “Regulatory Sandbox” shall mean a framework of special terms and conditions of a license, registration, authorization or assignment that allows persons to conduct live testing of products and services in a controlled environment under the supervision of the Central Government.

Chapter 9: Protection of users

33. Measures for protection of users

(1) For the purpose of this Section, “specified message” means any message offering, advertising or promoting goods, services, interest in property, business opportunity, employment opportunity or investment opportunity, whether or not – (a) the goods, services, interest, or opportunity are real or fictitious; or

(b) it is lawful to acquire such goods, services, property, interest or take up the opportunity.

(2) The Central Government may prescribe the measures for protection of users from specified messages. Such measures may include measures relating to:

(a) the prior consent of users for receiving certain messages or class of messages;

- (b) the preparation and maintenance of one or more registers, to be called as “Do Not Disturb” register, to ensure that users do not receive specified messages without prior consent; or
- (c) the mechanism to enable users to report specified messages received in contravention of this Section.

34. Duty of users

In the interest of the sovereignty, integrity or security of India, friendly relations with foreign states, public order, or preventing incitement to an offence, no user shall furnish any false particulars, suppress any material information or impersonate another person while establishing identity for availing telecommunication services.

Chapter 10: Miscellaneous

35. Creation of security interests

The Central Government may prescribe the security interest that a licensee or a registered entity can provide to lenders financing such entities, and the terms and conditions of such security interest.

36. Certification of persons for operation of wireless equipment on a vessel or aircraft

The Central Government may grant certification to any person to operate a wireless equipment on such class of vessels registered under the Merchant Shipping Act, 1958, aircrafts registered under the Aircrafts Act, 1934 and any other category of vessels or vehicles as may be notified by the Central Government, in accordance with the terms and conditions, including applicable fees and charges, as may be prescribed.

37. Certification for amateur station operator

The Central Government may prescribe through rules the manner of certification of persons to install and operate an amateur station. Such rules may specify the qualification of and terms and conditions subject to which, a certification for operating an amateur station may be granted, including through conduct of examinations for granting such certification, the fees and charges to be paid thereof, and other connected matters.

For the purposes of this Section:

“amateur services” means radiocommunication services for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, by duly authorized persons interested in radio technique solely with a personal aim and without any pecuniary interest;

“amateur station” means a station operated by an amateur for amateur services.

38. Civil liability

The Central Government may prescribe civil liabilities, including compensation payable by any person causing damage to telecommunication network or telecommunication infrastructure, to the licensee or registered entity, as the case may be, and the applicable penalties.

39. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Government of a Union Territory, or any other authority under this Act or any person acting on their behalf as the case may be, for anything which is done in good faith, or intended to be done in pursuance of this Act or any rule, regulation or order made thereunder.

40. Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.

41. Power to make rules

(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act, including any matter which is to be or may be prescribed, in respect of which provision is to be made by rules under this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty (30) days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

42. Power of Central Government to amend Schedules

(1) Subject to the provisions of this Section, the Central Government may, by notification, alter any of the Schedules to this Act, except for Schedule 3, alterations to which can only be undertaken through an amendment of this Act.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs.

(3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty (30) days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

43. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, before the expiry of three years from the date of commencement of this Act, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may be necessary or expedient, for removing the difficulty.

(2) Every order made under this Section shall, as soon as may be after it is made, be laid before each House of Parliament.

44. Rights in the Continental Shelf and Exclusive Economic Zone

The privilege of the Central Government to grant licenses, registrations or assignment under this Act in the Continental Shelf and the Exclusive Economic Zone of India and the rights of a licensee, registered entity or assignee, as the case may be, shall be subject to the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and applicable international laws as accepted and ratified by India.

45. Validation of certain acts and indemnity

All acts of executive authority done, decisions, actions, proceedings taken and orders passed, prior to the appointed date, by the Central Government, any officer of the Central Government, or by any other authority, with respect to assignment of spectrum or provision of telecommunication services, or telecommunication network or establishment of telecommunication infrastructure, in the belief or purported belief that the acts done, decisions, actions, and proceedings taken, were being done, taken or passed under the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933 or the Telegraph Wires (Unlawful Possession) Act, 1950, shall be as valid and operative as if they had been done, taken or passed in accordance with law; and no

suit or other legal proceeding shall be maintained or continued against any person whatsoever, on the ground that any such acts, decisions, proceedings taken were not done or taken in accordance with law.

46. Amendment to Act 24 of 1997

In the Telecom Regulatory Authority of India Act, 1997:

(a) In section 2, in sub-section (1), in clause (e), the following clause shall be substituted: “licensee” means a licensee defined under the Indian Telecommunication Act, 2022.

(b) In section 2, in sub-section (1), in clause (ea), the following clause shall be substituted: “licensor” means “the Central Government which grants a license, registration or assignment under the Indian Telecommunication Act, 2022”.

(c) In section 2, in sub-section (2), for the words “the Indian Telegraph Act, 1885 (13 of 1885) or the Indian Wireless Telegraphy Act, 1933 (17 of 1933), shall have the meanings respectively assigned to them in those Acts”, words and figures “the Indian Telecommunication Act, 2022 shall have the meaning assigned to them in that Act” shall be substituted.

(d) In section 4, the proviso shall be omitted.

(e) In section 11, in sub-section (1) for the words “Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885)”, the words “In consonance with the Indian Telecommunication Act, 2022” shall be substituted.

(f) In section 11, the second proviso to sub-section (1) is hereby deleted. (g) In section 11, the third proviso to sub-section (1) is hereby deleted.

(h) In section 11, the fourth proviso to sub-section (1) is hereby deleted. (i) In section 11, the fifth proviso to sub-section (1) is hereby deleted.

(j) In section 11, in sub-section (2), for the words “Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885)”, the words “In consonance with the Indian Telecommunication Act, 2022” shall be substituted.

(k) In section 11, in sub-section (2), after the proviso, the words “Provided further that the Authority may direct a licensee or class of licensees to abstain from predatory pricing that is harmful to the overall health of the telecommunication sector, competition, long term development and fair market mechanism” shall be inserted.

(l) In section 14, in clause (a), proviso (C) shall be omitted.

(m) In section 38, the following section shall be substituted “The provisions of this Act shall be in addition to the provisions of the Indian Telecommunication Act,

2022 and, in particular, nothing in this Act shall affect any jurisdiction, powers and functions required to be exercised or performed by the appropriate authority in relation to any area falling within the jurisdiction of such authority”.

Chapter 11: Offences

47. General provisions related to offences

(1) Any person or entity committing any offence listed in Schedule 3 shall be punished with fine or imprisonment, or through suspension of telecommunication service, or through a combination thereof, as specified in Schedule 3. The provisions of Schedule 3 shall apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act shall be bailable, and shall be cognizable or non-cognizable as provided under Schedule 3.

(3) No court shall take cognizance of any non-cognizable offence punishable under this Act or the rules or regulations made thereunder, save on a complaint made by the Central Government or the competent authority as may be notified by the Central Government in this regard.

(4) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class shall try any offence punishable under this Act.

48. Offences by companies

If the person committing an offence under this Act is a company, the employee(s) who at the time the offence was committed, was responsible to the company for the conduct of the business relating to the offence, shall be liable to be proceeded against and punished accordingly.

For the purposes of this Section-

“company” means a body corporate and includes a firm or other association of individuals;

“employee” excludes a person appointed as an Independent Director on the Board of Directors of the company.

49. Compounding of offences

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, only such offences as identified to be compoundable in Schedule 3, may be compounded either before or after the institution of any prosecution. Compounding

of such offences shall be in accordance with the procedure and on payment by the person committing the offence, of such sum, as the Central Government may prescribe. In the case of an offence punishable with fine only, no such sum shall exceed one hundred and fifty percent of the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.

(3) When an offence is compoundable under this Section, the abetment of such offence or an attempt to commit such offence, may be compounded in like manner.

(4) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the court to which he is committed, or as the case may be, before which the appeal is to be heard.

(5) The composition of an offence under this Section shall have the effect of an acquittal of the accused.

50. Power of search

Any officer authorized by the Central Government in this behalf, may search any building, vehicle, vessel, aircraft or place in which he has reason to believe that any unauthorized telecommunication network or telecommunication equipment or wireless equipment in respect of which an offence punishable under Section 47 has been committed, is kept or concealed, and take possession thereof.

51. Supply of information to authorized officers

Notwithstanding anything contained in any law for the time being in force, where the Central Government, a State Government or a Government of a Union Territory is satisfied that any information, document or record in possession or control of any licensee, registered entity or assignee relating to any telecommunication services, telecommunication network, telecommunication infrastructure or use of spectrum, availed of by any entity or consumer or subscriber is necessary to be furnished in relation to any pending or apprehended civil or criminal proceedings, an officer, specially authorized in writing by such Government in this behalf, shall direct such licensee, registered entity or assignee to furnish such information, document or record to him and the licensee, registered entity or assignee shall comply with the direction of such officer.

Chapter 12: Repeal and Savings

52. Repeal of certain Acts, saving of licenses, registrations or assignments and dissolution of certain authorities

(1) Subject to the other provisions of this Section, the enactments namely, the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933 and the Telegraph Wires (Unlawful Possession) Act, 1950, are hereby repealed.

(2) Notwithstanding the repeal of the provisions aforesaid, anything done or any action taken including any grant of license, registration or assignment, any order, or proceeding, pending or ongoing, under the repealed provisions shall be deemed to have been done or taken under this Act, and the provisions of this Act shall have effect in relation thereto.

53. Existing rules to continue

All rules, guidelines or administrative orders, made or purported to have been made under the Indian Telegraph Act, 1885 or under the Indian Wireless Telegraphy Act, 1933, or under the Telegraph Wires (Unlawful Possession) Act, 1950, shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules, guidelines or administrative orders were made, and shall continue in force unless and until they are superseded by any rules made under this Act.

Schedule – 1: Spectrum assignment for Governmental functions or purposes in view of public interest or necessity

1. National security and defence.
2. Law enforcement and crime prevention.
3. Public broadcasting by Prasar Bharati.
4. Disaster management, safeguarding life and property.
5. Promoting scientific research, resource development, and exploration.
6. Safety and operation of roads, railways, metro, regional rail, inland waterways, air, pipelines, shipping, and other transport systems.
7. Conservation of natural resources and wildlife.
8. Meteorological department and weather forecasting.

9. Internationally recognized dedicated bands for amateur stations, navigation, telemetry, and other like usages.
10. Use by Central/State Government/ their entities or other licensed entities for safety and operations of mines, ports and oil exploration and such other activities where the use of spectrum is primarily for supporting the safety and operations.
11. Public Mobile Radio Trunking Services.
12. Radio backhaul for telecommunication services.

Explanation: The term “radio backhaul” shall mean the use of radio frequency only to interconnect telecommunication equipment, other than the customer equipment in telecommunication networks.

13. Community Radio Stations.
14. Space research and application.
15. Certain satellite-based services such as: Teleports, Direct To Home (DTH), Digital Satellite News Gathering (DSNG), Very Small Aperture Terminal (VSAT), National Long Distance (NLD), International Long Distance (ILD), Mobile Satellite Service (MSS) in L and S bands.
16. Use by central/state government or their authorized agencies for telecommunication services.
17. Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Network

Limited (MTNL).

18. Testing, trial, experimental, demonstration purposes for enabling implementation of new technologies.
19. Any other function or purpose determined by the Central Government to be included under this Schedule.

Schedule – 2: Broadcasting services requiring license as of the Appointed Date

1. Direct to Home (DTH) Services.
2. Community Radio Stations.
3. FM Radio Broadcasting Services through Private Agencies.
4. Internet Protocol Television (IPTV) Services.
5. Downlinking of Television Channels.
6. Uplinking of Television Channels.

Schedule – 3: Offences and Penalties

S. No.	Offence under the Act	Penalty	Cognizable or Non-cognizable	Compoundable or Non-compoundable
1	Providing telecommunication services or establishing telecommunication network without a license under sub-section (1) of Section 4.	Imprisonment for a term which may extend to one year, or with fine up to rupees fifty lakhs, or both.	Cognizable	Non-compoundable
2	Gaining or attempting to gain, directly or indirectly, (a) unauthorized access to telecommunication network or (b) intercepting a message unlawfully.	Imprisonment for a term which may extend to one year, or with fine up to rupees fifty lakhs, or suspension of telecommunication service, or a combination thereof.	Cognizable	Non-compoundable

3	Wilful contravention that is detrimental to national security under Section 25.	Imprisonment for a term which may extend to three years, or with fine up to rupees one crore, or suspension of telecommunication service, or a combination thereof.	Cognizable	Non- compoundable
4	Possessing or use of any equipment that blocks telecommunication without authorization.	Imprisonment for a term which may extend to three years, or with fine up to rupees fifty lakhs or suspension of telecommunication service, or a combination thereof.	Cognizable	Compoundable
5	Wilfully removing or tampering with or causing damage to telecommunication infrastructure or telecommunication network.	Imprisonment for a term which may extend to one year, or with fine up to rupees one crore, or both.	Cognizable	Compoundable
6	Causing damage through negligence to telecommunication infrastructure or telecommunication network.	Fine up to rupees fifty lakhs	Non-cognizable	Compoundable

7	Possessing wireless equipment without an authorization or exemption.	First Offence: Fine up to rupees fifty thousand. Each subsequent offence: Fine up to rupees two lakhs for each such instance	Non-cognizable	Compoundable
8	Use by any person or entity of a telecommunication service, telecommunication network or telecommunication infrastructure knowing or having reason to believe that such telecommunication service, telecommunication network or telecommunication infrastructure does not have the required license or registration under this Act.	Fine up to rupees one lakh.	Non-cognizable	Compoundable
9	Impersonating authorized personnel of licensee, registered entity or assignee to perpetrate fraud.	Imprisonment for a term which may extend to three years, or with fine up to rupees fifty lakhs or suspension of telecommunication service, or a combination thereof.	Cognizable	Non-compoundable

10	Contravention of the provisions of Section 33.	First Offence: Fine up to rupees fifty thousand. Each subsequent offence: Fine up to rupees two lakhs for each such instance, or suspension of telecommunication service, or a combination thereof.	Non-cognizable	Compoundable
11	Misrepresentation of identity as required under sub-section 7, Section 4 by a person availing telecommunication services.	Imprisonment for a term which may extend to one year, or with fine up to rupees fifty thousand, or suspension of telecommunication service, or a combination thereof.	Cognizable	Compoundable

<p>12</p>	<p>Contravention of any provision of this Act, or rules, or any condition, limitation or restriction subject to which any license, registration, assignment, authorization, direction or exemption in relation to any matter under this Act, has been granted or accorded, and for which no penalty or punishment is provided elsewhere in this Act.</p>	<p>First offence: Fine up to rupees twenty five thousand. Second or subsequent offence: Further fine up to rupees fifty thousand for every day after the first during which the contravention continues.</p>	<p>Non-cognizable</p>	<p>Compoundable</p>
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Schedule – 4: Penalties for breach of terms and conditions

Categorization	Penalty
Severe	Penalty up to Rs 5 Cr
Major	Penalty up to Rs 1 Cr
Moderate	Penalty up to Rs 10 Lakh
Minor	Penalty up to Rs 1 Lakh
Non-severe	Written warning

Schedule – 5: Telecommunication Infrastructure

1. Telecommunication lines, including wire or wires used for the purpose of telecommunication, including copper cables, optical fibre cables and submarine cables, with any casing, coating, tube, or pipe enclosing the same, any appliances and equipment connected therewith for the purpose of fixing or insulating the same.
2. Posts.
3. Telecommunication towers by whatever name called (including mobile towers).
4. Ducts.
5. Conduits.
6. Cable corridors.
7. Any civil, electrical, or mechanical infrastructure used or capable for use for telecommunication as may be notified by the Central Government from time to time.