



**Dated: 01-09-2022**

**Comments of the ITU-APT Foundation of India  
on  
Consultation Paper released by DoT on 23-07-2022 regarding  
“Need for a new legal framework governing Telecommunication in India”**

Executive Summary

Department of Telecom on 23-07-2022 released a Consultation Paper regarding the need for a new legal framework governing Telecommunication in India, as presently the entire Telecommunication Network is mostly governed by Indian Telegraph Act, 1885, a 137-year-old Act. ITU-APT Foundation of India (IAFI) has considered the consultation paper and provides our comments. Our Comments are structured in following seven sections.

We would also like to request that industry comments should also be sought when draft laws are ready before they are passed by the Indian parliament.

The key focus of our Comments is:

- Need for licensing to attract more investments and implementation of innovative technologies in last mile networks
- Exemption from licensing of captive indoor/in campus wireless networks
- More Frequency bands to be added for unlicensed indoor usage such as 6GHz WI-FI6e and V band Wi-Gig
- Ease of accessing Radio frequency spectrum with suitable strengthening of WPC, the spectrum management authority
- Separate licenses for Private LTE/5G for SDCA or even smaller areas
- Support for licensing of private sector satellite based communication infrastructure in a big way to make broadband internet available in remote locations
- Separate Licensing for facility based networks and easier licensing for service providers without facilities.
- Broadband policy to be at forefront wherein all media (terrestrial and space) should be encouraged without any discrimination and with respective global practices in place
- Importance of Spectrum policy roadmap to be recognized within the framework. ITU harmonisation , alignment with global practice as key tenets.

Spectral efficiency that can be achieved in older/legacy bands could be recognised and quantified before further assignment

- Satellite/Space use of spectrum needs to be administratively assigned to satellite and space service operators as per global practice
- Exclusive and non-exclusive (shared) utilization of spectrum resource to be recognized within the framework
- Ease of doing business and enhancement to policies that encourage FDI in India should also be a focus of the enabling framework
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## 1. About IAFI

*ITU-APT Foundation of India (ITU-APT) is a non-profit, non-political, non-partisan Industry foundation registered as a society under the Societies Registration Act, 1960. ITU-APT is working for last 18 years with the prime objective of encouraging involvement of professionals, corporate, public/private sector industries, R&D organizations, academic institutions, and such other agencies engaged in development of Indian Telecom sector in the activities of the International Telecommunication Union (ITU) and the Asia Pacific Telecommunity (APT).*

*The Foundation has been recognized as an International/Regional Telecommunications Organization by the International Telecommunications Union (ITU). ITU-APT is also having close working relations with similar organizations in many other countries including, Japan, Indonesia, and USA.*

*Our members include many stalwarts of the telecom sector including many previous secretaries, members, advisors and DDGs of the DOT and Telecom Commission. We also have many corporate members from India and*

other countries including operators, vendors. The foundation has been responding to various government consultations in the past.

For any further information please see our website <https://www.itu-apt.org/> or contact Mr. Ashish Chaudhary, Sr. Manager of the Foundation at +91 70172 10403 or [info@itu-apt.org](mailto:info@itu-apt.org)

## 2. General Suggestions for New telecom law

1. The Indian Telegraph Act 1885 is quite versatile piece of Legislation. It has withstood the test of time (with only minor amendments) for more than 135 years. Very few countries in the World might have a similar versatile Act. The definition of 'Telegraph' in this act is very broad, encompasses all means of telecommunication, even the futuristic Free Space Optics for communications. Section 4 of the Act provides all necessary powers to the Government. It has allowed Telecom liberalization and privatization, etc.

**However, it is felt that the word 'Telegraph' is very old and does not represent the modern telecom. Therefore, the new law should be titled "Indian Telecommunications Act". The other option is to call it "Digital Communications Act". However, the same is not considered appropriate as it would exclude analogue communications or other future forms of communications, which may or may not be digital.**

**Further, Broadcasting should be kept out of this act and covered by a separate act under Ministry of I&B.**

2. The proposed new Act should be **simple** and details for specific activities/ aspects of different telecom services should be part of **Rules** which can be framed under the Act as it is much easier to amend the Rules, as compared to amending the Act. New Law should therefore allow formation of Rules for various services/ aspects. The existing service rules should be amended along with the new law.
3. A short 'Preamble' should be included in the beginning of the Act, to indicate the broad 'Objective' of the Government from this Act; This can be suitably drawn from NDCP-18:

*This Act supports the development of national digital information infrastructure and provision of telecom services to consumers, industries, enterprises, and government agencies. Digital information infrastructure is increasingly emerging as a key enablers and critical determinant of a country's growth and well-being. The objective of this Act is to lay out consistent guidelines, rules, and principal framework for provision of telecom services to all, focusing on the needs of a changing India, by encouraging and supporting private and public investments in building the digital information infrastructure. The Act also aims to encourage Research and development and local manufacturing of Telecom equipment in the Country.*

4. The radio frequency (RF) Spectrum can provide the best benefits for the country, if managed/ engineered in an integrated manner for the whole country. Considering the vast area of the country and large population, the management authority, the WPC Wing, needs to be strengthened and converted into a separate, independent department of the Ministry. The Act should make it mandatory for the spectrum regulator to publish Annual National Frequency allocation plans as well as five-year spectrum outlook on a regular basis.
5. The Act should provide for the following three main types of licenses, which should be clearly defined in the Act:
  - a. Facilities Based Operator (FBO) License, including Nationwide universal public access network License, Captive non-public network access licenses, Local Area Public Network Licenses, non-terrestrial network licenses including Gateway Earth station licenses, other facility-based service licenses such as PMRTS, GMPCS and IP based network licenses (such as call centers)
  - b. Service Based Operator (SBO) Licenses such as Virtual mobile operators, and specific IP based service providers. These Operators do not own any telecom equipment but only provide service to the users.
  - c. License exempt services
6. The act should also make it clear that no license is needed for use of any telecommunications network within any premises owned or occupied by any person for its own use.
7. The Act should have a separate section on licensing of non-terrestrial networks including satellite Gateway Earth stations, HAPS, and HIBS stations as well as Indian owned and Registered Satellite space stations. Necessary rules should be framed for registration of such systems owned and operated by private/public companies with ITU Radio Communications Bureau (BR).
8. The economic penalties can also be part of various Rules (rather than in the Act), so that the amount of Fine/ Penalty can be reviewed and revised every 5 – 7 years, as per changes in economic situation.
9. Further, details regarding USO (Universal Service Obligation) Fund can also be transferred to Rules under the Act. A broad, brief section regarding 'Development of Digital Information Infrastructure' in the country for desirable socio-economic growth of the nation (by using USO Fund and/ or funds from the national exchequer), should be included in the main act.
10. R & D in all aspects of Telecom, including research into Vedic knowledge in the field of telecom needs to be encouraged, through suitable inclusion of its reference in the Preamble or in the section on R&D. All equipment needed for R&D purposes should be freely available without any restriction of any kind.

11. Persons registered as Dealers and holding Dealer's Possession License (DPL) should be able to procure/import and hold all telecom equipment as needed without any restrictions, for supply to license holders.
12. The act should also have supporting sections on the recognition of principles of Net Neutrality, support for Prime Minister's Wi-Fi Access Network Interface (PM-WANI) and license exempt Wi-Fi services in various bands including 6GHz and 60 GHz.
13. There is urgent need now to enhance the scope of telecom infrastructure providers. On several occasions, Telecom Regulator has also been recommending for Enhancement of IP-1 scope to include active elements such as Antenna, Feeder Cable, Base Station Transmission System, RAN, Small Cells, IBS, Edge Data Centers, etc. Therefore, in the new law, the scope of IP-1 registration should be expanded, and all eligible service providers should be allowed to obtain infrastructure from IP-1. Further, the scope of IP-1 should include, but should not be limited to ROW, Duct Space, OFC, Tower, Feeder Cable, Antenna, Base Station, IBS, DAS etc. A neutral host like IP-1 not only provides the required network infrastructure in a cost-efficient manner, but also allow operators faster time-to-market, besides attracting investments. However, IP-1 scope shall not include core network elements such as Switch, MSC, HLR, IN etc.
14. Importance of Spectrum policy roadmap to be recognized within the framework. ITU harmonization, alignment with global practice as key tenets. Spectral efficiency that can be achieved in older/legacy bands could be recognized and quantified before further assignment
15. Satellite/Space use of spectrum needs to be administratively assigned to satellite and space service operators as per global practice
16. Exclusive and non-exclusive (shared) utilization of spectrum resource to be recognized within the framework
17. Ease of doing business and enhancement to policies that encourage FDI in India should also be a focus of the enabling framework

### 3. Main points in the DoT Consultation Paper 23-07-2022.

- (1) Introduction - Need of new Legal Framework - Para 1 to 6.
- (2) What new law needs to address – Para -7 and 8.
- (3) Simplification of Regulatory Framework – Para- 9 to 13.
- (4) Spectrum Management – Para 14 to 17.
- (5) Right of Way – Para -18 to 20.
- (6) Merger and Acquisition – Para 21.
- (7) Insolvency - Para 22 to 23.
- (8) Expanding USOF – Para -24.
- (9) Penalties – Para – 25.
- (10) Public Safety and National Security – Para 26 to 27.

### 3. Details of various Section of India Telegraph Act, 1885

#### 1. Part – I - Preliminary

Section 1- Name of the Act.

Section 2- Applicable Area.

Section 3- Definitions.

#### 2. Part-II

Section 4 - Grant of License

Section 5 - Govt. To take possession of License Telegraph and Interception.

Section 6- Establish Telegraph of the land of Railway Company.

Section 6A- Rates for International Messages

Section 7 - Power to make Rules.

Section 7A - Saving the existing Agreements.

Section 7B - Arbitration of Disputes.

Section 8 - Revocation of License.

Section 9 - Govt. not responsible for Loss or Damages.

#### 3. Part –III

Section 10- Power to place Telegraph Lines and Post.

Section 11 - Power to enter in property for repair of Telegraph.

Section 12 - Power for Local Authority to give permission.

Section 13 - Power of Local Authority for removal/alternation of telegraph.

Section 14 - Power to alter position of Gas or Water Pipeline and Drain.

Section 15 - Dispute between Local Authority and Telegraph Authority.

Section 16 - Compensation of property other than local authority.

Section 17 - Removal or alternation of telegraph other than local authority.

Section 18 - Removal of Trees interrupting telegraph.

Section 19 - Telegraph lines before passing the Act.

Section 19A- Person likely to damage telegraph line.

Section 19B - Power to confer the telegraph authority power to licensee.

#### 4. Part IV – Penalty

Section 20 - Establishes un-authorized Telegraph.

Section 20A - Breach of Condition of License.

Section 21 - Using un-authorized Telegraph.

Section 22 - Opposing establishment of telegraph on Railway land.

Section 23 - Entering into signal room, trespassing.

Section 24 - Un-lawfully learning the content of message.

Section 25 - Intentionally damaging the telegraph.

Section 25A - Interference with telegraph.

Section 26 - Telegraph Officer disclosing/divulging the message.

Section 27 - Telegraph Officer fraudulently sending the message.

Section 28 - Misconduct.

Section 29 - Sending Fabricated Messages.

Section 29A - Penalty for above.

Section 30 - Retaining a message.

Section 31 – Bribery.

Section 32 – Attempts to commit offences.

5. Part – V – Supplementary Provisions

Section 33 - Requirement of additional police forces.

Section 34 - Law for Part B States.

Section 34A - Application of the Act to Presidency Town.

## 4. Developments in the Indian telecom in the recent years

Presently, the Indian Telecom Scenario is governed mainly by the following four Acts.

1. The Indian Telegraph Act, 1885 (“Telegraph Act”) came into force on 1st October 1885.
2. To regulate the possession of wireless telegraphy apparatus, the Indian Wireless Telegraphy Act, 1933 (“Wireless Telegraphy Act”) came into effect on 1st January 1934.
3. Similarly, to regulate the possession of telegraph wires, the Telegraph Wires (Unlawful Possession) Act, 1950 (“Telegraph Wires Act”) came into effect on 1st April 1951.
4. In addition to this, all present Licensees must comply the directions regarding Tariff and Quality of Services, issued by TRAI, a regulatory body constituted under TRAI Act, 1997.

Department of Telecom draws power mainly through the Indian Telegraph Act, passed by British Parliament in 1885, almost 137 years ago. At that point of time, only Telegraphic Messages and Voice Communication were existing. After NTP-1994, Licenses were issued to private players for basic access services and after NTP-1999, with the inception of mobile services and Internet, entire Telecom scenario has been drastically changes.

Since then, various new services like Mobiles, Messaging Services, and Internet have been added and many more new services likely to be added in near future. Mobile Services and Internet has further changed the entire telecom scenario and now Telecommunications became as Information and Communication Highway with the start of thousands of e-services by various government departments and private companies. Very soon, 5G services will roll-out in India and many new dimensions viz IoT, Mobile Edge Computing (MEC), Machine to Machine (M2M) Communication Services, AI, Cloud Computing and Cyber Security will be added.

The telecommunications sector has undergone a major process of transformation through significant policy and reforms. Following major developments taken place in the Indian Telecom Scenario and needs to be reflected in the proposed Telecom Act.

1. Presently, Central Government or Department of Telecom does not provide any Telecom Service directly to the end user, as telecom services are provided by two government PSUs viz BSNL/MTNL and number of Private Telecom Service Providers.
2. On 25-02-2012, a new PSU Bharat Broadband Network Limited (BBNL) was created for establishment, operation and maintenance of BharatNet, a middle-mile GPON



network from Block to Gram Panchayats/Villages. BharatNet is a Govt. of India Network, established, maintained and operated by BBNL. Entire project is funded by USOF.

3. For Telecom Licensing and Enforcement, entire country is divided in 22 LSAs and Licenses for Basic/Mobile Telecom Services are issued LSA-wise. (22 –LSA & 322 – SSA)
4. Now, DoT provides only one type of License i.e., Unified License for providing one or more types of telecom services. Licensee can take authorization to provide one or all 12 categories of telecom services.
5. Internet Service Providers (ISPs) are given three types of Licenses viz Category –A (PAN India), B (Telecom Circle and four Metro Cities) and C (SSA).
6. License and Spectrum have been separated now. Any Licensee, if willing can acquire spectrum from DoT independently.
7. In June 2016, the Department of Telecom introduced a new license category called the Unified License (Virtual Network Operator) (VNO). Through this license, the DoT finally permitted the launch of virtual network operator services in India, whereby licensed virtual network operators can, without owning their own telecom infrastructure, re-sell the telecom services obtained from regular telecom operators.
8. Telecom Regulatory Authority of India (TRAI) was established through TRAI Act, 1997.
9. The Telecom Disputes Settlement and Appellate Tribunal (TDSAT), was also established (under TRAI Act, 1997) to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector.
10. DoT in Sept 2017 issued amendment in the Indian Telegraph Rule- 1951 regarding Mandatory Testing and Certification of Telecommunications Equipment (MTCTE), considering security threat from Chinese Telecom Equipment. Some new Section is to be added in the proposed Act. This should include international standards for product compliance, cyber security, testing through certifying Indian Accredited Labs designated by the TEC.
11. DoT in Aug 2017 issued rules to regulate the Temporary Suspension of Telecom Services due to Public Emergency or Public Safety. Some new Section is to be added in the proposed Act.
12. DoT in May 2017 issued a Notification regarding provisioning of Submarine Optical Fiber Cable connectivity between Mainland India (Chennai) and Union Territory of Andaman and Nicobar Islands. More such cables will be laid in future. Capital Expenditure incurred will be borne by Central Government/DoT and will be funded by the Universal Service Obligation Fund. Some new Section is to be added regarding Submarine OF Cable in the proposed Act.
13. In 2018 the National Digital Communications Policy (NDCP) was released by the DoT. The policy seeks to prioritize universal access to digital communications over revenue generation. The policy also recognizes the trend of 'convergence' of communication technologies (voice, broadcasting and data) into the singular medium of data.
14. On 14th December 2018, the DoT issued the Flight and Maritime Connectivity Rules, 2018. These Rules have introduced a new category of service called the In Flight and Maritime Connectivity Service (IFMC) for facilitating Wi-Fi services on ships and aircraft. The Rules permit licensees holding certain service authorizations to offer IFMC services. The Rules also permit international airlines, international shipping lines



or other Indian companies to offer IFMC services after tying up with eligible Indian telecom licensees.

15. Information Technology Act 2000 (IT Act 2000) - In light of technological advancements, this legislation was introduced to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication. In 2008, this Act was amended and a new provision was inserted, which defines a "communication device" as a cell phone, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, TV channels, audio or image. With this new provision, the telecom communications are covered by the IT Act 2000.
16. On 31st July, 2018 DoT issued "Regulatory Framework on Net Neutrality", to ensure that the regulatory framework on Net Neutrality adheres to the fundamental principles and concepts of Net Neutrality, which clearly says that Internet accessibility and availability to all must be without any discrimination. Internet Access Services, therefore, need to be governed by a principle that restricts any form of discrimination, restriction or interference in the treatment of content, including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content.
17. Wi-Fi Hotspots are being developed in huge number by private players and Central Government/ DoT (especially in Rural Area). Some regulation needs to be added in the proposed Act for using de-licensed spectrum of 2.4 GHz and 5.0 GHz. More de-licensed frequency bands in 6 GHz and 60 GHz should be added for promoting Wi-Fi.
18. Telecom Equipment from Trusted Telecom Source - The Union Cabinet had accorded approval for the National Security Directive on Telecommunication Sector on 16th December 2020. Consequently, with effect from 15th June 2021 the Telecom Service Providers (TSPs) are mandatorily required to connect their networks only those new devices which are designated as 'Trusted Products' from 'Trusted Sources'. Necessary amendment had been made by the Government in this regard to the license conditions for the provision of telecommunication services by the TSPs.
19. There is now the urgent need for enhancement of scope of Telecom Infrastructure providers. All industry and Government stakeholders unanimously agree that scope of IP-1 registration should cover both passive as well as active infrastructure to encourage deployment of common sharable infrastructure and the same needs to be implemented at the earliest. NDCP-2018 gazette notified by the Government in Oct'2018 envisage enhancement of scope of IP-1 vide para 1.1(f) as below: "Encourage and facilitate sharing of active infrastructure by enhancing the scope of Infrastructure Providers (IP) and promoting and incentivizing deployment of common sharable, passive as well as active, infrastructure." Even TRAI also recommended to the Government for IP-1 scope enhancement and promoting deployment of common sharable, passive as well as active infrastructure, vide its recommendations dated 2-Feb-2018 on "Inputs for formulation of NDCP-2018".

## 5. Telecom Act of various countries:

1. New Telecom Act was introduced in Canada in 1993, replacing the Railway Act, 1906, which also governs the Telecom Services.

2. In USA, first major overhaul of Telecommunication Law was done after 62 years and Telecommunications Act of 1996 was introduced.
3. In UK, new Communication Act, 2003 was introduced superseding old Telecommunication Act, 1984.
4. In Australia, new Telecommunication Act was introduced in 1997.
5. In Brazil, new Telecommunication Law was introduced in 1997.
6. In Mexico, Telecommunication Act was introduced in 1996.
7. In Germany, new Telecommunication Act, 2021 has been introduced.

Considering Indian Telegraph Act, 1885 as 137 years old legislation and new legal framework is very much required; DoT released a Consultation Paper and requested comments from all the stakeholders to develop a new Legal Framework. In order to meet the existing and new challenges, it is very important to have a modern and future-ready legal framework which addresses the realities of telecommunication of 21st century in India. Enclosed please find our suggestions for a new telecom law to replace Indian Telegraph Act 1885

Section 6 – General suggestions for the New Telecom law

Section 7 - Comments of IAFI on existing Indian Telegraph Act

## 6. Comments of IAFI on existing Indian Telegraph Act

### **PART- I**

1. **Section (1)** - Name of the Act - should be **Indian Telecommunications Act, 20xx**.
2. **Section (2)** - Word “Telegraph” appearing repeatedly in the Indian Telegraph Act should be replaced by “**Telecommunications**”.
3. **Section 3(1)** - *"telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.*  
*Explanation. "Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than **3,000 giga-cycles** per second propagated in space without artificial guide;*

**REVISED Section 3 (1)** –

*"telecommunications" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, video, writing, images and sounds or intelligence of any nature by wire, cable (including optical fiber cable), visual or other electro-magnetic emissions, Radio waves, galvanic, electric or magnetic means.*

*Explanation. "Radio waves" means electro-magnetic waves of frequencies lower than **3,000 GHz**.*

**Section 3 (2) - "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by [the Central Government] or by a person licensed under this Act."**

**REVISED Section 3 (2) –**

**Section 3 (2) - "telecommunications officer" means any person appointed by the Central Government in connection with a telecommunication network or by a person licensed under this Act**

As the Telecom Network is mostly installed and maintained by private players, the Telecom Officer– should be a person appointed by the Central Government with the consultation with Licensee, for installation and maintenance of the Telecom Network.

Provision given Under Section -19 (B) of this Act may be used by the Telecom Authority.

**Section 3 (3) – "message" means any communication sent by telegraph, or given to telegraph officer to be sent by telegraph or to be delivered".**

**REVISED Section 3 (3) –**

**"message" means any sign, signal, writing, image, intelligence, or information of any nature transmitted or received through telecommunications**

**REVISED Section 3 (4) –**

**Telecommunications Network" means any telecommunication Line, wire, or telecommunication cable (any cable of a telecommunication system including Optical Fiber Cable), Telecommunications Equipment (any appliance, apparatus or accessory used or intended to be used for telecommunications) for transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to re-arrangement, computation or other processes by any means in the course of their transmission, emission or reception;**

**REVISED Section 3 (5)**

**Section 3 (5) - Telecom Network also includes any auxiliary or supporting structures such as ducts, enclosures, stays, struts or other above or below ground contrivance for carrying, suspending, or supporting a telecom network**

**Section 3 (6)** - *"telegraph authority" means the Director General of [Posts and Telegraphs], and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act.*

**REVISED Section 3 (6)** –

**Section 3 (6)** - Telecom Authority of India means Director General Telecommunication (DGT), appointed by the Minister of Communication *and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act.*

**Section 3 (7) and (8)** - No changes are required.

New Section to be added: -

**Section (3) (9)** –

**Designation of Public Telecommunication Licensees.**

The Telecom Authority may, with the approval of the Director General Telecommunications or Minister of Communication, designate any person who has been granted a license under section 4 as a Public Telecommunication Licensee to perform all or any of the functions relating to the operation and provision of telecommunication systems and services in India within the exclusive privilege of the Authority under this Act.

PART- II

**PRIVILEGES AND POWERS OF THE GOVERNMENT**

**4. Section (4):**

**1. Power to License Telecommunication Systems and Services.**

This section requires complete overhauling.

**We suggest the following: -**

(a) There should be three types of licenses defined in the Act:

- I. Facilities Based Operator (FBO) License.
  - i. National wide universal public access network License
  - ii. Captive non-public network access licenses
  - iii. Local Area Public Network Licenses
  - iv. Other facility-based service licenses such as PMRTS, GMPCS

- v. IP based network licenses (such as for call centers)
  - II. Service Based Operator (SBO) License.
    - i. Virtual mobile operators
    - ii. Specific IP based service provider (such as licensees providing IPTV)
  - III. License exempt services
- (b) No License is needed for use of telecommunications for use within any premises owned or occupied by any person for its own use.
- (c) A License may, with the consent of, or in accordance with the terms of a general authority given by the Minister of Communications, be granted by the Authority (DGT) either unconditionally or subject to such conditions as the Authority may impose and specify in the license and either irrevocably or subject to revocation as therein specified for the running of such Telecommunication Systems and Services falling within section 3 as are specified in the license.
- (d) A license granted under subsection (a) (I) above may be granted either to any person, class of persons or a particular person, and may include (without affecting the power to impose conditions conferred by that subsection) conditions requiring the licensee to enter into agreements or arrangements with any person, class of persons or another telecommunications licensee for: -
- (i) the interconnection of, and access to, telecommunication systems.
  - (ii) the sharing of installation or plant used for telecommunications belonging to any telecommunication licensee; and
  - (iii) such other purpose as may be specified in the license.

and on such terms and conditions as may be agreed to by the licensee and such other persons or licensees or, in default of agreement, as may be determined by the Authority.

- (e) the licensee to comply with any direction given by the Authority as to such matters as are specified in the license or are of a description so specified;
- (f) the licensee to comply with codes of practice and standards of performance that are applicable to the licensee; and
- (g) the licensee to do, or not to do, such things as are specified in the license or are of a description so specified.
- (h) The grant of a license under subsection (a) is subject to the payment to the Authority of such fees for the grant of the license as may be prescribed.
- (i) A licensee must also pay to the Authority for Universal Service Obligation” charges as may be determined by the Central Government after considering the recommendations made in this behalf by the Telecom Regulatory Authority of India (TRAI)
- (j) A licensee is not entitled for the refund of any fee paid under subsection (g), if the license is cancelled or suspended, or the period of the license is reduced or the license is terminated at the request of the licensee.
- (k) The grant of license under this section is at the discretion of the Authority.
- (l) This does not prevent the Minister of Communication from directing the Telecom Authority (DGT) to grant a license in any specific case.

IN ADDITION TO THE ABOVE, WE PROPOSED NEW SECTION - 4A:

**Section - (4A) – Power of the Central Government or Authority (DGT) to manage Radio Frequency Spectrum**

(1) Save as otherwise provided in this act, no person shall use any radio frequency spectrum or own or operate any telecom network using any radio frequency spectrum.

(2) provided that the central government may exempt any frequency band from licensing under sch conditions as may be prescribed, through publication in the gazette of India

(3) The Central Government may, grant any spectrum rights, licenses, authorizations, permits to any person or class of persons, or to all citizens by individual licenses or class licenses unconditionally or subject to such conditions, as the Central Government may impose and specify in the grant of the spectrum right, including conditions on the sharing and trading of radio frequency spectrum; and

Provided that the Central Government may exempt any frequency or frequency band (s) from Licensing requirements unconditionally or subject to such conditions as the Central Government may impose

(4) A spectrum right under subsection (3) may be granted to any person or class of persons, or to a particular person.

(5) For the purposes of subsection (3), the Central Government may, subject to the regulations specify, in such form and manner as the Central Government thinks fit:

- (a) the procedure and requirements for the grant of a spectrum right under subsection (3);
- (b) the conditions for participating in the process for the allocation of the spectrum right; and
- (c) the fees and charges payable, or the manner of determining the fees and charges payable, for the grant of the spectrum right.

(6) the Central Government may employ any, or any combination, of the following methods to determine the grant of a spectrum right:

- (a) auction
- (b) tender
- (c) e-auction
- (d) Administrative allotment
- (e) beauty contest
- (f) any other method as prescribed by the authority

(7) The grant of a spectrum right to a person under subsection (3) may be subject to the person paying to the Central Government such fees or charges as may be specified, or as may be determined in the manner specified, by the Central Government.

(8) A person who is granted a spectrum right under subsection (3) must also pay to the Central Government such other fees or charges for the grant, or such periodic fees or charges for the duration of the grant, or both, as may be specified, or as may be determined in the manner specified, by the Central Government under subsection (6).

(9) The fees or charges payable by a person to the Central Government under subsections (5) and (6) are recoverable by the Central Government from the person as a debt due to the sovereign.

(10) The grant of spectrum rights under subsection (3) is at the discretion of the Central Government.

(11) This section does not prevent the Minister from directing the Authority to grant a spectrum right in any specific case.

(12) Anything done under and in accordance with a spectrum right granted under subsection (1) does not constitute an infringement of the privilege conferred by section 4.

(13) For the purposes of giving effect to this section or any of the regulations, the Authority may give directions to any person who has been granted a spectrum right under subsection (3) concerning the use of the spectrum right.

(13) For the purposes of giving effect to this section, the Authority may by regulations can take following action.

(a) provide for the exclusion of any person from participation, or limiting the person's participation, in the process of allocation of any spectrum right;

(b) without affecting subsection (3)(a), specify the types of conditions that the Authority may impose on the grant of any spectrum right;

(c) provide for the variation of the conditions of the grant of any spectrum right;

(d) provide for the resumption, by agreement or compulsorily, of any spectrum right or part of any spectrum right;

(e) provide for the suspension or cancellation of the grant of any spectrum right or part of any spectrum right and the grounds for suspension or cancellation; and

(f) impose on a person who is granted any spectrum right, for the breach of any of the conditions of that grant or of any direction issued under this section, a financial penalty of an amount not exceeding the higher of the following amounts:

(i) 10% of the annual turnover of that part of the person's business in respect of which the person is granted the spectrum right, as ascertained from the person's latest audited accounts.



Saral Sanchar Portal:

**DoT has started a web-based portal for issuing of various types of Licenses and Registration Certificate. It is a unified portal to issue various types of Licenses and Registration Certificates in a digitized manner to ensure transparency, a paperless, secure and hassle-free platform. It covers –**

- (a) Unified License.**
- (b) Unified License (VNO)**
- (c) WPC Licenses (RTR/GMDSS/HAM/NW/Non-NW/Satellite/SACFA etc.)**
- (d) PM WANI.**

IN ADDITION TO THE ABOVE, WE PROPOSED NEW SECTION – 4B:

**SECTION – 4B: Telecom Services through Satellite:**

**Department of Telecommunication provides various types of licenses for Satellite Services and more services likely to be added in near future. This must be reflected in the proposed Act.**

On 25-08-2014, DoT permitted BSNL for provision and operation of Satellite based services using Gateway to be installed in India. Later various types of licenses were issued in India

- (1) VSAT Services through INSAT:** After inception of the Telecom Policy, 1999, DoT issued broad guidelines for issue of License for Commercial CUG VSAT service and Captive CUG VSAT service. The scope of the service is to provide data connectivity between various sites scattered within territorial boundary of India via INSAT Satellite Transponder using Very Small Aperture Terminals (VSATs). However, these sites should form part of a Closed User Group (CUG). VSAT service providers takes dedicated satellite bandwidth through the Department of Space (DoS) and is also liable to pay the satellite bandwidth charge separately.
- (2) MSS-R Services through INSAT:** INSAT Mobile Satellite System Reporting Service (INSAT MSS Reporting Service) is a one-way satellite-based messaging service available through INSAT. The basic nature of this service is to provide a reporting channel via satellite to the group of people, who by virtue of their nature of work are operating from remote locations without any telecom facilities and need to send short textual message or short data occasionally to a central station. This service provides one way message reporting (transmit only) facility from anywhere in India.
- (3) INMARSAT Services:** - Inmarsat has been mandated to provide Global Maritime Distress and Safety System (GMDSS) services for maritime use. The GMDSS is mandated for ships internationally by the International Maritime Organization (IMO) Safety of Life at Sea Convention (SOLAS). In India, BSNL is providing GMDSS services through INMARSAT. The procedures governing use are contained in the International Telecommunication Union recommendations and in the International Radio Regulations, and carry the force of an International Treaty. On 25-08-2014, DoT

granted a Service License to BSNL for provisioning of INMARSAT/Satellite Phone Service, using gateway installed in India' under "Sui-generis" category.

- (4) **GMPCS Service:** - In addition to GMDSS, BSNL also provides GMPCS Services in India using INMARSAT. BSNL has established the gateway and started the Global Mobile Communication by Satellite (GMPCS), a Satellite Phone Service in May 2017.

It is proposed that suitable provisions for satellite services and gate-way earth Stations in the private sector should be added under this new section.

**5. Section (5) - "*Power for Government to take possession of licensed telegraphs and to order interception of messages*".** Minor corrections mentioned.

Provisions mentioned in the Rule 419 A of Indian Telegraph Rule, 1951 regarding Interception needs to be added.

**6. Section (6) - Power to establish telegraph on land of Railway Company**

This section needs to be deleted as RailTel is laying its Telecom Network along the Railway track.

**Section (6A) - Power to notify rates for transmission of messages to Countries outside India**

Central Government or DoT does not provide any messaging services to countries outside India and Telecom Tariff is decided by TRAI, so this section may be deleted.

**7. Section (7) - Power to make rules for the conduct of telegraphs**

**For conducting the day-to-day telegraph functioning, Central Government / DoT has framed Indian Telegraph Rules, 1951 (537 Rules) and (24) amendments have been issued by DoT till date.**

Very similar to the Act, these rules have to be revised, as most of rules are outdated.

**Section (7A) - Saving of existing agreements**

No changes are required.

**Section (7B) - Arbitration of disputes**

Following change is suggested.

The award of the arbitrator appointed under sub-section (1) can be challenged by any of the party in the Apex Court only.

**8. Section (8) - Revocation of licenses.**

Following change is suggested.

Central Government or DGT may take decision regarding Revocation of License, based on the recommendations of a Committee constituted for specific purpose involving senior officers of DoT and CEO of the Licensee.

**9. Section (9) – Government not responsible for loss or damage:**

Modified as:

Central Government is not liable in respect of any injury, loss or damage suffered by any person by reason of —

- (a) any failure to provide or delay in providing any telecommunication services or any equipment associated therewith or service ancillary thereto;
- (b) any failure, interruption, suspension or restriction of any telecommunication service or service ancillary thereto or delay of, or fault in, any communication by means of telecommunications;
- (c) any error in, or omission of, any information transmitted through telecommunications; or
- (d) any loss of secrecy in communication arising from the use of any telecommunication service,

which is due to the act or default of another person, or an accident or some other cause beyond the public telecommunication licensee's control.

**New Section already added in the Act by virtue of creation of USOF:**

**In 2003, Indian Parliament passed Indian Telegraph (Amendment) Act, 2003 for creation of USOF. Following Sections have already been added in the existing Act.**

**9A –**

- (1) On and from the commencement of Indian Telegraph Act (Amendment), 2003, there shall be deemed to have been established, for the purpose of this act, a fund to be called the Universal Services Obligation Fund.
- (2) The fund shall be under the control of the Central Government and there shall be credited thereto –
  - (a) Any sum of money paid under Section – 9B.
  - (b) Any grants and loan made by the Central Government under Section 9(C).
- (3) The balance to the credit of the fund shall not be lapsed at the end of the financial year.

**9B -**

The sum of money received toward Universal Service Obligation under Section - 4 shall be credited to the Consolidated fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit

such proceed to the fund from time to time being utilized exclusively for Universal Service Obligation.

**9C -** The Central Government may, after due appropriation made by Parliament by law in this behalf, credited by grants and loans such sum money as that Government may consider necessary in the fund.

**9D -**

- (1) The Central Government shall have the power to administer the fund in such manner as may be prescribed by rules made under the act.
- (2) The fund shall be utilized exclusively for meeting the Universal Service Obligation.
- (3) The Central Government shall be responsible for the coordination and ensuring timely utilization and release of sums in accordance with the criteria as may be prescribed by rules made under this act.

**We propose to add a new Section in the Act for creation of Telecom Development Fund.**

**Section – 9(E)** - For the research and development of Indigenous Telecom Equipment and to achieve Zero Import Policy, following section need to be added in the proposed Telecommunication Act.

- (1) Initially, Rs 1,000/- (One Thousand Crore) will be diverted from the existing USO Fund, to create Telecom Development Fund.
- (2) 10% of the total Universal Services Access Levy (presently 5% of the AGR is paid by all Telecom Service Providers) every year, should be transferred to Telecom Development Fund and to be utilized for the Research and Development of Telecom Equipment in the country.
- (3) A committee under of Senior Officers will be constituted under the chairmanship of the Secretary, Telecom and other members will be from R&D organizations, TEMA, IITs and other reputed institutions.
- (4) Funds will be allocated based on the recommendations of the Committee.

PART- III

**POWER TO PLACE TELECOM LINES, EQUIPMENT CABLES,  
WIRES, POSTS, **MASTs, OR TOWERS****

**10. Section (10) –**

**Power for telegraph authority to place and maintain telegraph lines and posts.**

**Central Government may issue rules for placement of telecom lines, equipment cables, wires, and posts, masts or towers**

Department of Telecom vide Gazette Notification dated 15-11-2016, issued Indian Telegraph Right of Way Rules, 2016, to regulate Underground Infrastructure (Optical Fiber Cable) and Over Ground Infrastructure (Microwave Towers).

The Department of Telecommunications (DoT) has launched a centralized right of way (RoW) portal, Sugam Sanchar (translated as accessible connectivity), which will provide single-window clearance for stakeholders to apply and track applications.

11. Section (11) –  
**Power to enter on property in order to repair or remove telegraph lines posts**
12. Section (12) –  
**Power for local authority to give permission under section 10, clause (c), subject to conditions.**  
**Provisions applicable to property vested in or under the control or management of local authorities.**
13. Section (13) –  
**Power for local authority to require removal or alteration of telegraph line Telecom Network or post.**
14. Section (14) –  
**Power to alter position of gas or water pipes or drains.**
15. Section (15) –  
**Disputes between telegraph authority and local authority.**
16. Section (16) -  
**Provisions applicable to other property**  
**Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority**
17. Section (17) –  
**Removal or alteration of telegraph line or post on property other than that of a local authority.**
18. Section (18) –  
**Provisions applicable to all property**  
**Removal of trees interrupting telegraphic communication –**
19. Section (19) –  
**Telegraph lines and posts placed before passing of this Act**  
**Section (19A) – Person exercising legal right likely to damage telegraph or interfere with telegraphic communication to give notice.**  
**Section (19B) –**  
**Power to confer upon licensee powers of telegraph authority under this Part.**

## **Right of Way:**

On 15-11-2016, DoT issued detailed rules regarding Right of Way known as Indian Telegraph Right of Way Rules, 2016.

The Department of Telecommunications further launched a GatiShakti Sanchar portal, which would streamline the application and approval procedure for right of way (RoW) across the country. Any Telecom Licensee/ IP-1 Infrastructure company used the same for filing the requisition and getting approval.

Many Central Government Departments and State Governments are the stake holders.

## **In view of this new provision as per DoT order dated 15-11-2016 should be inserted.**

PART- IV

### **Penalties**

**20. Section (20) –**

**Establishing, maintaining or working un-authorized telegraph–**

Penalty Amount mentioned needs to be revised

**Section (20A) –**

**Breach of condition of license**

Penalty Amount mentioned needs to be revised.

**21. Section (21) –**

**Using unauthorized telegraphs**

Penalty Amount mentioned needs to be revised

**22. Section (22) -**

**Opposing establishment of telegraphs on railway land.**

Section needs to be deleted.

**23. Section (23) –  
Intrusion in to signal-room, trespass in telegraph office or obstruction.**

Minor corrections suggested.

**24. Section (24) –  
Unlawfully attempting to learning the contents of messages.**

No change is required.

**25. Section (25) -  
Intentionally damaging or tampering with telegraphs.**

Minor corrections suggested.

**Section (25A) –  
Injury to or interference with a telegraph line or post**

Minor corrections suggested. Penalty Amount mentioned needs to be revised.

**26. Section (26) –  
Telegraph officer or other official making a way with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals.**

No change is required.

**27. Section (27) -  
Telegraph officer fraudulently sending messages without payment.**

May be deleted.

**28. Section (28) –  
Misconduct**

No change is required.

**29. Section (29) –  
Sending fabricated messages.**

No comments – section replaced by 29A.

Section (29A) –

**Penalty**



Amount of penalty needs revision.

**30. Section (30) -  
Retaining a message delivered by mistake**

May be deleted.

**31. Section (31) –  
Bribery**

No comments.

**32. Section (32) -  
Attempts to commit offences**

No comments.

PART-V

SUPPLEMENTAL PROVISIONS

**33 and 34. Section (33 & 34)-**

**Power to employ additional police in places where mischief to telegraphs is repeatedly committed.**

These laws might be used by British to harass general public.

Both the sections need to be deleted, as does not match with Indian Constitution.

Suggestion from ITU-APT for addition of New Sections in the Proposed Telecom Act.

**A. Powers for Modification of license conditions by DGT**

(1) Subject to this section, the Authority (DGT) may modify the conditions of a license granted under this section.

(2) Before making modifications to the conditions of a license of a public telecommunication licensee under this section, the Authority must give notice to the licensee —

- (a) stating that it proposes to make the modifications in the manner as specified in the notice and the compensation payable for any damage caused by the modifications; and

- (b) specifying the time (being at least 28 days from the date of service of notice on the licensee) within which written representations with respect to the proposed modifications may be made.

Authority must take the views of the TRAI on the proposed modifications.

(3) Upon receipt of any written representation mentioned in subsection (2), the Authority must consider the representation and may —

- (a) reject the representation; or
- (b) amend the proposed modifications or compensation payable in accordance with the representation, or otherwise,

and, in either event, the Authority must issue a written direction to the licensee requiring that effect be given to the proposed modifications specified in the notice or to such modifications as subsequently amended by the Authority within a reasonable time.

(4) The Authority must not enforce its direction —

- (a) during the period of any appeal pending with the Minister of Communication.
- (b) while a reconsideration request of the public telecommunication licensee for pending appeal for a decision of the Authority under this section is under consideration by the Authority; or
- (c) while an appeal of the public telecommunication licensee in respect of a decision of the Authority under this section is under consideration by the Minister.

#### **D. In place of Section (8 and 20A) – regarding**

##### **Revocation of License, following is suggested,**

##### **Suspension or cancellation of license, etc.**

If the Authority is satisfied that a person who is granted a license under section 4 or any regulations made under this Act is contravening, or has contravened, whether by act or omission —

- (a) any of the conditions of the license or part thereof;
- (b) any provision of any code of practice or standard of performance;
- (c) any direction of the Authority given under various sections.

(d) any terms or conditions of participation in a dispute resolution scheme

the Authority may, by written notice, do either or both of the following:

- (e) issue such written order to the person as the Authority considers requisite for the purpose of securing compliance thereof;
- (f) require the person to pay, within a specified period, a financial penalty of an amount not exceeding the higher of the following amounts:
  - (i) 10% of the annual turnover of that part of the person's business in respect of which the person is granted the license, as ascertained from the person's latest audited accounts;

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(2) If the Authority is satisfied that —

- (a) the person mentioned in subsection (1) is again likely to contravene, whether by act or omission, any condition, provision, direction or section mentioned in that subsection;
- (b) the person mentioned in subsection (1) has gone into liquidation other than for the purpose of amalgamation or reconstruction;
- (c) the person mentioned in subsection (1) is no longer in a position to comply with this Act or the terms or conditions of the person's license; or
- (d) the public interest so requires,

the Authority may by written notice and without payment of any compensation or refund of any fee, do all or any of the following:

- (e) cancel the license or part thereof;
- (f) suspend the license or part thereof for such period as the Authority thinks fit;
- (g) reduce the period for which the license is to be in force.

(3) An order under subsection —

- (a) may require the person concerned (according to the circumstances of the case) to do, or to refrain from doing, such things as are specified in the order, or as are of a description specified in the order; and
- (b) takes effect at such time (being the earliest practicable time) as is determined by or under that order.

(4) The Authority may at any time vary, suspend or revoke the whole or any part of an order.

(5) Any person who fails to comply with any order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 10% of the Annual Turn Over or to imprisonment for a term not exceeding 3 years or to both.

(6) In any proceedings brought against any person for an offence, it is a defense for the person to prove that the person took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) If the Authority, by written notice under, requires a person who is granted a license to pay, within a specified period, a financial penalty and the person fails or refuses to pay the financial penalty within the specified period, the Authority may, by written notice and without payment of any compensation or refund of any fee, do all or any of the following:

- (a) cancel the license or part thereof;
- (b) suspend the license or part thereof for such period as the Authority thinks fit;
- (c) reduce the period for which the license is to be in force.

(8) Any financial penalty payable by any person is recoverable by the Authority as a debt due to the Authority from that person; and the person's liability to pay is not affected by the person's license ceasing (for any reason) to be in force.

## **E. Equipment Type Approval (ETA) to be used in Telecom Network–**

### **Regarding Approval of Equipment to be used in Telecom Network.**

DoT on 05-09-2017, issued notification regarding Testing and Certification of Telegraph. In addition to the above, from 15th June 2021 the Telecom Service Providers (TSPs) are mandatorily required to connecting their networks only those new devices which are designated as 'Trusted Products' from 'Trusted Sources'.

(1) The following equipment must be approved by the Authority before use

- (a) any equipment to be used for connection (whether directly or indirectly) to any telecommunication system;
- (b) any equipment to be used as an adjunct to or in conjunction with any telecommunication system; and
- (c) any equipment belonging to a telecommunication system licensee.

(2) A person applying for an approval under this section may be required by the Authority to comply with such requirements as the Authority may think appropriate;

and those requirements may include a requirement to satisfy some other person with respect to any matter.

(3) An approval under this section may apply either to particular equipment or to any equipment of a description specified in the approval, and may so apply either for the purposes of a particular telecommunication system or for the purposes of any telecommunication system of a description so specified.

(4) An approval under this section may specify conditions which must be complied with if the approval is to apply, for any purposes specified in the approval, to any telecommunication system or equipment which is so specified or is of a description so specified.

(5) Any such condition referred to in subsection (4) may impose on the person to whom the approval is given a requirement from time to time to satisfy some other person with respect to any matter.

(6) The Authority or any other person by whom any matter falls to be determined for the purposes of any requirement imposed pursuant to subsection (2) or (4) may charge a fee in respect of the carrying out of any test or other assessment made by the Authority or other person.

(7) A public telecommunication licensee may, with the approval of the Authority (except in cases of emergency), cease or refuse to supply a telecommunication service to any person by means of a telecommunication system operated by the licensee if, through the use of such telecommunication service, there is or is intended to be connected to the telecommunication system, equipment or cabling that is a threat to —

- (a) the safety or proper functioning of the telecommunication system; or
- (b) the safety of any person.

## **F. Framework for Mergers & Acquisitions etc.**

As mentioned in the consultation paper released by DoT – “With a view to simplifying the framework for mergers, demergers and acquisitions, or other forms of restructuring, a new law needs to allow for any licensee or registered entity to comply with the scheme for restructuring as provided under the Companies Act, 2013, and **simply inform the Department of Telecommunications**, as required. This process needs to be simplified”.

Comments:

It will not be appropriate that merger/de-merger should be as per Company Act, 2013 and companies should simply inform the DoT, because-

- a. The merger and acquisition in the telecom sector are considered to be horizontal mergers, so both the companies should be in same line of business.
- b. It is necessary to check, whether monopoly may develop after merger. DoT on 20-02-2014 already issued limit of 50% of market share.
- c. Regarding FDI in Telecom Sector, guidelines are issued by SEBI also needs to be verified.
- d. Some guidelines are also issued by Competition Commission of India for Telecom Sector.
- e. DoT on 20-02-2014 issued a detailed guidelines regarding merger of various categories of Telecommunication Licensees.

So, it will be appropriate that DoT should take opinion from SEBI and CCI.

#### **G. Recognition of Net Neutrality:**

A separate section needs to added to ensure that the regulatory framework on Net Neutrality adheres to the fundamental principles and concepts of Net Neutrality. DoT has already issued details on 31<sup>st</sup> July, 2018.

#### **H. TRAI has issued regulation regarding Telecom Consumers Protection and Redressal of Grievances Regulations, 2007, as powers under TRAI Act.**

TRAI on 05-01-2012 issued detailed guidelines for Telecom Consumers Complaint Redressal Regulations, 2012, as Quality of Service in monitored by the TRAI.

#### **I. On 27-06-2022, DoT has issued guidelines for Captive Non-Public Network (CNPN) License.**

It allows Enterprises for setting up Private Captive Isolated Network, by acquiring License from DoT and same is valid for ten years. Some enterprises are willing to gain 5G Spectrum for setting-up Private Captive Network.

#### **J. Infrastructure Service Providers (IP-1) (Passive Telecom Network)**

DoT on 04-07-2017, issued Policy regarding IP-1 registration. IP-1 license is an authorization issued by the Department of Telecommunication (DoT), to enter in the telecom businesses, to work as a Telecom Infrastructure Provider of Category-I. With this license, an IP company can provide technical aid like Dark Fiber, Right of Way, Tower, and Duct Space.

#### **K. Powers of Director General Telecom:**

Following Exclusive privilege to DGT with respect to Telecommunications are suggested.

**(a)** As from (date of operation of new act) and subject to this Act, the Telecom Authority (DGT) has the exclusive privilege for the operation and provision of various types of telecommunication systems and services in India.

The privilege conferred on the Authority (DGT) by subsection (a): --

- (i) includes the rights of establishing, installing, using, working, maintaining, developing, constructing, promoting, hiring and selling telecommunication systems and services; and
- (ii) extends to every vessel or aircraft registered in India and every other vessel, aircraft and any vehicle, whether mechanically propelled or not, in India.

(b) The privilege conferred by section (a) is not infringed by: -

- (i) the running by a person solely for the person's own use or solely for the purposes of the person's business (but not for providing any telecommunication service to another person) of a telecommunication line system in which all the equipment comprised therein is situated.
- (ii) the operation of any telecommunication system in the course of their duties by the officers and men and women of the Indian Armed Forces, the Indian Police Forces, the Indian Civil Defense Forces or of any visiting force lawfully present in India.

#### **L. Reconsideration by Telecom Authority (DGT) and appeal to Minister:**

**To avoid litigations between Licensor and Licensee, we propose to add new section.**

(1) Any telecommunication licensee aggrieved by —

- (a) any decision of the Authority in the exercise of any discretion vested in it by or under this Act; or
- (b) anything contained in any code of practice or standard of performance or in any direction of the Authority given under various sections,

may, within 30 days of the receipt of the decision or direction of the Authority or the issue or approval of the code of practice or standard of performance, as the case may be —

- (c) make a request to the Authority to reconsider the matter; or
- (d) appeal to the Minister.

(2) Any person (other than a telecommunication licensee) who is aggrieved by —

- (a) any decision of the Authority under various sections  
or
- (b) anything contained in any code of practice issued under various sections or in any direction of the Authority,



may, within 30 days after the receipt of the decision or direction of the Authority or the issue of the code of practice, as the case may be —

- (c) make a request to the Authority to reconsider the matter; or
- (d) appeal to the Minister.

(3) A person must not make both a reconsideration request to the Authority and an appeal to the Minister in respect of the same decision or direction of the Authority or thing contained in a code of practice or standard of performance.

(4) Where a reconsideration request and an appeal have been made in contravention to existing provisions, the appeal is deemed to be withdrawn.

(5) Where -

- (a) a reconsideration request has been made to the Authority by any person; and
- (b) an appeal in respect of the same decision or direction of the Authority or thing contained in a code of practice or standard of performance is made or has been made to the Minister by any other person,

the appeal to the Minister is deemed to be withdrawn.

(6) The Authority may determine any reconsideration request under this section by confirming, varying or reversing any decision or direction or by amending any code of practice or standard of performance.

(7) Any telecommunication licensee or any person mentioned (as the case may be) who is aggrieved by any decision of the Authority under subsection (6) may appeal to the Minister within 30 days after the receipt of the decision.

(8) Any person who makes an appeal to the Minister within the period specified in that subsection —

- (a) state as concisely as possible the circumstances under which the appeal arises, and the issues and grounds for the appeal; and
- (b) submit to the Minister all relevant facts, evidence and arguments for or against the appeal, as the case may be.

(9) The Minister may reject any appeal of an appellant who fails to comply.

(10) Where an appeal has been made to the Minister, the Minister may require any person to whom applies to provide the Minister with all such information as

the Minister may require for the purpose of considering the appeal and making a determination for resolving it.

(11) Subsection (10) applies to -

- (a) any party to the appeal; and
- (b) any person who is not a party to the appeal but appears to the Minister to have information that is relevant to the matters mentioned in that subsection.

(12) Any person required to provide information under subsection (10) must provide it in such manner and within such period as may be specified by the Minister.

(13) The Minister may determine an appeal under this section by confirming, varying or reversing any decision or direction of the Authority or by amending any code of practice or standard of performance.

(14) Any decision of the Minister under subsection (13) is final.

(15) Unless otherwise provided, where a reconsideration request or an appeal is made under this section, the decision, direction or other matter which requires reconsideration by the Authority or which is appealed against must be complied with until the determination of the reconsideration request or the appeal, as the case may be.

(16) The Minister may make regulations in respect of the manner in which an appeal may be made to the Minister under subsection (1), (2) or (7) and the procedure to be adopted in hearing such appeals.

#### **M. OTT Players to Remain Outside Purview of DoT Licensing:**

More than 40 OTT Platforms are in operation in India and more likely to added in near future. Presently, OTT players are governed by the IT act and no license / permission regime is applicable to OTT players.

OTT services are governed by the IT act and therefore they should remain outside the purview of the telecom Act

#### **N. Prime Minister's Wi-Fi Access Network Interface (PM-WANI):**

The Union Cabinet on 9th December, 2020 has approved setting up of Public Wi-Fi Networks by Public Data Office Aggregators (PDOAs) to provide public Wi-Fi service through Public Data Offices (PDOs) spread across length and breadth of the country to accelerate proliferation of Broadband Internet services through Public Wi-Fi network in the country. This will encourage technology entrepreneurs to develop and deploy Wi-Fi technology solutions triggering Make in India. This will enable new business models for shopkeepers as potential PDOs to provide high speed broadband services. No License Fee for providing broadband internet services using public Wi-Fi Hotspots will be charged. This step will massively encourage internet proliferation and penetration across the length and breadth of the country. Availability and use of Broadband will enhance incomes, employment, quality of life, ease of doing business etc.

So, a new Section in the proposed Act for PDOs should be added.

**O. Guidelines for the registration requirement for OSPs:**

DoT in recent year has changed the guidelines for OSPs for ease of doing business by BPOs.

On 23-06-2021, DoT issued detailed guidelines for OSPs and need to be added in the proposed Act.

So, a new Section in the proposed Act for OSPs.

**P. Mobile Number Portability (MNP): -**

DoT on 06<sup>th</sup> of May, 2009 issued detailed guidelines for Intra LSA Mobile Number Portability and later on 03-01-2014 issued directions for Full Mobility (Inter/Intra LSA).

Portability of Mobile Number is very important for consumers to get best quality of service, as right of the mobile user. It compelled the Service Provider to provide good Quality of Service. Almost 700 million customers have already availed the facility.

So, a new Section in the proposed Act for MNP.

**Q. CLI Spoofing regarding International Long-Distance Service:**

DoT on 06-07-2022 issued direction to all ILD service providers to drop all calls

With no CLI or improper CLI at their Gateway itself, in order to ensure Public Safety and Security of the Country

Considering the safety and security, there should be a Section in the proposed Act.

**R. Public Mobile Radio Trunking Service (PMRTS):** (Handheld Walky-Talky)

Service started in 1995 - A very useful service for Manufacturing Units, Oil & Gas, Mining, Construction, Courier, Emergency Medical Services, Utilities, Transportation (Road, Airports, Harbors), Energy & Communication, Fire & Safety department of public utilities.

PMRTS is a two-way mobile radio service in which users communicate amongst themselves in a designated group, talk through a pair of radio frequencies which get assigned out of a common pool of frequencies in a designated frequency band. PMRTS is a well proven service having its unique capability of communication instantly within the closed user group (CUG).

A separate section to be added considering the usefulness of the service.

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