

IAFI Recommendations to Department of Telecommunications (DoT) on the proposed Indian Telecommunication Bill, 2022

S. No.	Section	Details	Views/Comments/Suggestion
1.	1(2)	Jurisdiction of the Bill is mentioned as Whole of India – requires further clarity	<p>Whole of India must include Indian Territorial Water and on Aircrafts within and above Indian and above Indian Territorial Waters (as mentioned in Section 4 Clause 1 Part (a) of the existing Indian Telegraph Act, 1885).</p> <p>Extra Territorial jurisdiction should also be defined in the act, as after inception of Internet, many service providers/call centers functioning in India with main servers installed in the cloud or outside of India.</p>
2.	2	Definitions	<p>It is proposed and recommended that all the definitions should be provided in one particular section as it was under section 3 of the existing Indian Telegraph Act, 1885. We recommend the same for the current draft bill since the current draft bill has definitions in each of the following of the sections making it superfluous, we further recommend simple and single definition for Telecommunications.</p> <p>Certain definitions to be included in the bill are given in attachment 1.</p> <p>We also believe that in the bill the definition of Jurisdiction needs to be further developed and should be well-defined, because this will create a sense of transparency so that any service provider/providers will have the maximum clarity on the services rendered by them with clear administration.</p> <p>Another subset of clarity that is required is under the same definition of Jurisdiction, because we believe that in the current telecom draft bill there is no provision stating the jurisdiction regarding a call-center operating in India with its main servers that are situated outside of India, therefore this is a loophole and</p>

			<p>not defining the same will leave us with an ambiguous definition of the word jurisdiction what are the provisions of penalties imposed on a call center that has main servers situated outside and involved in illegal activities.</p> <p>Here we would like to add whether the proposed act has its jurisdiction to take action on main server operators? The term jurisdiction should also further elaborate on the definition for the cloud services and that of cloud-based servers.</p>
3.	2(12)	Prescribed	<p>The terminology “may be prescribed” has been used in 32 different sections of the proposed draft bill. “May be prescribed” here stands for the fact that the Rules will be formed at a later date, which leads the reader to believe that there is no clarity regarding the same and the bill should therefore define it further in terms of timeline on when the government will elaborate on this terminology. Additionally More than 600 rules are present in the act Indian Telegraph rule 1951 but most of these are outdated and redundant in nature. Therefore, we believe that <u>there should be a target date for framing/updating of these set of rules since there is no time frame mentioned making it ambiguous and less transparent in nature.</u></p>
4.	2(18)	Telecommunication Equipment	<p>The proposed bill defines Telecommunication Equipment to include “software integral to such telecommunication equipment”. It’s not clear if this would include a mobile’s operating system.</p>
5.	2(19)	Schedule-5 Telecom Infrastructure	<p>Satellite Communication Infrastructure should be included.</p>
6.	2(21)	Telecommunication Services – In definition of Telecommunication Services- Over the Top (OTT) communication service is also added.	<p>In Section – 3(2) – it is mentioned that Central Government may grant license for providing Telecommunication Services. Furthermore, it has been observed that the government has planned to include internet-based OTT communication services such as WhatsApp, Signal, Telegram, Facetime, Google Meet etc. under telecom services, now this brings the question of the fact that if OTT services like WhatsApp / Facebook have to take License from DoT and pay charges, then these service providers may demand money from the user for their services. So, user has to pay to both, to Internet service</p>

			<p>provider and to OTT service providers which makes double payment for a user on a subscription basis.</p> <p>If OTT services like WhatsApp / Facebook has to take License from DoT and pay License Fee/USO levy, then these services providers may demand money from the user for their services. So, user has to pay for both, to Internet Service Provider and OTT Service Providers.</p> <p>Considering the importance of OTT services, as used by poorest of the poor, some light-touch regulation may be good enough.</p>
7.	3	Heading – Exclusive Privilege	<p>It is observed in this draft telecom bill that “the Central Government shall have the exclusive privilege” the word privilege here means that “a special right, advantage, or immunity granted or available only to a particular person or group”. This gives a sense of autonomous regime or a self-governing way forward. Therefore, it is our recommendation that the word privilege be removed and be replaced with a different word.</p> <p>Following additional provisions should be added to these sections: Provided that nothing in this section would apply to</p> <p>a) Use of Telecommunications by any person for his own use entirely within any premises occupied by him</p> <p>b) All types of Information services (Including OTT services</p>
8.	4	License – for providing Telecommunication Service	<p>Presently, DoT is issuing only one type of License viz Unified License with authorization of requested services. If OTT services providers has to operate, will same License will be needed for OTT services or it may be a simple registration like OSP, IP-1 and M2M etc. If all the OTT Service Provider has to take license from DoT, it may again lead to License Raj in DoT.</p>
9.	5	Spectrum Management	<p>There is insufficient clarity regarding Spectrum Management, especially assignment of shared spectrum for Satellite Communications, unlicensed spectrum for public Wi-Fi, use of unlicensed spectrum for innovative applications such as short-range devices (SRDs) etc. It will be appropriate to</p>

			<p>assign spectrum administratively to the satellite Service Operators, as per global practice.</p> <p>IAFI support for more flexible licensing regime for the 57- 71 GHz regulations for the encouragement of innovative, unlicensed applications while ensuring reasonable coexistence with other unlicensed users in the band, considering global harmonization with respect to licensing framework in the 57-71 GHz band. The band can be used for services which will be of substantial public benefit and could enable deployment of applications that can provide assistance to persons with disabilities and improve personal health and wellness, etc. De-licensing of the band will foster competition and enable technological innovation.</p> <p>De-licensing of the band will also help stimulate the development of new products and services in a wide variety of areas such as personal safety, autonomous vehicles, home automation, environmental control, and healthcare monitoring while also ensuring coexistence among future unlicensed communications devices in the band.</p> <p>IAFI in various meeting repeatedly pointed out that spectrum, being scarce limited natural resource; need not to be allocated to a single service provider willing to provide broadband services in rural/remote areas using LEO Satellites, as sharing of spectrum is easily possible in Satellite. There should be a separate section in the proposed bill for allotment of spectrum for satellite services which means an elaborate section within the bill for <u>licensing of non-terrestrial networks including satellite Gateway Earth stations, HAPS, and HIBS stations as well as Indian owned and Registered Satellite space stations.</u></p>
10.	10	Appeal	<p>It has been also observed that the term “Appellate Authority” needs to be well-defined, articulated and transparent because the draft bill uses the term “may be prescribed” which brings us back to the previous recommendations we have made in the above section, additionally we also believe that since the section says “<u>Any person aggrieved by any action may prefer an appeal to the appellate authority</u>”, the most appropriate way to resolve this issue would be through a committee formed under Appellate</p>

			Authority. There is no mention of the role of <u>Telecom Disputes Settlement and Appellate Tribunal (TDSAT)</u> as an Appellate Authority under this act which reflects that the bill negates the role of TDSAT as an Appellate Authority for telecom disputes to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers and to promote and ensure orderly growth in the telecom sector.
11.	11	Alternate Dispute Resolution	It is understood from this bill that the government may try to resolve issues, any dispute, or class of disputes more appropriately through arbitration, mediation or other process of dispute resolution, then the Central Government may establish a suitable mechanism for the resolution of such disputes, but this also provides no clarity on how the mechanism will function, and what all it shall encapsulate.
12.	13, 14	RoW	Imposition of Right of Way rules by the Centre against states or Municipal Corporations appears to be difficult, as Centre cannot take coercive action to impose 'right of way' rules, as land is a state subject.
13.	24	Public Safety	In case of Public Emergency and in the interest of general public and national security, provision has been made that the government may take temporary possession of telecommunication services/ infrastructure/ network from a licensee or registered entity. Intriguingly, the threshold for 'public safety' or 'public emergency' has not been defined in the Bill, and it is left to the subjective interpretation of the executive.
14.	24 (2)	Public Safety	According to the bill, a central or state government or specially authorised officer can order the proscription, interception, detainment or disclosure of any message for purposes of public safety and public emergency; in the interest of India's sovereignty, integrity or security; public order; friendly relations with foreign states; or preventing incitement to an offence. Regarding decryption of messages, matter was heard number of times in Hon'ble Supreme Court, where WhatsApp argued that end-to-end decryption is impossible, there was not much it could do. The matter remained unresolved/sub-judice. In 2021, the government notified the IT Rules 2021 under which significant social media intermediaries are required to trace the "first originator" of a message. WhatsApp and Facebook challenged the order, arguing that it would mean breaking end-to-end encryption and undermining the right to privacy for all their users. This matter, too, still remains sub-judice.

15.	41	Power to make Rules	The bill aims to preserve existing rules and regulations under the New Telegraph Act, until they are replaced. Framing so many new rules and regulations (say Indian Telecommunications Rule-2022 replacing Indian Telegraph Rule-1951) will be herculean task for DoT. Without amending the existing Indian Telegraph Rule, 1951, implementation of new legislation will not be appropriate
16.	46	Amendment to TRAI Act, 1997	It is proposed to dilute the crucial powers of TRAI. Weakening statutory regulator may reduce the investor's confidence and may affect FDI inflow. The removal of such powers would not be keeping with international practice where telecom regulators are endowed with a greater degree of independence to ensure that investor confidence and consumer protection is maintained in the market. Present provision for referencing and back referencing between TRAI and the DoT will be omitted as part of the new bill. Removing checks and balance mechanism between the policy maker (TRAI) and the licensor (DoT), may harm investment in Telecom sector.
17.	47	Offence	TRAI had already notified the Telecommunication Commercial Communications Customer Preference Regulations, 2010 to curtail unsolicited commercial communication. It had also set up a Do Not Disturb registry according to these regulations and released a list of registered SMS headers for registered telemarketers in 2020. TRAI has a reporting mechanism to complain against unregistered telemarketers that would at first level be resolved by the telecom service provider and, in case of dissatisfaction, be escalated to the appellate level at the provider. But although all this has been mentioned, it is still not clear whether the proposed changes will replace or supplement the existing mechanism, in addition to this we believe that the offences from Indian Telegraph Act & Indian Wireless Telegraphy Act need to be merged and covered in the draft bill for example; Penalty for unlawful possession of telegraph wires wireless telegraphy apparatus, other than a wireless transmitter. The Amount of Fine/ Penalty should be can be reviewed and revised every 5 – 7 years, as per changes in economic situation or some mechanism of automatic revision.

18.	48	Offence by Companies	It should be mentioned that penalty should be as per Schedule-3 of the proposed bill. In Schedule-3 regarding Penalty, there should be provision for Bribery by the employees of the licensees (private company), as many cases were observed, where employees demanding money for erection of tower etc. Govt./PSU employees are already covered by various conduct rules.
19.	47	General Provisions related to offence	As per the Schedule 3 (8) Penalties a person or entity can be fined of up to 1 lakh INR for the use of an unlicensed telecommunication network, infrastructure or network, either knowingly or having reason to believe it to be unlicensed. This is concerning as the ground “having reason to believe so” may be misused and may put the user at a disadvantage as it appears to place the burden on user to prove lack of knowledge about the license status of any service provider or all user has to check the license status of the service provider before taking a service. It means the function of the LSA is to be performed by the end user, to avoid penalty. Clause 47 includes provisions relating to penalties related to offences listed under Schedule 3. This particular provision under Schedule 3 must be amended to ensure that the user should not penalized for using services provided by an unlicensed service.
20.	51	Supply of information to authorized officer	As per the bill (Section-51), a specially authorized officer can direct the service provider to furnish any information, document or record, which may or may not be related to a subscriber and is necessary for any civil or criminal proceedings. Service such as Signal, maintain no records of its users and has no metadata for them. Does this mean such companies have to cease its operations in India?
21.	Schedule-4	Penalty for breach of terms and conditions	There are five categories of penalty like severe, non-severe, moderate, minor and major which are mentioned. There is no clear definition of each of these terms making it confusing and vague in nature.
