

TV RAMACHANDRAN

# USHERING IN THE ERA OF INDIAN TELECOM RESURGENCE

The new Telecom Act addresses key issues hindering the sector's growth, paving the way for innovation, investments, and better customer services



**T**he Telecommunications Act, 2023 which replaces the 138-year-old Indian Telegraph Act of 1885 and two other Acts, represents a milestone in India's telecom sector. It signifies the elevation of digital communications, addressing key issues that previously hindered sector growth, and propelling it to new heights of performance potential.

## CLARITY ON SPECTRUM ASSIGNMENT

One of the primary features of this Act is that it provides open, transparent, and clear guidelines for the assignment of radio frequency spectrum for the first time in nearly

30 years since the opening of the telecom sector. The spectrum, the lifeblood of the sector, has unfortunately been the source of numerous heartaches, disputes, and controversies that have plagued the industry. The Act eliminates all uncertainty while clearly outlining directions for transparency and predictability in the assignment of various types of spectrums for different applications or end uses. It effectively provides clarity on what can and cannot be auctioned.

While the Supreme Court judgment in the 2G spectrum matter was considered a necessary course correction for



## Recognising the need for a comprehensive review, the Act takes a transformative step by evolving the USO Fund into the Digital Bharat Nidhi.

the sector, it has unfortunately led to an unending stream of debates, discussions, and non-reasoned arguments. Despite a Presidential reference to the Supreme Court for clarifications and a clear advisory judgment from the apex court, needless debates have persisted.

This Act now settles matters once and for all by strongly affirming, in line with the Supreme Court judgment, that auction is generally the preferred method of assigning spectrum, except for three exceptional areas requiring administrative assignment for specific reasons. These areas include public interest services, government services, and areas infeasible for auctioning due to techno-economic reasons. In the case of satellite communications, auctioning is infeasible because the same spectrum is used by multiple operators in different orbital slots.

This rule also applies to point-to-point backhaul spectrum and WiFi spectrum, as they logically fall into this category, being reusable by the same as well as different users. Additionally, WiFi falls into the category of public interest services. In all such cases, the Act [sections 4 (4), (5), and 57 (1) and the First Schedule] enumerates 19 applications, sub-areas, and use cases given in Schedule 1, which are to be assigned spectrum through the administrative process.

The decision to assign spectrum administratively for Satcom is a hugely positive one, aligned with international best practices. It will tremendously boost investor confidence, significantly increasing the inflow of both international (FDI) and domestic investment to the sector. Furthermore, it will not only spur the mainstreaming of established Satcom players but also boost the spirits of the entire Satcom industry, including a large number of indigenous space startups. Additionally, regulatory and policy certainty for the assignment of spectrum for various other areas and applications for public utility, such as public Wi-Fi and telecom backhaul for long-distance applications, particularly in rural areas, will be extremely useful in the context of inclusive connectivity for all 6.4 lakh+ villages for Bharat Net.

India has a greater need for satellite-based communication than other developed countries

and regions due to vast geographically challenging terrains. However, it has only one-third of its Asian peers' satellite connectivity per capita and only one-twentieth or even lower than that of Europe and the US. The Act, working in tandem with the latest Space Policy, will provide a significant shot-in-the-arm to the Satcom sector, boosting the digital dreams of the country to accelerate socio-economic development in an all-inclusive manner.

### CLARITY ON THE TREATMENT OF OTT

The Act introduces a significant reform for the Over-The-Top (OTT) sector, marking the second major area of focus. OTTs, being Internet products, have traditionally fallen under the jurisdiction of the Ministry of Electronics and Information Technology (MeitY). They have been subject to regulatory oversight by MeitY and governed by the IT Act, along with the associated rules and guidelines. Under this regulatory framework, the OTT sector has flourished, witnessing substantial growth, evidenced by the remarkable milestone of 22 billion OTT/App downloads in 2022 – one of the highest globally, attracting attention from various international regimes.

However, in recent years, certain vested interests have sought to create confusion by advocating for the regulation of OTTs similar to telecom services. Both the Telecom Regulatory Authority of India (TRAI) and the Department of Telecommunications (DoT) have consistently emphasised that OTTs and telecom are not comparable. OTTs operate in the application and content layer, while telecom functions in the network layer, enjoying exclusive rights such as interconnection, interference-free spectrum, Right of Way (RoW), unique numbering resources, and the right to establish core and transmission networks. Despite these distinctions, the confusion persisted due to the lack of legislative direction, which the Act now addresses.

The Act unequivocally excludes OTTs from its purview, with no mention of them anywhere, in contrast to the earlier version.

It is noteworthy that concerns regarding the impact of the Telecom Bill on broadcasting have been conclusively addressed in the final Act, which does not encompass

To safeguard existing digital infrastructure, punitive measures are introduced under the new law against acts of theft or vandalism.



### IN BRIEF

- The Act brings transparency by providing clear guidelines for radio frequency spectrum assignment, eliminating uncertainties.
- Strategic decisions on satellite communication spectrum assignment, are expected to boost investor confidence and accelerate inclusive connectivity.
- The Act excludes OTT services from telecom regulations, emphasising legislative clarity, stimulating innovation, and ensuring exclusive governance by MeitY.
- There is a shift from hard licensing to a modern system of authorisations to simplify the processes and enhance the ease of doing business.
- The transformation of the USO Fund into Digital Bharat Nidhi aims to support universal service, research, and pilot projects.

broadcasting. This resolution brings significant relief to the broadcasting sector.

### LICENSING THROUGH AUTHORISATION

For decades, the spectre of hard licensing has cast a shadow over the sector, hindering it in both direct and indirect ways. The Act commendably addresses this issue by replacing the outdated framework with a modern and facilitating system of Authorisations, akin to systems in many advanced Western regimes. The existing system, which involves approximately one hundred different types of licenses with various constructs like license, registration, permission, and authorisation, is streamlined into a simpler construct for three aspects: providing telecommunication services, operating and expanding telecommunication services, and possessing radio equipment. Notably, OTT and Broadcasting Services are excluded from this list.

Currently, the licensing process involves cumbersome documentation spanning hundreds of pages. In contrast, the process of authorisation will result in a concise and worded document. This represents a significant leap forward in the administration of Indian Telecommunications, promising to enhance the Ease of Doing Business and instil confidence among all stakeholders.

### DRIVING DIGITAL BHARAT NIDHI

Established on 1 April 2002, the Universal Service Obligation Fund (USOF) initially aimed to support the provision of telecom services to unconnected and underserved areas. However, as time progressed, it appears that the USOF has become inadequately attuned to modern requirements, resulting in the accumulation of a substantial corpus of unutilised funds. Recognising the need for a comprehensive review, the Act takes a transformative step by evolving the USO Fund into the “Digital Bharat Nidhi” under the control of the Central Government.

The new mandate of Digital Bharat Nidhi encompasses several key objectives. Firstly, it seeks to support universal service by promoting access to and delivery of telecommunication services in underserved

The Act gives a further impetus to innovation and technology development by legislating the establishment of suitable regulatory sandboxes.

rural, remote, and urban areas. Secondly, it aims to foster research and development of telecommunication services, technologies, and products. Additionally, the fund is empowered to support pilot projects, provide consultancy assistance, and offer advisory support toward the provision of services in the specified areas. Lastly, Digital Bharat Nidhi is tasked with supporting the introduction of telecommunication services, technologies, and products.

This strategic evolution aims to revitalise the fund, ensuring its relevance to contemporary needs and empowering it to play a more dynamic role in driving digital connectivity across diverse regions in the country. The Act gives a further impetus to innovation and technology development by legislating the establishment of suitable regulatory sandboxes.

### PROTECTING THE CUSTOMERS

The Act introduces crucial measures to safeguard users or customers. Firstly, the 'Do Not Disturb' or DND register is granted a legal mandate to shield users from unsolicited commercial (spam) messages and calls. Additionally, an online grievance redressal mechanism is established to promptly address user grievances. The Act also designates the fraudulent acquisition of SIMs using someone else's identity proof as punishable under the law.

### REFORMS TO STREAMLINE RIGHT OF WAY

The Act addresses long-standing challenges faced by operators in rolling out communication infrastructure, such as towers, optic fibre cables, and other network elements. It provides effective legislative backing to resolve these hindrances. Notably, it mandates time-bound permission for installation on public property. Moreover, it requires a mutual agreement between property owners and those intending to set up telecom networks on private property.

It also facilitates the establishment of common ducts in telecom infrastructure for networks and designates the District Magistrate and/or the District Judge for dispute resolution. To safeguard existing digital infrastructure, punitive measures are introduced under the new law against acts of theft or vandalism. These provisions

aim to ensure uninterrupted digital connectivity, and as a consequence, the rollout of network infrastructure is expected to accelerate considerably.

### CONTINUED FLOW OF REFORMS

In addition to the extensive reforms in various areas introduced by the new Telecommunications Act, a steady stream of significant reforms continues even after the Act. For instance, the ministry recently brought 37 additional telecom products under the Simplified Certification Scheme (SCS) from 1 January 2024, reducing certification time from eight to two weeks and significantly enhancing the ease of doing business.

This brings the total products under SCS to 49, with various charges for testing or evaluation either reduced or waived, reducing application costs by over 80% and alleviating the compliance burden on operators.

Another recent reform extends the scope of registration for standard-based and secured M2M and IoT ecosystems. This allows various types of business entities, partnership firms, LLPs, institutions, etc., to apply for registration, further improving the ease of doing business and boosting investor confidence.

Indubitably, with the advent of the Telecommunications Act 2023, India is poised to develop increased momentum for moving to Digital Bharat through expeditious installation of digital infrastructure as well as an accelerated development of modern satellite communications as well as innovative internet applications and content. The sector is further enthused by the continued flow of reforms even after the Act.

An upward-spiralling effect on economic growth would inevitably result in accelerating the digital economy to USD 1 trillion and raising the Indian economy to the desired USD 5 trillion level. 🌟

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