

Business Standard

How disruptive will the draft telecommunication bill be?

The draft Indian Telecommunications 2022 bill, which seeks to address problems in the telecom sector, may have far reaching effects on OTT services, spectrum allocations and other fields. Find out how

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Telecom spectrum is similar to atma.

It's ajar. It's amar, as the Bhagwad Gita describes.

It has no physical form, yet it is

omnipresent. That's how the government imagines spectrum, in the Explanatory Note to the draft Indian Telecommunication Bill, 2022.

The Bill, which will regulate the sector once it becomes an Act, seeks to replace the existing legal framework governing telecommunication in India, comprising the Indian Telegraph Act, 1885, the Wireless Telegraphy Act, 1933 and the Telegraph Wires (Unlawful Possession) Act, 1950.

The draft Indian Telecommunication Bill, 2022 has, for the first time, laid down a clear statutory framework and regulations on assigning spectrum. It says, spectrum should primarily be given through auction. For specific functions related to the government and public interest, like defence, transportation and research, the Bill proposes assignment through the administrative process.

To enable efficient use of spectrum, the Centre may also 're-farm' or 'harmonise' any frequency range assigned by auction, or administrative process.

The Bill enables sharing, trading, leasing, surrender of spectrum assigned, and a process to return unutilised spectrum.

To address the demand of telecom companies for a level playing field, the telecom department aims to bring in a landmark change by extending the definition of 'telecommunication services'.

It proposes to bring over-the-top (or OTT) communications services such as WhatsApp, Telegram, satellite-based communication services and internet under the ambit of the Bill.

So, OTT communication services have to take a licence now and be subjected to the same conditions governing telecom players in India, like quality of service and security rules, etc.

Shiv Putcha, Founder and Principal Analyst, Mandala Insights says, including OTT under telecom is contentious. May create a level-playing field between telcos and OTT. Language suggests greater centralisation of powers.

The government will also have the power to terminate spectrum allocations partly or in full, if it determines that assigned spectrum has remained unutilised for insufficient reasons over a period of time.

Likewise, the spectrum allocated to telecom companies that are undergoing insolvency and are unable to offer services, pay dues or comply with license conditions, will be taken back by the government.

The Bill also seeks to simplify the framework for mergers, demergers, acquisitions or other forms of restructuring, by only requiring intimation to the licensing authority, while relief, write-off or deferment of dues may be allowed in cases of payment default in extraordinary circumstances.

Next, the draft bill tries to achieve through law a 'right of way' (ROW) enforceable at the state- and at the municipal-corporation level. This legal framework is key to the rollout of 5G services. It lays down a framework in which a public entity that owns the land has to grant 'right of way' permission expeditiously, unless it gives a substantive ground for refusal.

The existing regulatory framework, based on Right of Way Rules, 2016, has had a limited impact in addressing bottlenecks in the rapid expansion of telecom infrastructure.

The Rs 60,000 crore Universal Service Obligation Fund will be expanded into the Telecommunication Development Fund by adding further objectives of underserved urban areas, R&D, skill development etc.

To prevent cyber fraud, the Bill provides that the identity of the person sending a message through telecom services shall be available to a user receiving it.

Peeyush Vaish, Partner & Telecom Sector Leader, Deloitte India says, govt will not change rules with retrospective effect. OTT services may have to verify their users. Bill says grant of RoW should be non-discriminatory.

DoT has also heeded the unanimous call from companies that the USO Fund levy should be discontinued or suspended for a few years until the large unutilised surplus cash of around Rs 60,000 crore is utilised.

The Bill also raises some concerns. Experts indicate, the Centre cannot take coercive action against states or municipal corporations to impose 'right of way' rules, as land is a state subject.

More clarity is required as to how the government plans to regulate OTT communication services under this Bill.

Analysts also worry that the Bill will adversely impact the consultative role of TRAI, weakening its position. It excludes the obligation of the government to consult TRAI on licensing issues.

Overall, the Bill places emphasis on the development of telecom infrastructure while covering new-age services to keep up with the times.