



## JSA Newsletter Telecommunications

Ninth Edition (April to June 2022)

### **Cabinet Approves 5G Spectrum Auction and Notice Inviting Applications**

On June 15, 2022, the Union Cabinet ("**Cabinet**") has approved a proposal of the department of telecommunications ("**DoT**") to conduct the spectrum auction. The said auction will assign spectrum in high, mid and low frequency bands to the successful bidders for providing 5G services to public and enterprises. Nearly 72 gigahertz of spectrum, with a validity period of 20 years will be auctioned by the end of July 2022.

The acquisition of spectrum in the upcoming auction will be benefitted by the zero Spectrum Usage Charges ("**SUC**") announced in September 2021, providing a significant relief to the service providers in terms of the operating cost of telecom networks.

The Cabinet has announced various progressive options for acquisition of spectrum bidders for facilitating ease of doing business, such as allowing successful bidders to pay for spectrum in 20 equal instalments, rather than making an upfront payment. The bidders would be given an option to surrender the spectrum after 10 years with no future liabilities with respect to balance instalments. The Cabinet also decided to enable the development and setting up of 'private captive networks' to facilitate innovation in applications such as machine-to-machine ("**M2M**"), internet of things ("**IoT**"), artificial intelligence across automotive, healthcare, agriculture, energy, and other sectors.

Pursuant to the Cabinet approval, the DoT has initiated the spectrum auction and Notice Inviting Applications has been issued on June 15, 2022.

### **Guidelines for Surrender of Access Spectrum by Access Service Providers**

The DoT has notified the Guidelines for Surrender of Access Spectrum by access service providers dated June 15, 2022 ("**Surrender Guidelines**"). The entire process for the surrender of spectrum by a TSP would be conducted online in a time-bound manner.

The Surrender Guidelines permit telecom service providers ("**TSPs**") to surrender the spectrum, acquired through any auction conducted after the issue of the Surrender Guidelines, after a minimum period of 10 years from the date of acquisition of such spectrum. For surrender of spectrum, the TSP is required to submit an online application with details regarding the spectrum, at least 12 months prior to the proposed date of surrender. The TSP is also required to clear all dues in respect of proposed quantity of spectrum being surrendered. Upon clearance of dues, the approval for the surrender of spectrum would be communicated by the DoT to the TSP within 15 days on the date of surrender of spectrum, the TSP is required to submit a declaration that the surrendered spectrum has been vacated and the surrendered spectrum would be put to auction at the first opportunity after the final approval to surrender of spectrum is issued by the DoT.

## Amendments in guidelines for PLI Scheme

In order to facilitate design-led manufacturing for 5G products under production linked incentive scheme (“**PLI Scheme**”) for telecom and networking products and to enhance the scope and timelines of the PLI Scheme, the PLI Scheme has been amended to facilitate design-led manufacturing with an additional incentive rate of one per cent over and above existing incentive rates. As per the amendment, a design-led manufacturing for the purpose of the PLI Scheme is the manufacturing of the specified telecom and networking products fulfilling the system design and development, including hardware and software for the specific end products.

The amendment has enhanced the financial allocation for micro, small & medium enterprises (“**MSME**”) from INR 1,000 crores to INR 2,500 crores. The amendment also introduces a clause stating that the DoT reserves the right to withdraw the approval if an applicant fails to make eligible investment within the first 2 years of the approval. The amendment is effective from April 1, 2022.

## Spectrum usage charge order

The DoT has prescribed the following SUC for spectrum held by TSPs access services authorisation vide an order dated June 21, 2022 (“**Order**”). The Order states that no SUC is to be charged for spectrum acquired through auction held after November 2021. Further, the SUC for all spectrums assigned to TSPs in all access spectrum bands including broadband wireless access spectrum in 2300 MHz/2500 MHz band acquired in the 2010 auction, will be calculated basis the weighted average rate of the SUC. The Order provides the method of calculation of the weighted average rates.

Additionally, according to the Order, for the purpose of calculation of SUC, a minimum/presumptive adjusted gross revenue (“**AGR**”) which must not be less than 5% of the bid amount is to be considered. The calculation of SUC will be on the basis of minimum/presumptive AGR or the actual AGR whichever is higher. The Order also provides details of the rates of SUC for the spectrum acquired in the 2010, 2012, 2013, 2014, 2015, 2016 and 2021 auctions.

## Guidelines for Captive Non-Public Network

Pursuant to the recommendations of the TRAI on "*Auction of Spectrum in frequency bands identified for IMT/5G*" dated April 11, 2022, recommending options for setting up of Captive Non-Public Network (“**CNPN**”) the DoT has issued the below mentioned guidelines.

### 1. Guidelines for CNPN License (“**CNPN Guidelines**”)

As per the CNPN Guidelines, CNPN can be set up in the following manner:

- (a) **TSPs Setting up CNPNs:** TSPs with Access Service authorisation may provide private networks as a service to an enterprise by using network resources over its public land mobile network (“**PLMN**”). Further, they may establish isolated CNPN for enterprises using International Mobile Telecommunications (“**IMT**”) spectrum acquired by them. Accordingly, amendments to Unified License (“**UL**”) and Unified Access Service License (“**UASL**”) to the above-mentioned effect have been issued.
- (b) **Enterprises setting up CNPNs:** Enterprises setting up CNPNs may obtain the spectrum on lease from TSPs or directly from DoT and establish their own isolated network. To enable the same, a license under Section 4 of the Indian Telegraph Act, 1885 may be issued by the DoT in line with the broad guidelines detailed below.
  - (i) *Eligibility:* An applicant must be an Indian Company and an occupant of the geographical area(s)/property(ies) on which such CNPNs will be established. Further, the net worth of the applicant may not be less than INR 100 crores to seek direct assignment of spectrum.
  - (ii) *Scope:* The CNPN licensee (“**Licensee**”) may establish indoor/within premise isolated CNPNs for own use within the area of operations of license. The Licensee is prohibited from using the CNPN

license for providing commercial telecommunication services.

- (iii) *Area of Operation:* The CNPN license will be valid within such locations in India where the Licensee is an occupant of the geographical area(s)/ property(ies) on which such CNPN is to be established.
- (iv) *General Conditions:* Some of the general conditions of CNPN license include: (i) the application for the CNPN license is to be made online through the Saral Sanchar portal; (ii) the CNPN license will be valid for 10 years; and (iii) a unique license number will be issued to each licensee, which is to be used by the Licensee to apply for the spectrum.
- (v) *Fees:* Applicant will only have to pay one-time non-refundable application processing fee of INR 50,000.
- (vi) *Security Conditions:* The Licensee is required to follow relevant network security conditions and instructions regarding the procurement of telecom equipment from trusted sources.
- (vii) *Spectrum for CNPN License:* The leasing of spectrum for CNPN licensee will be governed by the Guidelines of Spectrum to CNPN Licensees dated June 27, 2022, issued by the DoT.

## 2. Guidelines for Leasing of Spectrum to CNPN Licensees (“Spectrum Guidelines”)

As per the Spectrum Guidelines, the enterprises setting up CNPN may obtain the spectrum on lease from TSPs having Access Service in the following manner:

- (a) TSPs with Access Service authorisation will be allowed to lease auction acquired/ liberalized IMT spectrum to Licensees.
- (b) Licensees may obtain IMT spectrum from one or more TSPs on mutually agreed terms and conditions.
- (c) TSPs are required to submit the details of spectrum band(s), quantum of spectrum in each band, period of lease, geographic area of lease, geo-coordinates of the logical perimeter of the premises and use of spectrum, to DoT on the Saral Sanchar portal, within 15 days of entering into leasing agreements with licensees.
- (d) The Licensees are required to obtain online Standing Advisory Committee on Radio Frequency Allocation (SACFA) clearance and ensure that no interference is caused to any public network or any other licensed user of spectrum, while using the leased spectrum.
- (e) The revenue earned by a TSP through the spectrum leasing will form part its Adjusted Gross Revenue.

## **Amendment in unified access service license agreement (“UASL Agreement”) and unified license (“UL Agreement”) for provision of CNPN**

DoT has introduced various amendments the UASL Agreement and UL Agreements vide its notification dated June 27, 2022, to accommodate the provision of CNPN. The amendments include amendments to the scope of the license agreements to include the provision of CNPN and to the definition of AGR to include revenue from permissible leasing of spectrum.

## **Telecom Tariff (68th Amendment) Order, 2022**

Subsequent to the Telecommunication Tariff (56th Amendment) Order, 2021 dated November 22, 2013 and the Telecommunication Tariff (61st Amendment) Order, 2021 dated November 24, 2021 issued by the Telecom Regulatory Authority of India (“TRAI”) which dealt with the ceiling tariff for USSD based mobile banking service, on November 24, 2021, whereby NIL charges were proposed for USSD sessions for mobile banking and payment services (“USSD Sessions”), TRAI issued the draft Telecommunication Tariff (66th Amendment) Order, 2021 (“Draft 66th Amendment”), on November 24, 2021, whereby NIL charges were proposed for USSD Sessions. After due consideration of all the comments and counter comments received on the Draft 66th Amendment, TRAI is of the view

that, to protect the interest of the USSD users and to promote digital financial inclusion, USSD Sessions charges are to be rationalised. Accordingly, TRAI has issued the Telecommunication Tariff (68th Amendment) Order, 2022 on 'Regulatory Framework on USSD-Based Tariff' which states that the subscribers will not be charged for USSD Sessions.

## Proposed Amendments to the Intermediary Rules

Ministry of Electronics and Information Technology ("MeitY") has proposed certain amendments to the the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("Intermediary Rules") to address the challenges and problems faced by the internet users as the digital eco-system and connected Internet users in India expand. Accordingly, MeitY is proposing the below mentioned four amendments:

- (a) It is proposed that rules 3(1)(a) and rule 3(1)(b) of the Intermediary Rules be amended in the below manner to require intermediaries to ensure that users comply with the due diligence requirements enshrined in them:
  - (i) The intermediary must prominently publish the rules and regulations, privacy policy and user agreement for access or usage of its computer resource by any person and ensure compliance of the same.
  - (ii) The intermediary is required to inform the above-mentioned publications of the intermediary to the user and require the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that belongs to another person, that is defamatory, false, obscene, invasive of another person's privacy, impersonates another person, contrary to law including Article 19(2) of the Indian Constitution which permits the government to impose reasonable restrictions upon the freedom of speech and expression in the interests of public order, harmful to a child, infringes any proprietary right, deceives the addressee about the origin of the message, and contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource.
- (b) Addition of rules 3(1)(m) and 3(1)(n) to respect the constitutional rights of Indian citizens in the manner depicted below:
  - (i) the intermediary is required to take all reasonable measures to ensure accessibility of its services to users along with reasonable expectation of due diligence, privacy and transparency;
  - (ii) the intermediary is required to respect the rights accorded to the citizens under the Constitution of India.
- (c) It is proposed to add the below two provisos under rule 3(2) of the Intermediary Rules:
  - (i) The first proviso will require any complaint for removal of any content under rule 3(1)(b) to be addressed within 72 hours of the receipt of the user's complaint, because of the very nature of cyber space providing instant communication, outreach and virality. Any other grievance will continue to be addressed within 15 days.
  - (ii) The second proviso allows intermediaries to implement any safeguards to prevent any misuse of the grievance redressal mechanism by users.
- (d) It is proposed to create an appellate body namely the '*Grievance Appellate Committee*' under rule 3(3) of the Intermediary Rules. Users will have the option to appeal against the grievance redressal process of the intermediaries before this new appellate body.

As a part of pre-legislative consultation process, MeitY is seeking comments from the public on the above listed proposed amendments till July 6, 2022.

## **SoP for Complaints on Non-Implementation/Selective Implementation of the DoT Public Procurement (Preference to Make in India) Notification**

The DoT has issued the standard operating procedure (“SoP”) on June 13, 2022, laying down the procedure to be followed for handling complaints regarding non implementation /selective implementation of the Notification issued by the DoT dated August 29, 2018, which dealt with the public procurement in relation to telecom products, services or work.

According to the SoP, if local suppliers of telecom products, services or works have a complaint against procurement process by any specified procuring entity, they may make a written complaint to the Member Secretary of the Committee in DoT. (“**Committee**”). The relevant complaint will be scrutinised by the Investment Promotion Cell of the DoT (“**IPC**”) and forwarded to the procuring entity and the concerned administrative ministry/department for their comments to be provided within 15 days. Thereafter, if the complaint still remains unresolved, it will be forwarded to the Committee. If no representative(s) of the complainant or procuring entity appears for the meeting, then the case will be decided based on the documents available on record.

The IPC will communicate the decision of the Committee to the procuring entity and the concerned ministry/department for ensuring compliance and a request to furnish an ‘action taken report’, within a week. If the issue still remains unresolved owing to the failure of the procuring entity to comply, it will be referred to the Standing Committee of Department of Industrial Policy and Promotion.

## **Exemption from Mandatory Testing of Equipment**

With the aim to reduce the compliance burden and to enable the industry to roll out products faster and reduce import delays, the DoT, in consultation with MeitY, has decided to exempt following products from the ambit of mandatory testing and certification of telecommunication equipment regime under Indian Telegraph (Amendment) Rules, 2017:

- (a) Mobile user equipment / mobile handset (mobile phone);
- (b) Server;
- (c) Smart watch;
- (d) Smart camera; and
- (e) PoS machine (point of sale devices).

## **DoT issues SOP for Deduction Verification**

The DoT issued a SoP dated May 10, 2022, with the aim to ensure greater levels of standardization, efficiency, transparency and accountability in the deduction verification process, and the overall license fee SUC assessment process. The SoP will be applicable for deduction verification process for the financial year 2021-2022.

The objectives of this SoP are to facilitate and ensure:

- (a) Facilitate efficient and timely processing of deduction claims;
- (b) Ensure consistency, uniformity, transparency and accountability across all verifying authorities;
- (c) Reduce disputes and litigations between the DoT and the telecom industry;
- (d) Assurance of revenue by standardising admissibility/inadmissibility of claims.

The SoP essentially codifies the orders/guidelines covering the deduction verification regime in a single document and also introduces certain new elements for overall improvement of the deduction verification process.

The DoT has also launched new revenue management system called the 'System for Assessment of License Fee Revenue & SUC (SARAS)' to ease, standardise and digitise all aspects of telecom finance compliance, including submission of AGR statements/deduction claim/bank guarantees and related ancillary processes, across the life cycle of a licensee.

## CERT-In Direction and the FAQs

MeitY has issued a notification dated April 28, 2022, introducing additional compliances in relation to information security practices, procedures, prevention, response and reporting of cyber incidents ("2022 Directions"). The 2022 Directions will take effect from June 28, 2022. The directions were issued to augment and strengthen the cyber security in the country in light of unavailability of information to carry out the analysis, investigation and coordination of cyber incidents and cyber security incidents as per the process of law.

**Applicability:** The obligation to report cyber security incidents applies to service providers, intermediaries, data centres, body corporates and government organisations. ("**Entities**") Further, the frequently asked questions ("**FAQs**") issued by the Indian computer emergency response team ("**CERT-In**") dated May 18, 2022 also specifically state that such obligation to report cyber incidents extends to any entity whatsoever, in the matter of cyber incidents and cyber security incidents including Indian companies and foreign firms that serve Indian customers.

The compliances in the 2022 Directions are as follows:

- (a) **Network Time Protocol Servers:** All Entities are required to ensure the synchronisation of all their information and communications technology ("**ICT**") systems clocks by connecting to the network time protocol ("**NTP**"), server of national informatics centre ("**NIC**") or national physical laboratory ("**NPL**") or with NTP servers traceable to these NTP servers. If the service providers have ICT system across different geographies, then accurate and standard time source other than NPL and NIC is to be used while ensuring that their time source does not deviate from NPL and NIC.
- (b) **Reporting:** All service providers, intermediaries, data centers, body corporates and government organisations are mandated to report relevant cyber security incidents to CERT-In within 6 hours of noting or being notified of such incident. In the event all the information as per the CERT-In incident reporting form is not available with an entity, the entity may provide information to the extent available at the time of reporting. Any additional information may be reported later within reasonable time to CERT-In.
- (c) **Point of Contact:** All service providers, intermediaries, data centers, body corporates and government organisations are required to designate a point of contact to interface with CERT-In and the information relating to the **point** of contact is to be sent to CERT-In and should be updated from time to time.
- (d) **ICT Systems Logs:** All service providers, intermediaries, data centers, body corporates and government organisations shall enable logs of all their ICT systems and maintain them securely for a rolling period of 180 days and the same is to be maintained within the Indian jurisdiction. CERT-In may request these logs as and when required. The logs may be stored outside India also as long as the obligation to produce logs to CERT-In is adhered to by the entities in a reasonable time. An officer of CERT-In may seek the logs at any time. Any service provider offering services to the users in the country needs to enable and maintain logs and records of financial transactions in Indian jurisdiction.
- (e) **Maintaining Information:** Data centres, virtual private server providers, cloud service providers and virtual private network service providers are required to register certain information including validated names of subscribers/customers hiring the services; period of hire including dates; IPs allotted to / being used by the members; email address and IP address and time stamp used at the time of registration / on-boarding; validated address and contact numbers etc. This information is to be maintained for a period of 5 years or longer as mandated by the law, after any cancellation or withdrawal of the registration.
- (f) **Know Your Customer and Financial Transactions Records:** The virtual asset service providers, virtual asset exchange providers and custodian wallet providers are to mandatorily maintain all information obtained as part

of Know Your Customer and records of financial transactions for a period of 5 years so as to ensure cyber security in the area of payments and financial markets for citizens while protecting their data, fundamental rights and economic freedom in view of the growth of virtual assets.

(g) **Implications of Non-Compliance:** The penalties prescribed under section 70B of the Information Technology Act, 2000 which includes imprisonment for a term that may extend to 1 year or fine up to INR 1 lakh or both will be applicable for non-compliance of the 2022 Directions.

On June 27, 2022, CERT-In issued another notification stating that the 2022 Directions will only become effective to MSME and data centres, virtual private server providers, cloud service providers and virtual private network service providers to the limited extent relating to the aspects of registration and maintenance of validated names of subscribers/customers hiring the services and validated address and contact numbers, from September 25, 2022.

## **Use of Low Power Radio Frequency Devices in the frequency band 433.05 to 434.79 MHz (Exemption from License) Rules, 2022**

The Ministry of Communications has notified the Use of Low Power Radio Frequency Devices in the frequency band 433.05 to 434.79 MHz (Exemption from License) Rules, 2022 (“**Rules**”) in supersession of the Use of Low Power Devices or Equipment for Indoor Applications in the 433 to 434 MHz Frequency Range (Exemption from Licensing Requirement) Rules, 2012 and the Use of Very Low Power Radio Frequency Devices or Equipment including Radio Frequency Identification Devices (Exemption from Licensing Requirement) Rules, 2015. The Rules state that no licence shall be required by any person to establish, maintain, work, possess or deal in any wireless telegraphy apparatus for the purpose of usage low power short range radio frequency devices, on non-interference, non-protection and shared and nonexclusive basis, complying with the technical specification and working in the frequency band as prescribed.

The Rules further state that where any person, who has been issued a license under section 4 of the Indian Telegraph Act, 1885 (“**Act**”) informs the telegraph authority (as defined in the Act) that his licensed system is getting harmful interference from any other radio communication system exempted under the Rules, then such telegraph authority can call upon the user of such other radiocommunication system and direct the user to take immediate steps to avoid interference by relocating the equipment, reducing the power and using special type of antennae, failing which the telegraph authority may recommend discontinuation of such wireless use.

The Rules also mandate that the Radio frequency devices are designed and constructed in such manner that the bandwidth of emission and other parameters shall conform to the limits prescribed and such equipment shall be type approved.

## **Compliance to Amendments in License Conditions - Trusted Telecom portal**

Pursuant to the amendments in telecommunication licenses issued by the DoT in March 2021 for procurement/ use of telecommunication equipment from trusted sources, the DoT issued instructions in June 2021 to all licensees to submit an authorization letter for appointing a nodal officer for the Trusted Telecom portal which had been live with effect from June 15, 2021. Subsequently, a reminder for the same was issued on December 13, 2021. Further, in light of non-compliance with the aforementioned instructions, the DoT has issued a notice dated June 10, 2022, to those licensees that are yet to submit the authorisation letter to appoint a nodal officer for the Trusted Telecom portal and to submit the same to the designated authority i.e., National Cyber Security Coordinator by June 15, 2022, failing which, action will be taken against those non-compliant licensees.

## **Guidelines for Funding under sub-scheme setting up of DCIS**

On March 28, 2022, the DoT has issued guidelines for funding under the sub-scheme of ‘Setting up of Digital Communication Square (‘**DCIS**’) (‘**Sub-Scheme**’) under ‘Champion Services Sector Scheme’ (‘**Scheme**’). The main

objective of the Sub-Scheme is to promote the ecosystem for research, design, development, proof of concept testing, Intellectual Property Rights creation, pilot project and manufacturing and make India a global hub for production of telecommunication equipment as well as a centre for digital communication services. The focus areas of the Sub-Scheme include:

- (a) Long term evolution advanced, 5G and future generation access technologies, software defined networks and network function virtualization, IoT/ M2M, the cloud and data analytics;
- (b) Backhaul radio and communication technologies;
- (c) Core and edge routers, soft switches, ethernet switches, modems, routers, dongles, data cards, mobile handsets, wireless access points, mobile handsets etc.;
- (d) Security and surveillance equipment, sensors;
- (e) Convergence of telecom, information technology and broadcasting technologies;
- (f) Over-the-top services as drivers for penetration of broadband services;
- (g) Green and energy efficient technologies / solutions for the telecom sector; and
- (h) Any other area considered commercially relevant in future.

The duration of the Sub-Scheme is 4 years from 2022- 2023 to 2025-2056. Further, the implementing agency will the Telecom Centres of Excellence (“**TCOE**”). The SoP for grant under the Sub-Scheme has also been notified along with the Guidelines and it deals with the following: (i) implementation mechanism and agency; (ii) role of TCOE, such as due diligence involving legal, technical & financial due diligence; (iii) signing agreement; (iv) disbursement of funds; (v) monitoring of the project.

### **Extension of MoD Security Clearance from 6 months to 1 Year**

As International Long Distance (“**ILD**”) operators reported that the short period for Ministry of Defence (“**MoD**”) clearance as part of the maintenance of submarine cables was posing difficulties to ILD operators as an application for such clearance had to be filed every 6 months. It was further reported that the ILD operators were facing difficulties in synchronising the concurrent requirement of Ministry of Home Affairs (“**MHA**”) clearance for crew members and the MoD clearance for vessels/ships is difficult as the MHA clearance period is 1 year while the MoD clearance period is 6 months. Thus, in the interest of ease of doing business, the DoT requested the MoD to extend the period of clearance from 6 months to 1 year. Subsequently, vide letter dated May 12, 2022, the MoD agreed to grant such extension. Therefore, on May 27, 2022, the DoT issued directions to all ILD operators to take necessary action to synchronise the MoD and MHA clearances.



## Telecommunications & Broadcasting Practise

Our Communications practice is handled by a team with specific domain-expertise, and we advise various stakeholders in both Telecom & Broadcasting sectors on a wide range of transactions and assignments that involve constitutional, legal, contractual, commercial, regulatory and policy advice. The practice is led by an expert who has over 35 years of experience, and with the team having expertise in handling diverse aspects of the Telecom sector (financial reform, spectrum management, legal and strategic change). We advise broadcasters, BPOs, internet service providers (ISP), operators and investors in the Global System for Mobile Communications (GSM) and the Code Division Multiple Access (CDMA) technologies, and new investors on diverse licensing issues, entry strategies, structuring, national security challenges, and other regulatory issues. We represent the interests of licensees and other stakeholders in interacting with the licensor and regulators with respect to reforms in the regulatory and policy framework to facilitate business growth drawing upon international best practices. We advise and represent investors, broadcasters, and telecom licensees on commercial transactions in this sector, including mergers, acquisitions, restructuring, divestment, licensing, and project financing. We advise telecom service providers and other corporate houses on all aspects of spectrum licensing and allocation, including fundamental issues relating to the scope of spectrum bands, the regulatory framework governing their allocation in India, and planning, strategising and following up on their application to the Government.

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