



Twelfth Edition (January to March 2023)

## **Indian Telegraph (Infrastructure Safety) Rules, 2022**

The Department of Telecommunications (“DoT”) through its notification dated January 3, 2023, released the Indian Telegraph (Infrastructure Safety) Rules, 2022 (“Rules”).

The Rules aim to protect telecom infrastructure from damages caused due to excavations of the road and other properties. The Rules lay down the procedure for exercising the legal right to dig or excavate any property which is likely to cause any damage to infrastructure or interfere or interrupt with the telegraphic communication. Any person desirous of doing so, is required to give a notice of the same to the telecom licensee (“Licensee”) that owns the infrastructure. Such notice is required to include information such as name and address of the person exercising the right, agency details, contact details, date and time of start of the exercise, description and location of the exercise, and the reasons for such digging or excavation.

According to the Rules, upon receipt of the notice, a Licensee is required to provide the details of the ownership or control of management of the respective infrastructure along with the precautionary measures to avoid damages to the person exercising their right to dig or excavate any property. It is the duty of the person exercising the right to dig or excavate any property to take precautionary measures to avoid damages to the telegraph infrastructure provided by the Licensee. However, in case the Licensee does not provide any details within the time prescribed, then the person exercising the legal right to dig or excavate any property will be free to exercise the right without any restrictions.

Lastly, in an instance where damages are caused to a telegraph infrastructure, the person responsible for causing such damages while exercising his legal right to dig or excavate any property, will be liable to pay the damages equal to the expenses incurred to restore those damages.

## **Amendment under Appendix 2T of Appendices and Aayat Niryat Forms (“ANFs”) of Foreign Trade Policy 2015-2020 (“FTP”)**

The Directorate General of Foreign Trade (“DGFT”), through its notification dated January 9, 2023, and in exercise of the powers conferred under the FTP, issued an amendment (“Amendment”) to the Appendix 2T of Appendices and ANFs of FTP.

The Amendment authorizes the Mobile and Electronic Devices Export Promotion Council (“MEDEPC”) to issue a registration-cum-membership certificate (“RCMC”) for final products such as smartphones, smart watches, monitors, projectors, televisions, among others; and for parts or accessories of vibrator motors, static conductors, lithium-ion battery, among others.

Prior to the Amendment, RCMCs were issued by the Telecom Equipment and Services Export Promotion Council (“TEPC”). Accordingly, the RCMCs issued till January 9, 2023, will remain valid till the date of their expiry.

## **Meeting of the Telecom Regulatory Authority of India (“TRAI”) on quality of services**

TRAI, through its notification dated February 2, 2023, called for a meeting with telecom service providers (“TSPs”) on February 17, 2023, to discuss measures and action plan for improvement in the quality of service through a review of the quality of service standards, quality of service of 5G services and commercial communications.

## **Consultation paper on Introduction of Digital Connectivity Infrastructure (“DCI”) Provider Authorization under Unified License (“UL”)**

The TRAI, through its notification dated February 9, 2023, released a consultation paper (“Digital Connectivity CP”) titled ‘Introduction of Digital Connectivity Infrastructure Provider (“DCIP”) authorization under UL.

The Digital Connectivity CP seeks the views of the stakeholders broadly on the following:

1. The need to amend any chapter or parts of the UL or other licenses to make the proposed DCIP authorization chapter in UL effective.
2. Issues or hurdles that Infrastructure Provider Category-1 (“IP-1”) registered entities may face when migrating to the proposed DCIP authorization.
3. Measures to be taken to ensure that DCIP licensees rent/sell/lease their infrastructure in a fair manner.
4. Measures to be taken to ensure DCIPs lease/rent/sell digital connectivity infrastructure items, equipment, and systems within the limit of their designed network/capacity so that service delivery is not compromised at the cost of other eligible service providers.

The stakeholders are required to provide their comments and counter-comments by April 6, 2023 and April 20, 2023, respectively.

## **Directions to access service providers (“ASPs”) to stop misuse of headers and message templates, and to curb unauthorized promotions using telecom resources**

TRAI, through its notification dated February 16, 2023, observed that headers and message templates are being misused by some telemarketers and that some promotional messages are not being sent through registered telemarketers and are instead being sent by unauthorized and unregistered telemarketers. In order to avoid and curb these issues, ASPs have been directed to comply with the following, among others, within 30 (thirty) days:

1. re-verify all registered headers and message templates on the distributor ledger technologies (“DLT”) platform and block all un-verified headers and message templates within 30 (thirty) and 60 (sixty) days respectively;
2. ensure that temporary headers are deactivated immediately after the time duration for which such headers were created;
3. bar all telemarketers, who are not registered on the DLT platform from handling the message template scrubbing and delivery of messages to recipients through ASP’s network;
4. ensure that promotional messages are not transmitted by unregistered telemarketers or telemarketers using telephone numbers.

## Meeting with major TSPs to review the issues related to quality of telecom services being faced by consumers and the menace of UCC

TRAI held a meeting with major TSPs on February 17, 2023, in relation to the quality of telecom services and the menace of unsolicited commercial communications.

The TSPs were asked to remedy the issues of call muting and one-way speech on priority and were asked to report outages to TRAI in any state or district. TSPs were also asked to plan and implement systems for online data collection for quality of standard benchmarks, and to implement systems for internal monitoring on a 24/7 and 360-degree basis, considering the scale and size of networks that are being set up for 5G services.

## Recommendations on “Rating of Buildings or Areas for Digital Connectivity”

TRAI through its notification dated February 20, 2023, released its recommendations on “*Rating of Buildings or Areas for Digital Connectivity*” (“**Recommendations**”). These Recommendations have been released pursuant to the inputs received from stakeholders on a consultation paper that was issued in this regard.

The Recommendations broadly cover the following:

1. The need to amend model building bye-laws and the national building code of India to incorporate necessary provisions on DCI. The DCI consists of passive and active elements which include any apparatus, appliance, equipment, and system used or capable of extending seamless digital connectivity.
2. The necessity to make DCI an essential part of building development plans.
3. The need for persons possessing requisite skills to perform the functions of a DCI designer or DCI engineer or DCI evaluator.
4. The need to task the Bureau of Indian Standards (“**BIS**”) to review existing standards and procedures of DCI for buildings.
5. The need for BIS to prescribe provisions of DCI that would be mandatorily required to be completed for issuance of completion or occupancy certificate for buildings.
6. The need to amend the Indian telegraph act, 1885 to enable the central government to prescribe through rules, the formation a Council of Digital Connectivity Infrastructure (“**CoDCI**”). The rules may specify the manner of certification of persons to design, deploy, and evaluate DCI. Further, the rules may also specify the qualification of terms and conditions for the grant of such certification.
7. The need to establish CoDCI under the department of telecommunications in collaboration with the ministry of housing and urban affairs, all India council for technical education, national skill development council, telecom sector skill council, and construction skill development council or any other organisation/institution as deemed appropriate.
8. The role of the CoDCI would broadly be to prescribe qualifications, roles and responsibilities of DCI professionals, to suggest appropriate graduate and diploma courses for DCI professionals, to accredit institutes and organizations for offering courses related to DCI, to conduct exams and certify DCI professionals.
9. The need to establish a mechanism for certification, registration, and capacity building for DCI professionals, within one year from the date of establishment of CoDCI or 3 (three) years from the date of these Recommendations, whichever is earlier.

## **Indian telecom security assurance requirements for the network function virtualization**

The National Centre for Communication Security (“NCCS”), under the aegis of DoT has released the draft Indian Telecom Security Assurance Requirements (“ITSAR”) for the Network Function Virtualization (“NFV”) on February 7, 2023 (“NFV Draft”).

The basic objective of the NFV Draft is to provide the security requirement for the telecom networks and the standards, once finalised, will be binding on telecom operators as well as equipment makers. NFV is an intrinsic feature of 5G, which allows some telecom network functions to be virtualised or be software driven. The NFV Draft has been issued in view of the fact that the introduction of NFV in the mobile network will present new challenges to network security.

## **Indian Telecom Security Assurance Requirements for the Aggregated gNB (NR-NodeB) of 5G**

NCCS, under the aegis of DoT has released the draft ITSAR for the Aggregated gNB (NR-NodeB) of 5G i.e., the 5G Radio Access Network (RAN) network element (“Draft”) on February 7, 2023.

The objective of the Draft is to present comprehensive, country-specific security requirements of the 5G RAN Network Element i.e., Aggregated gnb (nr node b) with standalone deployment. The Draft is in line with the specifications introduced by various regional/international standardization bodies/organizations like 3<sup>rd</sup> Generation Partnership Project (3GPP), and Telecommunications Standards Development Society, India (TSDSI) along with the country-specific security requirements.

## **Compliance to amendments in telecom licenses issued by the DoT for procurement of telecommunication equipment from trusted sources**

The DoT through its notification dated February 22, 2023, directed all licensees to comply with the amendments issued in the UL, UL (virtual network operators), unified access service license, captive non-public network and commercial and captive (closed users group) license regarding the submission of a compliance report for procuring telecom equipment from trusted sources. The licensees are required to submit the said report on the 1<sup>st</sup> day of January as well as 1<sup>st</sup> day of July of every year through the saral sanchar portal.

## **Meeting of Joint Committee of Regulators**

As per the Information Note of February 23, 2023 issued by TRAI a meeting of joint committee of regulators was held to discuss an action plan to curb spam and fraud using telecom resources. The inconvenience to the public caused by unsolicited commercial communication was recognized, and other matters such as misuse of SIM box, pan-India roll-out of central equipment identity register to stop misuse of mobile handsets, and implementation of digital consent acquisitions, among others, were also discussed.

## **Directions for submission of quality of service reports by TSPs**

TRAI through its notification dated February 23, 2023, issued a direction (“Direction”) under section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11, of the TRAI Act, 1997, and regulation 9 of the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations.

The Direction mandates all the basic telephone service providers and cellular mobile telephone service providers to submit the state and union territory-wise data, in respect of quality of service parameters. The data is required to be submitted in a microsoft excel format duly signed by the authorized signatory of the service provider, within 45 (forty

five) days from the end of each quarter for basic telephone service (wireline) and within 21 (twenty one) days from the end of each quarter for cellular mobile telephone service.

## **Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulations, 2023**

TRAI through its notification dated February 24, 2023, released the Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulations, 2023 ("**Draft QoS Regulations**"), repealing the erstwhile Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation, 2006.

The Draft QoS Regulations apply to all TSPs having unified access service license, UL with authorization for access service, and UL for virtual network operators with authorization for access service.

The purpose of these Draft QoS Regulations is to bring about uniformity and transparency in the procedures adopted by TSPs in relation to metering and building, to prescribe standards with regard to the accuracy of measurement and reliability of the billing, to minimize the incidents of billing complaints, and to protect the interest of consumers of telecommunication services.

The Draft QoS Regulations lay down the procedure for the appointment of auditors to audit the accuracy of Metering and Billing System ("**System**") of TSPs, and also provide the following disqualifications for the appointment of auditors:

1. The auditor should not be appointed for more than 2 (two) years consecutively
2. The auditor should not be an internal auditor
3. The auditor should not have had any business relationship with the TSP in the last year.

If the TSP, while self-evaluating its System, observes that its subscribers have been overcharged, it is required to immediately rectify the error in the System, and refund the overcharged amount to the relevant subscribers within 3 (three) months of the end of the quarter for which the self-evaluation was undertaken by the TSP. Overcharging, under the Draft QoS Regulations, has been defined as the failure of a TSP to meet the commitment of the tariff offered either in terms of volume or price, or both. Overcharging also includes a chargeable event for which the charge to the subscribers is higher than the tariff plan opted for by the subscriber.

The TSPs are also required to submit to TRAI, an action taken report, in respect of each System and each license service area ("**LSA**") audited, along with the status of audit observations pending to be resolved from previous quarters. If a TSP does not comply with these requirements, a penalty of not exceeding INR 1,00,000 (Indian Rupees one lakh) per report for every week or part thereof during which the default continues, subject to a maximum of INR 50,00,000 (Indian Rupees fifty lakh) per metering and billing system, or as the case may be, per LSA will be levied.

Every TSP is required to comply with the Code of Practice for Metering and Billing Accuracy ("**Code**") as laid down in the schedule of the Draft QoS Regulations. The Code provides for information relating to tariffs, the accuracy of measurement, reliability of billing, timelines of post-paid billing, restriction and removal of services, and complaint handling.

## **Guidelines for Audit of the Metering and Billing System and accuracy of metering and billing in LSA**

TRAI through its notification dated February 24, 2023, released the Guidelines for Audit of the Metering and Billing System and accuracy of metering and billing in LSA ("**Draft Metering Guidelines**").

The purpose of auditing the system according to the Draft Metering Guidelines, is to evaluate the accuracy of the system, whether centralized or distributed, and to review the records related to billing, including subscribed tariffs and billing complaints.



The Draft Metering Guidelines require every TSP to have their system and LSA audited annually by an appointed auditor. The audit process must ensure the accuracy of each system before auditing any LSA, and each system and area should be audited once a year. The audit of the system should be done first, and the audit of the LSA should be evenly distributed throughout the financial year's 4 (four) quarters. The TSPs are required to submit an annual schedule of audits to TRAI by May 15, 2023, including details of the systems and LSAs to be audited. They are also required to provide call data records and system details to auditors within specified timeframes and are required to conduct regular self-checks and facilitate auditors in the conduct of audits.

The Draft Metering Guidelines also lay down the obligations of auditors. The appointed auditors are responsible for auditing the systems of the TSPs and certifying compliance with the Draft Guidelines from TRAI. They are required to adhere to the audit schedule and maintain confidentiality. The auditors cannot have any conflicts of interest and are required to report any critical matters promptly to TRAI.

The auditors are required to submit the report expeditiously and not wait for comments from the TSPs. After completing the audit, the auditors are to submit the report and key findings to TRAI. Areas of concern are categorized into 3 (three) categories namely non-compliance, deficiency, and observations. The audit report is to include an overview, key findings or observations, instances of overcharging, action taken by the TSPs on the overcharging reported, comments of the TSPs against each audit observation and auditor's opinions, and other relevant details specified by the TRAI.

The Draft Metering Guidelines have also laid down specific timelines within which the auditors and the TSPs are required to submit their reports of system audit and LSAs audit for accuracy of metering and billing. The Draft Metering Guidelines also lay down the timelines within which the information pertaining to the metering and billing system is to be provided by the TSP to the auditor and the timelines within which the system audit is required to be completed.

## **Applicability of FDI Policy on Over-The-top ("OTT") Platforms**

The Ministry of Information and Broadcasting ("**MIB**") through its notification dated March 10, 2023, clarified the applicability of Press Note 4 ("**Press Note 4**") dated September 18, 2019, on OTT platforms.

The Press Note 4 provides for a Foreign Direct Investment ("**FDI**") upto 26% under the government approval route for entities involved in uploading/streaming of news and current affairs through digital media.

However, clarification was sought by several OTT platforms regarding the applicability of the Press Note 4 as these platforms were only providing a platform for the carriage of third-party news and current affairs content of news channels without any editorial intervention.

Accordingly, MIB clarified in the Press Note 4 that when an OTT platform hosts a digital feed of a television news channel that has been granted permission under the uplinking and downlinking guidelines, and subsequently makes it available to its subscribers, such OTT platforms will not be covered under the 26% FDI rule prescribed under the Press Note.

## **Advisory to broadcasters in relation to non-compliance**

The MIB through its notification dated March 23, 2023, issued an advisory directing all broadcaster associations to comply with the various mechanisms in place such as the audit of subscriber management systems, conditional access systems, and other related systems to verify monthly subscription reports.

Additionally, the MIB directed all Multi System Operators ("**MSOs**") to comply with the regulations issued by TRAI in addition to furnishing information such as high-end locations, conditional access system, platform service details, etc, as required by MIB.

Further, the advisory stated that MSOs who fail to comply with the terms and conditions of the registration granted to them will be marked by the MIB as *non-compliant*. Consequently, broadcasters have been advised to enter into fresh interconnections or renewal agreements with only compliant MSOs, and in case a broadcaster has entered into an interconnection agreement with a non-compliant MSO, it is required to correspond with the MIB and get the status changed to *compliant*.

## **Clarification regarding Policy Guidelines for Uplinking and Downlinking of Satellite TV Channels, 2022**

The MIB through its notification dated March 24, 2023, issued a clarification regarding the Guidelines for Uplinking and Downlinking of Satellite TV channels, 2022. This clarification was issued pursuant to comments received from stakeholders in relation to the interpretation of the said guidelines.

Accordingly, the MIB reaffirmed that permitted entities may only provide channel signal decoders to registered MSOs and cable operators, registered DTH operators, authorized Internet Protocol Television (IPTV) service providers, and authorized Headed-In-The-Sky (HITS) operators.

## **Recommendations on community radio stations ("CRS")**

TRAI through its notification dated March 22, 2023, released its recommendations on "*Issues related to Community Radio Stations*" ("**Recommendations**"). These Recommendations have been released pursuant to the inputs received from stakeholders on a consultation paper that was issued in this regard.

The Recommendations broadly cover the following:

1. The need to disqualify religious bodies from owning broadcasting channels including CRS.
2. The need to increase the grant of permission agreement period from 5 (five) years to 10 (ten) years.
3. The need to increase the duration of advertisement on a CRS from 7 (seven) minutes per hour to 12 (twelve) minutes per hour.
4. Allowing organizations that operate in multiple districts to set up multiple CRS in their area of operation by seeking an undertaking from the organizations confirming that programs will be prepared locally.
5. Allowing organizations to set up a maximum of 6 (six) CRS throughout the country.
6. The need for the MIB to persuade the central and state governments to sponsor more programmes on CRS for helping CRS in sustainability.
7. The need for the MIB to persuade universities of central and state governments to provide budgetary support to establish and operate CRS.
8. The need to make the process for granting CRS permission, online and through a single window system
9. The need to grant Standing Advisory Committee on Radio Frequency Allocation (SACFA) clearance and Wireless Operating License (WOL) within 1 (one) month of the application of the same.

## **Directions for reporting major network outages**

TRAI through its notification dated March 28, 2023, and in exercise of the powers conferred upon it under the TRAI Act, 1997, has directed all ASPs to electronically report the incidents of major network outages that affect the telecom services for a period of more than 4 (four) hours. The ASPs are required to report such incidents within 24 (twenty four) hours of their occurrence.

Additionally, the ASPs are also required to report the root cause of major network outages along with the corrective actions to be taken, within 72 (seventy two) hours of restoration of services. These instances are required to be reported in the format prescribed by TRAI.

## **Telecommunications & Broadcasting Practice**

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. 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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17 Practices and  
24 Ranked Lawyers



16 Practices and  
11 Ranked Lawyers



7 Practices and  
2 Ranked Lawyers



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