TELEPOST
STAY CONNECTED WITH INDIA'S TELECOM LEGAL UPDATES

VOLUME 1 | EDITION 1

With Digital India in the focus, 2023 has met with an eventful start with several developments buzzing in the telecom legal and regulatory framework. This appears to be a promising time for the digital ecosystem, and stakeholders should track these developments and ongoing public consultations to put forth industry concerns. In this Edition 1-Volume I of the newsletter, we have covered key legal and regulatory updates during January to June 2023, impacting the telecom sector in India.

Snapshot

Legal and regulatory updates

- The Department of Telecommunications (DoT) seeks details of 'internet telephony apps' launched or supported by telecom licensees

- Telecom Regulatory Authority of India (TRAI) issues a slew of press releases and directions to strengthen and reinforce requirements under telemarketing regulations

- DoT issues advisory guidelines for cybersecurity of machine to machine (M2M) and the Internet of Things (IoT) devices

- DoT amends telecom licenses for rationalisation of application processing fee

- DoT reiterates compliance to amendments in telecom licenses for procurement of telecom equipment from trusted sources

- TRAI issues directions to telecom service providers (TSP) to report major network outages to it

- Telecommunication Engineering Centre (TEC) issues updates on the mandatory testing and certification of telecom equipment

Policy updates | Consultations, recommendations, and draft laws in the pipeline

- The Government undertakes discussions and consultations for new laws overhauling the telecom, information technology and data protection frameworks

- TRAI undertakes consultation on regulating convergence in telecom and broadcasting services

- TRAI issues recommendations to promote ease of doing business in the telecom and broadcasting sectors in India

- TRAI issues recommendations on the licensing framework and regulatory mechanism for submarine cables landing in India

- TRAI undertakes consultation on assignment of spectrum for space-based communication services

- TRAI undertakes consultation on the definition of international traffic

- DoT undertakes consultation on the issuance and renewal of a no objection certificate (NOC) for the import and sale of , SIM, eSIM and chips of foreign TSPs in India for use in M2M-IoT devices-products meant for export only

- TRAI undertakes consultation on telecom infrastructure sharing, spectrum sharing and spectrum leasing

- TRAI undertakes consultation on the introduction of authorisation for digital connectivity infrastructure providers

Key legal and regulatory updates

DoT | Seeking details of 'internet telephony apps' owned by telecom licensees

On 4 May 2023, the DoT issued a letter addressed to Unified License (UL) and UL for Virtual Network Operators (UL VNO) license holders and sought information about 'Internet Telephony Applications' launched or supported by them.

In its letter, DoT reiterated the definition of 'Internet Telephony' i.e., transfer of message(s) including voice signal(s) through public internet, which on the face of it, is wide enough to include all voice-based communications over internet. Hence, according to DoT, all 'Internet Telephony Applications' would come under the purview of telecom license in India. This appears to be an exercise to collect relevant statistics on internet telephony applications launched or supported by TSPs.

"With the DoT seeking details of 'internet telephony apps', the tides of regulation appear to be shifting in the realm of Over-The-Top (OTT) services."

With the DoT seeking details of 'internet telephony apps', the tides of regulation appear to be shifting in the realm of Over-The-Top (OTT) services. This move will severely impact the ongoing debate between TSP and tech companies. TSPs in India have contended that lack of regulatory oversight over OTT players has led to a non-level playing field. On the other hand, many tech companies have argued that such services are different from traditional telecom services and are anyway regulated under information technology laws. Interestingly, the proposed draft of the Indian Telecommunication Bill 2022 (Draft Telecom Bill), in its current form, also seeks to include OTT communication services within the scope of 'telecommunication services', which would require appropriate licenses.

At present, DoT has not issued any formal document setting out the background or pretext for issuance of the letter. It remains to be seen how DoT will proceed after the TSPs submit their responses, paving the way for a potential paradigm shift in the regulatory landscape of India's telecom sector.

TRAI | Strengthening telemarketing regulations in India

Over the past few months in 2023, the TRAI has issued a slew of press releases and directions further to the requirements under the Telecom Commercial Communications Customer Preference Regulations, 2018 (TCPR), including the following:

- Press release on 'Directions to Access Providers to stop misuse of Headers and Message Templates, and to curb unauthorised promotions using telecom resources under TCCCPR-2018' on 16 February 2023 to strengthen enforcement of this regime by calling upon TSPs to comply with the directions to verify compliance of entities with requirements under TCPR.

- 'Directions to Access Providers to stop misuse of Message Templates, under TCCCPR-2018' on 12 May 2023 to direct TSPs to verify use of more than three variable parts in the contents only with proper justification and additional checks.

- Press release on 'Reverification of Headers and Content Templates by Principal Entities under TCCCPR-2018' on 25 May 2023 emphasizing that sender entities such as banks, other financial institutions, insurance companies, trading

companies, business entities etc. need to get their content templates registered with the TSPs, failing which any non-compliant SMS shall not be delivered to the customer. TRAI also notes that due to lack of timely action by sender entities, the header/sender IDs and content templates assigned to such senders remain vulnerable for likely misuse, spam and financial frauds. TRAI states that any further delay on part of senders to get re-verification of headers/sender IDs and content templates may result in the blocking of their headers/sender IDs, content templates and messages.

- 'Direction regarding implementation of Digital Consent Acquisition (DCA) under TCCCPR, 2018' on 2 June 2023, acknowledging that many promotional messages are sent without consent verification, TSPs have not developed a uniform process for registering the consent of the subscribers, digital consent acquisition and revocation facilities are yet to be developed, etc. In this regard, TRAI has directed TSPs to ensure that no promotional messages are sent without scrubbing of the consent and preference of the customers, develop and deploy 'Digital Consent Acquisition' (DCA) facility by 31 July 2023 to enable subscribers to record and revoke their consents, ensure that the sender or brand name is mentioned clearly in the consent, ensure that the consent acquisition confirmation message to the customers has information related to revocation of the consent, etc.

- 'Direction for deploying Artificial Intelligence and Machine Learning based UCC Detect system under TCCCPR, 2018' on 13 June 2023, noting that there should be functionalities to detect, identify, and act against senders of non-compliant commercial communications and curb unsolicited commercial communications (UCC). TRAI has directed TSPs to deploy artificial intelligence and machine learning based UCC detection systems and take necessary action against defaulting entities. This system should be capable of detecting non-compliant UCCs, carrying out reputation-based analysis of the message sender, etc.

In the past also, TRAI has issued various press releases with reminders and warnings for senders of commercial communications, telemarketers and TSPs to comply with requirements under TCPR. Yet, entities continue to flout these norms which is leading to a surge in consumer complaints relating to spam calls and messaging, fraudulent loan offers and banking alerts, sharing of web-links with viruses and malware, etc.

TRAI's efforts to strengthen telemarketing regulations in India send a resounding message to entities flouting the norms. With a surge in consumer complaints, these regulatory measures aim to protect individuals from spam calls, fraudulent offers, and cyber threats. As the Government gears up for more stringent measures, entities must assess their compliance with the evolving framework to ensure a secure and trustworthy communication ecosystem.

DoT | 'Advisory Guidelines to M2M/IoT stakeholders for securing consumer IoT' (Advisory Guidelines)

In the Advisory Guidelines issued by DoT on 2 March 2023, DoT acknowledged that IoT is one of the fastest emerging technologies across the globe which is being used to create smart infrastructure and it is important to ensure that the M2M and IoT end-points comply with the safety and security standards and guidelines in order to protect the users and the networks that connect these devices.

To this end, DoT issued broad guidelines under the Advisory Guidelines, based on the technical report by the Telecommunication Engineering Centre (TEC) on 'Code

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of Practice for securing Internet of Things (IoT)'. These guidelines include restrictions on use of universal default passwords, use of best practices on passwords and other authentication methods such as multi-factor authentication, implementing means to manage reports of vulnerabilities and strengthening cyber-security practices, software updates and end-of-life policy, etc.

This will be pivotal for several sectors as IoT-M2M devices and smart infrastructure are prevalent across consumer appliances, fleet management, power sector, automotive, surveillance, remote health management, agriculture, etc. Additionally, considering that a new data protection bill is in the pipeline in India, the Advisory Guidelines serve as a timely and important piece of advisory to all industry stakeholders engaged in the M2M - IoT business to gear up their cybersecurity measures.

DoT | Amendment in telecom licenses for rationalisation of application processing fee

"This appears to be a step forward in removing a few entry barriers and easing some financial costs towards obtaining a telecom license."

In its notification dated 18 April 2023, DoT issued an amendment to UL and UL VNO license agreements and guidelines to rationalise the application processing fee (which is to be paid at the time of submitting the license application to DoT). It appears that DoT seeks to apply a uniform application fee of INR 10,000 (approx. USD 120) for each service area or telecom circles across the different service authorisations under UL and UL VNO. For obtaining an 'all services' authorisation under UL and UL VNO, the application processing fees remains INR 1,00,000 (approx. USD 1200). This appears to be a step forward in removing a few entry barriers and easing some financial costs towards obtaining a telecom license.

DoT | Reiterating compliance to amendments in telecom licenses for procurement of telecom equipment from trusted sources

"This is important to note not only for TSPs, but also for equipment manufacturers and importers."

Pursuant to the license amendments issued by DoT on the procurement of telecom equipment from trusted sources, DoT has issued several notifications calling upon TSPs to appoint a nodal officer on its portal and submit compliance reports with the said license amendments. In this regard, DoT issued another notification on 22 February 2023, once again calling upon TSPs to submit the compliance reports on 1st January and 1st July every year through the designated portal in view of the license amendments. This is important to note not only for TSPs, but also for equipment manufacturers and importers.

TRAI | Directions to all TSPs to report major network outages to TRAI (Reporting Directions)

"This can aid increasing the accountability by TSPs and may prove to be important for the users and tech industry as network outages adversely affect the availability or quality of service of telecom networks."

With major network outage of telecom networks occurring due to technical reasons or natural calamities going unreported by TSPs, TRAI issued the Reporting Directions along with a press release on 28 March 2023. Through the Reporting Directions, TRAI seeks to collect information about such network outages at district level.

TSPs have been directed to report all incidences of major network outages affecting the telecom services to the entire consumers of a district continuously for a period of more than 4 hours, within 24 of their occurrences, in the prescribed format. They must also report the root cause of such major network outage and corrective actions taken thereof, within 72 hours of restoration of services, in the prescribed format. This can aid increasing the accountability by TSPs and may

prove to be important for the users and tech industry as network outages adversely affect the availability or quality of service of telecom networks.

TEC | Mandatory testing and certifications for telecom equipment

The TEC prescribes certain 'essential requirements' (ER) pursuant to the mandatory testing and certification of telecom equipment (MTCTE) requirements set out under the Indian Telegraph Rules, 1951 (as amended) (Telegraph Rules).

In this regard, TEC prescribes certain parameters, testing procedures, exemptions, etc. from time to time for the MTCTE requirements. Some of the key notifications issued by TEC between 1 January to 30 June 2023 are as follows:

- Exemption pertaining to the parameters of Optical Fibre (Single Mode) and Optical Fibre Cable products notified under MTCTE

- Notification of WiFi CPE and IP Router including security testing under MTCTE

- Clarification on the testing of base station for cellular network as per ER under MTCTE

- Acceptance of a valid certificate issued by the Bureau of Indian Standards (BIS) or test reports issued by BIS recognised lab(s) against safety requirements under MTCTE

- Designation of labs as Conformity Assessment Body (CAB) for 5G products

- Procedure for designating domestic testing labs for testing of Conditional Access System (CAS) and Subscriber Management System (SMS)

- Notification of the products covered under Phase V of MTCTE mandatorily with effect from 1 July 2024

Policy updates | Consultations, recommendations, and draft laws in the pipeline

Discussions on the draft Indian Telecommunication Bill and proposed Digital India Act

Government bodies such as DoT and the Ministry of Electronics and Information Technology (MEITY) have acknowledged that the existing legislations governing the telecom and information technology sectors have become rather outdated considering the pace at which technologies are rapidly evolving.

In the telecom sector, DoT had issued a draft of the Draft Telecom Bill for stakeholder consultations towards the end of 2022, to replace the colonial era laws such as the nearly 150 years old Indian Telegraph Act, 1885. This will be a landmark development for all entities operating or wishing to operate in the telecom sector as it introduces drastic changes to the existing framework, including expanding the scope of regulated telecom services to include OTT communication services, M2M

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service, broadcasting services etc. Based on recent news reports, it appears that the Government is in the process of updating and finalising the Draft Telecom Bill and a revised draft may be tabled in the Parliament soon.

MEITY also conducted a preliminary stakeholder discussion on the proposed 'Digital India Act 2023' (DIA) (which is yet to be released) with a view to create open, safe, trusted, and accountable internet. The proposed DIA seeks to focus on user harms, emerging technologies and the risks associated with the same, ensuring online diversity and fair market access, etc. It appears that various forms of emerging technology and digital communication services may come under the purview of the Draft Telecom Bill and/or the upcoming DIA. Some stakeholders have expressed that there may be some overlap between the Draft Telecom Bill and DIA, and services such as OTT services, cloud services, etc. may be better suited for regulation under the DIA only. It will be critical for entities operating in the digital ecosystem to keep track of these updates.

TRAI | Consultation paper on 'Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services' (Convergence CP)

TRAI issued the Convergence CP on 30 January 2023, focusing on the ambiguities and shortcomings in the legal and regulatory framework with respect to modern applications and converged technologies such as internet protocol television (IPTV), OTT communications, IoT, etc. Here, TRAI sought to examine the convergence across telecom, broadcasting, information technology and space laws at a statutory level, licensing level, regulatory level, administrative or functional level, and institutional level.

To gather industry perspectives, TRAI sought stakeholder comments on the amendment of existing laws, need for having a comprehensive or converged legal framework, alternative licensing and administrative framework or architecture or establishment, unified policy framework and spectrum management regime, etc. to bring in synergies in the legal and regulatory framework. In the comments submitted to TRAI, many industry associations have argued that telecom services and internet-based services (such as OTT services) should be separately regulated as they operate in different layers. Various industry associations also supported that cloud services should remain under the domain of the MEITY and governed under prevailing information technology laws. Several stakeholders have also suggested that it may be prudent to keep regulation of telecom and broadcasting services separate, although challenges relating to regulation of some converged services (e.g., IPTV) may need to be examined. With extensive comments and counter-comments from stakeholders for consideration, it will be interesting to see the next steps by TRAI on the proposed converged framework, especially because many have argued against complete convergence on several facets.

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TRAI | Recommendations on "Ease of Doing Business in Telecom and Broadcasting Sector" (EODB Recommendations)

TRAI issued a comprehensive set of recommendations as part of the EODB Recommendations on 2 May 2023, further to the *suo moto* consultation on this subject carried out earlier in December 2021.

The EODB Recommendations envisage several procedural changes in the interest of simplification. These include single window online portals, setting out defined

timelines, easing process for regulatory approvals, permissions, testing and certification, centralisation of audit, financial and accounting related obligations, integration of different ministries involved, etc. The EODB Recommendations also seek to reduce the compliance and cost burdens in the current legal and regulatory framework. These, range from the complex processes of applications for different licenses and approvals to ongoing obligations and reporting requirements, audits, involvement of different regulatory authorities, etc. as well as promote the laying of international submarine cables and setting up cable landing stations in India.

By simplifying procedural and compliance burdens, embracing online processes, and reducing unnecessary complexities, TRAI's initiatives aim to create a favorable environment for growth and innovation. These measures not only alleviate the operational challenges faced by businesses but can also foster increased efficiency and productivity. Ultimately, TRAI's forward thinking approach can pave the way for a thriving industry that can embrace emerging technologies and seize new opportunities with ease.

TRAI | Recommendations on 'Licensing Framework and Regulatory Mechanism for Submarine Cable Landing in India' (CLS Recommendations)

TRAI issued the CLS Recommendations on 19 June 2023 pursuant to the public consultation process in respect of the consultation paper issued by TRAI on this topic last year. TRAI has taken into account a diverse set of views and comments submitted by stakeholders and provided some notable recommendations such as clarity on ownership of cable landing stations and categorisation of cable landing station (CLS) locations as 'main CLS' and 'CLS-Point of Presence' (CLS PoP), providing dark fibre pair(s) in the submarine cable from the main CLS to their respective CLS-PoP location, use and setting up of submarine line terminal equipment and power feeding equipment to address different use-cases, etc.

TRAI has acknowledged submarine cables and CLS as a critical asset and recommended adding a section in the Draft Telecom Bill to promote, protect and prioritise submarine cables and CLS in India. TRAI has also noted that "damage to sub-sea infra should be considered as damage to critical infrastructure of national importance and be strictly dealt under the India laws".

With rapid technological advancements and 'new generation submarine cable systems', TRAI's recommendations suggest some critical and much-awaited amendments to the regulatory framework to cater to evolving industry needs, increased data capacities, participation by global submarine consortiums and promoting innovation and investments in this sector. Since these are only recommendations at this stage, it remains to be seen how they may be formally adopted and implemented by the Government of India.

DoT | Consultation Paper on 'Policy for Issuance-Renewal of NOC for Import-Sale in India, of SIM-eSIM cards or chips of Foreign Telecom Service Providers, for use in M2M-IoT devices-products meant for export only'

With the proliferation of M2M and IoT devices, many entities are incorporating SIM cards in such devices. Many times, SIM cards are embedded at the time of manufacture of a product (that may take place outside India) and, thereafter, these

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embedded SIMs (e-SIM) are activated by local or foreign TSPs. Certain Indian entities are also manufacturing such devices with e-SIMs for exporting to the international market.

In the consultation paper issued by DoT on 19 April 2023, DoT notes that manufacturers are seeking foreign SIMs to be provided to them in India itself for integration into their products for IoT-M2M services for use outside India. This would warrant obtaining a NOC that involves certain subscriber verification requirements, for obtaining SIM cards of foreign operators (although ultimately these products would be exported and used outside India only). Considering the practical challenges involved with this, DoT had raised certain issues for stakeholder comments regarding activation of such SIMs for sample, function and prototype testing, custodian of SIMs, penalties for non-compliance of the NOC, etc. As manufacturers strive to integrate foreign SIMs into their products for international markets, navigating the complexities of compliance requirements becomes crucial. This consultation seeks to streamline the process, fostering seamless integration and promoting India's role in the global M2M-IoT ecosystem.

TRAI | Consultation paper on 'Assignment of Spectrum for Space-based Communication Services' (Space-Com CP)

" The outcomes of this consultation have the potential to shape the future of satellite services and propel India's presence in the global space communication landscape."

In the Space-Com CP issued on 6 April 2023, TRAI has examined the different types of satellite communication services in the industry, use of different spectrum and frequency bands and technologies, spectrum coordination for satellite communication services. Under the current legal and regulatory framework, there can be many different licenses, permissions, clearances, etc. required for different types of satellite communication service. Some of these include telecom service license, wireless operating license, frequency allocation clearance, Direct to Home (DTH) license, etc.

The Space-Com CP seeks to examine the appropriate frequency bands for gateway links and user links for space-based communication services, quantum of spectrum for such services, limit on the number of satellite systems, trading or leasing of partial or entire satellite spectrum holding, challenges with spectrum assignment and auctions for different bands, eligibility conditions, etc. The outcomes of this consultation have the potential to shape the future of satellite services and propel India's presence in the global space communication landscape.

TRAI | Consultation paper on 'Definition of International Traffic'

" By seeking stakeholder inputs, TRAI paves the way for a clearer and more efficient communication landscape while addressing the evolving needs of the telecom industry."

In this consultation paper, TRAI notes that mobile messaging services have advanced over the years from SMS to MMS to instant messaging and OTT communication services, and significant amounts of data and voice traffic are transmitted across the word. DoT had requested TRAI to provide its recommendations on defining 'international SMS' and 'domestic SMS' under the telecom license regime, which would have a bearing on interconnection usage charges. In the consultation paper, TRAI has sought stakeholder comments on defining 'international traffic' and 'domestic traffic', which are currently not expressly defined under the telecom licenses. By seeking stakeholder inputs, TRAI paves the way for a clearer and more efficient communication landscape while addressing the evolving needs of the telecom industry.

"Optimisation of resources as intended in the Infra-Sharing CP can allow TSPs to divert investments into infrastructure upgradation and network expansion, facilitating investments in this sector."

TRAI | Consultation paper on 'Telecommunication Infrastructure Sharing, Spectrum Sharing, and Spectrum Leasing' (Infra-Sharing CP)

Pursuant to requests from industry stakeholders on the issue of sharing of core network elements and subsequent reference by DoT, TRAI issued the Infra-Sharing CP on 13 January 2023. Among other things, TRAI seeks to examine 'passive' infrastructure sharing across different telecom licenses and authorisations, sharing of 'active' infrastructure elements between TSPs, and the general industry view on facilitating infrastructure sharing. The Infra-Sharing CP also focuses on encouraging roaming arrangements among TSP in remote and far-flung areas to improve overall connectivity across India, inter-band access spectrum sharing among the access service providers, implementing a regime for authorised shared access of frequency spectrum, etc. Optimisation of resources as intended in the Infra-Sharing CP can allow TSPs to divert investments into infrastructure upgradation and network expansion, facilitating investments in this sector.

Various industry associations have expressed that passive infrastructure sharing should be permitted across all telecom license authorisations and there is a need for DoT to resolve ambiguities in the license terms and conditions. It has also been contended by some stakeholders that sharing of active infrastructure should be simplified amongst TSPs to promote efficient use of resources and better connectivity pan-India. This is a critical lookout for the telecom industry, especially considering the increased infrastructure burdens due to proliferation of 5G. It remains to be seen how TRAI and DoT may address the points put forth by stakeholders and devise appropriate policies for infrastructure sharing going forward.

"With contrasting viewpoints among stakeholders, the outcome of this consultation process will shape the future landscape of infrastructure sharing and raise important questions about maintaining a level playing field for all service authorisations."

TRAI | Consultation paper on 'Introduction of Digital Connectivity Infrastructure Provider (DCIP) Authorization under Unified License (UL)' (DCIP CP)

The DCIP CP, issued by TRAI on 9 February 2023, envisages a new category of telecom licensees, i.e., 'Digital Connectivity Infrastructure Providers' (DCIP) who will be authorised to own and operate passive as well as certain network layer active infrastructure to aid speedy digital communications infrastructure penetration in the country. This comes after a series of discussions and consultations on the issue of infrastructure sharing, including TRAI's recommendations in 2020 that suggested enhancing the scope of registration for Infrastructure Providers-I (IP-I) to enable them to provide active infrastructure as well. However, DoT had firmly communicated to TRAI that active infrastructure can be provided only by telecom licensees and IP-I entities cannot be allowed to provide active infrastructure under their IP-I registration.

Based on DoT's suggestion that a new category of telecom license may be affected to enable setting up and sharing of telecom infrastructure, TRAI proposed the DCIP authorisation with relatively light-touch license terms and conditions and incentives such as no license fees, minimal entry fees, and no performance bank guarantees, etc. Such DCIP entities will be permitted to share infrastructure with TSPs and IP-I entities which can help in reducing the capital expenditure (CapEx) costs and the overall burden on such regulated entities.

However, this consultation has met with a lukewarm reception with many stakeholders not favouring creation of a new license authorisation for DCIP entities. On one hand, some of the industry associations submitted that the scope of the IP-I registration should be enhanced to enable sharing of active infrastructure based on the National Digital Communications Policy 2018 and earlier recommendations of TRAI. On the other hand, some other stakeholders have contended that creating the DCIP authorisation with light-touch terms may raise concerns on the level playing field vis-à-vis service authorisations such as National Long Distance (NLD) service (where licensees can provide end-to-end bandwidth and domestic leased circuits) with more onerous license terms and conditions. With contrasting viewpoints among stakeholders, the outcome of this consultation process will shape the future landscape of infrastructure sharing and raise important questions about maintaining a level playing field for all service authorisations.

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