



Joint Industry Statement on the Telecommunications Bill, 2022

10 November 2022

On behalf of the undersigned associations, we write to share recommendations on the Department of Telecommunications (DoT), Ministry of Communications draft Telecommunication Bill, 2022 (Draft Bill), circulated for public comment on 21 September 2022.

Our associations represent global companies that develop, sell, or rely on digital technologies and services. Industry supports the government's stated commitment to promoting digital inclusion and catalyzing the next generation of digitally-enabled economic growth. India has long been a global technology leader that creates and supplies goods and services to contribute to a productive, competitive, and innovative global economy and society. Thoughtful regulatory approaches have been critical to that success.

Industry greatly appreciates the opportunity to provide its views in this consultation and on the Draft Bill. While we understand that the Draft Bill is an attempt to streamline telecommunications regulation in India and create a “future-ready” framework, the overhaul to the regulatory framework as presented in the draft Bill will significantly impact domestic and global digital services and future innovations, to their possible detriment.

Given the broad scope and wide-ranging impact of the proposed law, Indian policymakers would greatly benefit from continued consultation with affected stakeholders – both domestic and foreign – before the legislation is considered. The many substantive concerns raised by the Draft Bill, including those laid out below, merit sufficient time for meaningful input.

First, the overbroad scope of the regulation is unprecedented as it would impose extensive licensing and associated requirements on a wide range of digital and communications services including email, Internet-based communication services, machine to machine communication services and over-the-top (OTT) communication services including video and data communication services. These services have flourished, in large part, because the legacy

regulations for telephony have not been applied to such services, which has provided a ground for innovation and development. These new regulatory requirements will present a significant compliance burden, increasing costs and restricting trade and innovation, thereby limiting growth both domestically and internationally. Such requirements would stifle the availability and growth of innovative digital services going forward during a key evolutionary period.

We recommend that the definition of “telecommunications services” and applicable requirements should omit email, Internet-based communication services, machine-to-machine communication services, and over-the-top (OTT) communication services including video and data communication services. Communication services are being increasingly integrated as an ancillary function into almost every conceivable service. While we appreciate the intention of creating a “future-ready” framework, the addition of communication services in this definition will hamper the upcoming innovations taking place in smart IoT devices.

Further, we recommend excluding customer equipment and software from the definition of “telecommunications equipment” as they are already regulated by the Ministry of Electronics and Information Technology (MeiTY). Instituting additional regulations on these devices will create a considerable compliance burden, leading to barriers to innovation and faster technology adoption – impacting a fast-growing and fledgling sector.

Second, we also have strong concerns about the expansive powers granted to the DoT that may threaten the privacy and security of digital communications absent the addition of clear safeguards. Expansive government access rights to user information and communications, identification verification requirements, and government interception provisions are all likely to require the dilution of encryption mechanisms. This may not only violate the right to privacy of users, but the weakening and prohibition of encryption technologies ultimately makes products less secure for users and firms globally, including Indian users and firms. These powers also grant the DoT broad authority to restrict or deny access to Internet and digital services without any obligation to provide justification or timelines for restricted access, or provide mechanisms for appealing such an order. As a consequence, many companies likely would opt-out of participating in the Indian market, rather than shoulder the costs and information security risks of compliance.

Third, subject matters such as email, Internet-based communication, and cloud-based services are already under the purview of the IT Act that has a very robust and well working process for dealing with national security related scenarios. The current IT Act may soon be replaced by the Digital India Act that will build in additional safeguards as needed. We therefore recommend that the two subject matters be kept separate to avoid statutory duplication and accompanying interpretational and enforcement challenges, as well as administrative burden (for the private sector as well as for the public sector itself).

In addition to the above items, we note that many of the signatories to this statement have submitted comments that further detail concerns for your consideration. While some of these organisations have been able to draft comments during this short time span, others have not, so we once again note that further deliberation and consideration would be necessary to fully assess the Draft Bill, given its wide-ranging implications.

Thank you for your consideration of these comments and for your continued engagement with stakeholders.

Signed,

ACT | The App Association

Asia Internet Coalition

Computer & Communications Industry Association (CCIA)

Information Technology Industry Council (ITI)

India Cellular and Electronics Association (ICEA)

Japan Electronics and Information Technology Industries Association (JEITA)

Japan Business Machine and Information System Industries Association (JBMIA)

United States Council for International Business (USCIB)

U.S.-India Strategic Partnership Forum

Software & Information Industry Association (SIIA)