



GOVERNMENT TO FORM NEW BODY TO OVERSEE TELECOM AND CYBER SECURITY

[Home](#) → [Government to form new body to oversee telecom and cyber security](#)

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The government is planning to set up a new body NTNSCB, that will oversee telecom and cyber security to avoid overlap between various ministries and intelligence agencies that are currently handling this issue. The NTNSCB shall be located in the communications ministry and headed by the telecom secretary. NTNSCB will have representatives from the defense and home ministries, intelligence agencies, IT department, intelligence bureau, national security advisor and NTRO, among others. The NTNSCB shall suggest measures to address network security related issues, set up objectives and targets to the various departments and agencies handling telecom and cyber security related issues. The Centralized Monitoring System (“CMS”) and the secured network have been initiated by the government to strengthen monitoring of mobile, internet and other forms of communications in India. CMS aims at monitoring all communication traffic, wireless and fixed line, satellite, internet, e-mails and VoIP calls.

PSA view – Currently, several departments and ministries deal in network security in isolation and it is important that for the overall network security the role and functions of these departments and ministries are clear without overlaps. This will avoid unnecessary delay in decision making and even for projects of national importance.

New policy for interception to security agencies

The government is planning a new setup to enable law enforcement agencies to seek real-time information of telecommunication exchanges along with tracking of users. In order to create a conducive environment for the law enforcement agencies and allowing them to access real-time information of exchange of messages, data and calls made by users as well track their location whenever required, a new set of security guidelines have been proposed by TRAI. The draft guidelines is pending with the Home Ministry. The Telecom Regulatory Authority of India will extend all technical help for deciphering the information received through interception of telecom networks. Crucially, while extending communication assistance to security agencies for law enforcement, the following elements needs consideration: (i) the privacy issue of the users, which should not be transgressed without valid reasons; (ii) proper checks and balances to stop the misuse, to cut down on delays, and leakages of information by the use of latest technologies and systems to security agencies; (iii) enhance the data deciphering capacities of the security agencies; and (iv) to make the

telecom network robust enough to withstand any terrorist attack and natural disasters by setting new parameters and standards. The new policy proposes to create telecom security assurance and testing labs for security related testing and certification of telecom equipment.

PSA view – This new policy aims at controlling the use of communication systems, track the systems and using interceptions to prove any crime. In effect, it can be very useful in controlling and/or to withstand any crime or natural disasters. However, it is pertinent that privacy of users be given prominence and interception procedures be made stringent to avoid any misuse.

2G Judgment: Making probity essential

The Supreme Court in the *Centre for Public Interest Litigation and Ors. v. Union of India and Ors* analyzed the developments in telecom policy since the introduction of telecommunication in India. The court primarily assessed the methodology adopted and the allotments undertaken by the Department of Telecommunication (“DOT”) in allotment of license for the fourth Cellular Mobile Service Provider (“CMSP”) in all circles. In doing so it framed three primary queries (i) what are the principles applicable by the government in the allocation of national resources and assets?; (ii) whether DOT adopted the correct method as per the regulations, law and principles applicable to such allotments?; (iii) if not, then what should be the correct method for such allotment and whether in view of this and other information, the allotments are liable to be quashed? The Supreme Court ruled that (i) in regard to national resources and assets, the government is merely the trustee for the people and has to allocate the same in a manner which is consistent with constitutional principles and adherent to the larger public good as ascertainable; (ii) the method of first come first serve adopted by DOT in allotment of CMSP licenses is inherently flawed due to its dependence on chance and accident on the part of the applicant and is a method which does not apply assessment or judgment of the government in such allotment and is, therefore, not adherent with either constitutional principles or in the interest of public good; (iii) therefore, as the methodology of allotment of CMSP licenses was ruled arbitrary and contrary to public interest, the licenses issued under the methodology adopted by the government since January 10, 2008 are liable to be cancelled.

PSA view – The Supreme Court in its decision has observed, but failed to consider the position of the companies who invested heavily in the license holder companies. This view though legally tenable is extremely bad for the foreign investment climate in the country, especially for a burgeoning sector like telecom. Also, this is going to create skewed competition and possible oligarchies and cartelization among the established players who were being offered serious challenges by the new operators. The Supreme Court could have attempted to reconcile the interests of foreign investment and the possible culpability of their Indian partners in large scale corruption for allotment of license. If done this way, the Supreme Court would have established not only the rule of law but also balanced the equities in a manner which would have given a further impetus to foreign investors after its landmark judgment in the Vodafone case.

Preference to domestically manufactured electronic goods

The central government has approved the proposal to provide preference to domestically manufactured electronic products, in procurement of those electronic products which have security implications for the country and in government procurement for its own use. This is consistent with India’s commitments to the World Trade Organization. Electronic product(s) having security implications and agencies deploying them

will be notified by concerned Ministry/Department. The notified agencies will be required to procure the specified electronic product or products from a domestic manufacturer. Specific guidelines is yet to be issued by the government. The policy is expected to create an indigenous manufacturing eco-system for electronics in the country. Government with major expansion programs under telecom including national optical fiber network, e-governance, broadcast, citizen service centers etc., is generating significant demand in the sector.

PSA view – This policy provides the necessary support and boost to the domestic electronic manufacturing industry. This will provide them with sufficient market place and needless to say great employment opportunities as well.

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