

# Speed up Promulgation of the Telecommunications Act to Ensure Fair Competition in China

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To meet the needs for telecommunications supervision and regulation, the State Council formulated and issued the Telecommunications Regulations of the People's Republic of China in 2000 with a view to standardizing and adjusting the telecommunications market and the legal relationship in telecommunications regulation. The promulgation of the Telecommunications Regulations has greatly promoted the development of China's telecommunications industry. However, as the Telecommunications Regulations is an administrative regulation, it has a relatively lower grade of force as compared with laws. In addition, some new situations and new problems have emerged in China's telecommunications market and telecommunications regulation in recent years. These include the restructuring of the telecommunications

industry and the formation of a competitive telecommunications market in the country. The Telecommunications Regulations has gradually shown certain limitations in terms of applicability and implementation.

Telecommunications are playing an increasingly important role in the national economy and people's production activities and life. In the new historical period, standardizing the order of the telecommunications market and adjusting all kinds of social relationships in telecommunications activities in the form of a national law has become an important task of national legislation. Social relations in telecommunications activities and telecommunications regulation are in urgent need of being standardized as legal relationships through laws of a higher authority.

## **THE TIMES CALL FOR AN EARLIER PROMULGATION OF THE TELECOMMUNICATIONS ACT**

**1. Enacting the Telecommunications Act is the inherent requirement of a socialist market economy.**

A sound legal system is the inherent requirement of a socialist market economy. The market economy is an economy governed by law. The socialist market

economy should be a legal economy that operates in strict accordance with a legal system that embodies people's will and reflect the inherent pattern of the socialist market economy. Continuously pushing forward legal building and gradually forming a sound legal system is the inherent requirement of the development of the market economy. It also forms an important guarantee for the healthy development of the market economy.

As China continues to deepen its economic system reform, it has preliminarily established a socialist market economic system. In a market economy, the country should change its way of national economic management from a domination of “administrative means” to that of mainly “legal means” and “economic means” and replace the previous micro administration with macro regulation. As the market administrator, the government should not become the dominator of market activates but only a regulator and referee of market activities. The establishment and improvement of the market economic system have put forward a need for legislation. As a law to adjust telecommunications activities in China, the Telecommunications Act can establish new telecommunications operation relationships and telecommunications regulatory relationships in the country through legislation and provide the legal basis, which accommodate the needs of a market economy in China, for carrying out telecommunications operation activities and telecommunications regulatory activities.

## **2. Formulating the Telecommunications Act is the inevitable requirement of telecommunications development and reform.**

Entering the 1990s, China has deepened its telecommunications reform in a bid to adapt to the development needs of the telecommunications industry. Meanwhile, in line with the development features of the industry, the country has also carried out restructuring, which starts to give rise to a pattern of competition among several operators. In 2002, China Telecommunications Group Corp. and China Netcom Communications Group Corp. were

established, bringing fundamental changes to the operational mechanism, market pattern and management system of China's telecommunications industry. There was a thorough separation between the government and enterprises in the telecommunications market, forming a pattern of competition between several operators. There is a need to create a legal environment that adapts to the needs of competition. The idea is to ensure that telecommunications operations and telecommunications regulation can be smoothly carried out to safeguard a fair, just and effective order of competition in the market and protect the lawful rights and interests of market entities under the conditions of competition among several operators. Formulation of the Telecommunications Act will create conditions for ensuring a fair order of market competitions.

## **3. Formulating the Telecommunications Act is the inherent need for China to cope with the new situation following its WTO accession.**

WTO accession has facilitated China to enter the world market and created favorable conditions for China to attract foreign capital and advanced technologies to enter the domestic telecommunications market and bring domestic capital and technologies into the world market. To organically integrate the domestic telecommunications market with the international market and promote the healthy and orderly development of China's telecommunications industry, it is necessary to establish a set of telecommunications operation rules that accord with China's reality and its commitments to WTO. Formulating the Telecommunications Act is essential for standardizing and adjusting relevant telecommunications regulations.

## **A SOUND LEGAL ENVIRONMENT**

## **NEEDS TO BE CREATED FOR THE DEVELOPMENT OF THE TELECOMMUNICATIONS INDUSTRY**

### **1. The Telecommunications Act will help safeguard the order of the telecommunications market.**

During the period of monopolistic telecommunications operations, operational relationships in the telecommunications market were simple. There were no more social relationships to handle rather than that between telecom operators and telecom users. Moreover, as telecommunications services were in short supply during the period of monopolistic telecommunications operations, telecommunications relationships were also relatively simple. A great number of relational issues could be solved by planning and administrative means. When several operators compete, the situation is completely different. Under such a pattern, there is a need to solve the relationship between telecom operators and telecom users. Focus also needs to be placed on solving the relationship between telecom operators to ensure fair competition. Issuing the Telecommunications Act will create favorable conditions for standardizing and adjusting the above relationships.

The Telecommunications Act can establish not only a market access system that adapts to the needs of telecommunications operations and telecommunications regulation but also fair and specific market operation rules and promote fair competition between market entities. It can not only guide and standardize telecom operators' market behavior but also restrict and standardize the acts of the telecom regulatory body. It can not only give active safeguard to legal acts in the telecommunications market but also crack down on acts that breach legal provisions and break the market order. All the above measures can effectively safeguard the order of the telecommunications market and promote the healthy development of

China's telecommunications industry.

### **2. The Telecommunications Act will help protect the legal rights and interests of telecommunications operation enterprises.**

Enterprises are the entity of market activities. Enterprises under the market economic conditions should possess independent legal person status and have an equal legal position and full capacities for action and for assuming reasonability. The law must set provisions for the organization, status, role and activity rules for all kinds of enterprises. This is the only way for enterprises to become market entities with well-defined rights and responsibilities. Through standardizing and adjusting telecommunications operation behavior, the Telecommunications Act will protect and ensure legal telecommunications operation behaviors, crackdown and punish law-breaching telecommunications operation behaviors and provide legal guarantee for telecom operators to carry out business operations according to law and safeguard their lawful rights and interests.

Firstly, the Telecommunications Act safeguards telecom operators' own lawful rights through protecting their statutory rights. By ensuring all kinds of rights and interests for telecom operators such as telecommunications operational entity status, telecommunications operation activities and telecommunications construction activities, the Telecommunications Act will offer powerful safeguard for telecom operators to carry out business operations according to law. Secondly, through standardizing and restricting the telecommunications regulatory body's supervision acts, the Telecommunications Act will safeguard the lawful rights of telecom operators. While granting the telecom regulatory body with certain right to regulate, the Telecommunications Act will also set corresponding restrictions over the exercise of its rights to regulate and its regulatory activities. The Telecommunications Act firstly establishes the principle of "regulation by law" for the telecommunications regulatory work and requires the telecommunications regulatory body to exercise its

regulatory right in strict accordance with law. Meanwhile, it also provides for an information disclosure system for the telecommunications regulatory body and confidentiality obligations for telecommunications regulatory personnel. This will play an active role in ensuring that the telecommunications regulatory body carries its administrative duties according to law and in safeguarding the lawful rights and interests of telecom operators.

### **3. The Telecommunications Act will help safeguard the rights and interests of telecom users at large.**

Safeguarding the lawful rights and interests of telecom users at large is one of the fundamental purposes of the making of the Telecommunications Act. All our work including legal system building is for realizing, safeguarding and developing the fundamental interests of the people at large. Our laws and regulations need to accord with people's will, pursue people's interests and win people's heart. This is the only way to let the people continuously get actual benefits, get support from the people and truly carry out the laws and regulations

The Telecommunications Act will not only set provisions for "telecom user's rights and interests" in an independent chapter but also give special provisions over acts that are likely to harm telecom users' interests in the telecommunications service process. The Telecommunications Act has legal provisions for protecting telecom user's interests from the perspectives of telecommunications service quality supervision and handling of disputes between telecom operators and telecom users, thus providing a direct basis for telecom users to protect their lawful rights according to law. Through specifically setting provisions for telecom users' rights and telecom operators' obligations, the Telecommunications Act establishes the specific relationship between telecommunications service providers and telecom users in the telecommunications service process. These provisions form the legal basis for telecom users to protect their lawful rights and interests on their own or by way of the telecommunications

regulatory body's regulation of telecom operators.

### **4. The telecommunications Law will help ensure that China can enter the world's telecommunications market.**

Accession to the WTO has created favorable conditions for China to enter the world telecommunications market and participate in international competition. But WTO has its fixed rules, which all its members must comply with and follow. In the WTO rules, there are requirements for "nondiscriminatory" and "transparent" telecommunications regulation. This requires us to formulate fair and just telecommunications regulatory rules and telecommunications operation rules in line with the provisions over China's WTO accession agreement. It also requires us to publicly release such rules. Legislation is one of the most suitable forms of expression that complies with the WTO requirement. To satisfy the requirements of WTO rules, we should improve our telecommunications law system as well as our telecommunications legislation.

Through establishing a set of fair and just telecommunications operation mechanisms and telecommunications regulatory rules, the Telecommunications Act provides an important guarantee for China to attract foreign capital into its telecommunications field, integrate domestic capital into the international telecommunications market and take part in international competition. Countries with developed telecommunications technologies and solid capital strength in the world all have highly market-oriented telecommunications operations and a sound legal system. Out of considerations for capital and investment security, foreign investors often see a fair, rational and sound legal system as a basic condition for them to make investment. Without sound telecommunications legislation, China will find it very hard to attract foreign capital and technologies and raise the level of its telecommunications development. Meanwhile, legal provisions are needed for the domestic capital to enter the world market and take part in the international competition. The Telecommunications

Act can not only provide well-directed guidance for domestic capital to enter the international market but also play an active role in protecting domestic capital and domestic investors.

**5. The Telecommunications Act will help China's telecommunications industry to change from being big to becoming strong.**

The Telecommunications Act is formulated after China's telecommunications reform and development have entered a certain stage and its telecommunications industry has reached a certain level. It is the need for China to consolidate its achievements in telecommunications reform and development as well as its important achievements in separating the government administration from enterprises operation and forming a pattern of competition among several operators in the market in recent years. Meanwhile, it is also the need for China to transform from a country with a big telecommunications industry into one with a strong telecommunications industry.

With the healthy development of its telecommunications industry, China has become a country with one of the largest telecommunications industries in the world. Under the new situation, developing itself from a country with a big telecommunications industry into one with a stronger telecommunications industry has become one of China's basic goals to develop its telecommunications industry. While "quantitative" requirements and evaluation are measures for countries with a big telecommunications industry, then "qualitative" requirements and evaluation are the criteria for countries with a stronger telecommunications industry. Integration of existing telecommunications services is required. To make such a change, various conditions are needed. One very important aspect is to establish a legal system and set up legal relationship that adapts to the development needs of the telecommunications industry. As far as telecommunications development needs are concerned, the absence of a Telecommunications Act is one of the major factors that affect or even restrict China to transform its

telecommunications industry from being big to being strong.

China has formulated and introduced administrative regulations and departmental rules such as the Telecommunications Regulations and Administrative Measures for Telecommunications Service Operation Permit and their introduction has also greatly promoted the development of the telecommunications industry in China. Nevertheless, legal documents like the Telecommunications Regulations are of a relatively low level of force and have already shown certain limitations in terms of contents and extent of regulatory effect. To ensure smooth telecommunications reform and development and make China to change from a country with a big telecommunications industry into one with a strong telecommunications industry, it is extremely important for China to formulate and introduce a law with higher legal force that can fundamentally adjust telecommunications operation and telecom regulatory relationships. Based on the telecommunications development needs and in the form of national laws, the Telecommunications Act may establish a telecommunications operation system and a telecommunications regulatory system that adapts to the development of China's telecommunications industry. Meanwhile, the Telecommunications Act can also pursue administrative as well as criminal legal liabilities for acts that breach the above systems so as to protect implementation of the relevant provisions.

**STRENGTHEN THE SENSE OF  
CARRYING OUT BUSINESS  
OPERATIONS ACCORDING TO  
LAW AND ESTABLISH THE  
CONCEPTION OF REGULATION  
ACCORDING TO LAW**

Telecom operators and the telecommunications regulatory body need to form a correct understanding of the influence and role of the Telecommunications Act over telecommunications operation activities and telecommunications regulatory activities.

Telecom operators need to provide their services according to law, and the telecommunications regulatory body needs to undertake effective regulation of telecommunications operation activities. To do so, they must have a correct understanding of legislation of the Telecommunications Act.

The fundamental purpose of formulating the Telecommunications Act is to safeguard the order of the telecommunications market, protect the rights and interests of telecom users and telecom operators and promote the development of the telecommunications industry. Adjusting telecommunications operation activities and undertaking necessary standardization of telecommunications regulatory activities are precisely for fulfilling the above goals. The fact that the Telecommunications Act sets up market entry conditions and prescribes for necessary standardization and adjustment of acts in the telecommunications market are for the very purposes of establishing a fair, just, effective and orderly market and ensuring that every market entity can operate its services in the market and enjoy its various rights in telecommunications operation activities according to law. Meanwhile, setting out necessary restrictions and standardization over the telecommunications regulatory body's regulatory behavior is also to ensure that the body can carry out its administrative work according to law and that the regulatory activities are undertaken in a lawful and rational manner.

It should be kept in mind that restriction and standardizations are just means but not ends. The ultimate purpose of setting necessary restrictions

over telecom operators and the telecommunications regulatory body is to promote development and establish a set of long-term mechanisms to ensure that telecom operators can enjoy their due rights and interests according to law and the telecommunications regulatory body can effectively carry out telecommunications regulation.

The promulgation of the Telecommunications Act will produce a major impact on the development of China's telecommunications industry. Both telecom operators and the telecommunications regulatory body need to actively respond to it and cope with the influence of the Telecommunications Act.

As one of the main activity entities in the telecommunications market, telecom operators should form a correct understanding of and judgment on the introduction of the Telecommunications Act and adopt active measures to usher in its enactment. They should firmly establish the sense of carrying out business operations according to law and adhere to honest operations and greatly improve their core competitiveness to ensure that they are in an ever-winning position in competition.

In regulating telecommunications operation activities, the telecommunications regulatory body should establish the idea of regulation according to law. It needs to fully realize that telecommunications regulation is both a right owned by the telecommunications regulatory body but also a responsibility. This is a unification of rights and responsibilities. Telecommunications regulatory bodies at all levels should fully, accurately and actively exercise the telecommunications regulatory rights granted to them by law and complete their regulatory work in strict compliance with the law.