Tower and Infrastructure Provider Association (TAIPA's) response to TRAI Consultation Paper on Draft Guidelines for Unified Licence/Class Licence and Migration of Existing Licences.

TAIPA welcomes the opportunity to respond to TRAI's recommendations on licensing and guidelines for migration to the proposed new regime.

Tower Companies through IP-I services have played a key role in expanding affordable telephony in India. Since towers enable signals to be carried wirelessly, the industry has avoided huge cost and time in deploying underground cables and optical fibre to connect cities, towns and villages in India. Furthermore, Tower infrastructure Companies, by creating neutral host platforms that the telecom service providers can share and do not have to build of their own for their exclusive use, have drastically lowered the cost of serving the end users leading to lower tariffs and an increase in tele-density.

These Companies, as input service providers for telecom services, are registered as IP-I service providers with DoT and through "sharing" approach have enabled the telecom industry to become more "environment friendly", "reduce the cost of operations" and "conserve scarce resources by avoiding duplication of telecom infrastructure" which is wasteful especially for a country like India. These towers not only serve the cellular networks but also support BWA, Radio Trunking, Rural Broadband and provide the backbone for rural Common Service Centers. In brief, in an environment starved of several types of infrastructure, a tower brings not just telecom connectivity, but also access to many community services.

The Industry responsible for the lowest tariff in the world is being taxed on one hand for its efficiency by civic agencies by levying upon them new & revised charges by 20 times and on the other, their IP-I services are being brought under licensing & revenue share. This double whammy has further got worsened with the exit of a few current players as it would inevitably reduce the demand for shared infrastructure.

TAIPA does not see any merit or advantage in licensing of IP-I as the proposals are:

1. Not based on accurate data and sound analysis
2. Discriminatory
3. Not reflecting upon the best regulatory practices
4. Hurting the viability of existing business
5. Hurting the foreign investors
6. Hurting the smaller players
7. Difficult to implement

TRAI has proposed to bring the IP-I business under a unified licence because:

1. It will prevent loss to the exchequer due to **alleged arbitrage** by mobile operators,
2. It will Increase the **scope of IP-I business** after the move to unified licence,
3. It could reduce the difficulties of IP-I players to obtain **right-of-way &**
4. IP-I have **large revenues.**

We respond below to show that these assumptions are unfounded:

I. "Arbitrage"

It is alleged that mobile operators escape licence fees on their revenues from towers. This is incorrect. While rules do allow mobile operators to exclude pass through revenues such as interconnection and roaming that are passed on to other operators, tower revenues do not qualify for any such exemption. For instance, any fee paid by a mobile operator to an IP-I operator is paid after licence fees on the entire original revenue (excluding the exempted part) have been deducted. Government revenue on account of licence fees from mobile companies is not impacted in any way.

Indeed the move to impose a licence fee on the IP-I business will double the licence fee burden on the sector since the government receives a fee first on the revenue of the telecom service provider and then, on the revenue of the Tower Infra Company for its IP-I services to the telecom service provider.

II. "Right of Way (ROW)"

TRAI has reasoned that DoT should bring IP-I under license so that they can take benefits to seek way-leave from public authority, Public Corporation, State Government or Central Government in the respective service area. This is flawed. This is evident from the fact that MHA and DoThave extended important support to network service/equipment providers even though they have no licences and are not envisaged to require them.

III. "Enhanced scope-Active; independent of Service Providers"

It is fair to say that most of the infrastructure remaining to be deployed is required in rural and remote areas where costs are high and profits uncertain. In this situation, "sharing" is the way forward but there is IP-I players see no need to be independent of Service providers. In any case, in March 2009 DOT has already enhanced thescope of IP-I service providers "to cover the active infrastructure, if provided on behalf of the licensees. **IP-I services seek no expansion in their scope of permitted activities.**

IV. Large Billing and Higher profits

There is a need to clarify that the TRAI estimate of IP-I revenue of Rs.20, 000 crore of IP-I services is misleading since 30-35% of total billing is passed-on for power and fuel to the respective providers Indeed, IP-Is actually incur a loss on this part. More importantly, the overall return on the capital employed by Tower Infra Providers is still negative for the IP-I services.

It is important to recognize that IP-I services are one of the many inputs to operators who provide services to end users. They are inherently different from NLD and ILD services which customers use like local calls but pay for only through the access same service provider. Operator to operator services are typically not charged on a per call basis but based on capacity.

In brief, licensing would further cripple the already handicapped Industry & would defeat the very intent of the Government towards making the infrastructure shareable so as to reduce costs and avoid wastage of capital and other national resources by preventing duplication of infrastructure.

Issue-wise Submissions:

We IP-I companies are concerned with Chapter I (Guidelines For Unified License) and Chapter III (Migration of Existing License to Unified License) of the Consultation and our comments to the same are as follows:

1. Comments to Chapter I and Chapter III of the Consultation

*The Chapter I and Chapter III of the Consultation proposes to bring IP-I within Unified Licensing along with unified access service ("**UAS**"), cellular mobile telephone services ("**CMTS**"), internet services ("**Internet**"), national long distance ("**NLD**") services, international long distance ("**ILD**") services and global mobile personal communication by satellite ("**GMPCS**") services.*

By bringing IP-I companies within the scope of Unified Licensing, the Consultation proposes to impose onerous terms and conditions on IP-I companies on the same lines as those being imposed on UAS providers, CMTS providers, Internet providers, NLD providers, ILD providers and GMPCS providers. Like these service providers, the Consultation also requires IP-I companies to comply with significant net worth criteria, paid up capital criteria, payment of entry fees & submission of bank guarantees, license fee payment and payment of substantial amount of processing fee.

We believe it is not justified to treat IP-I companies in the same manner as those companies which are engaged in active telecom/ voice/ data business for the following reasons:

(i) <u>Difference in the Nature of Business</u>

The business of IP-I companies is more in the nature of a support service to the active telecom business by providing services and infrastructure (such as, towers, dark fibre, right of way, buildings, duct space and DG sets) to the telecom companies. The customers of IP-I companies are those who are engaged in the business of provision of active telecom/voice/data services, such as UAS providers, CMTS providers, Internet providers, NLD providers, ILD providers.

The IP-I companies are infrastructure/service providers to the telecom operators. These IP-I companies provide input services/ infrastructure support to the telecom operators which in turn facilitate these telecom operators to roll out and provide services to the end users.

Considering that IP-I companies are infrastructure/service providers to telecom operators (such as UAS providers, CMTS providers, Internet providers, NLD providers, ILD providers), their business operation and requirements are not the same as those of these telecom operators and hence, they cannot be put under the same category of Unified Licensing as the telecom operators and also cannot be subject to the

same terms and conditions. We believe that clubbing infrastructure/ service providers (i.e. IP-I companies) in the same category as their customers (i.e., the telecom operators) is fundamentally incorrect and not required at all.

(ii) Similarity with Other Registrations/ License granted by DoT/ Other Business Entities In Telecom Sector

Unlike the licenses for UAS, CMTS, Internet, NLD, ILD and GMPCS, which are granted under section 4 of the Indian Telegraph Act, 1885, the permission granted to IP-I companies is in the nature of a registration and is not a license under section 4 of the Indian Telegraph Act, 1885.

Also, it is pertinent to note that there are companies who are engaged in the business of providing managed services to the telecom operators and as a part of these managed services, they manage, maintain and look after the operation of the active part of the telecom network of the telecom operators.

We do not see any logical reasoning for IP-I companies to be singled out for inclusion in the Unified Licensing regime.

(iii) Reduction in the cap for Foreign Direct Investment ("**FDI**")

As per the Consultation, the FDI would be limited to 74% out of which beyond 49% prior approval of FIPB would be needed. **Please note** this would amount to reduction of the existing limit of 100% of FDI for IP-I companies out of which beyond 49% prior approval of FIPB is needed. This would be a set-back for the tower sector, in particular, for companies which have invested thousands of crores and which already have 100% foreign investment.

Please note that tower sector is a capex intensive sector and requires substantial investments in construction and set up of towers. Foreign investment is a very important source of funds for this sector. The reduction of the FDI cap for IP-I companies would be a discouraging signal for the foreign investors, more importantly, when these investors have already made 100% investment after duly procuring approval from FIPB.

After the relevant ministries of Government of India having granted clearances and after FIPB having granted the approvals for 100% investment by, a complete about turn in the policy requiring these approved foreign investors to reduce their investment in India can prove to be very devastating for this sector in the long run.

(iv) Period of Registration

Under the current IP-I registration, there is no specific period provided. Hence, this registration once granted remains valid until cancelled. As per the Consultation, the period of Unified License (which will include IP-I) would be limited to 20 years.

This is again a set-back for the tower sector and we do not see any strong reason(s) for such a change.

(v) Practical Implementation Problem

At present, there are approximately 350 IP-I registered companies (including companies like, Power Grid Corporation of India Limited, Indian Oil Corporation, Railtel Corporation of India Limited) in the market. Most of them are either pure passive infrastructure companies, or companies engaged in other businesses including IP-I business and have no connection with the active telecom business.

Also, it is important to note that under the current guidelines for procuring registration as IP-I, it is not necessary that the main business of the applicant company should be an active telecom business. Many of these existing IP-I companies have procured IP-I registration since their incidental business involves provision of duct space, dark fibres etc. Thus, the argument of arbitrage and the license fee evasion cannot be made against such IP-I companies.

Please note that the proposal to bring all such IP-I companies within the scope of Unified Licensing would create a practical problem of operational implementation for all these companies and does not seem to be positive step towards promotion of business of these companies. Many of the conditions (such as interconnection, commissioning of applicable systems etc.) applicable to telecom operators are not relevant in the context of business of a pure IP-I providers or IP-I providers who are not engaged in the business of provision of active telecom/ voice/ data service.

(vi) Substantial Equity Restriction

The substantial equity restriction which is applicable on UAS licensees provide that no single company/ legal person having substantial equity in the applicant company, either directly or through its associates, shall have substantial equity holding in any other company having UAS/ CMTS/ basic license in the same service area.

Please note that at present, the guidelinesfor grant of IP-I registration and the terms and conditions of IP-I registration do not impose any such substantial equity restriction on IP-I companies. This restriction, in any case, should not be imposed on the IP-I companies. Such restriction if imposed would create operational problems of implementation, in particular, for companies which already have multiple legal entities they operate through.

(vii) Compliance with Telecom Policies

The Consultation and the proposed changes to the extant legal regime must be within the parameters of the telecom policies issued from time to time. None of the previous national telecom policies (namely, national telecom policy 1994 and national telecom policy 1999) envisage subjecting IP-I category companies to same/ similar terms and conditions as telecom companies which are engaged in active telecom/ voice/ data business and which are licensed under section 4 of the Indian Telegraph Act, 1885.

Further, the proposed the draft national telecom policy 2011, envisages creation of a separate network service operator license (those which would engage only in provision of networks/ infrastructure) from service delivery operator license (those which would engage only in provision of telecom service). Thus, the focus of even this proposed policy is to treat network/ infrastructure providers separately from those who are engaged in the business of provision of telecom services to the customers.

Considering this overall picture, we strongly believe that the proposal to include IP-I companies within the scope of Unified Licensing would be a retrograde step for this sector and would also create unnecessary confusion in the regulatory regime as well as in the minds of prospective foreign investors.

2. What are your views on the scope of Licence for Unified Licence (National level/Service area level/District level) and Class Licence? (Clause 5 of draft guidelines for Unified Licence and Clause 5 of draft guidelines for Class Licence)

5. These draft guidelines do not provide for Licensing through Authorisation. In your opinion, considering the services that are already covered under Unified Licence and Class Licence, is there any need for Licensing through Authorisation? If so, which are the services to be so covered? And, what should be the guidelines for such a licence?

7. Is there any other service(s), which needs to be brought under licensing regime?

We strongly disagree with the proposal that IP-I players be licensed at all. However, in most countries where spectrum and other scarce resources are auctioned, the natural extension is to move away from licensing to authorization. Market priced spectrum makes authorization as the sole basis for licensing.

The eligibility norms for authorization are usually (and should be) enough to control entry to the sector. Market priced spectrum is a sufficient barrier to keep away "non-serious" players from infrastructure. Licence fee serves no additional purpose. Careful entry norms such as net worth, experience etc. are usually quite enough for this purpose. Non-serious players have little incentive to stay in the capital intensive sector. When there are no direct or indirect subsidies, only the players with serious business plans seek to enter markets which involve high capex and opex. Speculators have little or no attraction.

It is a serious mistake to do away with authorization. Indeed, like in mature regulatory regimes, this should be the norm for all services that do not require a licence.Authorization should be free and given in a time bound fashion to any applicant if it satisfies designated criteria.

Also, we need to decrease, not increase the number of services requiring a licence.

3. What, in your opinion, are the actions that should be classified as minor violations and major violations? (Clause 10 of draft guidelines for Unified Licence)

4. Even within minor and major violations respectively, what, in your opinion, should be the factors to be taken into consideration while determining the actual amount of penalty? (Clause 10 of draft guidelines for Unified Licence)

Violation should be considered major only if there is evidence of mala fide action on part of the service provider. Penalties must depend on the nature

and extent of wrongdoing and the steps, if any, taken to prevent avoidable losses or damage to life or property.

8. In the new licensing regime, spectrum has been delinked from the Unified Licence. In such a scenario, should TRAI be entrusted with the function of granting all types of Unified Licence as is prevalent in majority of the countries in the world?

Yes provided it can employ transparent and time bound processes.

9. Presently, in case of IP- I, there is no restriction on the level of foreign equity in the applicant company. However, in case of Unified Licence, the total foreign equity in the total equity of the Licensee is restricted to 74%. Please indicate the maximum time which should be given to the IP-I to comply with the FDI condition of 74% after grant of Unified Licence.

We believe 100% equity must continue as Government has emphatically repeated that number of steps have been taken to simplify the FDI regime to make it easily comprehensible to foreign investors. Ownership and control are now central to the FDI policy, and the methodology in this regard has been clearly defined. However, the licensing of IP-I will do the opposite and spur exit of FDI.

IP-I have already have brought roughly 10,000 Crore in FIPB approved FDI. Thanks to government support for FDI in infrastructure, rules permit 100% FDI by IP-I players but only 74% in user facing telecom services. This means the industry stands to lose FDI at precisely the juncture when it must add another 150,000 towers to meet demands of connectivity and broadband especially in rural areas and accordingly, there is urgent need for $8-10Bn of investment, partly funded by FDI. The new rules will cause prospective investors to seek more stable investment regimes.

11. Please raise any other issues you feel are relevant and offer your detailed comments on the same.

Licence Fee on IP-I Discourages Sharing: This approach is especially worrying since this very outsourcing has enabled IP-I service providers to provide a Neutral Platform i.e. an infrastructure which is not owned by a competing mobile operator. This independent neutral platform promotes competition by easing entry of new players and enables improved and cheaper services for consumers.

IP-I Licence will hurt Providers & Users of IP-I services: Under the pretext of eliminating arbitrage, the government's decision will punish 350 other IP-I companies that offer towers and maintenance but who were never a part of any mobile operator. The decision comes after IP-I have invested approximately Rs.100,000 crores and will thoroughly undermine their

business. Such mid-course change of rules, relating especially to long term investments undermines business confidence and is unfair and indefensible. Also, it is unfair especially for independent Tower Companies like GTL, Tower Vision, ITL, ATC, Railtel&PowerGrid etc. who never hived-off/divested.

IP-I Licence will hurt Broadband Growth:IP-I players like Indian Oil, GAIL, Konkan Railways & others would be discouraged to lay dark fiber alongwith their routine work by licensing. A licence will eventually add avoidable costs to the broadband plans of the Government.

In closing, we also believe bringing IP-I services under licensing framework will go against the governments stated objective of “reducing the license and inspection raj”.