February 24, 2012

Shri Sudhir Gupta,
Pr. Advisor (MS),
TRAI,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi-110 002

Sub: **Comments on Draft Guidelines for Unified Licence/Class Licence &Migration of Existing Licences**

Dear Sir,

This has reference to the TRAI Notice of February 10, 2012 seeking the stakeholders' comments on consultation paper on draft guidelines for UL & migration of existing licences.

In this context, while Viom Networks once again congratulates you and TRAI for visionary recommendations on Telecom infrastructure issued on 12th April, 2011, we are seriously distressed to note that, despite representation by all the stakeholders irrespective of divergent interests, the paper contemplates bringing the IP-I services under a unified licensing regime of revenue share.

Our enclosed response is reiterating our request for not bringing the IP-I services under Unified Licence. Hope you find the counter reasoning and arguments are meeting said objective & get a fresh & kind consideration from the Authority.

Should you require any further clarification/information, please do let us know.

Thanking you,

Very truly yours
for **Viom Networks Limited**

Naresh Ajwani
Chief - Regulatory & Corporate Affairs
naresh.ajwani@viomnetworks.com, +919811200400

Licensing of IP-I services is not only putting at risk the draft National Telecom Policy goals, it would also have far reaching implications on Nation's interest.

Why licensing the IP-I services will jeopardize policy goals?

Introduction

Infrastructure is the fundamental enabler for a modern economy and infrastructural development is a key focus area for the Government. The Tower Infrastructure Industry has strengthened Government's intent towards optimum utilization of Infrastructure by investing over Rs. 100,000 crore in lakhs of structures that can today facilitate a host of services such as Broadcasting, Security services, Banking, Metrology, and Information services including Telecom - A true convergence.

Tower Infrastructure Industry of India renders services as input service providers for telecom under "registration" with DoT as IP-Is since 2000 but is not under the ambit of Section 4 of the Indian Telegraph Act 1885. Over the years, the significance of the telecom sector has grown immensely in the Indian economy, with this sector having a significant contribution towards GDP. As aptly outlined by the Telecom Regulatory Authority of India, **what telecom is to economy, telecom infrastructure is to the telecom services.**

Case

The licensing proposal is so inequitable that even on basic logic, if the license fee on IP-I services be held to be valid, all equipment manufacturers like Ericsson, NSN, Huawei, who are registered with TEC, must also be licensed & pay license fee to DoT. Similarly, if the argument is that anything which is utilized by telecom industry or the telecom service provider can be subject to license fee by DoT, the license fee as a corollary could become leviable on IT companies like IBM and Wipro.

Motivation

In brief, it is erroneous that any services rendered to Telecom operators to enable them to in-turn provide telecom services could also be subjected to license issued by the Department of Telecommunications.

Let's now argue the major motivation of the three main assumptions/reasoning offered by the Authority to licence the IP-I services:

I. Assumption: "Arbitrage"

We are disturbed that no opportunity was given to the IP-I service providers to clarify the facts relating to the so-called "arbitrage". Frankly, "Arbitrage" is an inaccurate term as IP-I players do not buy or sell the same product in two different markets. They cannot exploit any mismatch between prices and 'pocket the difference' in any part of their business.

"Saving of Licence Fees": The assumption, that hiving off the towers by the operators was to lower their revenues which in turn would reduce their fee liability, is unfounded as the motivation was valuation & it is stated in accordance in TRAI's letter of October 21, 2008. This position of TRAI was after advocating for the "separation" in their recommendation on Sharing in April'07 as explicitly as under:

> ***"The service providers handle their infrastructure activities as one of the segment of their telecom business. In the absence of separation of the infrastructure activity of the service provider as having legal entity, it may be difficult to segregate revenue arising out of infrastructure activity from the total revenue for providing exemption."***

Despite this, the argument, that a few mobile operators hived-off their towers to reduce their licence fee liability because tower related revenues would no longer be included in the calculation of licence fees, overlooks DOT's rules for fee computation. Neither before divestment nor since, has it been possible to reduce their fee liability by hiving off towers.

Earlier, the cost/rental paid by one operator to the other for using his tower was only after having paid FULL Licence fee due to the Government on his AGR. Even now, the cost paid by an **operator towards use of tower infrastructure provided by an IP-I player cannot be deducted from the AGR used for calculation of the license fee.**

On the contrary, a license fee on IP-I would mean **"double license" fee** i.e., first on the revenue of the telecom service provider and then, on the revenue of the Tower Infra Company earned from its IP-I services to the telecom service provider.

It would be apt to argue here only on similar **comments such as "Outsourcing":**

"Make or Buy" decisions are a natural part of any business. All companies must routinely determine whether an input in their business (e.g. hardware, energy, services, retail etc.) should be organized in house or purchased from the market. For instance, a new telecom player probably outsources majority of its business operations in order to save time and money. An older player may have many more assets (e.g. land, staff, equipment etc.) which it may choose to use exclusively or in part, depending on what makes business sense. In order to realize efficiencies, older mobile companies have systematically sought to 'outsource" several activities. These include procuring network equipment, retail of SIM cards, security checks etc. that they may have earlier done in-house. Indeed, the companies to whom these activities are outsourced may in turn outsource some of them. There is also no reason to believe that a future review might lead to a change in who carries out the activities that are a part of their business ecosystem. This might include bringing some activities back to the parent and moving the others, outside.

To single out infrastructure 'outsourcing' as a special case of outsourcing does not stand to any reason.

II. Assumption: "Legitimate Right of Way (ROW)"

There seems to be an inadvertent error in this assumption that by licensing only, the proposed benefits can be extended to the Tower Infrastructure Providers. There is a recent example set by the MHA and DoT regarding Equipment Security, where no attempt was made to bring network service/equipment providers under a licensing regime, but benefits/requirements were extended to them by virtue of the cascading effects of their commercial arrangements with the licensed service provider.

To check local Governance/Municipalities levying one-time as well as recurring annual charges & in some cases, enhancing them by 20 times, TRAI recommendations on Telecom Infrastructure related issues of April 12, 2011 aptly protect the IP-I service providers from arbitrary interferences and delays in approvals from local authorities. The Authority has rightly urged DoT to clarify legal anomalies as well as to remove bottlenecks. To reduce the scope for arbitrary charges by local authorities, it has also proposed an unambiguous scheme of charges for erecting towers etc. in different types of rural and urban areas, based also on the nature of infrastructure in place in those areas. TRAI has also prescribed an upper limit of 45 days for the local authorities to decide on applications for infrastructure creation. During the Round Table Conference held on Jan. 30, 2012, the Hon'ble MoCIT had expressed his intent to hold a meeting with the concerned State heads by the end of March 2012 towards resolving the issues on Right of Way and Uniform guidelines for states.

Undoubtedly, the growth in telecom services is possible only when there is a robust telecom infrastructure. Conversely, lack of infrastructure can deal a crippling blow to the aspirations of providing a reliable, high quality, world-class infrastructure to the citizens of the country. It follows that for a comprehensive and inclusive growth of the country**,** a sound infrastructure development policy is indispensable but that doesn't need any licensing to facilitate - 'Essential Infrastructure' status would be sufficient.

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

DoT letter of 9th March, 2009 clarifies that the scope of IP-Is has been enhanced "to cover the active infrastructure", if provided on behalf of the licensees, IP-I services prefer to limit their role in accordance.

Moreso, "Sharing" is the way forward as it results in optimization of capital investments and operational expenses but for that, there is no need to be independent of Service providers. The ARPUs of Service operators, which are already very low, can be expected to fall further since the remaining unconnected people, especially in rural areas, may have even lower incomes. Therefore, the only realistic option left for the operators is to further multiply efficiencies in service provision to reduce costs that could otherwise be passed on to consumers. For the same, we strongly believe that government should be encouraging such models that drive the overall efficiency in the sector.

Instead of expecting incentives from the Government over Tower Infrastructure Companies' role for telecom services, they are being taxed all around for "EFFICIENCY"; local Governance/Municipalities are trying to levy one-time as well as recurring annual charges & in some cases, enhancing them by 20 times. Besides, IP-I services are being brought under licensing and revenue share which can increase costs and will be either passed on to the Service Providers or may inevitably force the operators to once again take the regressive position of building their own infrastructure rather than taking the same from IP-Is on sharing basis.

There is also a need to clarify that the TRAI stated revenue of Rs.20,000 crore of IP-I services has approx. 30% of total billing as payments received on behalf of TSPs and passed-on for power and fuel where the IP-Is actually incur loss. It's is the same case like the interconnection charge that is collected as a part of the users' tariff and passed on to the operator who terminates the call. Also, the overall return on the capital employed by Tower Infra Providers is negative for the IP-I services.

To sum-up, to bring the IP-I services under licence would make the already bad business case worse; it would hurt almost all stakeholders by:

- Hurting affordability and availability of services to end users,
- Reducing the viability of IP-I service providers,
- Making rural and broadband services even more uneconomic, &
- Delaying UASL players, incumbent and new in their roll out of services.

Implications

Licence Fee on IP-I Discourages Sharing:

This approach is worrying especially since this very outsourcing has enabled IP-I service providers to provide with a Neutral Platform i.e., an infrastructure which is not owned by a competing mobile operator. This independent neutral platform promotes competition by easing out the 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 would 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 along with their routine work by licensing. A licence would eventually add avoidable costs to the broadband plans of the Government.

Licensing IP-I negates government assurance on FDI

The licensing of IP-I will do the opposite and spur exit of FDI of roughly Rs. 10,000 Crore brought by IP-service providers. As of now, 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 that 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. Also, the new rules on licensing will cause prospective investors to seek more stable investment regimes.

Conclusion

Higher costs will deter IP-I players from deploying urgent infrastructure & licensing of IP-I will thus hurt the very people and areas that are currently unattractive for investors.

Issue-wise Submissions:

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 Authorization. In your opinion, considering the services that are already covered under Unified Licence and Class Licence, is there any need for Licensing through Authorization? 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.

The licensing of IP-I will do the opposite and spur exit of FDI of roughly Rs. 10,000 Crore brought by IP-service providers. As of now, 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 that 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. Also, the new rules on licensing will cause prospective investors to seek more stable investment regimes.

Naresh Ajwani
Chief Regulatory and Corporate Affairs
Viom Networks Ltd.
+919811200400 & naresh.ajwani@viomnetworks.com