

R B Sahajpal
Counter Comments
CP¹PR^{2,3}

Introduction:

The following may please be noted:

- 1.** Etc. Stands for et cetera meaning 'and the rest' has been used '27' times in the CP⁴ thus making the 'scope of issues for consultation **non specific** due to **unspecified 'the rest'**.
- 2.** Although the phrase 'next-generation services' has been used only '1' time in the CP⁵ but will have profound effect on the response to Consultation.
- 3.** The use of word 'Internet' is distributed in the form of '5' noticeable avatars in CP⁶, Comments, Draft Telecom Bill 2022 as follows:
 - (i) Stand alone:-** pages '2' times '7', '1' time '36' occurs in Draft Telecom Bill 2022⁷, '1' time '1', occurs in BIF, page '1', '4' Consumer Protection Association Himatnagar'
 - (ii) Internet Service:-** pages '2' times '12', '2' times page '13', '2' times '16' occurs in CP, pages '1' time page '7', '1' '8' RJIL page '1' time '8' VIL, '1' time '30' occurs in Consumer Protection Association Himatnagar.
 - (iii) Internet Service Provider:-**
 - (iv) Internet Service Authorisation:-** page '1' time. '1' '16' occurs CP, pages '1' time '1', '1' time '2' occurs in ISPA, page '1' '1' time page '4' Airtel, page '1' time '1' power grid corporation.
 - (v) Internet Of Things (IoT):-** pages '1' time '1' occurs in ISPA, '1' time '1' occurs, '1' time '7' occurs in BIF, page '1' time '13' occurs in ISpA, page '1' time '13' occurs in AirTel, pages '1' time '11', '1' time '12', '1' time '2' occurs in Consumer Protection Association Himatnagar.
- 4. Pass-through:-** page '1' time '10' occurs in COAI, '1' time '5', '2' times '19 occurs in ISpA, '2' times '8' occurs in GSMA, '1' time '3', '2' times '12' occurs in VIL, '1' time '1' occurs in NELCO,
- 5. Level playing field:-** page '1' time '1' occurs in ISPA'.
- 6.** The phrases 'Section 4 of Indian Telegraph Act, 1885 '3' times page '03', '13', ' December 2003 by amending the Indian Telegraph Act, 1885' '1' page '21' occur in CP, the phrase 'section (4) of the Indian Telegraph Act 1885' '1' time 'page 7' in ISPAI comments.
 - (i)** The phrase 'The recent draft telecom bill that was released for public comments by the Ministry of Communications' "1' time page '3' in ISpA comments
 - (ii)** the phrase 'the Indian Telegraph Act, 1885' '5' times on pages '1' time '23' '1' page '28', '3' times page '29', '1' time page '32' Draft Indian Telecommunication Bill, 2022.

ISSUES FOR CONSULTATION

A. Issues relating to Infrastructure sharing:

- Q1.** Should passive infrastructure sharing be permitted across all telecommunication service licenses/ authorizations? Kindly justify your response.
- Q2.** Should other active infrastructure elements deployed by service providers under various licenses/ authorizations, which are not permitted to be shared at present, be permitted to be shared among licensees of telecommunication services.
- Q3.** If your response to the Q2 is in the negative, which active infrastructure elements should not be permitted to be shared? Further, which active infrastructure elements should be permitted to be shared with which licensees/ authorization holders? kindly provide details for each authorization with detailed justification.
- Q4.** In case it is decided to permit sharing of any additional active infrastructure elements among licensees,
 - (a)** What precautionary conditions should be put in place to avoid disruption in telecommunication

services due to any unforeseen situation? The response may be provided for each active infrastructure element.

(b) Whether there is a need to have a provision for permission from/ intimation to the Licensor before commencement of such sharing? If yes, what provisions and timelines need to be prescribed for each active infrastructure element?

Q5. Whether any other amendment is required to be made in the telecommunication services licenses/ authorizations with respect to the provisions relating to both active and passive infrastructure sharing to bring clarity and remove anomaly? If yes, clause-wise suggestions in the telecommunication services licenses/ authorizations may kindly be made with detailed justification.

Q6. Should there be any obligation on telecom service providers to share infrastructure that has been funded, either partially or fully, by the Government through Universal Service Obligation (USO) Fund or otherwise, with other telecom service providers? Kindly justify your response.

Q7. In case it is decided to impose some obligations on telecom service providers to share the infrastructure **funded by Government with other telecom service providers, is there a need to provide a broad framework for sharing of such infrastructure? If yes, kindly suggest the key aspects of such framework with detailed justification.**

Q8. Any other suggestion to facilitate infrastructure sharing may kindly be made with proper explanation and justification.

Ans. Q1-Q8

7. Status Quo may please be maintained w.r.t issues raised in **Q1-Q-8** as per the extant Legal Framework, Licensing Framework, Regulatory Framework because of the following:

(i) The date of amended 'The Indian Telegraph Act 1885' to be referred is not at all clear.(Please refer paras **6, 6(i),6(ii)** above. The status of Draft Indian Telecommunication Bill, 2022 is also not evident. Moreover 'The Indian Telegraph Act 1885' is proposed to be repealed⁸.

(ii)The concept of 'Level Playing Field' is yet to be considered by TRAI⁹.(Please refer para **5**. above).

(iii) No definition of '**Pass-through**' as used in DoT, TRAI Legal Framework, Licencing Framework documents could be traced.

(iv) The use of etc. (please refer par **1. above** makes the CP incomplete.

(v) Please refer paras **1.,2.** above: next-generation services' result from NGN(new generation networks) and "that the term the 'level playing field' has no practical application and that next generation communications apps are evolving rapidly"¹⁰ and "that the focus of sector specific ex ante telecoms regulation should be narrowed to access bottlenecks with freedom to innovate and compete for all in the communications apps market"¹¹.

B. Connectivity Issues Faced by the Subscribers in Remote and Far-flung Areas of the Country.

Q9. What measures could be taken to encourage roaming arrangements among telecom service providers in remote and far-flung areas? What could be the associated regulatory concerns and what steps could be taken to address such concerns? Kindly provide details on each of the suggested measures with justification.

Q10. What could be the other ways to ease out the hardship faced by the subscribers in remote and far-flung areas due to connectivity issues of the home network provider? Kindly provide detailed response with justification.

Ans. 09-10

Status Quo may please be maintained w.r.t issues raised in **Q1-Q-8** as per the extant Legal Framework, Licensing Framework, Regulatory Framework because of the following:

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- (ii) The concept of 'Level Playing Field' is yet to be considered by TRAI¹³ (Please refer para **5.** above).
- (iii) No definition of '**Pass-through**' as used in DoT, TRAI Legal Framework, Licensing Framework documents could be traced.
- (iv) The use of etc. (please refer para **1. above**) makes the CP incomplete.
- (v) Please refer paras **1.,2.** above: next-generation services' result from NGN (new generation networks) and "that the term the 'level playing field' has no practical application and that next generation communications apps are evolving rapidly"¹⁴ and "that the focus of sector specific ex ante telecoms regulation should be narrowed to access bottlenecks with freedom to innovate and compete for all in the communications apps market"¹⁵.

C. Issues relating to inter-band spectrum sharing among access service providers.

Q11. Whether inter-band access spectrum sharing among the access service providers should be permitted in the country?

Q12. In case it is decided to permit inter-band access spectrum sharing among access service providers, please provide detailed inputs to the following questions: (a) What measures should be put in place to avoid any potential adverse impact on competition and dynamics of spectrum auction? Kindly justify your response. (b) Considering that surrender of spectrum has been permitted in the country, what provisions need to be included in the guidelines for inter-band access spectrum sharing so that any possible misuse by the licensees could be avoided? Kindly justify your response. (c) What should be the broad framework for inter-band access spectrum sharing? Whether the procedure prescribed for intra-band access spectrum sharing could be made applicable to inter-band access spectrum sharing as well, or certain changes are required to be made? (d) What should be the associated charges, and terms & conditions for inter-band access spectrum sharing?

Q13. Any other issues/ suggestions relevant to the spectrum sharing between access service providers, may be submitted with proper explanation and justification.

Ans. Q11-13

Status Quo may please be maintained w.r.t issues raised in **Q11-Q-13** as per the extant Legal Framework, Licensing Framework, Regulatory Framework because of the following:

(i) The date of amended 'The Indian Telegraph Act 1885' to be referred is not at all clear. (Please refer paras **6, 6(i),6(ii)** above. The status of Draft Indian Telecommunication Bill, 2022 is also not evident. Moreover 'The Indian Telegraph Act 1885' is proposed to be repealed¹⁶.

(ii) The concept of 'Level Playing Field' is yet to be considered by TRAI¹⁷. (Please refer para **5.** above).

(iii) No definition of '**Pass-through**' as used in DoT, TRAI Legal Framework, Licensing Framework documents could be traced.

(iv) The use of etc. (please refer para **1. above**) makes the CP incomplete.

(v) Please refer paras **1.,2.** above: next-generation services' result from NGN (new generation networks) and "that the term the 'level playing field' has no practical application and that next generation communications apps are evolving rapidly"¹⁸ and "that the focus of sector specific ex ante telecoms regulation should be narrowed to access bottlenecks with freedom to innovate and compete for all in the communications apps market"¹⁹.

D. Issues relating to Authorised Shared Access (ASA) of Spectrum.

Q14. Whether there is a need to explore putting in place a regime to implement Authorised Shared Access (ASA), wherein an access service provider as a secondary user could use the frequency spectrum assigned to a non-TSP primary user (government agencies and other entities) on a dynamic spectrum sharing basis? Kindly justify your response.

Q15. In case it is decided to implement ASA technique for secondary use of frequency spectrum assigned to non-TSP primary users, please provide your response to the following questions with detailed justification:

(a) What are the potential spectrum bands in which ASA implementation can be considered.

(b) What measures should be taken to encourage and motivate the incumbent users for participation in the spectrum sharing through ASA technique?

- (c) What should be the broad framework for implementation of ASA technique?
- (d) Is there a need for putting in place a mechanism for dispute handling including interference issues in case of ASA? If yes, what should be the framework?
- (e) What methodology should be adopted for spectrum assignment to secondary users? What could be the spectrum charging mechanism for such assignment?
- (f) Who should be entrusted the work of managing shared access of spectrum?

Q16. Whether there is a need to permit the ASA technique-based dynamic spectrum sharing among access service providers? If yes,

- (a) What are the possible regulatory issues involved and what could be the possible solutions.
- (b) What measures should be put in place to avoid any adverse impact on competition and dynamics of spectrum auction? Kindly justify your response.

Q17. In case it is decided to permit ASA technique-based dynamic spectrum sharing among access service providers in the country, please provide your response to the following questions with justification:

- (a) Whether there is a need for prescribing any framework for such shared use? If yes, what should be the framework?
- (b) Whether access service providers should be required to obtain approval or intimate to DoT before entering into such arrangement?
- (c) Whether any fee (one time, or recurring), should be prescribed on the spectrum sharing party(ies)? If yes, what should be the fee and who should be liable to pay such fee?
- (d) What should be the treatment of spectrum shared through ASA technique for the purpose of computation of spectrum cap?
- (e) Whether there is a need for an independent entity for managing spectrum access? If yes, who should be entrusted this work? If not, how should the spectrum access be managed?
- (f) Is there a need for putting in place a mechanism for dispute handling including interference issues or should it be left to the access service providers? If yes, what should be the framework.
- (g) What other terms and conditions should be applicable for the sharing parties?

Q18. Suggestions on any other spectrum sharing technique(s), which needs to be explored to be implemented in India, may kindly be made along with the relevant details and international practice. Details of likely regulatory issues with possible solutions, interference management, dispute handling etc. may also be provided.

Ans. Q14-18

A definition of ASA is given below:

„**Authorised Shared Access** relates to radio spectrum usage. It was introduced as an enabler to unlock access to additional frequency bands which are currently not allocated for mobile broadband. As such, it is an alternative to spectrum clearing/refarming. The concept was extended as LSA (Licensed Shared Access)²⁰ .

Need to explore putting in place a regime to implement Authorised Shared Access (ASA) is a way forward for enhanced use of short natural resource SPECTRUM but this statement per se does not confirm the suitability of the same for Indian conditions. The other rider is that this possibility may be examined w.r.t spectrum held by non-TSP entities.

A better approach will be that the service providers who contributed comments to the CP may pool their resources to arrange an experimental set up to study the suitability, feasibility of ASA for Indian conditions.

In the meantime:

Status Quo may please be maintained w.r.t issues raised in **Q19Q-20** as per the extant Legal Framework, Licensing Framework, Regulatory Framework because of the following:

- (i) The date of amended ‘The Indian Telegraph Act 1885 to be referred is not at all clear.(Please refer paras **6, 6(i),6(ii)** above. The status of Draft Indian Telecommunication Bill, 2022 is also not evident.
- (ii)The concept of ‘Level Playing Field’ is yet to be considered by TRAI⁸.(Please refer para **5**. above.
- (iii) No definition of ‘ **Pass-through**’ as used in DoT, TRAI Legal Framework, Licensing

Framework documents could be traced.

(iv) The use of etc. (please refer par **1. above** makes the CP incomplete.

(v) Please refer paras **1.,2.** above: next-generation services' result from NGN(new generation networks) and "that the term the 'level playing field' has no practical application and that next generation communications apps are evolving rapidly"⁹ and "that the focus of sector specific ex ante telecoms regulation should be narrowed to access bottlenecks with freedom to innovate and compete for all in the communications apps market"¹⁰.

E. Issues relating to Leasing of Spectrum.

Q19. Where there is a need to permit spectrum leasing among access service providers? Kindly justify your response.

Q20. In case it is decided to permit spectrum leasing among access service providers, please provide detailed response to the following questions:

(a) Whether spectrum leasing should be permitted for short-term period only, or for both short-term as well as long-term?

(b) In case only short-term leasing is to be permitted, what should be the maximum duration for such spectrum leasing? Should there be any restrictions on renewal of such short-term lease?

(c) In case it is decided to permit long term leasing, please provide your response to the following questions with justification: (i) What measures should be put in place to avoid any adverse impact on competition and dynamics of spectrum auction? (ii) Whether there should be a maximum duration for which spectrum leasing may be permitted?

(d) What should be the applicable roll-out obligations for the Lessee (the access service provider which takes spectrum through leasing arrangement from the Lessor)? Whether the spectrum leasing should have any effect on the roll-out obligations applicable for the Lessor (the access service provider which has leased out the spectrum)? Whether the provisions for roll-out 48 obligation require to be different for short-term and long-term spectrum leasing?

(e) Should the spectrum leasing charges be levied on similar lines as applicable for spectrum trading? If no, what charges should be made applicable in case of spectrum leasing?

(f) Should there be a lock-in period, after acquisition of spectrum, to become eligible for spectrum leasing as applicable in spectrum trading? If yes, what should be the lock-in period post which, spectrum holder would become eligible to lease it to another access service provider?

(g) Whether there is a need for an approval from, or intimation to DoT before the proposed leasing of spectrum? If yes, whether prior approval/ prior intimation requirement be different for long-term and short-term spectrum leasing? What should be the timelines for approval from, or intimation to DoT in each case?

(h) Whether the spectrum held by an access service provider on short-term, or long-term lease be included to calculate compliance to spectrum caps?

(i) Considering that surrender of spectrum has been permitted in the country, what provisions need to be created in the guidelines for leasing of spectrum between access service providers so that any possible misuse by the licensees could be avoided?

(j) What other terms and conditions need to be prescribed in respect of spectrum leasing between access service providers.

Ans. Q19-20

Status Quo may please be maintained w.r.t issues raised in **Q19Q-20** as per the extant Legal Framework, Licensing Framework, Regulatory Framework because of the following:

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