Counter Comments by Tata Communications Limited on Stakeholders' Response to TRAI Consultation Paper on 'Introduction of Digital Connectivity Infrastructure Provider (DCIP) Authorization under Unified License (UL)'

At the outset, we would like to reiterate that there is no requirement/justification to introduce another new license with sole aim of providing active infrastructure to Telecom service providers granted license under section 4 of the Indian Telegraph Act, 1885 on account of following justifications:

(i) Any new licensing regime should serve the broader objective of attracting new investments to the telecom sector by maintenance of regulatory certainty in licensing regime instead of making licensing regime more complex and is totally against the spirit of National Digital Communications Policy (NDCP) 2018 and prove to be impediment in promoting "ease of business" in telecom sector. The current Unified licensing regime has been introduced in 2013, followed by VNO regime in 2015. Any such changes in the present licensing framework would be against the principles of regulatory certainty which is a hallmark of successful telecom regulatory practices.

(ii) The existing licensing regime continues to attract new investments to the telecom sector – as evident from the fastest 5G rollout in the country and investments in the OFC and Submarine Cable Networks.

(iii) The current Unified licensing regime is a vertically integrated licensing regime having the right to provide Infrastructure services, Network services and services to the end - customer. We do not foresee any benefit of introducing another category of license for the telecom sector and on the contrary, it may increase the complexities and compliance requirements, apart from disrupting the present settled Unified license regime which came into being recently in 2013 for all Telecom Services and in 2015 for Virtual Network Providers (VNO).

(iv) The adequacy and sufficiency of current licensing regime is a fact which is well recognised by DoT itself in its letter dated 28th November 2016, the relevant text is reproduced below:

i. *"Keeping in view that some IP-1 companies have invested into creation of active network infrastructure, which requires a license under Indian Telegraph Act,1885 all IP-1s are hereby provided an opportunity to take either a UL or a Virtual Network Operator Cat- B license for specific geographical areas*…."

Thus, a new licensing regime is not required as the current licensing regime is flexible enough to accommodate the players with interest in creating/ installation of active infrastructure in telecom sector.

(v) The incorporation of another category as Digital Communication Infrastructure Provider under Unified License may result into a market failure in case the DCIP shuts the shop as there would be dependency of more than one operator. It will ultimately impact the customers and Quality of Services as well.

(vi) This will also lead to complexities in the regulatory environment. Compliance etc. as additional regulatory measures/ Governance mechanisms would need to be taken so that DCIPs lease/rent/sell out the DCI items, equipment, and system within the limit of their designed network/ capacity so that the service delivery.

(vii) The study of global practices shows that most of the countries have only two separate categories of licenses for Network Service Provider, who are integrated operator enabling n/w and providing services to end customers including Service delivery operators and Service Delivery Operators i.e. the Service Delivery Operators are very lightly regulated. However, separation between infrastructure layer and network layer is not prevalent.

(viii) Sharing of active and passive infrastructure is already permitted for the licensees and further enablement through new regime not needed. To promote sharing pass through should be permitted to all the telecom licensees which will avoid double taxation.

(ix) The proposed DCIP licensing framework may lead to innovative structuring as it may lead to reorganisation of existing telecom service providers by taking the DCIP authorisation wherein they would serve their own licensed service provider as well as others and not under TSP license. Such arrangement will impact the revenues to the Government exchequer.

(x) The new regime may result into distortion of level playing field as DCIPs would be able to serve the customers without payment of any license fee. Whereas TSPs would be paying license fee on services such as transmission links which are proposed to be included in the scope of DCIP. Tata Communications strongly supports the current licensing regime of the layered approach viz IP-1, UL and UL-VNO regime which is well balanced; therefore, there is no need for any structural change in the licensing regime apart from simplification of UL-VNO regime as per global norms.

2. Rather than bringing in any new licensing regime, it is reiterated that changes/ efforts should be aimed towards simplification of license regime in terms of the following:
    i. Statutory levies required to be paid by the Telecom Service Providers,
    ii. Reduction in compliance burden/ processes and various costs/fee associated with the licenses,
    iii. Right of way process and cost structure simplifications,
    iv. Identifying Telecom Infrastructure as a critical infrastructure to enable better uptime on fibers, for ensuring better Network quality as a whole.
    v. Simplification of UL-VNO regime as per the global standards and permitting VNOs rights to numbering allocation rather than depending upon Network Service Operators.

3. However, despite all the above impediments, in case TRAI wishes to further add another authorisation, there is a need for ensuring following principles for the new regime:

    i. The new category should be brought in under Unified License authorisation for the sake of uniformity of licensing rules, regulations and terms& conditions.
    ii. Since the proposed DCIP category would be entering into infrastructure domain which would require huge capital expenditure, it is important to affix Entry Fee/ other eligibility conditions/ sufficient financial requirement to ensure participation by serious player.
    iii. Any change should be fair and equitable with the perspective of the existing licensing framework/ existing licensees.
    iv. Same service, same rules: In case the scope of services being provided by various telecom licensees is same, they should be governed under the same rules.

v. Any amendment in the licensing framework should preserve level playing field:
vi. Change in licensing framework should not cause any revenue arbitrage opportunities thereby causing a loss to Government exchequer.

Tata Communications' Counter Comments – regarding views expressed by other stakeholders

We would like to submit that there are some factual errors/ out of context references observed in the Comments submitted by some of the Industry Associations/ Stakeholders. These are enumerated below with our counter comments for kind consideration -

1. Some of the Associations have mentioned in their comments that the definition of telegraph does not distinguish between active infrastructure and passive infrastructure. Active infrastructure remains passive only in non-operating condition and it is powered by service provider only. The operations are done by TSP who takes infrastructure on rent or on lease from the Infra. Provider. Further, they have mentioned that the scope of the IP-1 registration needs to be expanded so as to include active infrastructure provisioning in addition to passive infrastructure.

   We would like to mention herewith that the selective quoting of the Indian Telegraph Act 1885 in terms of definition of telegraph would be misleading since as per section 4 of the Indian Telegraph Act, the Government provides the right to establish, maintain or work a telegraph on grant of license. The clause is reproduced below:

   > *Within [India], the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs: Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]: [Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working—*
   >
   > *(a) of wireless telegraphs on ships within Indian territorial waters [and on aircraft within or above [India], or Indian territorial waters], and*
   >
   > *(b) of telegraphs other than wireless telegraphs within any part of [India].*

   It is clear from above that to establish, operate and maintain the telegraph, a license is required from the Government.

   Apparently the same has been opined in the legal opinion taken by DoT as well ,as mentioned by TRAI in the consultation paper (Annexure IV- DoT's reference to TRAI dated 11.08.2022).

   Further, it would be relevant to mention here that active infrastructure was permitted as part of Infrastructure Provider – II registration till 2005, post which the registration was merged into NLD license. Thus, the active installation continues to be a licensed activity – which has attracted payment license fee even during the period between 2000 to 2005, when it was permitted under IP-II registration.

2. One of the Associations has commented that DoT vide clarification dated 22-05-2018, has clarified that under clause 2d of ROW rules, licensee includes IP-1 category as well.

It is submitted that the said clarification is limited to the extent of Right of Way Rules only, since as part of scope of Infrastructure Provider category I registration, the registrant can establish telecom towers, poles, dark fibre and ducts which would require Right of Way permissions for them as well. Hence, it would be out of context to consider the IP -I as licensee while deliberating on the scope of infrastructure for Infrastructure Provider Category I registration basis the DoT clarification.

3. Some of the Associations have referred to TRAI's recommendations dated 06-01-2015 on "Definition of revenue base (AGR) for the reckoning of License Fee and Spectrum Usage Charges" wherein Authority recommended that IP- I players should not be brought to licensing regime. This argument has been provided to support their view that the active infrastructure should be permitted by expanding the scope of IP- I registration. It is submitted that TRAI's recommendations are quoted out of context here. The scope of the referred recommendations was to examine whether to include passive infrastructure being provided by IP-Is under licensing from the perspective of levy of license fee. Hence these recommendations have been quoted out of context which is not relevant for the issues brought forward by TRAI in this consultation.

Further, the non-entry to the licensing regime was examined under the scope of services being provided under Infrastructure Provider Category -I which was related to passive infrastructure sharing. Where as in the current context, issue of active infrastructure is under consideration.

4. Some of the stakeholders have opined that the proposed changes to the UL part I by means of suggested removal of many clauses- would result into creation of a new license itself. The conditions in Part 1 of UL for any authorisation cannot be changed without amending the guidelines for Unified License, which needs to be discussed separately among all concerned stakeholders. It is submitted that for the sake of well-established licensing principles – Same service, Same rules and to ensure uniform licensing norms, application of subsequent amendments to all the licensees, it is utmost important the new licensing regime should fall under the domain of present Unified licensing only. This will also avoid disputes/ litigation between licensee and licensor. Further, there are many examples of introduction of new licensing regime without any structural changes to Unified License guidelines/ Part -1 of UL - such as M2M and Audio Conferencing / Audiotex / Voicemail Services.

5. Further, we disagree with the contention by one of the Association that Infrastructure provider should not fall under Unified licensing regime as it is not providing any services while the Unified license regime is issued to those entities who provide telecom services and therefore the licensing regime should be different for them. The said Association has proposed Telecom Infrastructure License instead of UL regime. It is submitted that Infrastructure provider under category - 1 is also providing its infra services only for telecom services to Telecom Service Providers only. Thus, this category provides infrastructure services under Business-to-Business category to TSPs. Further, even the authorisation such as M2M services which are in the form of Business to Business (B2B), have been included as authorisation under Unified Licensing regime, wherein M2M Service Provider under M2M Authorisation would also be providing its network services to M2MSPs registered under M2MSP guidelines with DoT as input service for enabling M2MSPs to offer M2M Applications / Services to their end customers.. We

would like to reiterate that if at all new licensing regime is to be introduced for Digital Connectivity Infrastructure Provider, it should be introduced under the preview of present Unified Licensing framework only.