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Ref No: RP/ FY 19 - 20/ 062/ 752

Dated: September 30, 2019

To,

Shri S.K. Singhal

Advisor (Broadband and Policy Analysis),

Telecom Regulatory Authority of India (TRAI),

Mahanagar Door Sanchar Bhawan,

J.L. Nehru Marg, (Old Minto Road)

New Delhi - 110002, India

Subject: Consultation Paper on "Review of Scope of Infrastructure Providers Category-I (IP-I) Registration"

Dear Sir,

This is with reference to your above mentioned consultation paper. In this regard, please find enclosed our response for your kind consideration.

Thanking You,

Yours' Sincerely

For **Bharti Airtel Limited**

A handwritten signature in blue ink, appearing to read 'Ravi P. Gandhi', is written over a blue horizontal line.

Ravi P. Gandhi
Chief Regulatory Officer

Encl: a.a.

Bharti Airtel's Response to TRAI's Consultation Paper on Review of Scope of Infrastructure Providers Category-I

At the outset, we would like to thank the Authority for giving us the opportunity to express our views on TRAI's consultation paper on review of scope of Infrastructure Providers (IP) Category - I.

As the technology advances towards 5G and the density of radio networks increases, it is certain that more base stations and associated infrastructure will be required in the coming days. The Telecom industry is highly capital intensive and the sudden requirement of capital for establishing the additional infrastructure has made it crucial to find more innovative ways to reduce the cost of infrastructure and attract investments in the sector.

In this context, any scope of reduction in costs by sharing of infrastructure is effective for both consumers as well as operators. In such an ecosystem, the consumers are benefited in terms of availability of telecom services at affordable rates whereas the telecom operators get an edge by economies of scale. .

While we explore more ways to enhance the infrastructure sharing, we would like to highlight some key factors that should be considered while reviewing the scope of IP Category-I:

- **Level playing field:**

Any enhancement in scope of the registration of IP Category-I shall not result in a non-level playing field. The provision of similar services should attract similar levies. In case an entity is not subjected to applicable levies and is competing for the same customers, the other TSPs become non-competitive. It is therefore, important that such issues must be duly considered while recommending any changes to the scope/ registration/ licensing regime.

- **Compliance to Legal Framework:**

In the current legislation, the provision of active telecom infrastructure is classified as "telegraph" and is regulated under the Indian Telegraph Act, 1885. As per the Act, the Central Government has the exclusive privilege of establishing, maintaining and operating the telegraphs. The Government may also grant a license under section 4 of the Act to establish, maintain or operate a telegraph within any part of India. Therefore, any change in scope of IP Category-I should to be in compliance with the existing legal framework.

It is also worth mentioning that the telecom sector encompasses one of the most critical and strategic infrastructures that withstands the entire communication as well as data network. Therefore, the extent of permission granted to an entity for deployment of

telecom equipment and provision of services should be determined after adequate checks and balances which are also applicable to other licensees.

- **No incidence of Double Taxation on revenue from sharing of infra structure:**

The objective of the consultation paper is to incentivize the sharing of infrastructure so that the costs can be reduced and the deployment/ proliferation of network can be expedited. It is therefore, important that any type of sharing of infrastructure should not result in an incidence of double taxation and all revenue paid by the Unified Licensee should be allowed as pass through charges while determining the AGR. DoT has already made such provisions for VNO/MVNO licensees.

In view of the above, please see our detailed responses to the questions raised in the consultation paper:

Q1. Should the scope of Infrastructure Providers Category - I (IP-I) registration be enhanced to include provisioning of common sharable active infrastructure also?

Bharti Airtel's Response:

Presently, the scope of IP Category-I includes the following:

- An IP Category-I registered company is allowed to provide dark fiber, duct space, towers on lease/rent out / sale basis and Right of Way to the licensees of telecom services on mutually agreed terms and conditions.
- DoT, vide its letter dated 09.03.2009, clarified that the scope of IP category-I registration, which was till then limited to passive infrastructure, has been enhanced to cover active infrastructure provided on behalf of the telecom licensees, i.e., they can create active infrastructure limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission media for and on behalf of UASL/CMSP licensees.
- Vide its letter dated 28.11.2016, DoT again clarified that,

"IP-1 providers are not permitted to own and share active infrastructure. The IP-1 providers can only install the active elements (limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission media only) on behalf of Telecom licensees i.e. these elements should be owned by the companies who have been issued license under Section 4 of Telegraph Act, 1885."

Along with the above clarification, it was further mentioned that,

"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-1 providers are hereby provided an opportunity to take either a Unified License or a Virtual Network Operator (VNO) license of requisite authorization or a UL(VNO) Cat-B license for specific geographical area

within six months of issue of this letter and move all such operations involving active network elements under the license. Alternatively, within a period of six months, the IP-1 providers can transfer all such active network elements to a holder of valid license."

Presently, the IP Category-I is a registration and not a license under the Indian Telegraph Act, 1885. As per the Act, the Central Government has the exclusive privilege of establishing, maintaining and operating telegraphs. It may also grant a license under section 4 of the Act to establish, maintain or operate a telegraph within any part of India. Any person/ entity which is allowed to establish, deploy and maintain active infrastructure is required to be licensed under the Act.

Hence, in order to allow an IP Category-I licensee to be able to deploy active infrastructure, a DoT vide clarification dated 28.11.2016 provided them the opportunity to acquire either the Unified License or a VNO License of the requisite authorization.

The deployment of active infrastructure by any entity comes with a lot of obligations, which are currently not a part of the registration provided by DoT for IP Category-I. Some of such critical compliances which are included in the Unified License but are not part of the IP Category-I registration include:

- Security Conditions for example ensuring privacy of communication, preventing unauthorized interception, getting clearance for foreign personnel likely to be deployed for installation/ maintenance of network etc.
- Confidentiality of information and prohibition of certain activities as stated under the Unified License
- Technical specifications including standards to be adhered to for applicable systems, network interconnection, interface, etc.
- Adherence to Quality of Service norms
- Conditions imposed on licensee w.r.t location of network elements
- Facilitating inspection and testing of Installations

Since, none of the above compliances are part of the IP Category-I registration, any provision to enhance the scope of IP Category-1 registration should be made keeping in mind these compliances.

It is therefore, recommended that once an entity is allowed to own, deploy and maintain active infrastructure along with the provision of services to other licensees, the entity should be licensed under Section 4 of the Indian Telegraph Act, 1885 and all compliances listed in the Unified License are met by that entity. Further, the revenue earned by such an entity from other licensed service providers should be allowed as pass through to such licensees in order to avoid the incidence of double taxation.

There are 926 IP Category-I registrations active as on date as per the list published by DoT on 04.02.2019. A number of these companies/ entities have only regional presence concentrated to few districts/ localities where they find it feasible to deploy passive infrastructure given

the absence of any compliance obligations. Enhancing the scope of IP Category-I registration without the associated obligations may bring a lot of chaos in the entire telecom space as the compliances presently mandated under the license will no longer be feasible to be ascertained by the Licensee.

With the advancement in technology and the network being prepared for 5G, it is vital that the sites are densified and additional fiber is deployed. It is also imperative to intensify the sharing of base stations and associated infrastructure in order to rationalize the capital required for provision of affordable services. Hence, allowing pass through of the revenue on account of sharing will boost sharing of active infrastructure between entities as well as other players who may obtain the license for the purpose of installation of active/passive equipment for sharing.

Further, to incentivize and introduce third party/independent companies specializing in installation of shared infrastructure, **TRAI should recommend DoT to introduce a new authorization in the Unified License (Network-authorization) under Section 4 of the Indian Telegraph Act. This license will be meant for entities desiring to deploy and own active infrastructure for sharing it with Licensed TSPs. An existing licensee already holding the Unified license should also be allowed the get such authorization with same terms and conditions.**

Further, we do not support any changes/ enhancement to the scope of present IP Category-I registration.

Introduction of this new Unified License (Network) will enable the IP Category-I entities desirous of deploying active infrastructure to undertake the same by taking the said Unified License Authorization while allowing the other IP Category-I registration companies to continue their business as usual without worrying about any additional compliance.

To elaborate further, the Unified License (Network) will comprise of the following:

- Deployment and installation of both passive as well as active infrastructure
- Sharing passive infrastructure with an IP Category-I Licensee, if required
- Providing services only to UL licensees having Access Authorization, NLD, ILD, ISP, etc.
- Allowing the import of wireless equipment on the basis of authorization/ spectrum held by the UL - Access Authorization

Further, the revenues of Unified License (Network) entities will be subjected to License Fee, and the pass through charges may be extended to TSPs so that there is no incidence of double taxation.

Q2. In case the answer to the preceding question is in the affirmative, then

- i) What should be common sharable active infrastructure elements which can be permitted to be owned, established, and maintained by IP-I for provisioning on rent/lease/sale basis to service providers licensed/ permitted/ registered with DoT/ MIB? Please provide details of common sharable active infrastructure elements as well as the category of telecommunication service providers with whom such active infrastructure elements can be shared by IP-I, with justification.**
- ii) Should IP-I be allowed to provide end-to-end bandwidth through leased lines to service providers licensed/ permitted/ registered with DoT/ MIB also? If yes, please provide details of category of service providers to it may be permitted with justification.**
- iii) Whether the existing registration conditions applicable for IP-I are appropriate for enhanced scope or some change is required? If change is suggested, then please provide details with reasoning and justification.**
- iv) Should IP-I be made eligible to obtain Wireless Telegraphy Licenses from Wireless Planning and Coordination (WPC) wing of the DoT for possessing and importing wireless equipment? What methodology should be adopted for this purpose?**
- v) Should Microwave Backbone (MWB) spectrum allocation be permitted to IP-I for establishing point to point backbone connectivity using wireless transmission systems?**

Bharti Airtel's Response:

As indicated in the response to Q1, we are of the view that:

- The scope of IP Category-I registration should not be enhanced to include provisioning of common sharable active infrastructure. It should be limited to passive infrastructure. However, the IP Category - I registration may install the active elements (limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission media only) on behalf of Telecom licensees as is presently allowed to them.
- A Unified License (Network) under Section 4 of the Indian Telegraph Act should be introduced, which would enable the deployment and installation of both passive as well as active infrastructure and provide services only to UL licensees having Access Authorization, NLD, ILD, ISP, etc. This will help the entities to create shared active infrastructure in an independent manner.

In view of the same, we recommend no changes to the scope of IP Category-I registration as sought under Q1 (i) to (v).

Q3. In case the answer to the preceding question in part (1) is in the negative, then suggest alternative means to facilitate faster rollout of active infrastructure elements at competitive prices.

Bharti Airtel's Response:

For facilitating a faster rollout of active infrastructure, we once again recommend to introduce a Unified License (Network) under Section 4 of the Indian Telegraph Act, which would enable the deployment and installation of both passive as well as active infrastructure and provide services only to UL licensees having Access Authorization, NLD, ILD, ISP, etc.

With respect to the Unified License (Network) Authorization, our point-wise reply to the issues raised in Q2 (i) to (v) is provided as below:

i) Common sharable active infrastructure elements which can be permitted to be owned, established and maintained by UL (Network):

Unified License (Network) be allowed to own, establish and maintain passive infrastructure as well as the following active elements:

- Antenna, feeder cable, Node B, Radio Access Network (RAN)
- Transmission system and media
- Core Network such as MSC, GMSC, SGSN etc. on behalf of UL – Access Authorization, NLD, ILD, ISP, etc.

ii) Category of telecommunication service providers with whom such active infrastructure elements can be shared by UL (NetCo):

The UL (Network) be only allowed to rent/ lease/ sell telecom infrastructure to service providers licensed with DoT. All other entities should take telecom resources from the respective UL Authorization i.e. Access, NLD, ILD, ISP, etc.

iii) Customers to which end-to-end bandwidth can be provided through leased lines by UL (Network):

The UL (Network) to only provide infrastructure/ bandwidth to service providers licensed with DoT. All others including Cloud Service Providers, M2M connectivity providers, MSOs, etc. should take telecom resources from respective UL Authorization i.e. Access, NLD, ILD, ISP, etc.

iv) Conditions applicable for UL (Network):

The requisite conditions as applicable under the Unified License be made applicable to UL (Network) including payment of Entry Fee and BG as paid by any other licensee. It is also essential that various guidelines related to security and data privacy be made applicable as applied in case of other licensees.

v) UL (Network)'s eligibility to obtain Wireless Telegraphy Licenses from Wireless Planning and Coordination (WPC) wing of the DoT for possessing and importing wireless equipment

The UL (Network) be allowed to import wireless equipment on the basis of authorization/spectrum held by the UL - Access Authorization. In this reference, such entities should also be eligible to obtain Wireless Telegraphy Licenses from WPC for possessing and importing wireless equipment.

vi) Should Microwave Backbone (MWB) spectrum allocation be permitted to UL (Network) for establishing point to point backbone connectivity using wireless transmission systems:

No, microwave allocation should not be permitted to UL (Network). They may use the microwave assigned to the UL - Access Authorization for establishing their network.

Q4. Any other issue relevant to this subject.

Bharti Airtel's Response:

The following issues also merit the Authority' kind consideration:

A. Any consideration paid by one Licensee TSP to another Licensee TSP for active/ passive infrastructure sharing should be allowed as passthrough:

- Currently, all the TSPs are allowed to share the active/ passive infrastructure. However, the payment made by one Licensed TSP to another is not allowed as pass through while determining the AGR for the purpose of payment of License Fees (LF) and Spectrum Usage Charges (SUC). This results in incidence of double taxation wherein not only the revenues of the Licensee TSP are subjected to LF/ SUC but the cost of the said Licensee TSP for infrastructure sharing is also subjected to LF/ SUC by the other Licensee TSPs, thereby, increasing the cost of sharing.
- We believe that if pass through is allowed for these payments made for the sharing of active/ passive infrastructure between the Licenses TSPs, the same will facilitate and incentivize the sharing of passive/ active infrastructure.

- It is, therefore, recommended that in order to incentivize/facilitate the sharing of the passive/ active infrastructure elements, Government should immediately allow pass through for any consideration fee paid by one Licensed TSP to another for passive/ active infrastructure sharing.
- Further, irrespective of the issue of the passive/ active Infrastructure sharing, the regime of pass through charges for admissibility of deductions from Gross Revenue for the levy of LF & SUC be reviewed and all kind of payments (either fixed or variable) made for any telecom input resource by one Licensed TSP to another should be allowed as a deduction to the former.

B. Allow sharing of the Core Infrastructure of the Licensee TSPs:

- The policy on infrastructure sharing should be further liberalized to allow sharing of core infrastructure such as Switch, MSC, HLR, IN, etc. among Licensees having the UL (Access/ NLD/ ILD Authorization).