



**ATC INDIA TOWER**  
CORPORATION

September 5, 2014

Shri Maruthi P. Tangirala  
Advisor (F&EA- II)  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawaharlal Nehru Marg  
New Delhi 110 002

**Subject: Comments on TRAI Consultation Paper No. 09/2014 on Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum usage Charges**

Dear Sir,

We would firstly like to thank the Telecom Regulatory Authority of India (“**Authority**”) for giving us the opportunity to put forth our views on the subject consultation paper.

American Tower Corporation (“**ATC**”) is a leading independent wireless and broadcast communication infrastructure company based in United States of America. It owns and operates over 69,000 sites in United States of America, Brazil, Chile, Colombia, Costa Rica, Germany, Ghana, India, Mexico, Panama, Peru, South Africa and Uganda. ATC is S&P 500 listed company (NYSE symbol: AMT) and currently has a market cap of approximately US \$32 billion.

ATC, through its group companies in India, is engaged, *inter- alia*, in the business of providing passive infrastructure to various cellular operators in India. Each of the group companies of ATC in India is registered with Department of Telecommunication (“**DoT**”) as Infrastructure Provider Category- I (“**IP-I**”) company. Presently, ATC has a portfolio of (approximately) 12,500 towers spread across all telecom circles in India.

While you may have received comments on the consultation paper from Tower and Infrastructure Provider Association (“**TAIPA**”, an association of certain Indian passive infrastructure companies, including ourselves), which includes our views and comments as well, we would also like to take this opportunity to provide our response, in our standing as a globally independent passive infrastructure company/ tower company (“**Passive Infrastructure Company**”), on certain statements mentioned in the consultation paper, which are in addition to and without prejudice to TAIPA’s response on the same.



**ATC INDIA TOWER**  
CORPORATION

Licensing of IP-1 Companies

The consultation paper provides that *possible inclusion of IP-1 companies under the licensing framework in future is an aspect that needs to be considered while assessing the issue of definition of adjusted gross revenue.*

At the outset, we would like to mention that the statement made in the consultation paper on inclusion of IP-1 companies under the purview of licensing framework in future is completely misplaced, unwarranted and not required considering that the subject matter of the consultation paper only relates to definition of adjusted gross revenue of the carriers so as to arrive, *inter-alia*, at inclusion and exclusion of items from the revenue base of the carriers (e.g. items that should be included in their revenue or cost, pass through expenses that should be allowed) for the levy of license fee and spectrum usage charges on the carriers.

Presently there is no basis on which IP-1 companies could be brought under the purview of the licensing regime under the Indian Telegraph Act 1885 ("**Telegraph Act**").

License under Section 4 of the Telegraph Act is granted by the Government for parting with its exclusive privilege of "establishing, maintaining and working telegraphs."

IP-1 companies only provide passive infrastructure such as dark fibers, right of way, duct space and towers to the licensees under the Telegraph Act and do not have the authority/permission of establishing, maintaining and working telegraphs. They do not render telecom services as defined in the Telegraph Act to the end consumer/ subscriber or carry out any other activity falling within the purview of the Telegraph Act. IP-1 companies are engaged in '*business to business (B2B)*' activities and provide infrastructure related services to telecom operators, like various other companies (such as IT companies, equipment suppliers etc) who also provide different input services to telecom operators. Accordingly, while IP-1 companies are required to obtain registration with the DoT, entities like telecom service provider are required to obtain license under the Telegraph Act, 1885 to offer telecommunication services.

Hence, to single out IP-1 companies and bring them under the purview of the licensing requirement under the present regulatory regime applicable to telecom service providers would be grossly unfair and unjust.

It may be also relevant to mention here that DoT, which is the appropriate regulatory authority for the IP-1 companies, had rejected earlier recommendations made by the Authority to bring IP-1 companies under the purview of the licensing framework on two previous occasions. (*Copy of the relevant DoT letters dated 25.08 2008 and 29.10.2008 are annexed as Annexure 1 hereto*). It is pertinent to note that in the letter dated 29.10.2008, DoT itself had taken the view that the activity of IP-1 companies do not qualify for grant of license under the statutory provisions.





**ATC INDIA TOWER**  
CORPORATION

Lastly, it may be noted that this issue has been addressed by TAIPA also in its response submitted on the consultation paper. However, we have briefly touched upon the same and put forward our views, as aforesaid, keeping in mind the importance and criticality of the said issue.

Regulatory regime in certain other jurisdictions

As mentioned above, besides India, ATC is engaged in passive infrastructure business and has tower and broadcast sites, in various other countries spanning from developed economies such as the United States of America (“USA”) to certain emerging markets in Latin America and Africa regions.

It would be pertinent to note that in nearly all these countries Passive Infrastructure Companies are not under the purview of any telecom regulator nor are required to pay any licensing fee to any regulatory authority. With specific reference to USA, we are a real estate investment trust (REIT) in USA and do not come under the purview of the telecom regulator.

From the above it is obvious that any move to bring IP 1 companies in India under the purview of licensing regime would generally be inconsistent with the international regulatory regime for Passive Infrastructure Companies outside India.

Arbitrage Opportunity- Avoidance of licence fee by telecom operators by hiving off telecom assets

The consultation paper states that TRAI’s recommendation in the past to bring IP-1 companies under the licensing regime was also aimed to plug the arbitrage opportunity arising from the incentive available to telecom service providers to hive-off their assets solely to avoid levy of license fee.

In this regard we would like to state that ATC is a completely independent Passive Infrastructure Company operating in various countries/jurisdictions as mentioned hereinabove.

In India, ATC established its business in 2006, which is to purely provide passive infrastructure to telecom operators. ATC and its affiliate companies have obtained respective approvals from the Foreign Investment Promotion Board for their business operations. We are not a hived off business entity of any telecom operator or have any business alignment with a particular telecom operator. Hence, the issue of arbitrage as mentioned by Authority in the consultation paper per se is not at all relevant and does not arise in our case.



**ATC INDIA TOWER**  
CORPORATION

It would be pertinent to note that as on May 13, 2014 there are about 450 IP-1 companies registered with the DoT. Out of these, there are only 30 IP-1 companies that are/were owned by, or are hived off business entities of, telecom operators. Therefore, it would be grossly unfair and unjust to bring all the IP-1 companies, including the independent IP-1 companies like us which are neither controlled nor owned by telecom operators and which do not have business affiliation with any particular telecom operator, under the purview of the licensing requirements using the argument of arbitrage.

Policy change retrospective in nature

As a multinational independent Passive Infrastructure Company, we have substantial business operations in India and have made significant investment in creating passive infrastructure on the basis of prevalent regulatory regime for IP-1 companies, which only requires a registration and not any license from any regulatory authority, as is also the practice in jurisdictions outside India. Our contractual arrangements with the customers/ telecom operators are of fixed term of 10 to 15 years and any license fee which may be imposed upon IP-1 companies cannot be passed/ recovered from the customer under the existing contracts.

In view of the above you will appreciate that if the IP-1 companies are being considered to be brought under the purview of the licensing framework and are required to pay license fee, it would not only be seen as a retrospective change in policy and a retrograde step reversing the regulatory regime but more importantly will also send a wrong signal to the business community regarding the stability and predictability of regulatory policies in India.

We would be happy to have a more detailed meeting and discussion on the above at any time convenient to you.

Thanking You.

Your's truly,  
For ATC India Tower Corporation Private Limited

(Sudip Gupta)  
Authorised Signatory



Government of India  
Ministry of Communications & IT  
Department of Telecommunications  
707, Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110001

No.10-51/2008-CS.III

Dated: 25<sup>th</sup> August, 2008


To.

✓ The Secretary,  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
(Old Minto Road),  
New Delhi - 110002.

Sir,

Kindly refer to Chairman, TRAI's letter No.9-13/2008-CN dated the 13<sup>th</sup> May, 2008 and subsequent letter dated 25<sup>th</sup> July, 2008 regarding the TRAI's suggestion for bringing IP-I providers under licensing regime.

2. The suggestions of TRAI on the above issue have been examined and the same have not been accepted by the Competent Authority. This is for your kind information.

  
25.8.2008  
(S.T. ABBAS)  
DIRECTOR (CS-III)

Government of India  
Ministry of Communications & IT  
Department of Telecommunications  
(CS Cell)

Sanchar Bhavan, 20, Ashoka Road, New Delhi – 110 117.

No.10-51/2008-CS-III

Dated: 29<sup>th</sup> Oct, 2008

To

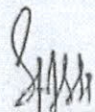
The Secretary,  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg (Old Minto Road),  
New Delhi – 110 002.

Subject: Suggestion of TRAI regarding IP-I Infrastructure Provider

With reference to the D.O. letter No.9-13/2006-CN dated 21<sup>st</sup> Oct, 2008 from chairman, TRAI addressed to Secretary, Dept. of Telecommunications, the undersigned is directed to state that:

- (i) The matter has been examined and as per the statutory provision, such activity does not qualify for grant of licence;
- (ii) The revenues and profits from such activities attract necessary statutory charges as applicable e.g. income-tax, corporate tax etc. Higher valuation cannot be a reason to bring IP-I under licensing regime.
- (iii) There is no bar for a company providing telecom services diversifying its business to other activities such as real estate, licence of space by way of construction of buildings, towers, ducts etc.
- (iv) USOF activities are reviewed from time to time and necessary action taken.
- (v) Further, TRAI Act does not envisage reconsideration of a final decision taken by the Government after due consideration, when time span after the decision is short and there is no change in the ground reality.
- (vi) Hence there is no case for reviewing the Government decision.

This has the approval of the competent authority.

  
29.10.2008  
(S.T. Abbas)  
Director(CS-III)