

VIL submission to TRAI consultation paper on Review of Scope of Infrastructure Providers Category –I (IP-I) Registration dated 16th August 2019

Preamble:

1. IP-Is can be allowed to install the active elements (limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system only) on behalf of Telecom licensees.
2. However, the above enhancement in scope of IP-1 can be undertaken provided the following conditions are met :
 - a. the active infrastructure should be only provided to licensee(s) to meet the policy objective of sharing and hence bring down the cost
 - b. the active infrastructure can be procured by IP-I for sharing with licensee(s) only basis the mutual agreement between licensee and IP-I which will prescribe the applicable frequency etc and bind IP-I to the conditions of the frequency allotment letter issued to the licensees in respect of equipment procurement and installation
 - c. in case there is no agreement with licensee then IP-I cannot procure or install active equipment
3. In present scenario, the active sharing can be promoted and cost of infrastructure can be reduced if license fee and SUC impediments are removed for licensees. If and only if such impediments cannot be removed for any reason, then, without diluting the contention for need to do so, only as a practical way out, active sharing of infrastructure with licensees be allowed to IP-I based on mutual agreement and on conditions as mentioned above. Such impediments must be removed to ensure level playing field, else the tilt even with such 'practical way outs' will lead to undue advantage to some players.
4. IP-1s cannot be allowed under Indian Telegraph Act, 1885 to provide end-to-end bandwidth through leased lines, under the scope of IP-1 registration. These are licensed activities of Access Providers and NLDOs, where the Access Providers and NLDOs provide end-to-end bandwidth through leased lines to their subscribers. IP-1s also cannot be allowed to obtain MWB spectrum allocation, under the scope of IP-1 registration.
5. In no case, IP-I can provide service directly to a non-licensed entity.

Issue-wise response:

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

A1.

Infrastructure Providers Category –I (IP –I) can provide prescribed infrastructure (passive infrastructure) to Licensees of Telecom Services on mutually agreed terms and conditions. Therefore, the role of IP-I is of a provider of such prescribed infrastructure only to telecom licensees. In addition, IP-Is are allowed to install the active elements (limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system only) on behalf of Telecom licensees i.e. these elements should be owned by companies who have been issued license under Section 4 of Telegraph Act, 1885.

In fact, in recent past and as noted by the Authority in the consultation paper, those IP-Is who have created active network infrastructure on their own have been asked by DoT to comply with the provisions of Indian Telegraph Act, 1885 and take the required license.

Therefore, at the outset we submit that role of IP-Is as providers of infrastructure to telecom service providers should remain within this framework. In case an entity wishes to provide any service in nature of bandwidth etc. on its own to any non-licensed entity then it should obtain respective license and pay similar license fee as being paid by existing licensees. This will ensure level playing field and fair competition.

Considering the objectives of NDCP 2018 for Digital India, Make in India, Smart Cities, accelerating broadband speeds, the policy aims to facilitate fibre to the tower programme to enable fiberisation of at least 60% of telecom towers. It is submitted that IP-Is are already allowed to provide assets such as Dark Fibre, Right of Way, Duct Space on lease/rent/sale basis. Thus, scope of IP-Is already includes fiber renting/leasing and sale in the manner same as towers and they are already equipped to meet said objectives of fiberisation. Further, DoT has vide its letter dated 22 May 2018 clarified that with reference to Clause 2(d) of the Indian Telegraph Right of Way (RoW) Rules, 2016 , “licensee” includes IP-I authorized to establish and maintain assets such as Dark fibres, RoW, duct Space and tower for the purpose of granting the same on lease/rent/sale basis to the licensees of Telecom services on mutually agreed terms and conditions. (Copy enclosed as Annexure A).

The same clarification mentioned that IP-I registrants shall in no case work and operate or provide telegraph service, including end to end bandwidth either to any service provider or any other customer.

The NDCP 2018 in its preamble mentions that the objective of a national policy on digital communications is to prepare the country and its citizens for the future. Achieving these goals would require that the key stakeholders – namely the Centre, the States, local governments and agencies, Telecom Service Providers, Internet Service Providers, Infrastructure Providers, handset and equipment manufacturers, the academic community, the innovators and start-ups come together to forge a coalition to deliver this national policy and its missions. Thus all key stakeholders have to come together and play their respective role to deliver the policy objectives.

One of the many strategies enunciated in the NDCP 2018 for Connect India - Creating a Robust Digital Communication Infrastructure 2022 Goals is to encourage and facilitate sharing of active infrastructure by enhancing the scope of Infrastructure Providers (IP) and promoting and incentivizing deployment of common sharable, passive as well as active, infrastructure.

The policy recognises facilitating sharing of active infrastructure which at present can be shared between the licensees since the licensees are only allowed to:

- use the active infrastructure considering necessary frequency allotments,
- choice of technology with licensees,
- network planning and rollout can be done by licensees, and
- the service can be only provided by licensees.

The respective amendment in UASL for active sharing was made on 11.2.2016 (Copy enclosed Annexure B).

Considering that IP-I can already provide passive infrastructure to licensees and can install prescribed active infrastructure on behalf of licensees (where such active infrastructure is to be owned by licensee company), we submit that scope of IP-I can be enhanced to provide prescribed active infrastructure to licensee(s) on rent/lease basis provided the following conditions are met:

- the active infrastructure should be only provided to licensee(s) to meet the policy objective of sharing and hence bring down the cost
- the active infrastructure can be procured by IP-I for sharing with licensee(s) only basis the mutual agreement between licensee and IP-I which will prescribe the applicable frequency etc and bind IP-I to the conditions of the frequency allotment letter issued to the licensees in respect of equipment procurement and installation
- in case there is no agreement with licensee then IP-I cannot procure or install active equipment

The definition of active infrastructure for this purpose needs to be limited to antenna, feeder cable, nodeB, RAN and transmission system only.

IP-Is are only registered entities and are not under obligation to pay license fee etc. unlike the case of licensees. Active sharing is allowed to the licensees but any consideration to the provider licensee from the seeker licensee will form part of AGR on which license fee will be paid. In case of active sharing between the licensees, the objective of sharing of reduction in cost get diluted due to additional cost implications of license fee. If SUC component is also to be considered then the cost on active sharing between licensees will further increase and will also vary depending on the spectrum holding. Thus, in present scenario the active sharing can be promoted and cost of infrastructure can be reduced if license fee and SUC impediments are removed for licensees. If and only if such impediments cannot be removed for any reason then without diluting the contention for need to do so, only as a practical way out, active sharing of infrastructure with licensees be allowed to IP-I based on mutual agreement and on conditions as mentioned above. We reiterate that such impediments must be removed to ensure level playing field , else the tilt even with such 'practical way outs' will lead to undue advantage to some players.

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.

A2.

i) IP-1s can provide common sharable active infrastructure elements limited to antenna, feeder cable, nodeB, RAN and Transmission system.

These can be provided by IP-1s on rent/lease/sale basis only to licensed telecom service providers (limited to UASL/CMTS/BSO/UL-Access/ISPs/VNOs-access and ISPs, as applicable).

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.

A2.

ii) No ; IP-1s cannot be allowed under Indian Telegraph Act, 1885 to provide end-to-end bandwidth through leased lines, under the scope of IP-1 registration. These are licensed

activities of Access Providers and NLDOs, where the Access Providers and NLDOs provide end-to-end bandwidth through leased lines to their subscribers (including but not limited to MSOs).

We refer to DoT's clarification dated 22 May 2018 where it reiterated that IP-I registrants shall in no case work and operate or provide telegraph service, including end to end bandwidth, as defined in Indian Telegraph Act, 1885 either to any service provider or any other customer.

Importantly IP-I registrants are not paying any AGR based license fee /SUC, which is a cost to the licensed entities. Any such allowance to IP-I registrants to provide end-to-end bandwidth through leased lines to service providers licensed/permitted/ registered with DoT/ MIB, will not only be violation of Telegraph Act but will also give undue cost advantage to IP-I registrants over licensed players.

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.

A2.

iii) Considering that IP-I can already provide passive infrastructure to licensees and can install prescribed active infrastructure on behalf of licensees (where such active infrastructure is to be owned by licensee company), we submit that scope of IP-I can be enhanced to provide prescribed active infrastructure to licensee(s) on rent/lease basis provided the all following conditions are met:

- the active infrastructure should be only provided to licensee(s) to meet the policy objective of sharing and hence bring down the cost
- the active infrastructure can be procured by IP-I for sharing with licensee(s) only basis the mutual agreement between licensee and IP-I which will prescribe the applicable frequency etc and bind IP-I to the conditions of the frequency allotment letter issued to the licensees in respect of equipment procurement and installation
- in case there is no agreement with licensee then IP-I cannot procure or install active equipment

Kindly refer to Answer to Question 1 for more details on reasoning.

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?

A2.

iv) Yes, but only to the extent of antenna, nodeB, RAN and Transmission system, as per guidelines of WPC and only when there is/are a mutual agreement(s) with a licensee(s) and in respect of permissions with the licensee (s).

v) Should Microwave Backbone (MWB) spectrum allocation be permitted to IP-I for establishing point to point backbone connectivity using wireless transmission systems?

A2.

v) No, MWB spectrum allocation should **not** be permitted to IP-1s for establishing point-to-point backbone connectivity using wireless transmission systems.

Q 3. 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.

A 3. Refer to our Answer to Question 1.

Q 4. Any other issue relevant to this subject.

A4.

- a) The role of IP-I is only limited to provide infrastructure to licensees or install infrastructure on behalf of licensees. In case of active infrastructure this basic rule must be followed together with any conditions that apply to licensees for procurement and installation of active infrastructure.
- b) In no case IP-I can provide service directly to a non-licensed entity. In past we have seen many incidents where tie ups between non-licensed entities and IP-I have caused a monopoly kind of situation resulting in huge cost to telecom service providers and in turn affecting services to the public. These examples pertain to airports, underground metros, malls etc. The objectives of sharing, as enunciated in the TRAI consultation paper, is to reduce cost to serve, however, at ground level the situation is to the contrary. The NDCP also emphasizes on the sharing of infrastructure, hence reduction in costs. **It is, therefore, re-emphasized that IP-I can provide infrastructure to licensees only and they cannot tie-up with non-licensed players to take control of provision of service.**

TRAI has itself recognized the above concern in its Report on Mobile Network QoS (Delhi Airport and Dhaula Kuan), where it has mentioned that the monopoly conditions impedes investment in upgrading or expanding the infrastructure and makes access to services very expensive.

- c) The licensees are best equipped for network planning, optimization, capacity enhancements, technology choice, spectrum deployments etc. Therefore, active sharing, to save costs can be best done by network planning teams of licensees. There are many issues involved in active sharing where role of 'network planning' is important and we submit that IP-I may not be best fit to provide such specialized services to the levels required, on their own.
- d) The basic framework should promote sharing to reduce costs but it should at the same time ensure that rules should be same and no one should get undue advantage.

New Delhi
30th September 2019

No. 2-6/2014-Policy I
Government of India
Ministry of Communications
Department of Telecommunications

Sanchar Bhawan, New Delhi- 110001.

Dated: 22nd May, 2018

OFFICE MEMORANDUM

Subject:- Clarification regarding the scope of Indian Telegraph Right of Way Rules, 2016.

With reference to Indian Telegraph Right of Way (RoW) Rules, 2016 which were notified on 15th November, 2016, it is clarified that under clause 2(d) of the said Rules, "licensee" includes Infrastructure Provider Category I (IP-I) authorised to establish and maintain the assets such as Dark fibres, Right of Way, Duct space and tower for the purpose of granting the same on lease/ rent/ sale basis to the licensees of Telecom services licensed under Section 4 of the Indian Telegraph Act, 1885 on mutually agreed terms and conditions.

2. It is reiterated that the IP-I registrants shall in no case work and operate or provide telegraph service, including end to end bandwidth as defined in the Indian Telegraph Act, 1885 either to any service provider or any other customer.


(Neeraj Mehrotra)
Director (Policy)
Tel. No.: 2303 6530

To,

1. Member (T)
2. Member (F)
3. Member (S)

Copy to:

1. PSO to Secretary (T)
2. PPS to Special Secretary (T)
3. Sr. DDG (LFP)
4. DDG (CS)

**Government of India
Ministry of Communication & IT
Department of Telecommunications
(Access Services Division)**

1203, Sanchar Bhawan, Ashok Road, New Delhi-110001.

No.20-443/2014-AS-I Pt

Dated: 11th February, 2016

To,

All Unified License (Access Service) Licensees

Subject:- Amendment in Unified License (Access Service) Agreement.

1. In pursuance of the clause 5.1 of Unified License (Access Service) Agreement, The LICENSOR hereby amends the Unified Licence (Access Service) Agreement and the clause 33 (VI) in Part-V is appended as below:

"Sharing of Active infrastructure amongst Service Providers based on the mutual agreements entered amongst them is permitted. Active infrastructure sharing will be limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system only."

2. This amendment shall form part and parcel of the UL (AS) Agreement and all other terms & conditions shall remain unchanged.

3. The amendment is effective with immediate effect


11/2/16
(R.K.SONI)
Director (AS-I)
Ph.No.23036284.

Copy to,

1. Secretary, TRAI, New Delhi.
2. WA, DoT, New Delhi.
3. Sr DDG (TERM)/DDG (WPF), DoT, Delhi.
4. DDG (A/C)/(LFA)/(LFP), DoT, Delhi.
5. Director (AS-II), Director (AS-III), Director (AS-IV), Director (AS-V) for kind information please.
6. Director (IT) for uploading on website.

**Government of India
Ministry of Communication & IT
Department of Telecommunications
(Access Services Division)**

1203, Sanchar Bhawan, Ashok Road, New Delhi-110001.

No.20-443/2014-AS-I Pt

Dated: 11th February, 2016

To,

All UAS Licensees

Subject:- Amendment in UASL Agreement.

1. In pursuance of the clause 5.1 of UASL Agreement, The LICENSOR hereby amends the UASL Agreement and the clause 33 (IV) in Part-V is appended as below:

“Sharing of Active infrastructure amongst Service Providers based on the mutual agreements entered amongst them is permitted. Active infrastructure sharing will be limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system only.”

2. This amendment shall form part and parcel of the UAS License Agreement and all other terms & conditions shall remain unchanged.

3. The amendment is effective with immediate effect

 11/2/16

(R.K.SONI)

Director (AS-I)

Ph.No.23036284.

Copy to,

1. Secretary, TRAI, New Delhi.
2. WA, DoT, New Delhi.
3. Sr DDG (TERM)/DDG (WPF), DoT, Delhi.
4. DDG (A/C)/(LFA)/(LFP), DoT, Delhi.
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**Government of India
Ministry of Communication & IT
Department of Telecommunications
(Access Services Division)**

1203, Sanchar Bhawan, Ashok Road, New Delhi-110001.

No.20-443/2014-AS-I Pt

Dated: 11th February, 2016

To,

All CMTS Licensees

Subject:- Amendment in CMTS Agreement.

1. In pursuance of the clause 5.1 of CMTS Licence Agreement, The LICENSOR hereby amends the CMTS Licence Agreement and the clause 34 (iii) in Part-V is appended as below:

"Sharing of Active infrastructure amongst Service Providers based on the mutual agreements entered amongst them is permitted. Active infrastructure sharing will be limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system only."

2. This amendment shall form part and parcel of the License Agreement and all other terms & conditions shall remain unchanged.

3. The amendment is effective with immediate effect


11/2/16
(R.K.SONI)
Director (AS-I)
Ph.No.23036284.

Copy to,

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