Vodafone Response to the TRAI Consultation on Ease of Doing Business dated 14 March 2017

At the outset it is our understanding that the present consultation has been issued with a view to addressing operational issues and implementation concerns that hinder the service providers in conducting their licensed activities.

In this regard, we would first like to laud the Government and the TRAI in already taking a series of initiatives in this arena, which will go a long way in achieving the Government objective of ease of doing business in India.

These initiatives include:
   a. Notifying the Right of Way Rules under the Indian Telegraph Act, 1885
   b. Dispensing with the need for Wireless Operating Licenses
   c. Automation of SACFA procedures
   d. Allowing /introducing E-KYC based subscriber verification
   e. Purging of infructuous Regulations.

We understand that **the objective of the current exercise by TRAI is to identify and eliminate redundant processes, remove inconsistencies prevalent in existing processes, simplify processes, ideally using technology as an enabler and to make these processes time bound.**

Our submissions in this regard are as below:

I.   TRAI RELATED

A.   Introduction of an M-Bill

   1.   We submit that in this era of growing use of smart phones and the development of a TSP app by every service provider, it is safe to assume that every postpaid subscriber can avail of the option for an M-bill instead of a physical bill as is the current practice/norm.

   2.   We believe that the move to an M-bill should be the rule rather than the exception and **we suggest that the TSPs should be allowed to provide an e-Bill /M-bill by default** with each subscriber being given the opportunity to 'opt-out' and receive a physical bill if he/she so requires

B. Tariff Information through E-KYC

1. As per TRAI's Regulation 'The Implementation of the Quality of Service (Code of Practice for Metering and Billing accuracy (Amendment) Regulations, 2013, dated 25.03.2013', consumer is to be provided with detailed information related to tariffs before enrolment.

2. While verification through E-KYC is paperless, in case of postpaid, a paper form containing tariff (TEF) is sought from the consumer, which is not environment friendly nor is it sync with the digital era. With advent of digital E-KYC process, tariff details can be informed to consumer through digital means like E-KYC, in place of paper based process. . It is pertinent to mention that as per regulatory requirements, consumer is provided with tariff plan details within 7 days through a welcome letter and regularly through postpaid bills as well.

3. For seamless, efficient and paperless onboarding experience, TEF should be provided through digital means like E-KYC mode.

C. Data Consent through E-KYC:

1. TRAI has vide its Telecom Consumer Protection Regulation (8th Amendment) dated 07.08.2015, prescribed that explicit consent is required to be taken from the consumer before activation of data services, which was being done through short code 1925. Subsequently, other verifiable means to take consent were also allowed vide TRAI email dated 09.09.2015 and letter dated 30.09.2015.

2. Accordingly, TSPs take data consent from consumers through 1925 and other verifiable means like through tele-verification which has simplified the process and increased likelihood of consumer's consent either for activation or deactivation of data.

3. However, under E-KYC process, tele-verification is not required hence, challenging to take consent.

4. We would therefore like to suggest that consent for data should be integrated within the E-KYC process, to act a pure digital and seamless way of on-boarding of customers for connection and services. E-KYC has been accepted as a verifiable means for subscriber verification and same would also meet the TRAI regulation's requirement of obtaining consent through other verifiable means. We request for a clarification from TRAI in this regard.

D. GST Implementation

1. At present, the service tax (S.T.) law requires TSPs to pay service tax on the Retail sale price of the paper and e-vouchers. In turn the entire distribution chain is exempted from S.T. This will change after GST is implemented.

2. As per Model GST laws, GST is to be discharged as per address of the Selling agent or a reseller or a distributor of SIM card or recharge voucher. Further, the value of supply for goods/services would be the transaction value. All the Selling agent, reseller, distributor of SIM card or recharge voucher beyond the threshold limit (Rs 20 lakhs) would be liable for payment of GST. This would have following issues:

   a. TSPs would not know of GST tax paid by distribution chain or it's rate where different rates apply hence, communication to subscriber of tax deducted would be a challenge.
   b. Change in tariff benefits to the consumer, in case of different GST in different states within a circle or outside, for recharges done outside the home state/home circle.

3. Therefore, the requirement of providing 'taxes deducted' to consumer post recharge with a top-up voucher under The Telecom Consumer Protection Regulation, should be removed. Also, the tariff format should be flexible to accept different tariff benefits based on location of recharge, as per sub-point b above.

E. **Reduction in Multiple Reports**

1. There are multiple reports being submitted to TRAI, few of which are avoidable (like data speed measurement report which does not correlate with actual user experience) and few reporting contains duplication of Data fields.

2. TRAI should undertake review of such reports and remove avoidable reports as well as duplicity of same information in different reports.

F. **Half-yearly Tariff Publications:**

1. As per TRAI direction dated 16.01.2012, TSPs are required to publish tariff plans in two newspapers on a half-yearly basis. However, in this era of instant and dynamic availability of information, we believe that requiring tariffs to be published half yearly may not be either useful or relevant, especially in view the following:

   a. With generally more than 20 tariff plans in the TRAI prescribed format, we believe that the detailed tariff information given in Newspapers has a very low recall value and at best it of fleeting use to consumers.

b. Tariff plans list/details are dynamic, with frequent changes. Even if few consumers retain a copy of the newspaper, it is more likely that information in such copy will soon be out of date and at variance with the current tariffs that are available real-time on the Net or through the mobile operator's App.

c. In such cases, the consumer may get different benefits which are applicable on date of subscribing/recharging hence causing, inconvenience to subscribers leading to disputes.

2. We submit that in this era of digitization with real-time online tariff information made available to the subscribers on the website of the mobile operator, through the TSP apps and available with the retailers, the requirement of publishing tariffs half yearly in the newspapers may be re-considered by TRAI.

3. This will also be in line with the spirit of Ease of doing Business, where TSPs should not be mandated to incur heavy costs on an activity that does not yield any commensurate benefits.

G. Refund of Security Deposit

1. The Quality of Service Regulations, 2009 of the TRAI requires the service providers to process 100% refund of the security deposit or any other refundable amount to the customers upon closure /termination of services.

2. It is submitted that whilst all efforts and made to ensure compliance with this benchmark, we suggest that the TRAI may consider a graded benchmark to facilitate o ease of doing business. This could entail processing say, 90-95% of the refunds within 60 days, with 100% being refunded within 90 days

3. We would also like to highlight that we have observed that in many cases, the refund amount is so nominal that the refund cheques are not even encashed by the customers. Further, the cost of issuing these cheques is several fold the value of the refund.

4. To illustrate, in an analysis done for a one month period, we observed
   • 25% of the cheques/refunds were for amounts of less than Rs. 25 per customer
   • These 25% cheques/ refunds accounted for only 0.54% of the refund value
   • The cost of issuing /processing these cheques for less than Rs. 25/-, was almost three times the amount of the refund value
   • 94% of the cheques for less than Rs. 25 were not encashed by the customers

5. It is therefore suggested that the TRAI may consider providing for refund of security deposit and/or other dues only when these exceed the value of INR 25.

II.   DoT Related

There are also some areas of simplification /improvement that we have raised/are raising with DoT and are hopeful that DoT will resolve them in near future. As the consultation paper sought comments on license related issues, we are stating such items, which are as follows:

H.   Roll-out obligations

1. At first, we would like to welcome the Government initiative taken in 2016 auctions stating that the requirement of rollout obligation shall be treated as fulfilled once the required number of district headquarters or block headquarters are covered by use of any technology in any band by a licensee.

2. There are however a few further areas of improvement/clarification that will go a long way towards easing the process of compliance with rollout obligations that are prescribed under respective NIAs.

3. We laud the DoT efforts to simplify verification processes by providing that the TERM cell will carry out sample testing of 10% of the self-certified DHQs / BHQs. This is similar to the approach followed in the case of EMF compliance which provides for upto 10% of the BTS sites of a service provider to be audited by the TERM Cell.

4. However, we note that unlike in the case of EMF, the testing fees taking by TERM are not confined to only 10% of the sites actually audited, but are taken for the entire base of 100%. Further, we note that each rollout testing includes a testing fee of Rs. 1 lakh for the MSC.

5. We submit that this is not in consonance with the objective of simplification of processes and results in an unjustified burden on the service providers.

6. We request that the testing fees should only be applied for sites actually tested for rollout compliance and further that the testing fees for the MSCs should be recoverable only once for the respective phase being tested.

7. Further, as TRAI is aware, DoT has adopted a cluster based approach for testing of sites for rollout compliance. We support this approach as this will allow DoT to test sample sites in the identified cluster so as to get a fair assessment of the overall status of rollout compliance.

However, we believe that the DoT approach in failing the entire cluster in case a site fails is incorrect and may be reviewed. We believe that in the event of a problem with any site, the operator should be given an opportunity to rectify the site and offer it again for testing. Such an approach will be fair and proportionate.

8.   There are some other issues allied to rollout obligation, which are understood to be in the service providers' interests, where some clarity will bring in more certainty.

I.   Payment of License Fee, SUC, etc

1.   The TRAI would be aware that at present, license fee is payable on the revenues of the previous quarter whilst in the case of SUC this is payable in advance on the estimated revenues from the ensuing quarter.

2.   In order to adopt a consistent approach, we request that both license fee as well as SUC should be payable on the revenues from the previous quarter. This will lead to better correctness and certainty in the payments.

J.   Multiplicity of Audits

1.   The TRAI would be aware that the service providers are subject to a multiplicity of audits by various authorities – internal audit, special audit, CAG audit etc. this places an onerous burden on the service providers that use up excessive time and resources to comply with the data and information requirements, apart from the possibility of different views being taken by different authorities.

2.   We submit that in order to facilitate ease of doing business, the TRAI may recommend that the prevalent practice of multiple audits be reviewed.

K.   SACFA Clearances

1.   At present SACFA clearance is required by every licensee for every spectrum band/spot assigned to it. This creates an unnecessary burden on the system. The SACFA approval is required primarily from the point of siting clearance of the tower with regard to its height and distance from the airport. The frequency allocated to the licensee has no role to play in the clearance of the site.

2.   In this regard, it is suggested that the SACFA approval process be simplified and only one approval be required per site. An additional antenna set up on the same site should be required to submit, for the purpose of information only, a NOC from the SACFA approval owner along with an undertaking that the antenna set up by the TSP is below the ceiling height approved under the SACFA clearance. This will alleviate a significant

and completely unnecessary burden on both the TSPs as well as the WPC wing in processing multiple applications for the same site location.

L. Import Licenses

1. Currently, telecom operators are required to get import licences for all RF equipment procured from outside the country. Without this; Customs does not clear the RF equipment for entry into India. The requirement acts as a significant bottleneck for operators as getting clearance take up to 1-2 months and in the meanwhile, their RF equipment are held up by the Customs.

2. Moreover, seeking import licences for every circle separately is also problematic since telecom operators having Pan India presence cannot import RF equipment in large quantities and deploy in their different licensed areas as and when required. In fact, moving RF equipment from one circle to another requires additional prior clearances. Therefore, the requirement of import licence is adversely affecting the network planning (both short-term and long-term) and network rollouts of telecom operators.

3. We believe that the whole objective of an import licence is merely to ensure that the DoT is well informed of the details of imported RF equipment, as well as its installation in licensed service areas. According to us, this objective can be achieved by DoT by seeking periodic reports from telecom operators than requiring them to seek a separate licence for all RF equipment's.

M. EMF compliance & self-certification

1. The TRAI is aware that all the service providers have under the aegis of the Government developed an online portal for EMF compliance and self-certification [Tarang Sanchar]. The portal is now being used to generate and submit online self-certificates to the DoT.

2. In view of the above and in any event, some of the current processes that are based on the legacy paper based system warrant a review.

3. For example, at present each upgrade by any TSP on a shared site, requires a corresponding response upgrade certification by every sharing TSP for every technology/BTS. This entails a completely unnecessary burden on the operators as the response upgrade certificate is only a duplication of the certificate submitted by the upgrading TSP. This process has become even more unnecessary in the online scenario, where each site is completely updated and current at all times and in compliance with the EMF norms laid down by the Government. We believe that this process is not necessary and may be done away with.

4. In addition to the above, the DoT had also laid down a requirement for a biennial certification of all the existing sites of every TSP, Given the launch of the Tarang Sanchar portal which has complete and current information on every site, we believe that this requirement too in unnecessary and may be done away with.

N. E-KYC Related Issues

Outstation subscribers

1. The E-KYC based subscriber verification norms are however yet to be extended to outstation subscribers. The TRAI has already made recommendations to this effect in its recommendations dated 23 January 2017 and we believe that the same are under consideration of DoT.

2. It is submitted that as Aadhaar is a central repository, exclusion of outstation subscribers from the purview of E-KYC authentication/verification does not also fit in the overall framework. We urge the TRAI to reiterate these recommendations and seek their implementation at an early date.

Audit to include both paper based & E-CAFs

3. The TRAI may be aware that DoT in a recent letter dated 27.03.2017 has provided that the subscriber verification audit sample will be confined only to subscribers verified through the physical documentation process.

4. We submit that the objective of the audit is to assess the compliance of the service providers to subscriber verification process and hence the E-CAFs that are part of the sample, must be included in the base for assessing the compliance.

5. Aadhaar based verification being a more robust process cannot be excluded from the purview of the audit as it would not only give an incorrect picture of compliance but would also result adoption of a targeted sample approach that would wrongly show a higher noncompliance than is actually the case.

6. We are in the process of representing this matter to DoT and request the TRAI too, to support us in this matter.

Re-verification of Existing Subscribers

7. Furthermore, TRAI would be aware that the DoT has on 23.03.2017 issued guidelines for re-verification of all existing subscribers through Aadhaar based e-KYC.

8. It is first submitted that all existing subscribers are already verified as per the existing guidelines issued by DoT in 2012, which were based on Hon'ble Supreme Court Order (Avishek Goenka PIL) and thus the requirement to re-verify already verified subscribers will lead to an added unnecessary burden on the operators.

9. It is further submitted that with the increased take up of E-KYC based activations and the natural churn in the industry, the process of Aadhaar based verification will happen naturally over the course of a few years.

10. It is also highlighted that while we are committed to having a robust verification process and are already making all efforts in the direction of E-KYC based activations, there are several challenges to carrying out the e-KYC based re-verification as has been instructed by the DoT. These include:

    i.   E-KYC is not mandatory for new subscriber verification. There is no enforceable way in which any TSP can ensure that subscriber additions will happen only through e-KYC or to make existing [already verified] subscribers come forward and be re-verified through E-KYC.
    ii.   E-KYC has not even been allowed as yet for outstation customers
    iii. E-KYC not possible for foreign nationals
    iv.   The rationale of re-verifying postpaid subscribers who have been physically verified by the service providers is not understood.
    v.   It has not been appreciated that the Aadhaar penetration in some service areas is very low
    vi.   The proliferation of POS devices for E-activations has commenced but has yet to proliferate and become ubiquitous

11. Given the above, it is apprehended that the re-verification despite huge costs and efforts will become a never ending exercise, and certainly cannot be completed in the one-year time frame that has been laid out by DoT. We request that the objective of having a E-KYC verified subscriber base should be achieved through the natural evolutionary process rather than a time bound approach especially in view of the challenges highlighted above.

12. The scale of such reverification is gigantic i.e. around 100 Crore subscribers and which means 33 lakh subscriber per day if the exercise is to be done over a period of 300 days. This rate is not possible to achieve considering the above factors and it is requested that a reasonable time frame be given for any such re-verification.

O. **Interference**

1. The TRAI is aware of the rampant use of illegal private repeaters and unauthorized use of jammers by various persons/bodies. Use of these jammers creates interference in licensed mobile services and results in an unacceptable deterioration of services that are beyond the control of the service provider.

2. This issue is known to all but needs to be addressed diligently else the service provider are, for reasons beyond their control, vulnerable to QOS deterioration, customer complaints, non-compliance of TRAI benchmarks and associated penalties.

3. It is submitted that there needs to be a clearly defined process on how the operators are required to deal with issues of illegal repeaters, which may entail filing a complaint with details with either the TRAI or the concerned TERM Cell to look into and address the matter.

4. We request that the TRAI may design/suggest an online process whereby complaints regarding illegal repeaters can be uploaded on a TRAI & TERM portal for examination and resolution by the concerned authorities.

P. **Reduce adverse impact of regressive Telecom Security Testing requirements**

1. With lack of India-specific certification requirements and no labs on the ground, it is essential for Government to postpone the initiative till clarity and guidelines are in place.

Q. **Harmonization of License Conditions with Information Technology Act 2008**

1. As TRAI is aware, the license provides that the Information Technology Act, 2000 will also be applicable to the Licensee/TSPs. We however note that there is inconsistency between the provisions under license and those in the Information Technology Act, that not only causes confusion on the applicability of the provisions, but also, impacts ease of doing business. Some such provisions are highlighted below:

2. For example, Clause 39.23 (viii) of UL prohibits[i] the Licensee from transferring any User information (except any accounting information pertaining to foreign subscribers using Indian Operator's network while roaming and IPLC subscribers), to any person / place outside India.

3. On the other hand, the Information Technology Act, which too, is applicable to the licensees, permits such transfer. Some relevant extracts from the IT Act are reproduced below:
   a. Information Technology (Reasonable Security Practices and Procedures and Sensitive Data and Personal Information) Rules, 2011 - Rule 7. Transfer of

information.-A body corporate or any person on its behalf may transfer sensitive personal data or information including any information, to any other body corporate or a person in India, or located in any other country, that ensures the same level of data protection that is adhered to by the body corporate as provided for under these Rules. The transfer may be allowed only if it is necessary for the performance of the lawful contract between the body corporate or any person on its behalf and provider of information or where such person has consented to data transfer.

b. IT Rule 3. Sensitive personal data or information — Sensitive personal data or information of a person means such personal information which consists of information relating to;—

  i) password;
  ii) financial information such as Bank account or credit card or debit card or other payment instrument details ;
  iii) physical, physiological and mental health condition;
  iv) sexual orientation;
  v) medical records and history;
  vi) Biometric information;
  vii) any detail relating to the above clauses as provided to body corporate for providing service; and
  viii) any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise:

  provided that, any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these rules.

6. For Social Good and Nation Building and also to improve operational efficiencies and effectiveness, there is dire requirement of sharing of data being allowed with third parties.

7. This may be in the form of anonymised real-time / near real-time location based data that can be used to address important urban, health and emergency issues such as Traffic Congestion, Smart Parking, Controlling disease spread, emergency evacuation on natural calamities etc. This will go a long way in facilitating country's objectives of Smart Cities, Digital India whereby big data analytics can help Government/ Economy in better social good and mechanism for disaster management in emergency situations.

8. This may also be in the form of taking advantage of various cloud computing solutions that can be used to drive operational efficiencies and effectiveness through data analytics, etc.

9. Further, in the last one decade the boundaries for data travel/storage is blurred. Almost every citizen of this planet now has his personal data stored in Gmail/Yahoo/Facebook/Twitter servers located in USA/Europe. This is absolutely customer's own choice to agree to terms & conditions of his data storage anywhere in the globe so far the same is safe and protected.

10. This ability to use data storage outside India should also be available to the telcos – for e.g. why should BMW/VOLVO car buyers in India be restricted from connecting their cars with BMW/VOLVO servers located in Europe; vice versa too, Indian manufacturers exporting products will also like service facility for global customers to be maintained in India for the purpose of efficiencies.

11. In view of the above and also in view of the fact that the IT Act / Rules, being statutory in nature, are applicable to Licensees entitling them to transfer "information" outside India, therefor such restriction in UL should be dropped.

12. Furthermore, both the License and the IT Act contain provisions with regard to confidentiality of information. The requirements are slightly varying in degrees and nomenclature, which can lead to confusion about applicability. **Therefore, such provisions may be dropped from the License and only IT Act provisions should apply**.

R. **Ease of Doing Business – M2M services**

1. The TRAI is aware of the immense potential that is offered by M2M/IOT services. India has started making nascent inroads in this arena but is being held back due to the legacy rules of subscriber verification being applied to M2M.

2. M2M connectivity is different in nature and scope to the normal connectivity for mobile subscribers. These are point to point data services that are carried out in a secure VPN environment. Further even in use cases, where some voice connectivity is required, this again, is in the form of Emergency voice & SMS to pre-identified numbers – which is the growing requirement of various car manufactures. Here too, the point to point voice connectivity cannot be equated with the connectivity offered under a normal mobile SIM. In view of the above, the subscriber verification norms laid down by the government for SIMs used by Humans cannot be blindly applied for SIMs fitted into Machines, which is presently the case, and which is dragging down the growth potential of these services.

3. It is also important to note that increased IOT/M2M connectivity will form the foundation to the evolution of Smart cities and meeting the Government's digital agenda. There is thus a dire need to address this severe operational constraint at the earliest.

4. **It is our view that there should not be any requirement for KYC for IOT SIMs. TSPs at the best can be mandated to maintain list of MSISDNs and IMEI numbers. We request TRAI support in this regard.**

S. **TERM Cell inspections – time consuming, exhaustive, interpretational**

1. TERM Cells seek various information from TSPs for inspections of UL, ISP, NLD & ILD. The format runs into several pages and information sought is very detailed.

2. When Government of India is heading into direction of shortening of various statutory forms in a single page e.g. Saral, etc – proformas of TERM Cell inspections still runs into several pages.

3. **A similar simplified approach should be followed in respect of the information requirements of TERM Cell as well**.

T. **OSPs**
1. License mandates that TSPs to ensure taking copy of OSP registration certificate from customers who need telecom resources for OSP activities failing which is a breach of license.

2. There is absolutely no tool / website where TSPs can cross check whether the potential customer is an OSP.

3. **It will be appropriate if a list of OSP registration holders across all India is published on a web site with their validity of registration & place of OSP centre.**

New Delhi
25 April 2017