

January 25, 2020

To:

Shri Syed Tausif Abbas,
Advisor (Networks, Spectrum and Licensing),
TRAI

Re: Pre-Consultation Paper on Enabling Unbundling of Different Layers Through Differential Licensing, 9th Dec. 2019

Dear Sir,

The basis of telecom related regulation and licensing is predicated on the Indian Telegraph Act of 1885. Unfortunately the law itself does not include a preamble which explains the objectives of the law. Notably the law was established by a colonial power which considered India as distinct from itself. The citizens of India were never accorded the same rights and freedoms as the citizens of England. While I am not familiar with the entire history of telecom regulation in the U.K. it is certain that the equivalent of the Indian Telegraph Act of 1885 does not prevail in the United Kingdom today. Best I can tell no specific licenses of the types required in India are necessary in the U.K. Telecom service providers are only required to register with the regulatory authority and adhere to the regulatory framework.

The Indian Telegraph Act of 1885 is patently antithetical to the Constitution of India. While the Constitution guarantees freedom of speech, the Act expressly denies it by reserving the right to build and operate telecom networks as an exclusive privilege for the Government. Countries that do not have such a regressive law do have very viable and vibrant telecom industries. Clearly the Act does not offer the citizens of India and the Indian telecom industry any discernible advantage. The Regulator and the Government should seriously consider replacing the Act with a more progressive law in keeping with the rights and freedoms enshrined in the Constitution and evolving to a market-driven telecom industry rather than Government directed, after all there is nothing that the Government knows better than the market as to who should succeed and who should not.

Telecom licensing in India has been a mixed bag. It cannot be considered an unequivocal success. While teledensity has zoomed from single digit percentages to world class levels in less than three decades the telecom industry itself is in a major crisis. A very significant majority of license holders have failed. The Tatas and Birlas, two of India's most successful business houses operating profitable enterprises in a variety of industries around the world, have been unable to establish viable telecom businesses in India. Even Vodafone, a global telecom player, with mobile operations in 24 countries and fixed broadband operations in 19 countries has written down its investment in India and is seriously considering and likely to exit the market. Perhaps one major reason for the failure of Vodafone and others in India is the regulatory and licensing regime – after all other factors associated with the industry such as technology, customer behavior/expectations,

management and engineering talent, etc. in India are not significantly different from other markets.

A major problem with telecom regulation and licensing in India is that it is primarily focused on maximizing Government revenue (revenue share, SUC, etc) not a healthy, viable telecom industry. The recent demands on telecom license holders other than basic service providers following the ruling by the Supreme Court on the definition of AGR imply that in the view of the licensor all of the economic value created by any enterprise stems solely from its telecom activities. The logic of bankrupting enterprises such as the Indian Railways, the Gas Authority of India, et al because they need a telecom license as a part of operating their SCADA networks is beyond comprehension. In most businesses all of the costs, including the investors' returns and taxes, ultimately have to be paid by the customers of the business. The massive revenue shares, interest, and penalties demanded by the licensor will ultimately have to be paid by the ordinary citizens of India using the telecom network.

The direction in which the regulatory and licensing framework needs to move is well articulated in Paragraph 14:

“... To serve this objective, the Policy further aims to pursue regulatory reforms to ensure that the regulatory structures and processes remain relevant, transparent, accountable and forward-looking. Additionally, the Policy aims to remove regulatory barriers and reduce the regulatory burden that hampers investments, innovation and consumer interest. The Policy also identifies steps to strengthen the sector's institutional mechanism and legislative framework, to ensure that India's economy and citizens can derive the full potential of its digital communications sector.”

The notion of unbundling into layers needs to be approached with great care since the layering is arbitrary (essentially a matter of convention).

The most perilous is the notion of Application Layer licensing. Everything done on the telecom network is, by definition, an application since the bits and bytes transported across the network have no inherent meaning/application in themselves. Thus even a conversation between two people requires an application – the telephone – which would then require a license! If all applications are required to have a license then all innovation which involves telecom would cease. Consider WhatsApp, it is clearly an application and could not have been developed and deployed if a license was required a priori.

Perhaps instead of creating a plethora of licenses through layering a more effective system would be to have a single telecom license (or even registration) and letting the license/registration holders decide what aspects of the telecom industry they want to address.

Thanking you,

DC Saheba

Dhananjay Saheba
Managing Director