ACTO Response to TRAI Consultation Paper No. 6/2009,
16 October, 2009, on Overall Spectrum Management and
Review of License Terms and Conditions

SUMMARY

The Association of Competitive Telecommunications Operators (ACTO) is pleased to submit the following comments to the Telecom Regulatory Authority of India (TRAI) in response to the TRAI Consultation Paper No. 6/2009, dated 16th October, 2009 on Overall Spectrum Management and Review of License terms and Conditions. The members of ACTO are AT&T Global Network Services India Private Limited (AT&T), BT Global Communications India Pvt. Ltd. (BTCG), Cable & Wireless Network India Private Limited, Orange Business Services and Verizon Communication India Private Limited , all of which provide telecommunications services to enterprise and multinational customers in India under International Long Distance (ILD), National Long Distance (NLD), and Internet Service Provider (ISP) licenses.

ACTO's members provide high quality Information Communications and Technology (ICT) services that are relied upon to an ever-increasing degree by their enterprise and multinational customers in India to improve production, manage supply chains and compete in global markets. Ensuring that these ICT services may continue to be provided on a cost-effective basis is vitally important to the continued growth of India's ICT-based economy.

ACTO's comments are limited to the proposal to establish a uniform license fee for the telecom sector set forth in Chapter 2 of the Consultation Paper, and which is the subject of Questions 42-44. ACTO is concerned that any resulting increase in the license fees for ILD and NLD licenses would harm the development and growth of services that play a critical role in the Indian economy. In particular, ACTO is greatly concerned by current media reports suggesting that a new uniform license fee might be set at 8.5 percent of Adjusted Gross Revenue (AGR), which would increase the present 6 percent license fee for ILD and NLD licensees *by almost fifty percent*.

In notable contrast to this proposed rate increase, the TRAI's 2005 recommendation supporting a 6 percent license fee for Unified License, Class License and Niche Operators stated that the Government might in the future consider *reductions* in the level of these license fees in the event of "increased revenues."[1] Accordingly, in view of the very significant increase in license fee revenues during the intervening period resulting from increased competition and service utilization – from Rs. 6,816 crore in 2004-05 to Rs. 9,510.8 crore in 2008-09[2] – in addition to the absence of evidence of increased administrative costs during this period, ACTO respectfully suggests that the TRAI should now consider reducing the present license fee for ILD and NLD licensees. Apart from USO contribution, which is meant for the development of telecom in rural sector, the objective of license fee should be to recover the administrative cost to run the operations by the Authority and Licensor. It is a very well documented fact that there is a huge amount of unutilised USO fund with the Government. Thus there is a strong case for reduction of license fee.

ACTO believes that there is no reason for the TRAI to impose a substantial fee increase. This proposed measure would raise costs for ILD and NLD licensees, impede growth and market entry in critical ICT services, and would be significantly out of step with best practice policies of countries that are reducing rather than increasing annual license fees. Such an approach also cannot be justified as necessary to prevent arbitrage in revenue reporting. This concern should be addressed by clarifying the relevant reporting regulations and requiring accurate reporting of parties with multiple license fee structures, rather than by imposing unreasonable fee increases on stand-alone ILD and NLD licensees that have no ability to engage in such arbitrage.

Instead, ACTO urges the TRAI not only to ensure that there is no license fee increase for ILD and NLD licensees, but indeed to reduce the current license fee percentage given the substantial increase in license fee revenues since 2005.

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[1] *TRAI Recommendation on a Unified Licensing Regime*, 13 January, 2005, Section 10.2.

[2] *See Telecom Sector Rings in Rs 45,000 Crore for Govt*, Times of India, 10 November 2009.

Further, we urge that the TRAI address arbitrage concerns though a more narrowly-tailored approach that does not adversely impact ILD and NLD licensees that have no ability to engage in the targeted misconduct.

These concerns are described in more detail below.

1. <u>The TRAI Should Reduce, Rather Than Increase, The Current License Fee</u>

Consistent with the other important measures taken by the DOT and the TRAI in recent years to open India's telecommunications market to competition and to encourage new market entry, the Ministry for Communications and Information and Information Technology reduced the annual license fees for ILD and NLD licenses from 15 percent to 6 percent of AGR effective on 1 January, 2006.[3] The Ministry stated that the purpose of this and other measures to liberalize NLD and ILD licenses announced at that time was to encourage competition and "growth of ILD and NLD service" and "to facilitate the growth of the IT and IT enabled services in the country."[4]

The Ministry's announcement followed the recommendation by the TRAI in January 2005 that the license fee for Unified License, Class License and Niche operators should be 6 percent of AGR.[5] This amount comprised a USO contribution of 5 percent and an Administrative cost of 1 percent that was "required for managing, licensing and regulating the telecom sector."[6] The TRAI emphasized that "the telecom services should not be treated as a source of revenue for the Government," and that "[i]mposing lower license fee[s] on the service providers would encourage higher growth, further tariff reduction and increased service provider revenues."[7] The TRAI also predicted that increased revenue growth through competition would produce "a win-win situation for the industry and the Government," and suggested that reductions in the license fee might be considered in the future as the result of the expected growth in license fee revenues.[8]

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[3] *See* Press Note, *ILD and NLD Licenses Simplified*, Ministry of Communications and Information Technology, Department of Telecom, 10 November, 2005.

[4] *Id*.

[5] *TRAI Recommendation on a Unified Licensing Regime*, Section 1.5.

[6] *Id.*

[7] *Id*., Section 10.1.

[8] *Id*., Sections 10.1-10.2.

In addition to noting potential reductions in the USO contribution, the TRAI stated that "with increased revenues the Administrative cost in terms of percentage of AGR may also come down from the recommended value of 1%."[9]

Through these and other measures, the Government sought to encourage increased competition in the telecom sector that would benefit Indian consumers and businesses by stimulating lower prices, new services and expanded consumer choice. The market entry that has since occurred and the resulting growth of ILD and NLD services demonstrate the soundness of these decisions. As predicted by the TRAI in 2005, telecom market growth has significantly increased license fee receipts, which have risen by almost 50 percent over the last five years, from Rs. 6,816 crore in 2004-05 to Rs. 9,510.8 crore in 2008-09.[10] ACTO accordingly urges the TRAI to continue the highly successful license fee policies adopted in 2005 of *reducing* the level of the annual license fees to encourage further telecom market entry and growth, and the faster achievement of national telecom objectives.

Indeed, the Ministry of Finance has also recognized the importance of reducing the level of the annual license fees in encouraging further telecom market entry and growth and achieving key national policy objectives, such as universal access, lower consumer prices and technological innovation. Imposing high licence fees may jeopardize operators' ability to achieve these objectives.

"A reduction in the absolute amount of these duties and levies shall allow telecom service providers to plough-back profits into enhancement of network and services. It is interesting to note that even with a reduction in the license fee chargeable from telecom service providers, the government can continue to collect the same revenue. This is so, because license fee is payable by telecom service provides as a fixed percentage of their revenue. With steadily rising revenues in the telecom industry, the absolute amount collected by the government will remain constant even if the percentage revenue share payable is reduced in a given proportion." [Source : Strategy Paper of MoF]

[9] *Id*., Section 10.2

[10] *See Telecom Sector Rings in Rs 45,000 Crore for Govt,* Times of India, 10 November 2009.

To reverse course on a successful policy and to increase the license fee, however, would increase costs and adversely impact the growth and development of new services. There is also no justification for such a step. Since the USO contribution will remain at 5 percent, any increase in the existing annual license fee for ILD and NLD licensees from 6 percent to 8.5 percent of AGR would represent an almost three-fold increase above the 1 percent of AGR currently collected to cover the administrative costs of managing, licensing and regulating the telecom sector. This percentage increase of collections compounds the already increased license fee receipts resulting from telecom market growth. However, no showing has been made of any increase in regulatory costs that would justify an increase in regulatory fees. Indeed, it is highly unlikely that the regulatory costs to oversee ILD or NLD licensees have increased in any significant manner since this is the most competitive and least regulated of all telecom sectors.

In the absence of any showing that increased regulatory costs require such a substantial license fee increase for ILD and NLD licensees, the increase would not be consistent with the meritorious approach described by the TRAI in 2005 – of not treating telecom services as a revenue source for the Government. Any such unsupported change in policy would fail to provide the regulatory predictability that is an important factor in telecom market investment decisions by both existing market participants and new market entrants alike.

International best practices also indicate that India should seek to reduce – rather than increase – its telecom license fees in order to attract more investment in the telecom sector. The ITU reports that there is a growing trend to reduce annual license fees to cover only the costs of the relevant administrative functions. European Union countries, for example, are subject to Authorization Directive 2002/20/EC requiring that license fees cover only those costs. In Pakistan, license fees have been reduced from 4 percent to 1.5 percent and then 0.5 percent. Singapore has required a license fee of 1 percent of annual gross revenue since 2000. In Hong Kong, the regulator, OFTA, has repeatedly reduced the annual fee for facilities-based licenses since market liberalization in 2001, to reflect that as competition in the sector has increased, OFTA's resources and costs to oversee that sector have decreased. And while India's USO levy comprises a significant portion of its annual license fee, China charges no USO levy at all. Thus, India's telecom license fees are already much higher than these other Asia Pacific countries and any increase in India's telecom license fees would create an even greater variance.We also attached a detailed table showing the trends in recurring authorization fee all across the globe and which has been sourced from ITU.

Trends in Recurring Authorization Fees

Recurring Authorization Fees in Selected Countries, 2007

Country	Annual non Spectrum Related Fees	Fee Type	Licence Types/Services
Algeria	10% of turnover	Revenue sharing	VoIP
Armenia	USD 1,887 USD 943 USD 189	Annual licensing fee Annual licensing fee Annual licensing fee	Provision of voice telephony services Provision of telegraphy services Provision of data (including Internet) services
Australia	Less than $1,000, plus a variable amount based on the carrier's revenue	Annual fee and revenue sharing	Carrier licence
Bahrain	1% of gross annual revenues attributable to licensed activities	Revenue sharing	Individual Mobile Telecommunications Services Licence; Individual Paging Services Licence; Individual VSAT Licence; Individual Public Mobile Radio Service Licence; International Telecommunications Facility Licence; International Telecommunications

			Services Licence; Individual National Fixed Services Licence; National Fixed Wireless Services Licence; Value Added Services Licence; ISP Licence; Internet Exchange Services Licence.
Belgium	EUR 24,300 EUR 12,150 EUR 24,300 EUR 12,150	Annual fee Annual fee Annual fee Annual fee	Electronic communications public network licence for an operator with significant market power (SMP) Electronic communications public network licence for an operator without SMP Public telephone services for an operator with SMP Public telephone services for an operator without SMP
Bulgaria	0.4% gross annual revenues (plus fees for numbering resources)	Revenue sharing	Public telecommunication network and provision of telecommunications services
Gabon	4% of turnover	Revenue sharing	Mobile telephone operator licence
India	6% - 10% of Annual Gross Revenues 6% of Annual Gross	Revenue sharing Revenue	Basic Services, Cellular Mobile Service Provider, Unified Access Service License (*sic*) VSAT, National

	Revenues	sharing	Long Distance, International Long Distance
Jordan	Up to 1%	Revenue sharing	Public Telecommunications (Individual Licences and General Authorizations)
Kenya	0.5% of turnover USD 2,857.10 USD 1,492.54 USD 1,428.60 NIL	Revenue sharing Annual Fee Annual Fee Annual Fee Not Applicable	Domestic Fixed Network, Mobile Operators, Data Carrier Network Operators, GMPCS Service Provider Local Loop Internet Exchange Points Internet Service Provider, Value Added Services GMPCS Satellite Operator
Kyrgyzstan	0.25% of turnover	Revenue sharing	Fixed Local Services, Fixed Domestic and International Long distance Services, Mobile Cellular Communications, Paging Services,

			Fixed Satellite Services, Mobile Satellite Services, Data Services, Radio Trunked Services, Radiosignalling (*sic*), Telematics (*sic*), Ethereal spreading of teleprogramm (*sic*), Ethereal spreading of radioprogramm (*sic*)
Latvia	0.2% of net turnover	Revenue sharing	All general authorizations for electronic communications service providers and network providers
Malawi	USD 100,000 USD 150,000 USD 1,000 USD 30,000	Annual fee Annual fee Annual fee Annual fee	Mobile licence Fixed licence VSAT licence International Gateway licence
Montenegro	1% of total income	Revenue sharing	Fixed local services, fixed domestic long distance services; fixed international long distances; mobile local services; mobile domestic long distance services, mobile international services, paging services, Internet services, VoIP services, public pay phone services, WiMAX
Pakistan	0.50% of Annual Gross Revenue, plus spectrum charges, where applicable	Revenue sharing	Data Class Value Added Service Licence, Voice Class Value Added Services Licence,

			Fixed Local Loop, International Long Distance, Infrastructure Licence, Cellular Mobile (CMT) Licence, Wireless Local Loop, Tower Licence
Samoa	Generally, 2% of gross revenue	Revenue sharing	Fixed, cellular, ISP, and carrier licences
St. Lucia	3% gross revenue	Revenue sharing	Fixed Public Network and Services; Public Mobile Network and Services; Internet Network and Services; Public Radio and Paging; Full ISP; and Value Added Service
Uganda	USD 1,000 USD 500 USD 2,000	Annual fee Annual fee Annual Fee	Commercial VSAT terminal Private VSAT International data gateway

Source: ITU 2007 Regulatory Survey.

Recurring Authorization Fees in Selected Countries, 2004-2005

Country	Annual non Spectrum Related Fees	Fee Type	Licence Types
Austria	0.1 – 0.2 % of gross turnover	Revenue sharing	All licences
Bahrain	1% of gross revenues	Revenue sharing	Mobile
Bhutan	Pre-determined fixed amount	Annual licensing fee	All licences
Chile	Variable fixed fees	Annual	All licences

		licensing fee	
Croatia	USD 6.6M	Annual licensing fee	3G Mobile
France	1% of 3G revenues	Revenue sharing	3G Mobile
Greece	.025 – 0.5% of gross turnover	Revenue sharing	All licences
Hong Kong, China	15% of gross revenues with escalating annual minimum payment	Revenue sharing	3G Mobile
India	6% - 10% of gross revenues	Revenue sharing	Fixed and mobile
Ireland	0.2% of gross turnover	Revenue sharing	Fixed and Mobile
Italy	EUR 38 million	Annual licensing fee	3G Mobile
Jordan	10% of gross revenues USD 100,000 5% gross revenues	Revenue sharing Annual licensing fee Revenue sharing	Mobile Mobile Fixed monopoly
Kenya	0.5% of gross turnover	Revenue sharing	All licences except paging
Luxembourg	0.2% of gross turnover	Revenue sharing	Mobile
Maldives	5% of gross turnover	Revenue sharing	Mobile, Fixed and ISP's
Oman	12% gross revenues	Revenue sharing	Mobile
Korea (Rep.)	Approximately 1-3.0% of gross revenues (annual adj.)	Revenue sharing	All licensed operators
Spain	0.2% of gross turnover	Revenue sharing	Fixed and Mobile
Tanzania	1.0% of annual turnover 1.5% of annual turnover	Revenue sharing	Fixed, long distance Mobile
Venezuela	5.3% of gross revenues	Revenue sharing	Mobile

Source: ITU Trends Report 2004, Chapter 4, "Licence Fee Practices: Historical Perspectives and New Trends".

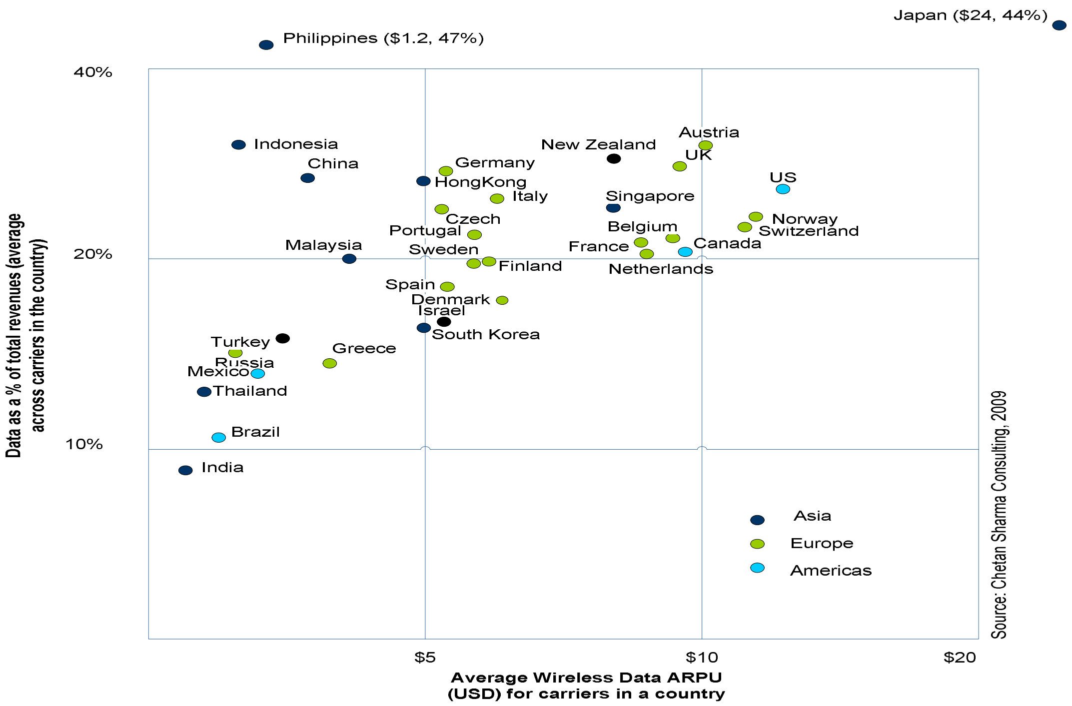
2. The TRAI Should Directly Address Arbitrage in Revenue Reporting

Concerns regarding arbitrage also provide no justification for increasing license fees for ILD and NLD licensees, which for all the ACTO members are non-integrated, stand-alone providers of enterprise data services. These licensees are already subject to uniform 6 percent license fees on all their services and consequently have no ability to engage in the "arbitrage in revenue reporting" that is asserted by the Consultation Document as supporting the adoption of a uniform license fee. Rather than seek to address such arbitrage by imposing a uniform license fee that would penalise ILD and NLD licensees that have no ability to engage in such misconduct by raising their annual license fees by almost fifty percent, the TRAI should directly address the arbitrage that is to be prevented.

Specifically, the TRAI should take immediate steps to clarify the regulations governing the treatment of different calls under the license regime and the relevant license fees applicable to these calls as well as to require adequate reporting to allow the TRAI to monitor compliance with these regulations. A more narrowly-tailored measure of this type would avoid harm to ILD and NLD licensees that have no ability to engage in the targeted misconduct, and to the enterprise and multinational customers in India that are served by those licensees. To address this concern through the proposed uniform license fee is unnecessary and overbroad.

3. A Minimal License Fee Also Should Be Retained to Encourage Increased Usage of Data Services

A minimal license fee for ILD and NLD licensees has also served to encourage the growth of the data services that play an important role in India's ICT-based economy. However, this policy support is still needed as demonstrated by the share of data service in India's total telecom revenue, which is around 11 percent (see graph below), compared to many countries of the world where this share is from 20 percent to 40 percent. Thus, to encourage the continued growth of these services in India, there is a continued need not only to keep the license fee rate to the minimum possible but also to reduce the license fee for these licensees to lower levels. It is undisputed that increases in the costs of services typically depress the volume of purchase of such services.



4. Governed by Contractual Agreements

The ACTO member companies who are catering to the enterprise segment are governed by the long term contracts that they have executed with their customers. The amount chargeable is already fixed and any increase in license fee will directly hit the bottom line of the NLD and ILD operators who operate on a very lean margin.

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In light of the foregoing concerns, ACTO responds to the questions raised by the Consultation Document with regard to the uniform license fee as follows.

42. What are the advantages and disadvantages of a uniform license fee?

Response: ACTO believes that any advantages of a uniform license fee are far outweighed by the resulting disadvantages of this approach. As described above, the major purported advantage of this approach, which is the prevention of arbitrage in revenue reporting, may be addressed through more narrowly-tailored measures to clarify and where necessary to improve the relevant reporting regulations rather than through a uniform license fee that would cause significant harm to licensees that have no ability to engage in such arbitrage. Any increase in the present 6 percent annual license fee for ILD and NLD licensees would impede growth and market entry in critical ICT services and would be significantly out of step with best practice policies of other Asia Pacific countries that are reducing rather than increasing annual license fees. There is also no showing of any increase in regulatory costs to support such an increase – to the contrary, the almost 50 percent increase in license fee receipts since 2004-05 requires that the Government should now consider reducing level of the annual license fee under the policy approach adopted by the TRAI in 2005 of not treating telecom services as a revenue source for the Government. An unsupported change in this meritorious and successful policy, which the TRAI adopted specifically to encourage telecom market growth, would not provide the regulatory predictability that is an important factor in telecom market investment decisions.

43. Whether there should be a uniform License Fee across all telecom licenses and service areas including services covered under registrations?

Response: For the reasons stated above in response to Question 42, ACTO believes that a uniform license fee across all telecom licenses and service areas is unnecessary to address arbitrage and that any resulting license fee increase for stand-alone ILD and NLD licensees would harm the continued growth of critical services. Therefore, ACTO does not support any uniform license fee that would result in such a fee increase.

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44. If introduced, what should be the rate of uniform License Fee?

Response: Any uniform license fee should in no event exceed the 6 percent level specified in the *Recommendation on a Unified Licensing Regime* issued by the TRAI in 2005, comprising a USO contribution of 5 percent and an administrative cost of 1 percent. However, consistent with this earlier recommendation by the TRAI, and the policy approach adopted therein of not treating telecom services as a revenue source for the Government, any uniform license fee that is now established should be set below this level, because of the significant market growth that has occurred since 2005 as reflected in the almost 50 percent increase in license fee receipts since then.

CONCLUSION

For the above-stated reasons, ACTO believes that the TRAI should not adopt any uniform annual license fee that results in any increase in the fees paid by stand-alone ILD and NLD providers. Instead, in furtherance of the approach adopted by the TRAI in 2005, the TRAI should reduce these fees in light of the substantial increase in revenue receipts since 2005 and the need to encourage the continued growth of the data communications services which are a key input for India's ICT economy.

ACTO would be pleased to provide any further information that would be helpful to the Authority.

Respectfully submitted

for Association of Competitive Telecom Operators

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November 12, 2009