



SPK/COAI/2020/293

October 30, 2020

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Subject: COAI Response to the TRAI Consultation Paper on “Enabling Unbundling of Different Layers Through Differential Licensing”

Dear Sir,

This is with reference to the TRAI Consultation Paper on “Enabling Unbundling of Different Layers Through Differential Licensing” released on August 20, 2020

In this regard, please find enclosed COAI response to the Consultation Paper.

We hope our submission would merit your kind consideration and support.

With regards,

Yours faithfully,

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Response to the TRAI Consultation Paper on Enabling Unbundling of Different Layers Through Differential Licensing released on August 20, 2020

At the outset, COAI welcomes the opportunity to comment on the TRAI Consultation Paper on Enabling Unbundling of Different Layers Through Differential Licensing.

- I. **Regulatory Predictability and certainty:** Regulatory predictability and certainty is the key to instilling confidence in the players in the sector who have made huge investments in building the telecom infrastructure. With technological developments, it is possible to provide telecom services through a myriad of technologies. For example, Internet service can be provided through fixed-line and cellular networks. Therefore, any policy should aim that all the players/operators who are providing telecom services enjoy a level playing field.

- II. **Investments made by the TSPs need to be protected:** In India telecom sector has empowered over 1 billion citizens and has one of the lowest voice call rates in the world today. However, the Industry that has invested over **INR 11.4 lakh crores** in setting up world-class mobile networks over the last 20 years has gone through one of the most disruptive phases in the last few years. The Indian telecom industry has witnessed unprecedented challenges in terms of forced consolidation; shut down of various telecom service providers; rising losses due to exorbitant spectrum cost, high regulatory levies/taxes, AGR dues payment etc. **We are of the view that Government policies should be directed towards safeguarding the investments made by the TSPs.** Government needs to provide incentives, reduce regulatory cost, provide appropriate Policy and Financial stimulus to the existing TSPs **under the current licensing framework**, to safeguard the business viability of the sector.

III. Unbundling of licensing Layers is not required:

We believe that there is **no requirement of unbundling various layers of the license** as the current licensing regime supports the layered approach w.r.t Infrastructure, Service and Applications

1. **Infrastructure:** The current licensing framework allows operators to optimally utilize their networks and spectrum by sharing active and passive infrastructure. Infrastructure Providers (IP1) are already allowed to own the Passive Infrastructure and the active Infrastructure on

behalf of TSPs. The telecom infrastructure laid by IP1 can be shared by multiple players, hence delinking the infrastructure layer. IP1 are providing these services under a Registration

2. Service:

- a. VNO has a separate authorization to provide the telecom services, on the network of the TSPs. As per the UL (VNO), VNO is not mandated to create any telecom infrastructure and can act as a pure reseller as being envisaged in the service layer.
- b. Though, VNOs can also set up their own network equipment and can create their own service delivery platforms in respect to customer service, billing and VAS.
- c. UL(VNO) not only helps in maintaining the level of competition, but also make way for innovative services in a niche, unserved areas; help local entrepreneurs with a small investment to provide telecom service, facilitate effective and efficient utilization of the infrastructure/resources created by TSPs.
- d. TRAI in the consultation paper highlighted that the mobile service VNO are not picking up as the TSPs are themselves providing services at the retail level. In this regard, we would like to submit that the Indian mobile market is a highly competitive market having one of the lowest tariffs in the world. The non-proliferation of MVNO (Access) can largely be attributable to the little/ no scope for incremental revenue generation in the hyper-competitive market.
- e. We are of the view that the TRAI should prescribe floor tariffs for a limited period to ensure business viability of the industry. This will also promote MVNO (Access), as this will help them to adequately price their services at levels which affords business viability.

3. Application: Various Applications services are currently being provided on the TSPs network, such as Cloud services, OTT etc, which do not require any license. The Authority has adopted a light-touch regulation for application services allowing for rampant growth of application providers.

IV. Issues with Unbundling of the Service and Network Licensing Layers:

1. We submit that a 'differential' licensing regime for network and Service layers will amount to moving away from the principles of unified licensing and convergence. Thus, the same needs to be examined carefully before taking any step in that direction.
2. We are of the view that the unbundling of licenses will only make the licensing regime more complex, as the conditions have to be reviewed and every time an existing licensee seeks to provide service, it will have to undergo a long and complex procedure of obtaining a new

license. We believe that the Policy should focus on simplifying the Licensing conditions on the lines of harmonized and equal policies for the competing technologies.

3. Unbundling of the Service and Network Licensing Layers, **may also create a situation wherein a huge amount is spent by the Network Provider in creating the infrastructure/network, however no service provider use the network of the Network operator** due to various reasons, including lack of business viability. In this scenario, the investment made by the Network Providers will get redundant.
4. Moreover, at present, it is commercially unviable for the existing TSPs to split their functions into different layers and act as network operator and service delivery operator separately. The existing TSPs have made huge investments in terms of Entry fee and License Fee.
5. We also, submit that the licensing regime should be uniform with the same services being subject to the same rules.
6. We believe that incentivized full sharing of the telecom network, without any incidence of double taxation, amongst licensed TSPs can serve the objectives of creating a seamless network layer by unlocking the true potential of the telecom infrastructure of existing licensed TSPs.

V. Suggested Policy measures

We believe that the objective of introducing different licensing layers is to promote building common telecom network/infrastructure and making more efficient utilization of telecom network/infrastructure. This objective can be achieved by providing appropriate Policy and Financial stimulus to the existing TSPs.

1. Reduce Levies on the sector

The License Fee (LF) and Spectrum Usage Charges (SUC) can be brought down to a nominal level in the existing licensing framework itself. There is no need for unbundling of license for the reduction of levies in the telecom sector.

2. Setting of the Floor Tariffs:

- a. Given the financial pressure on the sector and the fact that ARPU and Tariffs of the Indian Telecom sector are the lowest in the world, floor pricing is imperative to ensure that the sector is sustainable and is in a position to bear the deferred spectrum and AGR dues, while continuing to invest in world-class networks and services.

- b. Thus, TRAI should change the existing regulatory regime of complete forbearance in Tariffs and Regulate tariffs to protect the interest of telecom service providers.
 - c. Fixation of a floor price, is the way forward to guarantee minimum revenue for the TSPs to ensure the viability and orderly growth of the sector.
 - d. **Also, as highlighted above the Floor tariffs will help in facilitating the take up of the MVNO services in India.**
- 3. Allow Pass-through for any consideration paid by one TSP to another for active infrastructure sharing**
- a. All the TSPs are allowed to share the active infrastructure, however, the payment made by one TSP to another TSP is not allowed as a pass-through, to calculate the Adjusted Gross Revenue (AGR), for determination of the amount of License Fee (L.F) and Spectrum Usage Charges (SUC).
 - b. Thus, to facilitate the sharing of the active infrastructure elements, the Government should immediately allow the pass-through for any consideration paid by one TSP to another for active infrastructure sharing.
 - c. Further, irrespective of the issue of the active Infrastructure sharing, the regime of pass-through charges for admissibility of deductions from Gross Revenue for the levy of LF & SUC be reviewed and all kind of payments (either fixed or variable) made for any telecom input resource by one TSP (Licensee) to another TSP (Licensee) should be allowed as a deduction to the former.
 - d. **We believe that if pass-through is allowed for these payments made for the sharing of active infrastructure between the TSPs, the same will facilitate the active infrastructure sharing and no additional change in the licensing regime is required.**
- 4. Allow sharing of Core network elements:**
- a. Currently active Infrastructure sharing is allowed to TSPs for only antenna, feeder cable, Node B and transmission systems.
 - b. The policy on infrastructure sharing should be further liberalized to allow sharing of core infrastructure such as MSC, HLR, IN etc. among licensees having UL (Access Authorization).
 - c. Sharing of core network elements such as MSC, HLR, IN etc. among the TSPs will reduce cost for the TSPs and facilitate faster rollout.

5. **One Nation One license:** The present Unified Licensing is still circle based w.r.t Access Authorization. We should now move towards One Nation One License wherein an operator is allowed to have a single network on a Pan India basis to ensure efficient utilization of resources. This will require:
- Enhancing the scope of UL-Access to Pan India Authorization with no restriction to route inter-circle calls via NLD network
 - Uniform SUC charges so that a single GR/ AGR can be formulated and due LF/ SUC is paid on the same.
 - GR/ AGR definition is suitably modified to ensure clarity and onerous obligations.
 - One GR/ AGR statement for Pan India access services
6. We believe that a light touch regulation for application providers such as M2M, IoT, Cloud services, data centers, e-commerce, etc. may be continued and they can continue to take telecom resources from the licensed TSPs. However, in doing so, it may be ensured that any provision of telecom services and/or holding the wireless equipment, as defined in the Indian Telegraph Act, 1885, should be permitted only to the licensed TSPs.
7. Notwithstanding the above, we believe that OTT Communications players provide similar service as TSPs and hence there is a need to formulate a Legal, Licensing and Regulatory framework for ensuring that all OTT Communication service providers comply with requirements of National Security, Data Security, Privacy and Confidentiality of user information, support in disaster management and emergency call services and other issues of national and consumer interest. **While we acknowledge that TRAI has already given its Recommendations on this issue, however our concerns remain unaddressed. Hence, we again request TRAI to review this aspect and prescribe the Regulatory Framework for the OTT Players at the earliest.**

Considering the above our submission to the question-wise response is as follows:

Issue -Wise Response:

- Q1. Do you agree that in order to attract investment and strengthen the service delivery segment, Network services layer and Service delivery layer needs to be separated by introducing specific license for Network Layer alone? Please justify your answer.**

COAI Response:

- We are of the view that there is no additional benefit in case the Network services layer and Service delivery layer is separated by introducing specific license for the network layer.

2. As highlighted by us in the preamble under the current licensing regime there is no barrier to entry of new operators and there is enough segregation of network and service layer. We would like to submit that any additional licensing requirement may only create ambiguity with respect to service scope and responsibility of the entity, for fulfilling extant licensing conditions, within the new layers as envisaged. This will add to the regulatory burden of the existing players. Further, unbundling the licensing regime will only increase the amount of regulation and hence adversely impact the ease of doing business.
3. We also believe that the current licensing regime is also well poised to harness the power of emerging digital technologies, including 5G, Artificial Intelligence, Internet of Things, Cloud and Big Data while promoting investment and innovation. Thus, we are of the view that Government should provide incentives, reduce regulatory cost, provide appropriate Policy and Financial stimulus to the existing TSPs, allowing them to invest effectively towards these future technologies.
4. As highlighted in the preamble, ways of providing the benefits to the present TSPs could be:
 - a. By reducing LF and SUC in the exiting licencing framework
 - b. By allowing pass-thru of the amount paid by one TSP to another for sharing of active infrastructure sharing. This is to provide a boost to active infrastructure sharing.
 - c. By allowing the sharing of Core Network elements.
 - d. Move towards One Nation One License

Q2. Should the Network Services Layer licensee be permitted to take the Service Delivery Category licenses and provide the service? If yes, what kind of restrictions and safeguards are required to be built, in order to protect the competition and innovation in service delivery segment? Please justify your answer.

COAI Response:

As highlighted in the preamble, we do not support 'differential' licensing regime which leads to the unbundling of the different layers of licensing.

Without Prejudice to our submission above, we would like to highlight the following principles that need to be adopted in case TRAI decides to unbundle the network and service Layers of licensing:

1. No worse-off Principle must be adopted for the current licensees while deciding on the policy of migration.
2. The Scope of the existing licensees should not be reduced.

3. Existing licensees must have the option to continue under the existing licensing regime or migrate to a new license. It may be highlighted that while framing the earlier licensing regime as well option was provided to the TSPs for migration CMTS to UASL/UL.
4. Principles of level playing field should be adopted
5. Arrangements between the Network Provider and Service Provider should not be mandated and must be left to a mutual agreement and market forces.
6. Moreover, in case TRAI recommends the unbundling of the Network and Service Layers. The Network Service license must be permitted to take the Service Delivery Category Licence and provide the service.

We believe that the above principles will help to develop a licensing regime which enables the growth of services in the years to come.

Q3. Whether certain obligations should be imposed on the existing Unified Licensees, and other measures should be taken to encourage UL licensees to provide their network resources to VNO licensees particularly in mobile service segment? Please suggest the measures in detail.

COAI Response:

1. TRAI has highlighted in the paper that “while VNO regime is successful in other licenses/authorisations, only one Access service provider (PSU) has entered into an agreement with a few VNOs.
2. In this regard, we would again like to submit that the Indian mobile market is highly competitive with one of the lowest tariffs in the world, it is very difficult for the new TSP or VNO to provide services in the existing scenario. **Thus, TRAI needs to immediately set the floor price for the data services.**
3. Further, the commercial model between MVNO and TSPs (existing UL licensees) should be left to mutual agreement between the MVNO and TSPs

Q4. In case network layer and service delivery layer are separated by creating separate category of licenses, as proposed in Q1;

a) What should be the scope for Network layer license and Service Category licenses?

COAI Response:

As stated in our response to previous questions, there is no requirement to create a separate category of licenses by separating network and service delivery layer as the present licensing structure supports the layered approach

If it is still decided then, the scope for network and service layer can be:

1. The Network Services Providers (NSPs) layer should comprise of the physical infrastructure, active and passive elements and cloud-based instances of the network elements that are required to deploy a telecom network.
2. Service delivery Category should be associated with selling only the basic services i.e. Voice, Messaging and Data connectivity over the network of the Network Service provider. They would be permitted to sell these services to retail as well as the corporate (Bulk Usage) customers who requisition the services for their own end usage only.

b) Out of various responsibilities and obligations enumerated in Unified License, what should be the respective responsibilities and obligations of Network layer licensees and Service delivery category licensees? Please elaborate with justifications.

COAI Response:

Refer response to question (a)

c) What mechanism should be put in place to regulate the access to network services of Network layer licensees by the service delivery Category licensees. Whether certain obligations should be imposed on Network layer licensees to provide the network resources in a time-bound, transparent and non-discriminatory manner?

COAI Response:

1. Terms and conditions for the arrangements between the Network Provider and Service Provider **should not be mandated and must be left to mutual agreement and market forces.**

- d) What incentives (for example, lower license fee, lower SUC, etc.) could be provided to Network Layer licensees in the new unbundled licensing regime to encourage the investment in the Network layer? Please justify your answer.

COAI Response:

1. The Regulatory Levies (LF and SUC) can be brought down to a nominal level in the existing licencing framework itself. There is no need for unbundling of licence for the reduction of levies in the telecom sector.
 2. In case of the new licensing regime as well, nominal license fee and SUC should be prescribed for recovery of administrative charges and auction-related charges respectively.
- e) Whether the existing Unified Licensees should be mandated to migrate to the unbundled licensing regime, or the new regime should be introduced, while keeping the existing regime continued for existing licensees till the validity of their license, with an option of migration?

COAI Response:

1. Existing licensees must have the option to continue under the existing licensing regime or migrate to new license.
 2. It may be highlighted that while framing the earlier licensing regime as well option was provided to the TSPs for migration CMTS to UASL/UL.
 3. Option should also be provided to the TSPs even after the expiry of their license.
- f) Whether existing VNO licensees be mandated to migrate to service delivery category licenses as per unbundled licensing regime?

COAI Response:

1. As highlighted in the preamble, existing licensees (both UL & VNO) must have the option to continue under the existing licensing regime or migrate to new license.
- g) Whether service delivery category licensees be permitted to parent with multiple Network Service layer licensees? Please justify your answer.

COAI Response:

1. No, the Service delivery category should be permitted to parent to only one Network Service layer licensee.

2. TRAI in its earlier Recommendations on VNO as well had recommended that a VNO licensee cannot get attached to more than one TSP (MNO) in the same service area. We believe that this was a considered view and should be continued with in the case of service delivery category as well.

Q5. Any other issue related to the subject may be raised with suitable explanation and justification.

COAI Response:

1. We are of the view that the Government based on the recommendations of TRAI should consider reducing the regulatory financial burden and provide incentives to TSPs to catalyze investment and innovation in the sector, as highlighted the objective of this paper. We suggest the following measures for the same:
 - a. Rationalization of the Regulatory Levies:
 - i. Reduce the Spectrum Usage Charge (SUC) by 3% for all the TSP's.
 - ii. Reduce License Fee (LF) (USOF Contribution) from 8% to 3%.
 - b. Review the definition of AGR (Prospectively)
 - c. Allow Pass-through for any consideration paid by one TSP to another for active infrastructure sharing
 - d. Allow sharing of core network elements
 - e. Move towards One Nation One License
 - f. Prescribing the Floor Price for the data services
 - g. Prescribing the Regulatory Framework for the OTT communication players

Further, we request TRAI to kindly consider all our inputs mentioned in the preamble.

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