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Subject: ISPAI response to TRAI Consultation Paper no. 15/2014 on “Delinking of license for networks from delivery of service by way of Virtual network operators”

Dear Sir,

We congratulate the Authority to have come out with this consultation paper on the matter captioned above and sincere thanks for providing us the opportunity to submit our response on this important issue.

We have enclosed our comprehensive response for your consideration. We believe that the Authority would consider our response in positive perspective and incorporate the ISPs concerns on the subject matter.

Looking forward for your favorable consideration.

Thanking you,

With Best Regards,
For Internet Service Providers Association of India



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Encl: As above

Introduction

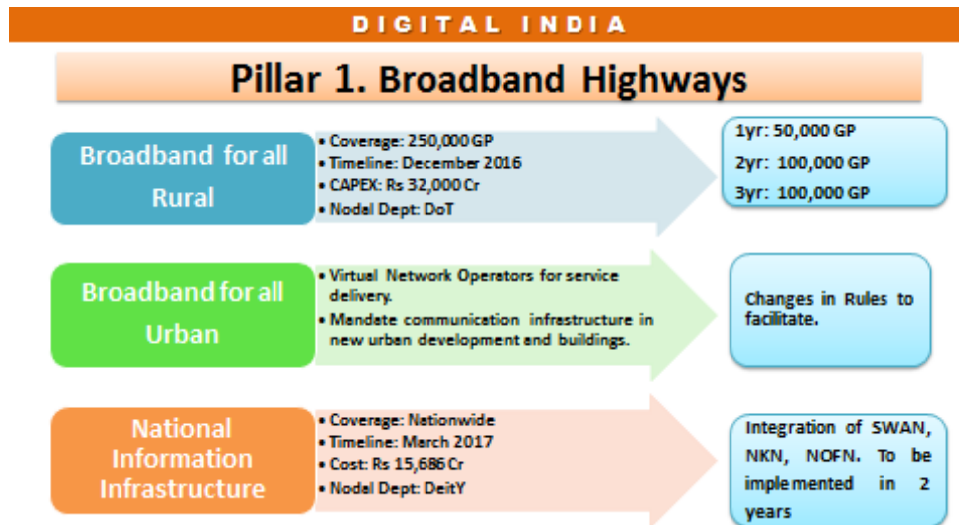
The Internet Service Providers Association of India (ISPAI) would like to thank the Hon'ble Authority for releasing the consultation paper titled "Delinking license for networks from delivery of services by way of Virtual Network Operators (VNOs)". ISPAI is pleased to provide its comments in support of the current consultation.

The National Telecom Policy, 2012 clearly envisions (as stated below) to facilitate delinking of licensing of Networks from the delivery of Services. The customers and operators both would derive significant benefits from enhance and innovative services and competition.

3.3. To ***move towards Unified Licence regime*** in order to exploit the attendant benefits of convergence, spectrum liberalisation and facilitate ***delinking of the licensing of Networks from the delivery of Services to the end users*** in order to enable operators to optimally and efficiently utilise their networks and spectrum by sharing active and passive infrastructure. This will enhance the quality of service, optimize investments and help address the issue of the digital divide. This new licensing regime will address the requirements of level playing field, rollout obligations, policy on merger & acquisition, non-discriminatory interconnection including interconnection at IP level etc. while ensuring adequate competition.

The Digital India Program also lays down virtual network operators as one of the ways for service delivery under the very first pillar on **building broadband highways**. The below slide from the Digital India presentation clearly identifies the same. Introduction of Virtual Network Operators for Service Delivery has been identified as the key step required. The action is in the form of changing rules to facilitate the same for overall broadband growth. Therefore the objectives of NTP 2012, Digital India Program and Prior Approval to this concept in 2009, clearly support the introduction of VNOs to facilitate competition and growth in the sector to achieve the objectives of the stated policies and roadmap of Government of India.

Therefore the telecom sector should be opened up for complete resale through VNOs.



The DoT in its reference dated 7th July, 2014 has sought recommendations of the Authority for delinking of licenses for networks from the delivery of services by way of VNOs etc. including associated issues of the definition of Adjusted Gross Revenue under the UL regime, terms of sharing of passive and active infrastructure etc. It is seen from Chapter 1 Para 1.20 of the CP that lot of emphasis has been laid on the transitioning of existing licensees to the new license framework despite of the fact that mandatory migration/transition to UL regime has not been rightfully stipulated by DoT from the existing service specific licenses to the new UL license as each license is a contract between the Licensor and the Licensee for a specific period.

The other issues which are raised are (a) the need to align the existing licensing framework to changed realities and (b) whether the existing framework will be able to meet the challenges posed by present and future technological developments and innovations in the ICT field. The entire stated aim of this consultation exercise is about leveraging the power of technologies-especially mobile and broadband technologies- for the benefit of Indian consumers.

ISSUES FOR CONSULTATION

Q1. (a) Is there any need to introduce more competition in service delivery by the way of introduction of VNOs in the sector? If not, why not?

(b) If yes, is it the right time to introduce VNOs?

ISPAI Response: It is the certainly the right time to introduce more competition in service delivery by way of introduction of VNO in the sector.

- The Digital India Program views this as an important area to open up for fuelling further broadband growth.
- The National Telecom Policy 2012 supports the same.
- The concept per se was approved by DoT in 2009.

Q2. Will VNOs pose a threat to NSOs or will they complement their operations? Justify your answer.

ISPAI Response: VNOs will complement the operations of NSOs in providing services.

Q3. How can effective utilization of existing infrastructure be improved? Can VNOs be a solution to achieve targets defined in NTP-2012 for rural density?

ISPAI Response: The introduction of VNOs would certainly lead to effective utilization of the existing infrastructure. The National Telecom Policy 2012 has appropriately emphasized one of the key importance of VNOs will be that they would allow NSOs to more efficiently utilize their existing infrastructure by providing an important source of revenue for capacity.

Q4. Does there exist a business case for introduction of VNOs in all segments of Voice, Data and Videos?

ISPAI Response: The regulatory framework should not identify or dwell on whether there is a supporting business case, before allowing VNOs to provide service. Instead, VNOs should be able to provide service, based on their business judgment that it may be profitable to do so in light of available market opportunities. A market based approach

instead of a regulatory oversight in such matters will be most appropriate to serve the requirements of all the stakeholders.

Q5. Whether VNOs be introduced in all or some of the services notified in the UL? Please name the services and the justification.

ISPAI Response: We are in favor of permitting VNOs to provide all services marked under the UL including internet services.

VNOs need to be introduced for internet services as well as for GMPCS services. In case of internet services the justification is that it would lead to entry of district based non-facility based internet service providers. In respect of GMPCS services only one operator is planning to provide facility based services GMPCS services perhaps with the Government financial support and there is a case to introduce VNOs in this space to improve the competitiveness in this service sector.

Q6. Is there sufficient infrastructure (active and passive including access spectrum) available with a TSP to meet its own requirements? Can TSPs spare available infrastructure for VNOs?

ISPAI Response:The regulatory framework should allow complete sharing of both active and passive infrastructure in all respects across all categories of licenses. The matter relating to availability of infrastructure for sharing is best addressed between the NSO and VNO as may be mutually agreed.

Q7. If any TSP is able to share its infrastructure with VNOs, what should be the broad terms and conditions for sharing the infrastructure?

ISPAI Response: Share of infrastructure with the VNOs should be on the terms and conditions to be mutually agreed between the TSP and the VNO.

Q8. Should VNOs be allowed to create their own infrastructure to reach out to niche markets? If yes, to what extent?

ISPAI Response: VNO should be allowed to lay infrastructure where ever it may require for further penetration of connectivity particularly in the last mile segment and to facilitate for providing local service with due compliance to the security concerns. If there is a requirement to share cost with the NSO, the same on mutually agreed commercial terms.

Q9. Should Local Cable Operators (LCOs) or Multi System Operators(MSOs) with cable networks be permitted to share infrastructure with VNOs to provide last mile connectivity?

ISPAI Response: The LCOs or MSOs with cable networks can be permitted to share/lease their last mile infrastructure with licensed ISPs and ISP VNOs can provide service using such last mile connectivity from the licensed ISP.

Q10. Does the adoption of the VNO model requires an entirely new licensing regime or will a chapter or a separate section for VNOs added to the existing UL suffice?

ISPAI Response: There should be a light touch regulation in the form of a registration process for VNOs. A separate section for VNO service needs to be added on in the existing UL regime.

Q11. Comment on what measures are required to ensure that the existing or new licensing regime takes care of future requirements of technological development and innovation and provides a clear roadmap for migration to existing service providers.

ISPAI Response: It is presumed that the future requirements of technological development and innovation in the question refers to the OTTs and M2M services. The licensing of OTTs and its interconnection with TSPs is a wide subject in itself and would require a detailed consultation on the placement of OTTs in the current licensing regime as well as their willingness to enter in to licensing obligations in the Indian geography.

The licensing regimes should be flexible technology neutral & service agnostic. It should be left to the choice of the operators for migration to new technology for providing innovative services.

Q12. In view of the complexity in the existing licensing regime as explained in Para 3.16 to 3.18, Should India move towards NSO and VNO based licensing?

ISPAI Response: No wholesale changes in the licensing regime needs to be made for introduction of VNO. Existing UL licensing regime can continue with additional provision in a separate chapter for licensing of VNOs based on light touch regulation.

Q13. If yes, whether existing licensees may be mandated to migrate to NSO & VNO based new licensing regime? What challenges will arise in the migration to the two types of licensing framework?

ISPAI Response: Licenses are contracts between the licensor and licensee for a specific period mentioned in the contract and any migration from one regime to another newer regime has to be at the discretion and agreement of the licensee. As on date the licensing regime is functioning satisfactorily for the reason that there has been no mandated or compulsory migration from one license contract in older license regime to another license contract in the newer licensing regime. We do not support the idea that India should move towards NSO and VNO based licensing as a completely new license regime superseding the earlier license regimes. The VNO for UL-ISP and UL-GMPCS can be permitted as separate chapter in the UL regime as well as in the service specific ISP and GMPCS licenses which are surviving as on date.

We do not support NSO & VNO based new licensing regime or mandating the existing licensees to migrate to NSO & VNO based new licensing regime

Q14. Should a VNO be issued a license at the National Level or for LSAs as in the case of UL or should it be based on the host NSO license areas?

ISPAI Response: The VNO license for a particular service should be issued and applicable as per the LSA for that service with flexibility to attach to any NSO. The license needs to be operator neutral.

Q15. What should be the duration of a VNO's license? Should it be linked with the license of the NSO or should it be for 20 years, as in the case of UL?

ISPAI Response: VNO should be issued license at national level or for LSAs for the internet services whereas for the GMPCS service VNO has to be at the national level. Similarly if VNO is sought to be introduced for other services it should be introduced based on the licensing mode viz. LSA based for access services and national level for all India services.

The duration of the license of the NSO should be 20 years as in the case of all other licenses and the obligation of providing services as a VNO by entering in to agreement with NSOs should squarely lie on the VNO.

Q16. Should there be any cap on the number of VNOs in a service area for a particular service? If yes, what should be the number? Please provide (a) service wise and (b) service area-wise numbers with justification.

ISPAI Response: At this juncture there is no need to put any cap on the number of VNOs in a service area.

Q17. Should there be restriction on number of VNOs parented to a NSO? Justify your answer.

ISPAI Response: There should not be any such restriction.

Q18. Alternatively, should one VNO be permitted to parent more than one NSO per LSA?

ISPAI Response: Yes, one VNO should be permitted to parent with more than one NSO. The regime should be as flexible far as possible. The VNOs and NSOs may have different requirements in terms of what to offer and ability to support in the form of infrastructure. The matter may best be addressed through market based mechanisms based on mutually agreed terms.

Q19. What should be the eligibility conditions for becoming a VNO?

ISPAI Response: The entity seeking a VNO registration should be a company registered under the Indian Companies Act, 1956.

Q20. Whether an existing Unified Licensee with authorisation to provide all services shall be eligible to become a VNO of another Licensee in the same or other LSA? Or, will it need separate/additional authorisation to work as a VNO for delivering services for which it does not have access spectrum?

ISPAI Response: Yes, existing UL or service specific licensees should be allowed to be VNO for the services for which they do not have such existing license.

Q21. Should there be any cross-holding restriction between a NSO and VNOs? If yes, please quantify the same with justification.

ISPAI Response: We do not support the licensing regime structure based on NSO and VNO. It is our proposal that a separate chapter in the existing UL license regime may be added to accommodate licensing of VNOs for all the services. If a licensee has a license

for a particular service based on UL regime or earlier service specific regime for a LSA he should not be allowed to take VNO license for that service. Further cross holding restrictions may be applied based on prevailing market conditions and the level of competition applicable provisions of competition law or M&A guidelines may best address the matter.

Q22. What should be the financial obligations of VNOs in the form of a) Equity & Networth b) Entry Fee c) PBG and d) FBG etc.? Please quantify the same with justification.

ISPAI Response: an entity registered under the Indian Companies Act, 1956. The Networth and Equity requirements are to be the same as required to register as Company under the Act. The entry fee should be kept minimal to cover the Administrative cost as.

PBG: Not required.

FBG: Will be applicable as required for LF in order to avoid any arbitrage opportunity but need to be ensured that there is no multistage levy. The AGR definition to such an extent should be modified.

Q23. Should a VNO utilise numbering resources, Network Codes and Locational Routing Number (LRN) of the NSO? Or, should the Licensor allocate separate numbering resource, Network Codes and Locational Routing Number (LRN) directly to a VNO?

ISPAI Response: Yes, VNOs should be allocated separate numbering and other codes.

Q24. What operational difficulties could arise in the above arrangements?

ISPAI Response: We do not envisage any operational difficulty in the above arrangement.

Q25. In case your reply is that the Licensor allocates numbering resource to the VNO, then how can it be ensured that the resources allocated to a VNO are efficiently utilised? Should any obligation be placed on VNOs for efficient utilisation of resources?

ISPAI Response: The existing mechanism applicable to allocate numbering resources can also be utilized.

Q26. Should the LF and SUC applicable to the VNO be as per stipulated conditions of authorisation in UL? Or, should it be treated differently for VNO? Please quantify your answer with justification.

ISPAI Response: License fees should be applicable as paid by NSO. LF should be paid by the VNO on the AGR which should be computed after deducting payment made by VNO to its parent operator for the services. The definition of AGR would need to be amended to avoid no multistage levy leading to double taxation.

As VNOs does not hold spectrum usage rights, they should not be charged any SUC.

Q27. Should an NSO be mandated to provide access to its network to a VNO in a time-bound manner or should it be left to their mutual agreement.

ISPAI Response: This should be left to be decided by mutual agreement between the VNO and the NSO.

Q28. How can MNP be facilitated in the VNO/NSO model? Can the VNO be treated separately for MNP purposes? Or, should MNP be facilitated only through the network of the NSO?

ISPAI Response: Such portability should be allowed.

Q29. Who is to be held responsible for CAF verification and number activation, the NSO, the VNO or both?

ISPAI Response: The party holding contractual agreement with the end consumer should be responsible for CAF verification. Number activation should be done by NSO.

Q30. Should an NSO or VNO or both be responsible for maintaining QoS standards as per TRAI's regulations?

ISPAI Response: For network performance related QoS parameters the responsibility should be on the NSO. For customer services related parameters the responsibility should be on the VNO.

Q31. How should Mergers & Acquisitions be dealt with in the VNO/NSO licensing model? Should the recently announced M&A guidelines issued by the Government for existing players be extended to cover VNOs? Or, should their M&A be treated separately?

ISPAI Response:No comments

Q32. Should the VNO be treated equivalent to the NSO/ existing TSPs meeting obligations arising from Tariff orders/regulations /directions etc. issued by TRAI from time to time?

ISPAI Response:Since the tariffs will be fixed by the VNOs for the services being provided by them there should be held responsible for compliance to tariff orders and directions in respect of consumer tariffs. In respect of network related issues the responsibility of meeting the obligation imposed by any regulation or direction should be on the NSO.

Q33. Please give your comments on any related matter not covered in this Consultation paper.

ISPAI Response:No Comments