

October 10, 2017

ISPL/ TRAI/02/2017

To,
Shri. S.T.Abbas, Advisor,
(Networks, Spectrum & Licensing),
Telecom Regulatory Authority of India,
New Delhi – 110003

**Subject : Our Counter Comment in a capacity of Infrastructure Provider to
TRAI Draft Recommendations dtd. 19/09/2017 on “ Ease of Doing
Telecom Business in India ”**

Dear Sir,

We congratulate the Authority to have come out with this Draft Of
Recommendations on the matter captioned above and sincere thanks for
providing us the opportunity to submit our response as **Counter Comments**
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 concerns of **IP-I Companies** on the subject matter and
provides relief to IP-I Companies as prayed hereinafter.

Looking forward for your consideration with Justice. Thanking you,

With Best Regards,

For **Infrasys Solutions Private Limited**

- Sd -

Sunil Somvanshi
MD

+91-8380008258
sunil@infrasyssolutions.com

Encl: 1. Counter Comments with prayers
2. DoT orders dtd 9/3/2009 & 28/11/2016 both in a single PDF File.

COUNTER COMMENTS ON DRAFT RECOMMENDATIONS “ Ease of Doing Telecom Business in India ”

ISSUE OF COUNTER COMMENTS:

ALL THE IMPORTANT ISSUES OF IP-I REGISTERED COMPANIES, WHICH ARE THE BACK BONE OF TELECOM BUSINESS IN INDIA, RAISED BY TAIPA (TOWER AND INFRASTRUCTURE PROVIDERS ASSOCIATION), BY PRESENTING COMMENTS ON THE CONSULTATION PAPER OVER THE SUBJECT OF THESE RECOMMENDATIONS & ALL THE PREVIOUS REPRESENTATIONS MADE OVER A PERIOD OF LAST MANY YEARS BEFORE TRAI & DoT REMAINED UNATTENDED TILL DATE, HAVE BEEN DODGED-IN-TOTO BY TRAI WITH A SIMPLE SENTENCE IN CHAPTER 1.4 OF THE DRAFT RECOMMENDATIONS, REPRODUCED HEREUNDER :

SOME ISSUES, RAISED BY STAKEHOLDERS, SUCH AS QUANTUM OF SPECTRUM USAGE CHARGES, LICENCE FEE ETC WHICH RELATE TO POLICY MATTERS ARE OUT OF THE PURVIEW OF THE SUBJECT, HENCE ARE NOT INCLUDED IN THESE RECOMMENDATIONS.

EXPLANATION:

WITHOUT THE EXISTANCE OF IP-I COMPANIES, THE RUNNIG OF TELECOM BUSINESS IS NEXT TO IMPOSSIBLE IN INDIA AT PRESENT. ALL THE ISSUES FACED BY IP-I COMPANIES IN INDIA HAVE BEEN NEATLY PRESENTED & RAISED BY TAIPA BEFORE THIS AUTHORITY IN THE FORM OF COMMENTS ON THE CONSULTATION PAPER AS WELL THE DRAFT RECOMMENDATIONS (BOTH ARE REPRODUCED AS ATTACHEMENTS WITH OUR COUNTER COMMENTS).

THE CLARIFICATION ISSUED BY DoT ON 28 NOVEMBER 2016, REFERRED IN PARA 3 OF THE SUPPORT SOUGHT BY TAIPA IN ITS COMMENTS ON CONSULTATION PAPER & ALSO REITERATED IN ITS COMMENTS ON DRAFT OF RECOMMENDATIONS HAVE PUT AN END TO EXISTANCE OF THE IP-I REGISTERED COMPANIES AFTER 27TH MAY 2017 WHO HAVE NOT AVAILED LICENSE BEFORE 27TH MAY 2017 TO MAINTAIN THE OWNERSHIP OF THE ACTIVE ELEMENTS SPECIFIED IN THE SAID CLARIFICATION OF 28 NOVEMBER 2016.

HARDSHIP ON INVESTING IN TELECOM SECTOR:

OUR COMPANY IS INVOLVED IN DEPLOYING SMART GPON-FTTH (GIGABIT-PASSIVE-OPTICAL NETWORKS) NETWORKS AT OUR INVESTMENT IN TOTO @ RESIDENTIAL PROJECTS OF BUILERS @ PUNE, WHICH WORK IN PASSIVE MANNER ONLY AFTER POWER SUPPLY OF THEM IS SWITCHED ON. THESE NETWORKS CAN BE USED FOR DEPLOYING CCTV SOLUTIONS, INTERCOM SYSTEMS, SECURITY SYSTEMS, SMART WATER/GAS/ ELECTRICITY METERING SYATEMS ETC. IN ADDITION TO THESE SOLUTIONS, GPON-FTTH NETWORKS CAN CARRY SERVICES OF MULTIPLE TELECOM SERVICE PROVIDERS. ALL THESE SOLUTIONS ALONG WITH SERVICES OF MULTIPLE TELECOM SERVICE PROVIDERS ARE BEING DELIVERED THROUGH A SINGLE NETWORK, THEREBY AVOIDING EXPENSES INCURRED FOR CREATION OF MULTIPLE NETWORKS i.e. EACH SEPARATE NETWORK FOR EACH SOLUTION & EACH SERVICE PROVIDER. TO SHARE THESE SMART PASSIVE NETWORKS WITH TELECOM SERVICE PROVIDERS, MY COMPANY AVAILED IP-I REGISTRATION.

THESE NETWORKS DO NOT CONSISTS OS ANY OF THE FIVE ACTIVE ELEMENTS AS REFERRED IN THE SAID CLARIFICATION. THE TRANSMISSION SYSTEMS ARE DEPLOYED & INSTALLED BY THE TELECOM SERVICE PROVIDERS ONLY. HENCE IT WAS NOT MANDATORY TO AVAIL THE LICENCE FOR OUR COMPANY AS OUR DEPLOYMENTS WORKS IN PASSIVE MANNER LIKE SIMPLE COPPER WIRES & HENCE ARE TERMED GIGABIT-PASSIVE-OPTICAL NETWORKS AND ARE PASSIVE NETWORK INFRASTRUCTURE ONLY EVEN AFTER THEY ARE SWITCHED ON.

THOUGH THE REALITY OF OUR NETWORKS IS AS ABOVE, THE DoT OFFICERS @ PUNE, AFTER MY REFUSAL TO PAY AS PER HEAVY DEMAND OF BRIBE, HAVE REGISTERED F.I.R. AGAINST ME & MY COMPANY FOR MAKING THEFT OF BROADBAND AND SELLING OF THE SAME TO TELECOM SERVICE PROVIDERS BY RUNNING THESE PASSIVE NETWORKS AND HAVE CHEATED GOVT OF INDIA BY NOT PAYING NATIONAL LONG DISTANCE LICENCE FEE OF Rs.2.5 Crores UNDER SECTIONS OF 420 & 379 OF I.P.C AND 4 & 20 OF THE INDIAN TELEGRAF ACT OF 1885.

NOW ME & MY COMPANY WILL HAVE TO FACE THE LEGAL SEQUENCES & SEEK FOR JUSTICE FROM JUDICIARY, IF ANY. ANYHOW MEANWHILE I PREVENTED MYSELF FROM COMMITTING SUICIDE ON ACCOUT OF DEFAMATION IN PUBLIC.

TRAP LAID BY DoT FOR INVESTORS :

THE DEPTT OF TELECOMMUNICATIONS OF INDIA LAID A TRAP TO FETCH IN DOMESTIC AS WELL AS FOREIN INVESTMENT BY PUBLISHING ITS CLARIFICATION No. 10-51/2008~CS-III DTD. 9TH MARCH 2009 BY ENHANCING THE SCOPE OF IP-I COMPANIES REGISTERED WITH THEM.

AS A RESULT OF WHICH FOR A PERIOD FROM 9TH MARCH 2009 TO 28TH NOVEMBER 2016 , IT IS ESTIMATED THAT INVESTMENT OF APPROX. Rs.4,00,000 CRORES FROM DOMESTIC AS WELL AS FOREIN INVESTORS WAS POURED IN AFTER THE CLARIFICATION No. 10-51/2008~CS-III DTD. 9TH MARCH 2009.

TO PUNISH ALL THE INVESTORS WHO INVESTED APPROX. Rs.4,00,000 CRORES AND HAVE TAKEN RELENTLESS EFFORTS (COSTS OF EFFORTS NOWAY LESS THAN THE AMOUNT OF INVESTMENT) TO DEVELOP THE INFRASTRUCTURE OF THE INDIAN TELECOM INDUSTRY, THE DEPTT OF TELECOMMUNICATIONS OF INDIA AGAIN PUBLISHED ITS CLARIFICATION No.10-40/2007-CS-III DATED 28TH NOVEMBER 2016 AGAINST ITS PREVIOUS CLARIFICATION No. 10-51/2008~CS-III DTD. 9TH MARCH 2009.

THE NATURE OF PUNISHMENT TO IP-I COMPANIES IS ELABORATELY DESCRIBED IN THE COMMENTS SUBMITTED BY TAIPA BEFORE THIS AUTHORITY IN THE FORM OF COMMENTS ON THE CONSULTATION PAPER AS WELL THE DRAFT RECOMMENDATIONS ON THE SUBJECT OF “ EASE OF DOING TELECOM BUSINESS IN INDIA ”

HENCE IT IS HUMBLY PRAYED THAT :

- 1. TO TAKE NECESSARY ACTION TO GET WORLDWIDE-DECLARED THAT THE INVESTMENT IN TELECOM BUSINESS IN INDIA CONSISTS OF EXTREME RISKS & COSTS AND THE MOST DANGEROUS FOR INVESTORS IN INVESTMENT OF THEIR MONEY, PLANT & MACHINERY ALONGWITH EFFORTS FOR THE SAME.**
- 2. TO TAKE NECESSARY ACTION TO LODGE THE F.I.R. AS WAS LODGED AGAINST ME, AGAINST ALL THE IP-I COMPANIES WHO ARE OWNING THE ACTIVE ELEMENTS & PASSIVE NETWORK INFRASTRUCTURES AFTER 27TH OF MAY 2017 WITHOUT AVAILING “THE LICENSES’, FOR CHEATING & MAKING THEFT BY AVOIDING TO PAY THE NLD-LICENSE FEES TO THE GOVT OF INDIA.**
- 3. TO INITIATE NECESSARY ACTION FOR PAYING BACK THE INVESTMENT ALONG WITH THE COMPENSATION, TO THE IP-I COMPANIES LIKE MINE WILLING NOT TO CONTINUE BUSINESS AS IP-I COMPANIES BEING THE SOFT TARGETS CAPTURED IN THE TRAP LAID BY THE DEPTT OF TELECOMMUNICATIONS OF GOVT OF INDIA. AND TO ALLOW THE IP-I COMPANIES AS IT IS TILL THEY ARE PAID THEIR COMPENSATION.**
- 4. ANY OTHER SUITABLE DIRECTIONS/ DECISIONS/ RECOMMENDATIONS MAY ME MADE BY TRAI IN THE LARGER INTEREST OF PUBLIC.**

For **Infrasyss Solutions Private Limited**

Sunil Somvanshi
MD

+91-8380008258
sunil@infrasyssolutions.com

No. 10-40/2007-CS-III
Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001.
(Carrier Services Cell)

Dated: 28.11.2016.

Subject: Clarification regarding scope of IP-I providers.

Kind attention is invited to various reports of TERM Field Units vide which it was intimated to CS Wing that IP-I registered companies are violating terms & conditions of IP-I registration by creation of active network infrastructure. In one of such cases, a Committee was formed to study various issues involved and recommend suitable action. On the basis of recommendation of the Committee, the following clarification in respect of DOT Letter No. 10-51/2008-CS-III dated 09.03.2009 regarding scope of IP-I Providers has been issued with the approval of Competent Authority vide DoT letter No. 10-40/2007-CS-III dated 28.11.2016 (copy of both letters are enclosed):-

"The IP-I providers are not permitted to own and share active infrastructure. The IP-I provider can only install the active elements (limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system only) on behalf of Telecom licensees i.e. these elements should be owned by the companies who have been issued license under section 4 of Telegraph Act, 1885.

Keeping in view, that some IP-I companies have invested into creation of active network infrastructure, which requires a license under Indian Telegraph Act, 1885, all IP-I providers are hereby provided an opportunity to take either a Unified License or a Virtual Network Operator(VNO) license of requisite authorization or a UL(VNO) Cat-B license for specific geographical area within six months of issue of this letter and move all such operations involving active network elements under the license. Alternatively, within a period of six months, the IP-I providers can transfer all such active network elements to a holder of valid license."

2. Accordingly, TERM Wing in DoT HQrs is requested to kindly bring this clarification to the notice of respective TERM Field Units for information to all IP-I registered companies, including those against whom violation of IP-I registration terms & conditions have been noticed.

Sanjeev Kumar Sharma
(Sanjeev Kumar Sharma)
Director (CS-III)

To
Sr. DDG(TERM), DoT HQ

10/28/11/2016

Div (T-III)

Circulate among TERM Cells

ANST(T-11)

Sum

28/11/2016

17/11/16

Government of India
Ministry of Communications & IT
Department of Telecommunications
Sanchar Bhawan, 20-Ashoka Road, New Delhi-110001.
(Carrier Services Cell)

No. 10-51/2008-Cs-III

Dated: 09-03-2009

To.

All IP-I Providers

Subject: Clarification regarding scope of IP-I providers.

It is to clarify that the scope of IP-I category providers, which is presently limited to passive infrastructure, has been enhanced to cover the active infrastructure if this active infrastructure is provided on behalf of the licensees, i.e., they can create active infrastructure limited to antenna, feeder cable, Node B, Radio Access Network(RAN) and transmission system only for/on behalf of UASL/CMSL licensees.

This issues with the approval of competent authority.


9-3-2009
(S.T. Abbas)
Director(CS-III)

No. 10-40/2007-CS-III
Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001.
(Carrier Services Cell)

Dated: 28.11.2016.

To

All Infrastructure Provider Cat-I (IP-I) Service Providers

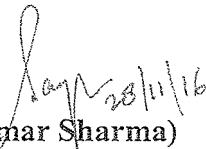
Subject: Clarification regarding scope of IP-I providers.

With reference to DOT Letter No. 10-51/2008-CS-III dated 09.03.2009, the undersigned is directed to convey the following clarification regarding scope of IP-I Providers:-

“The IP-I providers are not permitted to own and share active infrastructure. The IP-I provider can only install the active elements (limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system only) on behalf of Telecom licensees i.e. these elements should be owned by the companies who have been issued license under section 4 of Telegraph Act, 1885.

Keeping in view, that some IP-I companies have invested into creation of active network infrastructure, which requires a license under Indian Telegraph Act, 1885, all IP-I providers are hereby provided an opportunity to take either a Unified License or a Virtual Network Operator(VNO) license of requisite authorization or a UL(VNO) Cat-B license for specific geographical area within six months of issue of this letter and move all such operations involving active network elements under the license. Alternatively, within a period of six months, the IP-I providers can transfer all such active network elements to a holder of valid license.”

2. This issues with the approval of Competent Authority.


(Sanjeev Kumar Sharma)
Director (CS-III)

Copy to:

- (i) Sr. DDG(TERM), DoT HQ for circulation amongst the TERM Cell Units.
- (ii) Sr. DDG(AS) / WA / DDG(DS), DoT HQ – for information please
- (iii) All Licensed Telecom Service Providers
- (iv) ADG(IT), DoT HQ- for uploading the document on DoT's website.

April 21, 2017

Shri Sanjeev Banzal
Advisor – Network, Spectrum & Licensing
Telecom Regulatory Authority of India
New Delhi

Subject: TAIPA Submission on “Ease of Doing Telecom Business in India”

Respected sir,

Tower and Infrastructure Providers Association (TAIPA) is registered under the Societies Registration Act and has been formed as the industry's representative body by the telecom infrastructure providers (IP-Is) to expedite the success of the Telecom revolution and increase tele-density. TAIPA members include ATC Tower Co, Bharti Infratel, GTL Infrastructure, Indus Towers, and Tower Vision India.

This is with reference to TRAI letter dated 14th March 2017 seeking stakeholder' inputs on “Ease of Doing Telecom Business in India”. In this regard, we are pleased to attach herewith TAIPA submission for your kind consideration.

We believe our submission will merit your favourable consideration.

Thanks n regards,



Thanks & Regards
Tilak Raj Dua
Director General – TAIPA
98101 50000

TAIPA note for TRAI on Ease of Doing Telecom Business in India

Introduction:

Tower And Infrastructure Providers Association (TAIPA), is the industry representative body of the tower infrastructure providers of India and include all key players i.e., ATC India, Bharti Infratel, GTL Infrastructure, Indus Tower, Reliance Infratel and Tower Vision India. Our members are the registered IP-1s with DoT who undertake provisioning of passive infrastructure for the licensed telecom service providers thereby supporting telecom rollout across the length and breadth of the country.

IP-1s have been the catalyst ever since the Infrastructure Providers - Category 1 (IP-1) were created by DoT for providing passive telecom infrastructure services including towers to the Telecom Service Providers licensed u/s 4 of the Indian Telegraph Act, 1885. TAIPA and its members have been in the forefront of several innovations in the telecom sector especially in deploying and sharing towers in India's varied terrain and are responsible for introducing the concept of 'Infrastructure Sharing" which the world has emulated.

Background:

The present government has been very pro-active and some of the major reformatory initiatives have been undertaken especially for the telecommunication sector. The enabling and forward looking policies adopted by the Government of India duly supported by the industry Regulator have also led to a significant amount of foreign investment in the last few years and as a result ICT sector has become one of the preferred choice for Foreign and domestic investors.

The current Government's ambitious flagship programmes like – Jan Dhan Yojana for Financial Inclusion, Make in India, Start-Up India, Smart Cities and Digital India are leading the country towards revolution. The recent 'Re-monetization drive' converted numerous unaccounted cash transactions and brought them into digital and formal economy. There has been a paradigm shift in every sphere improving the lifestyle of people and the digital transformation is being witnessed across almost all the sectors and across the country. Needless to mention that a truly knowledge society will need broadband highways; and a world-class telecom infrastructure forms the bedrock for a ubiquitous communications services. The second wave of telecom growth is being witnessed owing to the phenomenal data growth and the tower infrastructure industry supports the same by providing suitable infrastructure for a fully connected nation.

While we appreciate the Government' proactive initiatives towards ensuring world-class telecom services for its citizens and enabling ease of doing business, there are a lot of regulatory and policy challenges/uncertainties including retrograde steps especially towards provisioning of the much-needed telecom infrastructure which is very essential for proliferation of the ICT/ broadband. Such retrospective actions on policy issues are highly undesirable, impedes the rollout of the essential and critical infrastructure such as telecommunications and must be avoided.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

The policy decisions like exclusion of IP-1s from Right of Way Rules, mandatory licensing of IP-1s for sharing of some the infrastructure elements and levy of irrational property taxes on mobile towers etc. are some of the retrograde, regressive steps and are disturbing the progressive Regulatory Framework & Policies which has served so well over the last two decades.

The telecom industry is already under a debt burden of over Rs. 4.4 Lakh crores and the recent surge in merger and acquisition activities amongst TSPs and IP-1s have further raised genuine concerns for its long-term survival. IP-1s, having made investments of over Rs. 250,000 crores are still not provided due policy/regulatory support and is hitting investor confidence. The administrative ministry i.e. DoT so far has not been able to assure the investor community about the continuity of Regulatory framework & Policies.

To create a robust telecommunication infrastructure, Infrastructure providers (IP-1s) are to be assured of a regulatory and policy certainties. It is therefore desirable that industry 'Open Houses' are best utilized by Government to get views on Policy matters prior to any Policy decisions and time bound responses are provided to industry concerns/ queries/ clarifications/ suggestions so as to enable speedy rollout and encourage investor sentiments and investments.

To create a robust telecommunication infrastructure, IP-1s needs to be assured of regulatory and policy certainties not only for speed rollout of critical telecom infrastructure but also for encouraging investor sentiments & investments.

Regulatory uncertainties brings investor reservations to the telecom infrastructure industry

Infrastructure providers are the backbone of the telecom sector as they provide Telecom Infrastructure sharing services to all the licensed Telecom Service Providers in a non-discriminatory manner. The sharing of infrastructure has not only saved enormous national resources viz., water, steel and cement etc., used for establishment of infrastructure but also reduced duplication of capital expenditure, on account of which long term investments have been made to telecom assets which have resulted in expansion and growth of business and increase in reach, affordability and connectivity to public across the country.

IP-1s have made significant investments in the sector and the tower industry has planned its business affairs and entered into long term contracts at fixed prices based on the existing legal and regulatory regime. Therefore, any changes in the Regulatory framework adversely affects the IP-1s more particularly if there is a sudden change in the 'goal posts/ rights & privileges' and having retrospective impact vis-à-vis those provided in the existing Policy directives and under their Registration Certificate.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

Changing the rules of the game midway, 'shifting the goal-post' and retrospective Policies especially after large sums have been invested in the sector create Regulatory uncertainties and is completely arbitrary and unfair and is not in line with Government of India's philosophy.

Telecom Infrastructure Industry seeks the following support from the Government to ensure Ease of Doing Business :

1. Indian Telegraph Right of Way Rules, 2016

IP Industry was created in early 2000 and the Registration Certificate of IP-1 permits owning, maintaining and leasing passive infra like dark fibres, Right of Way, duct space and towers etc., to the licensed Telecom Service Providers. Scope of IP-1s was reiterated and Guidelines were also framed by the Ministry of Telecommunication from time to time to facilitate telecom infrastructure by IP-1s. States were also directed to frame their Policies in line with the Guidelines.

The RoW Rules released on 16th November 2016, however, have been issued only for the Telecom Service providers and the IP-1s, who in fact have been created to establish telecom Infrastructure and own nearly 90% of the telecom infrastructure in the country have NOT even been mentioned in the RoW Rules. This discrimination and non-reference of IP-1s, the 'Creators of Telecom Infrastructure' has caused confusion in implementation at ground level in States & Municipalities who otherwise are dealt by IP-1s and is impacting the rollout of telecom infrastructure. Further, this retrograde step will also force TSPs to invest individually on their respective infrastructure and increase the cost of services.

It may be worth noting that TRAI has already advised DoT to revisit the RoW Rules and include the IP-1s so as to enable them avail ROW facility/provisions.

It is therefore requested that RoW Rules are revisited and IP-1s are also included and referred to along with Telecom Service Providers so as clear the confusion on the ground for speedy rollout of telecom infrastructure.

2. Issues regarding Government Lands & Buildings availability

DoT has taken some key steps in past few months for bringing out reforms in making available Government Land and Buildings for Tower installation and in yet another Policy flip flop, have instructed various Ministries and Government Bodies to allocate Government sites only to the Telecom Service Providers and reference to allot these sites to the IP-1s has been missing in the said directives. These Guidelines/Instructions have once again caused confusion at the ground and disallow IP-1s to create telecom infrastructure on Government land & Buildings. Needless to say that this again is in contradiction to the rights/established position of Government of India for Infrastructure Providers through their IP-1 Registration Certificate. The IP-1 industry is still finding it extremely difficult at the implementation level to get such premises at:

- (a) At ground level, IP-1s are not allowed for provisioning of telecom infrastructure on Government Lands & Buildings;

TAIPA note for TRAI on Ease of Doing Telecom Business in India

- (b) The Department of Posts guidelines for tower installations is at odds vis-a-viz Central Government notification and has various clauses which are un-implementable in its present form; and
- (c) There are severe challenges and issues with regard to the tower installation / Right of Way (RoW) permissions in the Cantonment areas under civic control of Cantonment Boards as the same are not aligned with guidelines/ policy issued by the Central Government.

It is therefore requested that Government Lands & Buildings are allotted to IP-1s so that they can create and share Telecom Infrastructure with all Service Providers in a non-discriminatory

Such guidelines are in contradiction to the rights/ established position of the Central Government provided to Infrastructure Providers through their IP-1 Registration Certificate(s) for provisioning of necessary telecom infrastructure in the Government buildings, DoP premises and Defence/ Cantonment areas and is a show stopper for the telecom infrastructure industry.

manner.

3. Regulatory Uncertainty/ Retrograde Steps & Reclassification of Common Telecom Infrastructure:

IP-1s have been creating and sharing Telecom Infrastructure with Telecom Service Providers in a non-discriminatory manner ever since their inception. Scope of services of IP-1s was further enhanced by DoT vide its letter dated 9th March 2009 which propagated sharing of infrastructure. In a complete U-turn and yet another Policy flip flop letter dated 28th November 2016, DoT disallowed IP-1s to own and share some elements of infrastructure like antenna, feeder cable, Node B & RAN and further advised IP-1s to take either UL/UL(VNO) License or transfer their such assets to Licensees within six months. All these elements viz., antenna, feeder/coaxial cable, Node B, RAN & Transmission Systems, combiners, splitters and directional couplers etc. however are 'Passive' and remain 'passive' till the time these are powered up by Telecom Service Providers for meeting their requirements of providing telecom services. It is pertinent to note that this 'Passive' description of such infrastructure elements is also in alignment with the recent TRAI Recommendations on In-Building Solutions.

Further, the UL/UL(VNO) Licenses as suggested by DoT are not suited for IP-1s as these licenses are for services to the end-consumers and the IP-1s DO NOT service to end-consumers but create and share telecom Infrastructure only with Telecom Service Providers.

In fact, considering the emerging market requirements and consumer needs from 'Voice' to 'Voice & Data' and the ambitious Smart City Programs of Government of India, it is desirable to redefine the Telecom Infrastructure from age old definitions of 'Active' and 'Passive' to 'Common Telecom Infrastructure'.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

The terms of reference of Registration Certificate of IP-1s, may also be revisited/ re-defined, if so required to enable the Infrastructure Providers own, install and share such multi-functional 'Common Telecom Infrastructure' as per the emerging market requirements for multi-service providers such as surveillance, street lights, WiFi Hot Spots, Small Cells and advertisements etc.

Also the focus of Government should be to enable faster provision of cost effective 'Common Telecom Infrastructure' for the benefit of public at large and NOT revenue generation from Licenses/additional Authorization/License Fees etc., which has cascading effects and eventually leads to additional cost to public at large.

Regulatory/ Policy certainties adds to the confidence of investor community and there is an urgent need to re-classify/ redefine 'Common Telecom/ Digital Infrastructure' to include Antenna, Feeder/Coaxial Cable, Node B, RAN & Transmission System, combiners, splitters, directional couplers and passive antennas etc. which must be allowed to be owned and maintained by IP-1s and shared amongst the Licensed Telecom Operators only under its existing Registration Certificate(s).

4. Exclusion of Telecom Towers from availing Input tax credit under GST Bill dated 28 March 2017

The GST Bill 2017 released on 28 March 2017 has made specific changes in the credit provision in the context of Telecommunication Towers. The GST Bill 2017 states that Input tax credit (CENVAT credit) (under the heading plant and Machinery) will not be available to tower infrastructure providers, which will have huge impact on the cost of services. Infrastructure Providers will need to include the component of this additional tax implication in its overall costs structure thereby raising the cost of services to TSPs and in-turn would result in significant tax cascading impact, which will naturally be passed on to the end consumers.

This is a complete U-turn by the Government which in its earlier Draft Bill (Nov. 2016) categorically included Telecom Towers within the ambit of Input Tax Credit and is a surprise to the industry as a whole without assigning any reasons for exclusion.

As per the GST Draft Bill of November 2016, Input tax credit remained unchanged as per the existing Service Tax laws realizing the criticality of mobile tower infrastructure. However, the Final GST Bill dated 28 March 2017 passed by the Parliament, Government completely went back from its earlier stated position and specifically excluded Telecommunication Towers alongwith Land, Buildings & Other Civil structures and Pipelines outside factory premises from extending the benefits as available currently under the CENVAT Rules. It be also appreciated that under the existing Service Tax laws, there is no provision which de-bars or specifically excludes the CENVAT credit on such towers.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

The modified definition as per Explanation to Section 17(6) of the Central Goods and Services Tax Bill, 2017 (“CGST Bill”) is provided as under:

- ‘Plant and Machinery’ means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation or structural support but excludes-*
- (i) land, building, or any other civil structures;*
 - (ii) **telecommunication towers**; and*
 - (iii) pipelines laid outside the factory premises*

The Telecommunication Towers are classified as ‘Plant and Machinery’ for the purpose of books of accounts which are maintained in terms of the provisions laid down under the **Companies Act (both under Companies Act, 1956 as well as Companies Act, 2013)**, such towers have also been consistently and uniformly classified and categorized as ‘Plant and Machinery’ only and the depreciation as required under the Accounting standards/ provisions of Companies Act has been charged as applicable to such classification.

Even, as per the current Income Tax laws, mobile towers have been classified and grouped under the block of Asset categorized as ‘Plant and Machinery’. The depreciation has been claimed at the rate applicable to ‘Plant of Machinery’ for the purposes of Income Tax computation and such allowances has been over the years settled.

The telecommunication towers are the backbone of telecommunication Industry and any denial of this credit would substantially increase the cost of providing this service to the common man. Digital India, Smart Cities, providing E-Governance services to the common man, etc and other flagship programs of the Government depends entirely on the availability of critical telecom infrastructure and any tax/ levy on such nation-building installations will ultimately increase the cost structure of the services to the end-consumer.

During the last two decades of unprecedented growth and development of the telecom sector, the semi-urban and rural areas have remained under penetrated either due to inadequate infrastructure or unviable business model. Hence, in the immediate future, the thrust of telecom services would be these semi-urban areas and rural areas where the current tele-density is mere 50% and much focus is needed to connect the unconnected. It is therefore considered critical that the future telecom towers to be rolled out in the semi-urban / rural areas would have to bear the enhanced costs due to the denial of critical CENVAT credit and the ultimate burden of this would be borne or loaded onto the end-consumers.

The primary objective of the Government while introducing GST is to ensure that there is no cascading of taxes and availability of seamless credit at all level of supply chain, the industry expects that under the GST regime inputs credit should be available for all the procurements including Telecom Towers.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

5. Off-set License Fee paid on Input Services to avoid Double Taxation

The Department of Telecommunications vide its recent guidelines dated November 2016 has mandated licensing in case IP-1s wish to own, install and share 'Active Infrastructure' i.e. antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system, etc.

Infrastructure Providers IP-1s are into the business of setting up passive infrastructure such as coaxial cable, combiners, splitters, directional couplers and passive antennas etc and it remains passive infrastructure unless lit or powered. These are powered by TSPs for meeting their requirements to make them active infrastructure for providing telecom services to the end-consumers. This is also in alignment with the recent TRAI recommendations regarding 'In-building Solutions' wherein it has recommended that IP-1s should be allowed to provision IB infrastructure which includes coaxial cable, combiners, splitters, directional couplers and passive antennas etc, for sharing amongst licensed TSPs on a non-discriminatory basis.

We as IP1s have represented to DoT as well as TRAI and are confident that DoT would agree to our submissions and follow TRAI recommendation in this regard.

However, notwithstanding the above, in a hypothetical situation, if IP-1s have to carry out some of these activities thru a subsidiary under an applicable License (Input Service Provider UL-VNO or ISP), Government MUST NOT charge License Fee twice on the same revenue i.e. firstly on the Input Service Provider and thereafter again on recipient of such Input Service (TSPs) on their output i.e. end service to consumers.

Currently, there is a major flaw in the License Fee provisions as deduction of expenses incurred on Input Services where License fees have been paid by Input Service Provider, are restricted to only a few items. For instance, while telecom has moved from just Voice to Data, expense on provision of Bandwidth (where such provider has to pay License Fee) is not allowed as a deduction while calculating AGR.

In order to streamline this anomaly and to avoid (a) double taxation and (b) possible arbitrage opportunities due to differential License Fee percentages, License Fee paid to DoT must henceforth be treated on same lines as service tax or GST. Accordingly, License Fee paid on Input Services which are used to provide Output Services (e.g. telecom services to consumers by TSPs), must be allowed to be set off against License Fee payable by such Output Service Provider.

This would be a major reform and would significantly enhance "ease of doing business" for operators as well as Input Service Providers.

This would also go a long way in encouraging 'Mobile Virtual Operators' (MVOs) as they would not be subjected to double License Fee – first by Mobile Network provider and thereafter by MVOs.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

6. Variance on Import duty of Lithium-ion Batteries for Electric Vehicle viz-a-vis Telecom Tower application

The 'Fuel cost' forms a major portion of the Operational Expenses i.e. around 30-35% of telecom tower operational expenditure involves the fuel cost. Due to the erratic power situation where more than 40% of the telecom tower sites face load-shedding for more than 12 hours per day. 60% of the power requirement for the tower is mostly fulfilled by diesel than Grid which is around 80-120% more than electricity.

In order to control the consumption of diesel and reduce carbon footprint, the industry has taken some key initiatives including use of efficient energy storage solutions. High efficiency batteries such as Lithium-ion and advanced VRLA batteries are used at large number of Telecom Tower Sites. The Lithium-ion batteries make a preferred source of back-up power as these have fast-charging advantage and longer life-cycle compared to traditional batteries. **However, the import duty on the said Lithium-ion batteries when used for telecom operations is significantly higher as compare to quite low for its usage in Electric Vehicles and thereby leading to significantly higher cost for Telecom operations.**

For example, hypothetically if the CIF value is assumed as Rs. 100/-, the landed cost (import duty) per Li-ion module for Electric Vehicle application comes to Rs 106.24 whereas for telecom applications this comes to Rs. 129.73. A detailed comparative analysis on import duty for Li-ion batteries for Electric Vehicle application viz-a-vis Telecom application is attached for your ready reference along with the custom explanatory notification (Ref.: Page no. 12, Point no. 85.8).

This differentiation in Import Duties of Lithium-ion batteries due to its usage is completely untenable considering that telecom is a critical, essential services and industry is forced to use battery backup due to non-availability/erratic grid electricity supply. The usage of such energy storage solutions not only reduces diesel consumption but also contributes towards reduction

Therefore, suitable deductions to TSPs on its License Fee payments must be available to the License Fee paid by the IP-1s on its revenues from TSPs to avoid double taxation on the same revenue stream or vice-a-versa as it is an input service to the TSPs and both sets of revenues cannot be levied license fee together.

It is therefore proposed that as a principle, any License Fee payable to DoT must be treated on the same principles as GST vis-à-vis set off of levy on Input Services to be made against levy on Output Services. In other words, the License Fee paid by any entity to DoT on the provision of services to another entity, included but not limited to TSP (Input Services) must be allowed as a set off to the said recipient of services against the License Fee payable/paid by it to DoT.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

of carbon footprint. Rationalization and reduction in import duty of Lithium-ion batteries will therefore boost its usage and contribute significantly towards a greener nation.

We request for a uniform import duty structure for Lithium-ion batteries irrespective of its usage as any incremental value adds on to the cost structure of the Infrastructure Providers thereby resulting in increased costs of services by the Telecom Service Providers and finally being charged on to the end-consumers.

We recommend to keep the import duty structure of Lithium-ion batteries at par irrespective of its usage and lower rate of duties should be applicable to Lithium-ion batteries for all the procurements including for Telecom services.

7. Levy of Property Tax on Mobile Towers

The issue related to levy of arbitrary and exorbitant property tax on telecom towers at different rates/amounts by different local authorities including Municipal Corporations, Municipalities and State Governments coupled with coercive actions such as sealing of towers, disconnection of power supply, nuisance at sites, use of force and damage to telecom sites etc. has again come to light in recent times.

Some of the Municipalities and States consider Telecom Towers only as a source of revenue instead of critical infrastructure essential for the common public. They calculate property taxes based upon the rentals, not linked to the standard and well established guidance/rateable value for the area and as a result property taxes are being levied as high as equal to the rentals being paid to the landowners in some cases.

The dispute qua property tax on mobile towers was pending adjudication before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India vide its Judgement dated 16.12.2016 directed the concerned parties to approach the appropriate Forums on issues of quantification of property tax and its retrospective/prospective effects.

The industry approached the Hon'ble High Court of Bombay, as directed by Hon'ble Supreme Court for clarification on quantum and periodicity of the said property tax and the matter is seized for further action/ direction by the Hon'ble High Courts.

Irrespective of highlighting the status of these matters to the Municipal Corporation/ Local Bodies within the State of Maharashtra, several demand notices/ attachment warrants have been issued and adhoc coercive like sealing of offices premise of mobile towers Companies, etc have been initiated on the alleged ground of outstanding tax payments resulting in huge impact on telecommunication service and inconvenience to public at large.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

We would also like to draw your kind attention to the issue related to levy of arbitrary, adhoc and exorbitant property tax on telecom towers by the at different rates/amounts by different local authorities including Municipal Corporations, Municipalities and State Governments coupled with coercive actions such as sealing of towers, disconnection of power supply, nuisance at sites, use of force, and damage to telecom sites etc.

Moreover, we would like to highlight that the Hon’ble Supreme Court, in its aforesaid judgment, has made an observation in paragraph 31 thereof that “.. in everyday life, a mobile tower is certainly not a building”.

So far more 250 tower sites including MSC/BSC catering to well over 03 million subscribers have been sealed, removed or demolished by various municipal corporations in Maharashtra resulting in huge impact on telecommunication services on consumers. Needless to mention such coercive action is disrupting smooth telecom operations in respective area whereas other Municipal Corporations are also threatening similar punitive action. Divergent policies/bye-laws of difference Municipal Corporations/ Local Authorities, etc within a State is hampering fresh telecom/tower roll out and coercive actions like mass scale sealing & demolition of telegraph & posts including towers is resulting in significant call drops.

In this regard, we would like to submit that :

- (a) Mobile Towers fall under the definition of “telegraph” under the provisions of Indian Telegraph Act which is absolutely different and distinct from the concept and meaning of the expression “Building” as used in the various State Acts.**
- (b) The Entry 31 covers the entire field in relation to “Telegraphs” including erection/ installation, maintenance and operation thereof and read with Entry 96 of the same List it covers all and any fee payable in respect thereof.
- (c) Present constitutional and legal framework for Telecommunications is as follows:

Schedule 7 of the Constitution of India consists of three lists as follows:

- List I – Union List
- List II – State List
- List III – Concurrent List

Telecommunication falls under the Union List. Entry 31 & 96 of this list cover all the matters related to telecom and associated fees. As per Part XI described below the Parliament has exclusive powers to make laws with respect to any of the matters covered under Union list, which includes telecom. The State legislative has exclusive powers to make rights related to land, which falls under the State list (list II).

Part XI of the Constitution of India covers the Relations between the Union and the States. Chapter I of Part XI of the Constitution of India relates to Distribution of Legislative Powers

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between the Centre and the States. Article 246 of chapter I covers subject matter of laws made by Parliament and by the Legislatures of States and is reproduced below:

“246. (1) Notwithstanding anything in clause (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

Entries 31 and 96 of the List I of the 7th Schedule cover telecommunications and related fees. These are reproduced below:

“31 – Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

“96 – Fees in respect of any of the matters in this List, but not including fees taken in any court.”

The laws governing the telecommunications in India are governed by the Indian Telegraph Act, 1885 amended from time to time. Section 7 of the Indian Telegraph Act, 1885 empowers the Central Government to make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

Moreover, in so far as private properties are concerned; all transactions in terms of the provisions of the Indian Telegraph Act, 1885 would lie directly between the telegraph authority and the property owner without the intervention or mediation of any local authority.

Further,

- a) Apart from arbitrary and unreasonable property tax being demanded by different authorities in the same State at different rates there is no uniformity in charging and levying such taxes. For example, the rate of property tax varies from 40% to 112% in the State of Maharashtra amongst various municipal corporations/municipalities etc.
- b) When our member company erects Roof Top Tower (RTT) on building being a temporary structure, Municipal Corporations treats them as another building i.e. building on building and sends tax demand notices to our member companies. This is totally unfair to our member companies when land and building is already being assessed for tax and all kind of taxes are already collected from the owner of the said building or land.

Telecom Towers and Telegraph being a Central subject, the State and Local Authorities including Corporations have no competence to levy and collect tax in respect of Telecom Towers. States therefore must be directed not to initiate any adhoc coercive actions on telecom tower sites, align their policies in-line with the Central Rules/Guidelines and NOT have their own Rules away from the central ones.

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8. Infrastructure Status benefits

Government of India, has already recognized the significance of telecom towers & the aspect of it being a highly capital intensive business. The Cabinet Committee of Infrastructure (CCI) granted “Infrastructure” status to Telecom Towers vide its gazette notifications dated 27th March 2012 & 1st April 2013. With this the benefits like Accelerated depreciation, Higher ECB limit, Eligible for viability gap funding (VGF), Lower import duties and excise exemption, Softer lending rates, Tax holidays etc. were to be extended.

It may however, please be noted that the basic support like priority electricity connections and preferential tariffs etc. are still not being granted to these critical & life-line installations. Erratic power supplies/ non-availability of electricity also hinders the smooth operations of telecom services and forces telecom infrastructure organizations to spend on DG sets, power storage equipment like batteries, etc. thereby increasing the cost of services.

Most of the infrastructure projects like roads, ports, airports etc. have been provided with the above supports besides equity funding from the Government of India.

The Tower industry has already written to the Department of Economic Affairs, Planning Commission and other concerned Department(s)/ Ministries seeking similar benefits. However, despite granting the infrastructure status to the sector, the benefits are yet to be extended to the sector.

Industry has represented its key concerns as mentioned above to the Central Government on multiple occasions, however, are yet to get any support/ benefits on the same. Further, electricity connections should be provided on priority and at preferential/ reasonable tariffs to telecom tower sites as telecom towers are critical and life-line installations.

9. Uniform Tower Installation Policy in States (aligned to DoT RoW Rules)

DoT has framed “Right of Way Rules” on 16th November 2016 laying uniform Guidelines for State & UT Governments for laying of Underground and Overground Telecom Infrastructure. The RoW Rules 2016 and DoT guidelines of 2013 cover the following among other issues:

- (i) single window clearance;
- (ii) processing of application within defined timelines with provision for deemed approvals;
- (iii) nominal one time administrative/processing fee;
- (iv) no adverse actions without hearing the applicant
- (v) extension of benefits application to infrastructure industry; and
- (vi) priority electricity connection; etc.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

The Rules envisages smooth rollout of much needed critical telecom infrastructure across the country. All stakeholders, particularly State Governments and Municipal Corporations are required to adhere to and frame policies in line with the DoT guidelines & RoW Rules 2016.

However, despite our regular meetings, presentations and representations with State Governments, the policies of the State Governments are still not aligned with the Central guidelines, resulting in a severe impediment for faster roll outs of telecom infrastructure in respective States.

Moreover, even within a State, various Municipal Corporations have issued different policies, thus creating a plethora of policies, confusion and chaos resulting in unwarranted difficulties and impediments for infrastructure providers/ telecom service providers. For example, in Maharashtra separate Tower Installation Policies have been notified by PUNE MC, MUMBAI MC, GREATER MUMBAI MC, NAGPUR MC, THANE MC, ETC. Further, despite our submissions and regular follow-up efforts, the State Government(s) and Union Territories are continuing with their own, independent Tower Installations policies/ guidelines.

The effect of the actions of the State Governments and Municipal Corporations is to create road-blocks in providing seamless telecom services, connecting the unconnected and hindering the growth of telecommunications in the country.

Some of the key concern areas for State Tower Installation policies include restriction of location of towers, multiple fees and levies, multiple clearances from different authorities, no provision for prior electricity connections and coercive actions including sealing of towers without prior notice or justification.

In this regard, we would like to submit that the State/UT Telecom Infrastructure Policies be accordingly amended and aligned to the DoT Guidelines of 2013 and Right of Way Rules 2016 by allowing IP-1s to create Telecom Infrastructure. .

The State/UT Telecom Infrastructure Policies be accordingly amended and aligned to the DoT Guidelines of 2013 and Right of Way Rules 2016 by allowing IP-1s to create Telecom Infrastructure.

11. Operational Challenges on Ground:

Interruptions & Interference by some local elements in routine operations of Telecom Tower sites in some parts of the country are on the increase. These elements pilfer diesel from DG Sets, cut cables, shut down the sites and disrupt smooth operations on the pretext of one or the other reason and cause severe business loss to industry and inconvenience to public at large.

TAIPA note for TRAI on Ease of Doing Telecom Business in India

It is therefore requested that the State Administrations are directed to take adequate steps and actions against these local elements so as to keep the sites operational 24x7.

Conclusion:

The above impediments both in terms of policy/ regulatory framework as well as operational/implementational challenges/ retrograde steps against the telecom infrastructure industry resulting in call drops, coverage gaps, poor quality of service and network congestion, increase in overall costs structures of the telecom services besides being impediments to the Government' vision of Digital India, Smart Cities, Financial Inclusion, Re-monetization/ Digitization of money transfers, E-governance, Broadband for all, etc. Therefore, there is an urgent need to avoid retrograde steps for speedy rollout of critical & essential telecom infrastructure.

In the context of the impediments enumerated as above and to supplement "Ease of Doing Business" for accelerating rapid establishment of Common Telecom/Digital Infrastructure with efficient usage of available resources, it is important that due clarity in Regulatory/Policy Framework on the following is provided immediately :

1. Inclusion of IP-1s in the Indian Telegraph Right of Way Rules, 2016;
2. Uniform Tower Installation Policy in States (aligned to DoT RoW Rules)
3. Regulatory Uncertainties/ Retrograde Steps & Reclassification of Common Telecom Infrastructure.
4. Exclusion of Telecom Towers from availing Input tax credit under GST Bill dated 28 March 2017
5. Off-set of License Fee paid on Inputs Services to avoid Double Taxation
6. Levy of Property Tax on Mobile Towers;
7. Operational Challenges on Ground
8. Availability of Government Lands & Buildings for Tower Installation;
9. Infrastructure Status benefits for Telecom Tower companies
10. Priority Electricity Connections for Telecom Towers
11. Variance on Import duty of Lithium-ion Batteries for Electric Vehicle viz-a-vis Telecom Tower application

October 3, 2017

Shri S.T. Abbas

Advisor (Network, Spectrum & Licensing)

TRAI

Email: advmn@traigov.in

Subject: TAIPA submission on draft recommendations on Ease of Doing Telecom Business

Respected Sir,

1. Tower & Infrastructure Providers Association (TAIPA), is the apex industry Association of Infrastructure Providers category 1 (IP-1). We actively work with various policy makers for accelerating the growth of the telecom tower industry in India. TAIPA members include all key players in the sector i.e. ATC Tower Co., Bharti Infratel, GTL Infrastructure, Indus Towers, Reliance Infratel, Tower Vision India and energy service companies like Applied Solar and Coslight India
2. This is with reference to the TRAI draft recommendations on 'Ease of doing Telecom Business' released on 19th September 2017 for comments of stakeholders.
3. In view of the above, the TAIPA submission on the draft recommendations released by TRAI is enclosed herewith as Annexure – 1 for your kind consideration.



Thanks & Regards

Tilak Raj Dua

Director General – TAIPA

98101 50000

Introduction:

The Infrastructure Providers Category – I were created by Department of Telecommunications for provisioning of telecom infrastructure such as towers ,cables, ducts, dark fibres, to the Telecom Service Providers licensed u/s 4 of the Indian Telegraph Act, 1885. TAIPA members have been at the forefront of several innovations in the telecom sector especially in deploying and sharing towers in India's varied terrain and responsible for introducing the concept of 'Infrastructure Sharing" which is being emulated globally.

Telecom infrastructure is fundamental for the growth of the telecom services in the country and forms an essential component in the telecom ecosystem. The deployment of a robust telecom infrastructure in the country is necessary for releasing the various transformative initiatives of the Government such as Digital India, Smart Cities, Make in India and Skill India. Thus, it is necessary to address the issues that the telecom infrastructure industry is facing to accelerate the deployment of infrastructure in the country.

However, the draft recommendations released by TRAI does not address the issues faced by the telecom infrastructure industry. The issues and concerns faced by the industry is impeding the roll-out of telecom infrastructure in the country which in turn deprives the consumers for accessing quality telecom services.

Infrastructure providers are the backbone of the telecom sector as they provide tower sharing services. This has reduced duplication of capital expenditure, on account of which long term investments are made to telecom assets which have resulted in expansion and growth of business and increase in reach and connectivity.

As IP-1s have made significant investments in the sector and the tower industry has planned its business affairs and entered into long term contracts at fixed prices. These contracts were based on the existing legal and regulatory regime. There should be no change in the 'goal posts/ rights & privileges' provided to the Infrastructure Providers under their registration certificate.

Changing the rules of the game midway and 'shifting the goal-post' especially after large sums have been invested in the sector is completely arbitrary and unfair.

In view of this, we once again would like to highlight the key issues which are being faced and needs to be addressed. To create a robust telecommunication infrastructure, IP-1s needs to be assured of regulatory and policy certainties not only for speed rollout of critical telecom infrastructure but also for encouraging investor sentiments. Therefore, suitable recommendations need to be included in TRAI recommendations on 'Ease of Doing Telecom Business'.

Telecom Infrastructure Industry seeks the following support from the Government to ensure Ease of Doing Business

1. Inclusion of IP-1s in the Indian Telegraph Right of Way Rules, 2016

IP-1s have not been extended the benefits of the recently notified RoW Rules which has been permitted in their respective Registration Certificate(s) and was the genesis for formation of this industry. However, with the recent Gazette Notification issued by Government of India excludes IP-1s from this provision and is a retrograde step which will force TSPs to invest individually on their respective infrastructure.

DoT has notified the Indian Telegraph Right of Way Rules, 2016 on 16th November 2016 and despite numerous representations have not extended the Rules to **IP-1s**.

As per the terms and conditions of the Registration Certificate of IP-1s, IP-1 infrastructure providers are obligated to provide and share its infrastructure with all licensed telecom service provider licensed under section 4 of the Indian Telegraph Act on a non-discriminatory basis. In this regard, we refer the condition(s) in the Registration Certificate issued by the Department,

Quote

... Infrastructure Providers (IP-1) to establish and maintain the assets such as Dark Fibres, Right of Way, Duct Space and Tower for the purpose to grant on lease/rent/sale basis to the licensees of telecom services

The company shall provide the said infrastructure on a non-discriminatory manner.

Unquote



Such retrograde steps with regard to RoW / Tower installation matters, defeats the whole purpose of formation of IP-1 category.

IP industry needs to be extended the Right of Way Rules to IP-1s also for providing necessary infrastructure and services within the scope of their registration certificate only *to the Licensees of Telecom Services licensed under section 4 of Indian Telegraph Act, 1885.*"



Moreover, State Governments barring a few, are not keen to align their respective State policies with the notified guidelines and is causing tremendous roadblocks for much needed proliferation of telecom/ data services.

2. Issues regarding Government Lands & Buildings availability

DoT has taken some key steps for bringing out reforms in making available Government Land and Buildings for Tower installation in past few months (IP-1s are not included especially in Delhi). However, the industry is still finding it extremely difficult at the implementation level to get such premises at:

- (a) At ground level, IP-1s are not allowed for provisioning of telecom infrastructure on Government Lands & Buildings;

- (b) The Department of Posts guidelines for tower installations is at odds vis-a-viz Central Government notification and has various clauses which are un-implementable in its present form; and
- (c) There are severe challenges and issues with regard to the tower installation / Right of Way (RoW) permissions in the Cantonment areas under civic control of Cantonment Boards as the same are not aligned with guidelines/ policy issued by the Central Government.

Such guidelines are in contradiction to the rights/ established position of the Central Government provided to Infrastructure Providers through their IP-1 Registration Certificate(s) for provisioning of necessary telecom infrastructure in the Government buildings, DoP premises and Defence/ Cantonment areas and is a show stopper for the telecom infrastructure industry.

3. Regulatory Uncertainty/ Retrograde Steps

IP-1s vide their Registration Certificate(s) issued by DoT have been allowed to setup passive infrastructure like Dark Fibres, Right of Way, Duct Space and Tower etc. which can be further given on lease, rental etc to the licensed Service Providers under Section 4 of Indian Telegraph Act 1885.

This scope was further enhanced by DoT vide letter dated **09th March 2009** by allowing IP-1s to provision active infrastructure elements i.e. Antenna, Feeder Cable, Node B, RAN & Transmission System for/on behalf of Licensed Operators.

The enhancement of scope for IP-1s propagated the concept of Sharing of the required telecom Infrastructure to the licensed telecom service providers only which will result in enhanced quality of services by TSPs to the end consumers.

Further, DoT issued another clarification letter dated 28.11.2016, unilaterally mandating all existing IP-1s to seek either a Unified License or a UL-VNO License for provisioning of active network elements, thereby completely nullifying the purpose of its Policy letter issued earlier on 09 March, 2009. The Government has made a complete U-turn through the said directive forcing the IP-1s to obtain a License (and pay License Fee) which was not required prior to 28.11.2016, thereby increasing the costs of services.

Moreover, such infrastructure i.e. antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system, coaxial cable, combiners, splitters, directional couplers and passive antennas etc when installed by IP-1s, if not powered, can not be termed as 'Active Infrastructure' and must be allowed for sharing and ultimately used by and amongst licensed TSPs. It is pertinent to mention that Infrastructure Providers are neither permitted (as per their Registration Certificate) nor have any intent to service the end consumers.

It is imperative that the telecom industry move towards convergence of such necessary common infrastructure and overcome the existing segregation of licensing, registration and regulatory mechanisms in these areas to enhance affordability, increase access, delivery of multiple services and reduce cost. It will be a key enabler of equitable and inclusive growth.

Regulatory/ Policy certainties adds to the confidence of investor community and there is an urgent need to re-classify/ redefine 'Common Telecom/ Digital Infrastructure' to include Antenna, Feeder Cable, Node B, RAN & Transmission System, coaxial cable, combiners, splitters, directional couplers and passive antennas etc which must be allowed to be owned and maintained by IP-1s and shared amongst the Licensed Telecom Operators only under its existing Registration Certificate(s).

4. Exclusion of Telecom Towers from availing Input tax credit under GST Bill dated 28 March 2017

The GST Bill, 2017 released on 28 March 2017 has made specific changes in the credit provision in the context of Telecommunication Towers. The GST Bill, 2017 states that Input tax credit (CENVAT credit) (under the heading plant and Machinery) will not be available to tower infrastructure providers, which will have huge impact on the cost of services. Infrastructure Providers will need to include the component of this additional tax implication in its overall costs structure thereby raising the cost of services to TSPs and in-turn would result in significant tax cascading impact, which will naturally be passed on to the end consumers.

This is a complete U-turn by the Government which in its earlier Draft Bill (Nov. 2016) categorically included Telecom Towers within the ambit of Input Tax Credit and is a surprise to the industry as a whole without assigning any reasons.

As per the GST Draft Bill of November 2016, Input tax credit remained unchanged as per the existing Service Tax laws realizing the criticality of mobile tower infrastructure. However, the Final GST Bill dated 28 March 2017 passed by the Parliament, Government completely went back from its earlier stated position and specifically excluded Telecommunication Towers alongwith Land, Buildings & Other Civil structures and Pipelines outside factory premises from extending the benefits as available currently under the CENVAT Rules. It be also appreciated that under the existing Service Tax laws, there is no provision which de-bars or specifically excludes the CENVAT credit on such towers.

The modified definition as per Explanation to Section 17(6) of the Central Goods and Services Tax Bill, 2017 ("CGST Bill") is provided as under:

'Plant and Machinery' means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation or structural support but excludes-

(i) land, building, or any other civil structures;

- (ii) **telecommunication towers; and**
- (iii) **pipelines laid outside the factory premises**

The Telecommunication Towers are classified as ‘Plant and Machinery’ for the purpose of books of accounts which are maintained in terms of the provisions laid down under the **Companies Act (both under Companies Act, 1956 as well as Companies Act, 2013)**, such towers have also been consistently and uniformly classified and categorized as ‘Plant and Machinery’ only and the depreciation as required under the Accounting standards/provisions of Companies Act has been charged as applicable to such classification.

Even, as per the current Income Tax laws, mobile towers have been classified and grouped under the block of Asset categorized as ‘Plant and Machinery’. The depreciation has been claimed at the rate applicable to ‘Plant of Machinery’ for the purposes of Income Tax computation and such allowances has been over the years settled.

The telecommunication towers are the backbone of telecommunication Industry and any denial of this credit would substantially increase the cost of providing this service to the common man. Digital India, Smart Cities, providing E-Governance services to the common man, etc and other flagship programs of the Government depends entirely on the availability of critical telecom infrastructure and any tax/ levy on such nation-building installations will ultimately increase the cost structure of the services to the end-consumer.

During the last two decades of unprecedented growth and development of the telecom sector, the semi-urban and rural areas have remained under penetrated either due to inadequate infrastructure or unviable business model. Hence, in the immediate future, the thrust of telecom services would be these semi-urban areas and rural areas where the current tele-density is mere 50% and much focus is needed to connect the unconnected. It is therefore considered critical that the future telecom towers to be rolled out in the semi-urban / rural areas would have to bear the enhanced costs due to the denial of critical CENVAT credit and the ultimate burden of this would be borne or loaded onto the end-consumers.

The primary objective of the Government while introducing GST is to ensure that there is no cascading of taxes and availability of seamless credit at all level of supply chain, the industry expects that under the GST regime inputs credit should be available for all the procurements including Telecom Towers.

5. Off-set License Fee paid on Input Services to avoid Double Taxation

The Department of Telecommunications vide its recent guidelines dated November 2016 has mandated licensing in case IP-1s wish to own, install and share ‘Active Infrastructure’ i.e. antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system, etc.

Infrastructure Providers IP-1s are into the business of setting up passive infrastructure such as coaxial cable, combiners, splitters, directional couplers and passive antennas etc and it remains passive infrastructure unless lit or powered. These are powered by TSPs for meeting their requirements to make them active infrastructure for providing telecom services to the end-consumers. This is also in alignment with the recent TRAI recommendations regarding 'In-building Solutions' which has the following passive elements i.e. coaxial cable, combiners, splitters, directional couplers and passive antennas etc, and can be provided by infrastructure providers IP-1s.

Even in a hypothetical sense, if IP-1s are to be brought under licensing regime, Government CAN NOT charge License Fee twice on the same revenue i.e. firstly on the Telecom Service Provider and then again on the Infrastructure Providers IP-1. **Further, we would like to highlight that as per the current formula for deriving AGR for TSPs, no deductions are allowed against any payments to IP-Is towards infrastructure provisioning.**

For example, once an IP-1 charges TSP any fee for infrastructure provisioning, the fee paid by the TSP is only out of that revenue stream which is already license fee paid. At all times, the fee paid by the telecom licensee (TSP) to IP-1 will only be out of the revenue stream which is already license fee paid. It is pertinent to highlight and we would like to reiterate that ***“No deductions are allowed on any payments to IP-Is from the GR of TSPs”***.

Licensing of IP-1s will tantamount to 'payment of Double License Fee'

If the IP-1s are also levied any License Fee by putting them under the licensing structure it will tantamount to payment of Double License Fee and will result in unjust enrichment of the Government.

For the purpose of additional clarity, we would like to share that if A's (IP-1) towers are shared by B (TSP) then B (TSP) would pay A (IP-1) the IP fee only out of the revenue on which it has already paid the license fee. Thus, in this scenario, if A (IP-1) has also to pay license fee on the revenues earned out of B's (TSP) revenue stream, it would amount to payment of double license fee as B (TSP) has already paid license fee on the revenue utilized to pay A (IP-1) for Infrastructure usage.

Therefore, suitable deductions to TSPs on its License Fee payments must be available to the License Fee paid by the IP-1s on its revenues from TSPs to avoid double taxation on the same revenue stream or vice-a-versa as it is an input service to the TSPs and both sets of revenues can not be levied license fee together.

6. Levy of Property Tax on Mobile Towers

The issue related to levy of arbitrary and exorbitant, property tax on telecom towers at different rates/amounts by different local authorities including Municipal Corporations, Municipalities and State Governments coupled with coercive actions such as sealing of

towers, disconnection of power supply, nuisance at sites, use of force, and damage to telecom sites etc has again come to light in recent times.

The dispute qua property tax on mobile towers was pending adjudication before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India has since held 'Towers as Buildings' vide its Judgement dated 16.12.2016. However, we would like to bring to your kind notice that certain issues i.e. the quantification of the Tax amount and its retrospective/perspective effects have been left open by the Hon'ble Supreme Court to be decided by the appropriate forum.

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The industry approached the Hon'ble High Court of Bombay, as directed by Hon'ble Supreme Court for clarification on quantum and periodicity of the said property tax and the matter is seized for further action/ direction by the Hon'ble High Courts.

Irrespective of highlighting the status of these matters to the Municipal Corporation/ Local Bodies within the State of Maharashtra, several demand notices/ attachment warrants have been issued and adhoc coercive like sealing of offices premise of mobile towers Companies, etc have been initiated on the alleged ground of outstanding tax payments resulting in huge impact on telecommunication service and inconvenience to public at large.

We would also like to draw your kind attention to the issue related to levy of arbitrary, adhoc and exorbitant property tax on telecom towers by the at different rates/amounts by different local authorities including Municipal Corporations, Municipalities and State Governments coupled with coercive actions such as sealing of towers, disconnection of power supply, nuisance at sites, use of force, and damage to telecom sites etc.

Moreover, we would like to highlight that the Hon'ble Supreme Court, in its aforesaid judgment, has made an observation in paragraph 31 thereof that “.. in everyday life, a mobile tower is certainly not a building”.

So far more 250 tower sites including MSC/BSC catering to well over 03 million subscribers have been sealed, removed or demolished by various municipal corporations in Maharashtra resulting in huge impact on telecommunication services on consumers. Needless to mention such coercive action is disrupting smooth telecom operations in respective area whereas other Municipal Corporations are also threatening similar punitive action. Divergent policies/bye-laws of difference Municipal Corporations/ Local Authorities, etc within a State is hampering fresh telecom/tower roll out and coercive actions like mass scale sealing & demolition of telegraph & posts including towers is resulting in significant call drops.

In this regard, we would like to submit that :

- (a) **Mobile Towers fall under the definition of “telegraph” under the provisions of Indian Telegraph Act which is absolutely different and distinct from the concept and meaning of the expression “Building” as used in the various State Acts.**
- (b) The Entry 31 covers the entire field in relation to “Telegraphs” including erection/ installation, maintenance and operation thereof and read with Entry 96 of the same List it covers all and any fee payable in respect thereof.
- (c) Present constitutional and legal framework for Telecommunications is as follows:

Schedule 7 of the Constitution of India consists of three lists as follows:

- List I – Union List
- List II – State List
- List III – Concurrent List

Telecommunication falls under the Union List. Entry 31 & 96 of this list cover all the matters related to telecom and associated fees. As per Part XI described below the Parliament has exclusive powers to make laws with respect to any of the matters covered under Union list, which includes telecom. The State legislative has exclusive powers to make rights related to land, which falls under the State list (list II).

Part XI of the Constitution of India covers the Relations between the Union and the States. Chapter I of Part XI of the Constitution of India relates to Distribution of Legislative Powers between the Centre and the States. Article 246 of chapter I covers subject matter of laws made by Parliament and by the Legislatures of States and is reproduced below:

“246. (1) Notwithstanding anything in clause (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

Entries 31 and 96 of the List I of the 7th Schedule cover telecommunications and related fees. These are reproduced below:

“31 – Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

“96 – Fees in respect of any of the matters in this List, but not including fees taken in any court.”

The laws governing the telecommunications in India are governed by the Indian Telegraph Act, 1885 amended from time to time. Section 7 of the Indian Telegraph Act, 1885 empowers the Central Government to make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

Moreover, in so far as private properties are concerned; all transactions in terms of the provisions of the Indian Telegraph Act, 1885 would lie directly between the telegraph

authority and the property owner without the intervention or mediation of any local authority.

Further,

- a) Apart from arbitrary and unreasonable property tax being demanded by different authorities in the same State at different rates there is no uniformity in charging and levying such taxes. For example, the rate of property tax varies from 40% to 112% in the State of Maharashtra amongst various municipal corporations/municipalities etc.
- b) When our member company erects Roof Top Tower (RTT) on building being a temporary structure, Municipal Corporations treats them as another building i.e. building on building and sends tax demand notices to our member companies. This is totally unfair to our member companies when land and building is already being assessed for tax and all kind of taxes are already collected from the owner of the said building or land.

Telecom Towers and Telegraph being a Central subject, the State and Local Authorities including Corporations have no competence to levy and collect tax in respect of Telecom Towers.

7. Infrastructure Status benefits

Government of India, has already recognized the significance of telecom towers & the aspect of it being a highly capital intensive business. The Cabinet Committee of Infrastructure (CCI) granted “Infrastructure” status to Telecom Towers vide its gazette notifications dated 27th March 2012 & 1st April 2013. With this the benefits like Accelerated depreciation, Higher ECB limit, Eligible for viability gap funding (VGF), Lower import duties and excise exemption, Softer lending rates, Tax holidays, etc were to be extended.

Moreover, basic support like priority electricity connections, preferential tariffs, etc are still not granted to these critical, life-line installations. Erratic power supplies/ non-availability of electricity also hinders the smooth operations of telecom services and force telecom infrastructure organizations to install DG sets, power storage equipments like batteries, etc thereby increasing the cost of services.

Most of the infrastructure projects like roads, ports, airports etc. have been provided with the above supports besides equity funding from the Government of India.

The Tower industry has already written to the Department of Economic Affairs, Planning Commission and other concerned Department(s)/ Ministries seeking similar benefits. However, despite granting the infrastructure status to the sector, the benefits are yet to be extended to the sector.

Industry has represented its key concerns as mentioned above to the Central Government on multiple occasions, however, are yet to get any support/ benefits on the same. Further, electricity connections should be provided on priority and at preferential/ reasonable tariffs to telecom tower sites as telecom towers are critical and life-line installations.

8. Uniform Tower Installation Policy in States (aligned to DoT RoW Rules)

DoT has framed “Right of Way Rules” on 16th November 2016 laying uniform Guidelines for State & UT Governments for laying of Underground and Overground Telecom Infrastructure. The guidelines covers the following, among other, issues:

- (i) single window clearance;
- (ii) processing of application within defined timelines;
- (iii) nominal one time administrative fee;
- (iv) extension of benefits application to infrastructure industry; and
- (v) priority electricity connection; etc

The Rules envisages smooth rollout of much needed critical telecom infrastructure across the country. All stakeholders, particularly State Governments and Municipal Corporations, are required to adhere to and frame policies in line with the DoT guidelines.

However, despite our regular meetings, presentations and representations with State Governments, in practice, the policies of the State Governments are still not aligned with the central guidelines, resulting in a severe impediment for faster roll outs of telecom infrastructure in respective States.

Moreover, even within a State, various Municipal Corporations have issued different policies, thus creating a plethora of policies, confusion and chaos resulting in unwarranted difficulties and impediments for infrastructure providers/ telecom service providers. For example, in Maharashtra separate Tower Installation Policies have been notified by PUNE MC, MUMBAI MC, GREATER MUMBAI MC, NAGPUR MC, THANE MC, ETC. Further, despite our submissions and regular follow-up efforts, the State Government(s) and Union Territories are continuing with their own, independent Tower Installations policies/ guidelines.

The effect of the actions of the State Governments and Municipal Corporations is to create road-blocks in providing seamless telecom services, connecting the unconnected and hindering the growth of telecommunications in the country.

Some of the key concern areas for State Tower Installation policies include restriction of location of towers, multiple fees and levies, multiple clearances from different authorities, no

provision for prior electricity connections and coercive actions including sealing of towers without prior notice or justification.

In this regard, we would like to submit that the State/UT Telecom Infrastructure Policies be accordingly amended and aligned to the Right of Way Rules 2016 issued by Department of Telecommunications once revised to include IP-1s.

The State/UT Telecom Infrastructure Policies be accordingly amended and aligned to the Right of Way Rules 2016 issued by Department of Telecommunications once revised to include IP-1s.

9. Priority Electricity Connections for telecom towers

Erratic power supplies/ non-availability of electricity has hindered smooth operations of telecom towers and has forced telecom infrastructure organizations to install DG sets, power storage equipments like batteries, etc.

Considering Telecom Towers as life-line installations, priority Electricity connections at reasonable tariffs is a must for smooth telecom operations across the country.

10. Ensuring Security of Telecom Infrastructure

As Telecom Towers needs to be operational 24/7, 365 days and all essential services, emergency services, National security etc. are dependent on these towers and cannot afford to shut down due to any reason. Thus, Security of telecom networks is of paramount to the telecommunication industry. However, Industry faces challenges in ensuring security to the networks because of the lawlessness rampant in some pockets of the country and absence of strict laws. The cases of thefts, vandalism and damage to the critical telecom infrastructure have been on the rise disrupting the operation of telecom services.

Thus, there is dire need to address the security aspect of telecom infrastructure and bring out suitable recommendations on this issue.

Conclusion:

The above impediments both in terms of policy/ regulatory framework as well as operational/implementational challenges/ retrograde steps against the telecom infrastructure industry resulting in call drops, coverage gaps, poor quality of service and network congestion, increase in overall costs structures of the telecom services besides being impediments to the Government' vision of Digital India, Smart Cities, Financial Inclusion, Re-monetization/ Digitization of money transfers, E-governance, Broadband for all, etc. Therefore, there is an urgent need to bring out suitable recommendations for speedy rollout of necessary telecom infrastructure.

It is important that due clarity in Regulatory/Policy Framework on the following is immediately provided:

1. Inclusion of IP-1s in the Indian Telegraph Right of Way Rules, 2016;
2. Availability of Government Lands & Buildings for Tower Installation;
3. Regulatory Uncertainties/ Retrograde Steps;
4. Exclusion of Telecom Towers from availing Input tax credit under GST Bill dated 28 March 2017
5. Off-set of License Fee paid on Inputs Services to avoid Double Taxation
6. Levy of Property Tax on Mobile Towers;
7. Infrastructure Status benefits for Telecom Tower companies
8. Uniform Tower Installation Policy in States (aligned to DoT RoW Rules)
9. Priority Electricity Connections for Telecom Towers
10. Ensuring security of telecom infrastructure

We are also aware that the Ministry of Telecommunication is seized of these issues but the need of the hour is an early resolution of the concerns expressed as above and to have uniform and consistent Policies & Regulatory Framework all across India.