

To: Mr Sunil Kumar Singhal,
Advisor
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi – 110002



Submitted via: ksinghal@traigov.in; rksingh@traigov.in

16 September 2019

Dear Sir,

Re: ACCA's Response to TRAI's Consultation Paper on "Review of Scope of Infrastructure Providers Category-I (IP-I) Registration"

The Asia Cloud Computing Association (ACCA) thanks the Telecom Regulatory Authority of India (TRAI) for the opportunity to comment on the consultation paper on "**Review of Scope of Infrastructure Providers Category-I (IP-I) Registration**". The ACCA commends the TRAI for suggesting the enhancement of the scope of IP-I registration, which will help achieve universal broadband access – one of the main objectives of the National Digital Communications Policy 2018 (NDCP 2018). We note that the TRAI recognises the importance of public-private dialogue to co-create policies for a better digital future for all.

As the apex industry association for Asia Pacific stakeholders in the cloud computing ecosystem, we represent a vendor-neutral voice of the private sector to government and other stakeholders. Our mission is to accelerate the adoption of Cloud computing through Asia Pacific by helping to create a trusted and compelling market environment, and a safe and consistent regulatory environment for cloud computing products and services. We are committed to strengthening cybersecurity resilience and developing a robust technology ecosystem which supports a vibrant digital economy.

Following discussions with our member companies, we are submitting our responses and comments on the TRAI's consultation paper on "Review of Scope of Infrastructure Providers Category-I (IP-I) Registration".

I would be happy to speak further with the TRAI on any of these items, or host a vendor-neutral discussion between the TRAI and other members of the industry from the ACCA to provide feedback. Please feel free to contact me if this is of interest.

I look forward to hearing from you, and welcome your response on the issues raised.

Yours sincerely,
Lim May-Ann
Executive Director
Asia Cloud Computing Association
mayann@asiacloudcomputing.org

Asia Cloud Computing Association's (ACCA) Response to the TRAI's Consultation Paper on "Review of Scope of Infrastructure Providers Category-I (IP-I) Registration"

(4) Any other issue relevant to this subject.

Comment #1: The ACCA recommends that IP-I companies should be permitted to share passive infrastructure not only with licensed/registered service providers, but also with other unlicensed/unregistered entities like cloud service providers (CSPs) (subject to applicable limitations discussed in comment #2).

- 1.1 Enabling the sharing of passive infrastructure would contribute towards achieving the Government of India's goal of "*Establishing India as a global hub for cloud computing, content hosting and delivery, and data communication systems and services*" as recognised in the National Digital Communications Policy 2018 (NDCP 2018).¹
- 1.2 The TRAI itself has noted that sharing of both active and passive infrastructure is necessary for "better spectral efficiency, reduced capital expenditures and better quality of service delivery".² The ACCA supports TRAI's view that increased access to passive infrastructure can play a major role in achieving these goals.
- 1.3 Indian law, currently, does not allow unlicensed entities, including CSPs, to access passive infrastructure such as dark fibre from IP-I companies for any purpose, forcing them to procure generic network connectivity services from local telecommunications service providers (TSPs). This is problematic because traditional networks operated by TSPs are principally designed for voice or public data services (such as IP services) and are not suitable for cloud services, which require very high availability, bandwidth and low latency for extremely large amounts of data. Achieving these outcomes using TSP services is especially difficult in India given the country's vast geography and relatively limited existing technology infrastructure and broadband deployment.
- 1.4 The services provided by TSPs are substantially more expensive than buying or leasing dark fibre from IP-I companies, as well as significantly more expensive than similar services available in other countries.
- 1.5 The ACCA also suggests that the passive infrastructure should not be used for the provision of telecommunications services to customers, and such services should continue to be provided only by properly licensed TSPs.

Comment #2: The ACCA recommends that current law be amended to permit CSPs to use passive infrastructure obtained from IP-I companies (or from TSPs) in order to establish, maintain and

¹ Para 2.2(f), National Digital Communications Policy, Department of Telecommunications, Ministry of Communications, Government of India, September 2018, available at <http://dot.gov.in/sites/default/files/EnglishPolicy-NDCP.pdf>.

² Para 2.6, Consultation paper on review of scope of infrastructure providers category-I (IP-I) registration, Telecom Regulatory Authority of India, 16 Aug. 2019, available at https://main.trai.gov.in/sites/default/files/CP_NSL_Infra_16082019.pdf.

operate an extended “private telegraph”³ – a type of private network – connecting two or more data centres in different locations.

- 2.1 It should be clarified that the “private telegraph” would not be used for the provision of telecom services to CSP customers and that such services will continue to be provided only by properly licensed TSPs, i.e.; all CSP customers will connect to CSPs’ data centres using services provided to them by TSPs.
- 2.2 Accordingly, Rule 472, Indian Telegraph Rules 1951 should be amended to allow private telegraphs to be established beyond the limits of “a single building, compound or estate”, and to pass over or under public roads, provided that they are only used for the purposes of an internal/private network such as connecting two or more data centres.
- 2.3 The legal provision for ‘private telegraph’ under Rule 472, Indian Telegraph Rules 1951, reads as follows:
“Any person may without a licence establish, maintain and work a telegraph (not being a wireless telegraph) within the limits of a single building, compound or estate: Provided that no telegraph line pertaining to the telegraph shall pass over or under a public road.”

The ACCA suggests that this provision be amended to read as follows:

Any person or entity may without a licence establish, maintain and work a telegraph (not being a wireless telegraph) for the purposes of operating a private/internal network: Provided that such telegraph shall only be used by the person or entity for its own use and shall not be used to provide any telecommunication services for which a separate license might be needed under the Unified License Agreement (ULA).

Comment #3: The ACCA notes that TRAI has proposed that IP-I companies be allowed to provide infrastructure access to “other TSPs”, subject to them being licensed by or registered with the Department of Telecommunications (DoT) or Ministry of Information and Broadcasting (MIB). The proposal includes CSPs among such “other TSPs”.⁴ The ACCA recommends that no new licensing or registration requirements should be imposed on CSPs.

- 3.1 The ACCA highlights that CSPs are not comparable to TSPs, and therefore recommends that CSPs be excluded from the scope of “other TSPs”. The Ministry of Electronics and Information Technology (MeitY) notes that “cloud services” are a “delivery model for information services”.⁵ CSPs’ information services are entirely distinct from telecom services provided by TSPs, and they use network infrastructure only for internal purposes such as connecting their data centres to each other. Customers access the information services (i.e. cloud services) provided by CSPs using network connectivity provided exclusively by TSPs. TSPs and the telecom services they provide are already heavily regulated, and these regulations adequately serve the purposes of

³ Rule 472, Indian Telegraph Rules, 1951: *“Private Telegraphs: Any person may without a licence establish, maintain and work a telegraph (not being a wireless telegraph) within the limits of a single building, compound or estate: Provided that no telegraph line pertaining to the telegraph shall pass over or under a public road.”*

⁴ Para 4.8, TRAI Consultation Paper: *“There is a requirement of telecom resources like end to end transmission bandwidth and dark fibers by different types of telecommunication service providers like VNOs, Cloud Service Providers, Multi-System Operator (MSOs)...”*; Para 4.15, TRAI Consultation Paper: *“Other telecommunication service providers such as Cloud Service Providers, M2M connectivity providers etc., who are presently...”*.

⁵ Pg. 29, GI Cloud (Meghraj) Strategic Direction Paper, MeitY, April 2013, available at https://meity.gov.in/writereaddata/files/GI-Cloud%20Strategic%20Direction%20Report%281%29_0.pdf.

protecting customers, maintaining public network security and integrity, and enabling the Government to monitor and obtain information on transmission of data (such as for national security purposes). Imposing additional regulations on CSPs would not create any additional benefit.

3.2 CSPs are already extensively regulated under Indian law – CSPs are directly regulated by the MeitY, as indicated by the Allocation of Business Rules.⁶ They do not need any further regulation by the DoT, MIB or any other ministry/department.

CSPs are subject to regulatory requirements under different laws and policies such as:

3.2.1 *Legislative framework*

- i. The IT Act regulates CSPs by prescribing obligations for data protection⁷, cooperating with government authorities⁸; and due diligence⁹.
- ii. Since CSPs use e-contracts such as terms of use and click-wrap agreements, they must comply with the Indian Contract Act 1872.
- iii. CSPs will be subject to data protection obligations under India's forthcoming personal data protection law.

3.2.2 *Government empanelment framework* - The MeitY regulates CSPs through their empanelment as government-approved service providers under GI Cloud (MeghRaj).¹⁰ CSPs must demonstrate compliance with standards on security, interoperability, data portability and service level agreements,¹¹ as well as contractual terms and conditions¹² to achieve empanelment for the delivery of their services. Compliance by CSPs is verified through an audit conducted by the MeitY's Standardisation Testing and Quality Certification Directorate¹³.

⁶ Pg. 51, Government of India (Allocation of Business Rules) 1961 (as amended up to 04 April 2019), available at https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeaobrules/english/1_Upload_1829.pdf

⁷ Section 43A, Information Technology Act, 2000 (IT Act).

⁸ Section 69, IT Act.

⁹ Section 79, IT Act; Rule 3, Information Technology (Intermediaries Guidelines) Rules 2011.

¹⁰ GI Cloud (MeghRaj)- A Cloud Computing Initiative of MeitY, available at <http://meity.gov.in/content/gi-cloud-meghraj>

¹¹ Invitation for application/proposal for empanelment of cloud service offerings of CSPs, MeitY, available at <http://meity.gov.in/writereaddata/files/Application%20for%20Empanelment%20of%20CSPs.pdf>.

¹² Guidelines for government departments on contractual terms related to cloud services, MeitY, available at http://meity.gov.in/writereaddata/files/Guidelines-Contractual_Terms.pdf.

¹³ GI Cloud (Meghraj)- A Cloud Computing Initiative of MeitY.