

27 January 2020

To  
Shri Syed Tausif Abbas  
Advisor, Networks, Spectrum and Licensing,  
Telecom Regulatory Authority of India (TRAI)

**Subject: Comments on Pre-Consultation Paper on Enabling Unbundling of Different Layers Through Differential Licensing**

**Shri Syed Tausif Abbas,**

The Asia Internet Coalition (AIC) and its members express our sincere gratitude to Telecom Regulatory Authority of India (TRAI), for leading the drafting of [Pre-Consultation Paper on Enabling Unbundling of Different Layers Through Differential Licensing \(TRAI PCP\)](#) and calling for public comments.

AIC is an industry association comprised of leading Internet and technology companies and is committed to safe and open Internet. AIC seeks to promote the understanding and resolution of Internet and ICT policy issues in the Asia Pacific region. Our current members are Airbnb, Amazon, Apple, Expedia Group, Facebook, Google, LinkedIn, LINE, Rakuten, Twitter, Booking.com, Yahoo (Verizon Media).

We commend that TRAI's objectives to support the National Digital Communications Policy (NDCP) 2018 (NDCP 2018) that will not only unlock the transformative power of digital communications but also improve well-being of the people of India. The AIC believes that to achieve the objectives of NDCP 2018, infrastructure is one of the key areas and that improvement in regulation and ongoing structural reforms are the pillars of a sound policy initiative.

Keeping in view that investments and innovation to promote Ease of Doing Business' are critical in India, we find this discussion timely and imperative. On behalf of the industry experts and our members, we submit to you to the recommendations and comments on the questions provided in the pre-consultation paper.

Accordingly, please find appended to this letter detailed comments and answers, which we would like TRAI to consider as part of the policy making process.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at [Secretariat@aicasia.org](mailto:Secretariat@aicasia.org) or at +65 8739 1490. Thank you for your time and consideration. Importantly, we look forward to offering our inputs and insights directly through meetings and discussions.

Sincerely,

A handwritten signature in black ink, appearing to read "Paine".

**Jeff Paine | Managing Director  
Asia Internet Coalition (AIC)**

<https://aicasia.org>

## DETAILED COMMENTS AND ANSWERS

**Q1. In your view, what could be the possible benefits and anticipated problems in having an unbundled licensing regime? Kindly suggest the measures that can be taken to overcome the anticipated problems (if any).**

**Response –**

In responding to this question, we must first assess the utility of the licensing regime itself. The current licensing regime is largely out of step with global best practices and the present needs of the telecom sector. With frequent changes and innovation in the telecom sector, the accompanying regulations should be transformative, and capable of addressing disruptions. Therefore, while it is commendable that the licensing regime is sought to be updated, we would like to submit that the need of licensing itself should be the first point of interrogation. The premise of this question in TRAI's Pre-Consultation Paper on Enabling Unbundling of Different Layers through Differential Licensing (*TRAI PCP*), therefore, is flawed, in that it takes the continuation of the licensing regime for granted. The question refers to the implications of changes in India's norms for licensing of telecom networks and services *without* considering whether licensing itself is still relevant or necessary.

We believe that licensing, first proposed in 1885 when the Indian Telegraph Act, 1885 was passed, is largely irrelevant today, at least in its current form, and not in line with the current state of development of the telecom sector. For this reason, our responses to the consultation questions should be considered bearing in mind our reservations about the licensing approach as a whole.

*Advantages of Unbundling:*

The National Digital Communication Policy 2018 (*NDCP*), as one of the strategies to promote India's digital economy and improve the ease of doing business in the country, suggests

unbundling of different layers in the telecom network, i.e. the separation of physical infrastructure from the services supported by it, and more broadly an overhaul of the telecom regulatory structure.

Unbundling can have several advantages if implemented correctly. They include the following:

1. Unbundling the licensing regime would separate the provision of physical infrastructure from the services running on it. It could, in principle, enable the regulators to prescribe different rules and compliance requirements for players operating across the different layers of the telecommunications network, allowing for the prioritization or incentivising of specific layers based on specific policy decisions.

For example, any new unbundling rules could reduce regulatory levies for specific layers, revise content-based compliance for network operators, or allow Virtual Network Operators (VNOs and MVNOs) to be controlled by market forces.

2. Unbundling would also incentivise self-regulation within the specific layers, especially if industry bodies are consulted in devising the new, specialised regulatory requirements. It may enable different levels of regulation in the different layers, especially allowing the application layers to be relatively light touch.
3. Reduced or less complicated compliance structures would in turn lead to enhanced competition, thereby expanding consumer choice and making prices competitive.
4. Unbundling would enable better harnessing of emerging technologies like 5G and Artificial Intelligence, the applications of which transcend the telecom sector.

However, if not implemented with due consideration, , and simply allowing unbundling, while retaining the larger regulatory framing will not yield the expected benefits. The licensing approach for the telecom industry has been revised in more evolved regulatory regimes like Europe and North America. Similarly, unbundling would not on its own improve ease of business or promote consumer interest and will require complimentary changes to the regulatory set-up.

**Q2. In case it is decided to unbundle the different layers of licensing,**

**(a) what should be the different layers and their scope? What changes would be required in licensing regime to enable such a framework?**

**Response –**

We believe that the layer should be regulated in a two-fold manner:

1. Infrastructure
2. Services

At the outset, any new licensing regime should extend its scope only to such issues that not solvable by market forces and that are skewed against the consumer's interest. For example, for the infrastructure layer, restrictions on sharing of active infrastructure should be revised. Additionally, for the service layer, any new change in the regulatory set-up should include a light touch framework aimed at promoting competition and should reconsider the current licensing regime.

The licensing regime, and the regulatory framework as a whole, should move from regulating all actors in the industry to identifying and regulating practices with potential to harm or hurt consumers. The process of recognizing these layers and formulating regulations specific to any on them, - should necessarily involve the participation of industry experts and representatives so that market forces are given their due importance in the process.

We would like to highlight concerns about the unbundling approach creating a new licensing regime for the "Applications Layer". Note that the term "Application Layer" can either be understood to mean "Application Services" as defined in the OSP registration (i.e. which require bulk telecom services), or alternatively as OTT applications. We suggest keeping OTT applications outside the purview of the licensing regime in toto since these are mere applications provided to end users over the internet using the network infrastructure of

licensed Telecom Service Providers (TSP). Such OTT applications are already regulated under the Information Technology Act, and soon, the Personal Data Protection legislation currently under consideration by the Parliament. On the other hand, “application services” under OSP registration, should be dealt with as per the outcome of the recent OSP consultation. These comprise of different verticals using bulk telecom resources such as call centres etc. It is suggested that in the light of promotion of the defined objectives of this exercise, license exempt regulation may be enabled for all players in the Applications Layer.

**(b) Should there be a new regime of licensing on which the existing licensees should migrate within a specified time frame or there should be a parallel incentivized licensing regime for unbundled layers of license?**

**Response –**

The current licensing regime is ill-suited to the demands of modern and evolving electronic networks and belongs to a time when players who deployed the Public Switched Telecommunications Network (*PSTN*) were the sole providers of electronic communications networks and services. Today, PSTN players’ role in provision of end-user services is much reduced.

The telecom sector today is conducive to competition in every layer, permitting competition between players, technologies, services, business models, etc., and requires a regulatory regime that ensures that consumers and the economy at large can benefit from the massive potential of telecommunications networks, services, and applications, without unnecessary constraints. While the NDCP has been drafted with this very objective in mind, we find that concrete steps are yet to be outlined. We recommend an approach that would identify and regulate only specific aspects of the telecom and digital communications sector, those which if left unregulated would hurt national interest or public resources, or compromise consumer

safety. This approach would mean that the regulatory regime moves from regulating the actors to regulating specific practices.

Any new rules should address the following concerns:

1. Prevent unauthorised use of networks by rogue elements;
2. Ensure effective interconnection between public networks,
3. Devise transparent allocation and pricing of spectrum and other scarce resources;
4. Set safe limits for radiation emitted by wireless equipment;
5. Ensure safe and aesthetic deployment of physical infrastructure like towers, fibre, in public spaces;
6. Protect consumers from abuse e.g. fraud, breaches in safety, security, and privacy by market players, etc.

**Q3. In case you are of the opinion that there is no need of unbundling of different layers of the license, what changes should be made in the existing licensing regime to (i) promote sharing to increase utilization of the existing resources, and (ii) catalyse investments and innovation in Digital Communications sector?**

**Response –**

The focus of the regulatory interventions should be on unshackling telecom service providers from burdensome levies to improve their profitability. The licensing regime needs to be reconsidered as whole, in the absence of which unbundling can only be recommended as a light touch approach for application services. In case the existing regime continues, legacy restrictions need to be cut down, including disproportionate fees, out of date Quality of Service restrictions, localisation requirements, reconsideration of restrictions on remote access, to name a few would need to be reconsidered.

#### **Q4. What other reforms / changes are required in the existing licensing regime?**

##### **Response –**

While the telecom sector welcomes the NDCP and the steps it seeks to take in order to boost India's position in the global digital economy and enhance emerging technology products and services, it is trite knowledge that the existing licensing regime that governs the sector is restrictive. The NDCP while creating safeguards for consumers, does not effectively address the concerns of the industry. For example, the policy does not adequately address the measures the government proposes to take to cut spectrum costs, does not revise the already high government levies in the form of the GST and solutions to the other physical impediments in seamless expansion of the sector.

With this in mind, we propose that a simplified framework should replace the existing licence regime; one that actively promotes competition at every level including players, services, technologies, platforms, business models, etc. It must promote investments by allowing investors enough flexibility in choice of what and how much they which to invest and where. Given the benefits that emerging technologies along with adequate infrastructure and facilitative policies can bring to consumers, the government should prioritize this social and economic impact instead of focusing on revenues for the exchequer.

A revised, simplified and clear framework is required to provide relief to current market players as well as encourage investment as well as the entry of new service providers. The first step in this direction would be to assist debt-ridden telecom providers. The Central Government has already spoken to the need of setting up a committee of senior officials to create a plan to help ease financial stress among companies in the telecom sector including reducing the Universal Service Obligation Fund charge, possibly deferring airwave auction payments and revising the high spectrum usage levies. We would urge that industry bodies and technical experts also be included in these deliberations.