

Re: Counter Comments by Dua Consulting on the Consultation Paper dated September 16, 2019 on "Review of Scope of Infrastructure Providers Category- I (IP- I) Registration".
From: Dua Consulting
Date: October 14, 2019

1. Introduction

TRAI's consultation paper dated 16th September 2019 on "Review of Scope of Infrastructure Providers Category- I (IP- I) Registration" ("**Consultation Paper**") provides a background on the current framework of Registration of IP-I providers in India. The Authority, in accordance with the changing needs of the technology opened the question of active sharing among infrastructure providers category-I who currently provide assets such as Dark Fibres, Right of Way, duct space and tower. While a number of stakeholders have provided their viewpoints, through this note, we are providing our counter-comments on the suggestions made which are detailed in Clause 2 below.

With the evolution of technology, service offering, bringing in economies of scale, the classification of infrastructure has a wide connotation. In the initial stages of development, no infrastructure sharing was allowed, which included sharing of towers. However, gradually both government and operators realised that resources need to be shared when getting clearances from towers/ municipalities/ housing societies became difficult. This set the advent of sharing of infrastructure. Similarly, sharing in the case of passive fibre and various other infrastructure, like use of cable lading station etc. was opened up to optimise the usage capacity, and eventually bringing down the cost of services to the customer.

Acknowledging the evolving technology, and the avalanche of new services like M2M, 5G, Digital India projects, and further discussion on changes in provisions of Data Localisation, upcoming e-commerce policy, and considering economical and ecological factors, it is necessary to ensure resource sharing which will lead to optimal utilisation of technology.

The following steps have already been taken with respect to sharing under IP-I Registration:

- In a notice dated March 9, 2009, DOT issued a clarification which mentioned that the scope of IP-I includes active infrastructure limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system only for/on behalf of UASL/ CMSP licensees.
- National Telecom Policy 2012 issued a mandate to move towards sharing active and passive infrastructure to exploit the attendant benefits of convergence, spectrum liberalisation and facilitate delinking of the licensing of Networks from the delivery of Services to the end users in order to enable operators to optimally and efficiently utilise their networks and spectrum moving towards Unified License regime.
- In May 2016, DOT also rolled out regulations for Licensing of Virtual Network Operator(VNO) and,
- In November 28, 2016, DoT issued a clarification regarding scope of IP- I providers, and stated that IP- I providers can only install active elements on behalf of Telecom Licensees. And IP – I companies under active network infrastructure were provided

an opportunity to register under the Unified License framework for VNO so that IP-I licences can transfer all active elements to a holder of valid license.

- As a step to incorporate changes for sharing of active infrastructure, National Digital Communications Policy (NDCP)-2018 introduced the need to secure universal broadband access and enhance the scope of Infrastructure Providers through its clause 1.1 (f) which states that *"Encourage and facilitate sharing of active infrastructure by enhancing the scope of Infrastructure Providers (IP) and promoting and incentivizing deployment of common sharable, passive as well as active, infrastructure."*

2. Counter Comments by Dua Consulting

2.1 Scope of IP-I registration on sharing of active infrastructure

- (a) Stakeholders held varied opinions about enhancing the scope of IP – I registration. While some allowed sharing of active infrastructure, & in support suggested that Infrastructure sharing pass through charges for AGR should be removed for active sharing of infrastructure and enhanced sharing should apply only to licensed service providers under the same service same rules guidelines. On the other hand, one TSP (Reliance Communications) was of the opinion that IP – I registration should not be enhanced to include active infrastructure since it would create an arbitrage between IP – I registration and TSP for providing the same services. Another TSP (Bharti Airtel) also pointed out that there may be a consultation for a new Telegraph Act for inclusion of licensing of network authorisation, and that might make active sharing of infrastructure irrelevant.
- (b) We are of the opinion that the scope of IP – I registration should be enhanced to include provisioning for sharing of active infrastructure also. Once this allowed, it is expected that a new entrant will be able to compress time for product delivery.

2.2 Scope of common sharable active infrastructure

- (a) Various inputs were received on the scope of sharing active infrastructure, some of these were:
- TRAI may define a "negative list" for what cannot be owned and shared.
 - Active infrastructure components may be used in Antenna, Feeder Cable, Transmission systems. IP- I should provide infrastructure services only to licensed TSPs.
 - Infrastructure services including end to end bandwidth should be provided only to applicable Licensed Telecom Service Providers for category of services as allowed to such Licensed Service Providers and to registered Mobile Service Operators.
- (b) In our considered view, except the last mile to access the consumers, which is the prerogative of a licensed service provider under the Indian Telegraph Act, 1885(**"Telegraph Act"**); other infrastructure like long haul & middle mile, which are just transporting data without the capability of interruption should be allowed if these IPs- I providers see a market for such a product, as well as license sees a need for providing at ease, these services to the end customer and does not violate the Terms and Conditions of a Unified License (UL) under the Telegraph Act and as are agreed among operators and IP- I providers.

2.3 Registration conditions

- (a) Summary of comments from various stakeholders were:
- Registration conditions would need to explicitly allow sharing of active infrastructure
 - Existing registration conditions applicable for IP-I are appropriate for current scope. In case of enhanced scope, the IPs should be required to obtain authorization under UL.
 - The active infrastructure can be procured by IP-I for sharing with licensees based on the mutual agreement between licensee and IP-I with prescribed equipment procurement and installation, frequency of sharing and other details.
- (b) In our opinion, it may be necessary to supplement the inclusion of Active Infrastructure sharing though a separate form mentioning the equipments shares, the frequency shared, and the registration are allotted only after testing by DoT. Since the scope of active infrastructures needs to be updated, there should also be a reasonable regulatory framework to provide against cyber attacks, the levy able taxation, and provisions to eliminate double taxation.

2.4 Wireless Telegraphy License

- (a) IP-I may be made eligible to own and obtain Wireless Telegraphy Licenses from Wireless Planning and Coordination (WPC) wing of the DoT for owning and possessing in importing of wireless equipment. Wireless connectivity for Middle mile, Long Haul may be in accordance with the existing provisions of the Telegraph Act. This option may be feasible only if stakeholders agree to the suggested mode of sharing considering aspects of competition and existing license holders. The DoT has already, vide a letter dated November 28, 2016 allowed IP-I to apply under the UL (VNO) route, and the provision of any additional license should only be applicable if it is in accordance with the existing Telegraph Act.
- (b) The existing procedure for Microwave Backbone (MWB) spectrum allocation to TSPs should be continued and IP-I should also be given the benefit of WPC Spectrum upon application and allotment of a Wireless Telegraphy License.

2.5 Other considerations

- (a) The issue of applicability that shall arise with allowing active sharing of infrastructure, such as Right of Way, sharing of towers is often non transferable or non assignable need to be addressed. It is important to increase the flexibility in assignment and transfer subject to due reporting and documenting of such transactions in order to ensure that the existing scheme of restriction on transferability does not handicap the existing infrastructure from being transferred despite the framing of a new regime. Whatever is licensable under the ambit of the Unified License of the Telegraph Act, and especially regarding access should not be shareable or transferable.
- (b) Further, active and passive sharing of infrastructure should be classified as pass through, and the taxation in such cases should not be doubly charged. p