I. BACKGROUND

1.1 India is currently the world's second-largest telecommunications market and has registered a strong growth in the past decade and a half. The Indian mobile economy is growing rapidly and will contribute substantially to India's Gross Domestic Product (GDP), according to report prepared by GSM Association (GSMA) in collaboration with the Boston Consulting Group (BCG).

1.2 The Indian telecom sector is expected to generate four million direct and indirect jobs over the next five years according to the estimates by Randstad India. The employment opportunities are expected to be created due to government's push towards increasing access in the rural areas and the rapid increase in the smartphone sales and rising internet usage.

1.3 Under the Bharat Net Phase II, the Department of Telecom has planned to connect 1.5 lakh unconnected villages with a high speed broadband network with a plan to expand public wi-fi spots to half a million by December 2018 as against the present number of 38,000.

1.4 With regards to procedures for ease of business, last year Right of Way 2016 rules were notified which tried to address some major concerns of the market players regarding the incongruities among various states and municipal corporations for establishing underground and over ground telegraph infrastructure by appointing nodal officers at the state level, streamlining the fee structure, and ensuring a time bound approval and re-addressal process.

1.5 Further, the policies related to the assignment of spectrum through auction, permitting spectrum trading, a push towards unified licensing and guidelines regarding merger and acquisitions have tried to engage stakeholders in the regulatory environment for the market players.

1.6 But, despite all of it, the telecommunications industry, which has the potential to contribute 8.2% (INR 14lakh Crore) of GDP by 2020 is 'bleeding' as mentioned by Gopal Vittal, Airtel MD for South Asia and India, in an interview to ET. The industry is having a total debt burden of Rs 4.5 lakh Crore at present with return on capital being as low as 1%. A major part of this debt burden and low revenues could be attributed to the ill-conceived policies of the Department of Telecommunications (DoT), in the last spectrum auction, as well as bad investment business decisions of the telecom companies.

1.7 India had the lowest average connection speed in the Asia Pacific region at 2.8 Mbps followed by Philippines at 3.2 Mbps. Overall India's average internet speed grew by 11% QoQ and 36% YoY, and ranked 114th globally. Most of it primarily due to the hurdles related to infrastructure, the delays due to bureaucratic red-tape, the

reluctance of the government to utilise the unused spectrum available with defence department, and government's ill-conceived taxation policies which has shrunk capital opportunities in the country.

1.8 Moreover, the continuous tussle of power between the DoT and the Telecom Regulatory Body of India (TRAI) regarding the policy decisions is further harming the industry. One such instance could be the rejection of idea by the TRAI in 2015 auction to involve 15 MHz of 3G at the same time as 2G airwaves but DoT rejected the recommendation, and decided to include only 5 MHz of the 2.1 GHz 3G spectrum along with 800 MHz, 900 MHz and 1,800 MHz 2G bands in the spectrum auction setting a high reserve price of 38.99 billion rupees ($635.8 million). Such uneasy relationship between the regulator (an expert body) and government does not bode well for industry.

1.9 Despite all the success, the Telecommunications sector continues to be the most litigious, for one reason or the other. That is a clear reflection of either the inadequacies of the policy formulation or their interpretations or deliberate loop holes. One of the classic example has been the backdoor entry of one operator of significance from a Data led ISP license to full blown voice and data service provider.

1.10 Another serious and unresolved issue is the definition of The Adjusted Gross Revenue (AGR). The issue is in courts. There are no clear interpretations of the AGR or what constitutes AGR.

1.11 DOT/GOI continues to be mired in a myriad of licenses, registrations etc. for various services with extremely gray boundary lines. It becomes difficult even for those implementing or policing these licenses/registrations to decide on a category. This confusion results in delays and litigations. Why cannot there be simple principles to decide the categories on the basis of a security threat and revenue leakage?

1.12 Unbundling of local loop has been in the offing for en extremely long period. It is the right opportunity to mandate the unbundling of local loop for commercial exploitation. The hoarding of local loop is a waste of national asset.

1.13 The theme of the policy should be **"APPLYING TECHNOLOGY TO REACH OUT TO THE MASSES"**

1.14 Finally, is revenue maximisation the Goal of the Government or is it to find a balance between the long term economic benefits of both the business and the government, keeping in mind that a national resource for commercial exploitation is allocated in fair, equitable and transparent manner, without prejudices and any favouritism.

2. RECOMMENDATIONS

2.1 Broader National ICT Policy

- As also mentioned in the OHD, it is more relevant to have an Information and Communication Technology (ICT) Policy instead of releasing a Telecom Policy

- ICT Policy should converge internet which includes cloud and, M2M technologies, software, telecom, broadcast, satellite and manufacturing industries to formulate a more holistic harmonized policy.

- A converged ICT policy should also include broad principles of privacy and security which can become the building blocks of sectoral regulations

- There is an urgent need to release White-Papers on the achievements and failures of earlier Telecom Policies, with a road-map for the implementation of the proposed Telecom/ICT Policy.

- There is also a requirement to develop an innovation policy which can institutionalize the whole innovation ecosystem. While Start-up India and Stand-up India are two missions working towards creating an ecosystem, there is a need to develop a broader policy towards encouraging innovation solutions to ensure that India can leapfrog in providing technology solutions by 2022

2.2. Resolving Legislative and Procedural Issues

- There are different sets of legislations to govern infrastructure, spectrum, license and interconnection related issues with further rules related to Quality of Service (QoS), security requirements, roll out obligation, telemarketing norms etc. The plethora of legislation creates different rules for different sets of industries in the overall Telecommunications market. Rules for TSPs and OTT (Over the Top) service providers are one such example where they have different obligations while they both, in practice, work in synergy. Across the world, governments are moving towards '*Same Service, Same Rule*' premise. In France, regulator has demanded VoIP telephony player to register as a telecom operator, with VoIP having same regulatory framework as telecom in Germany. Thus, under the broad Unified Licensing Policy of the government, instead of creating segregation of services, and creating varied legislations for different players, a broad encompassing legislation should be drafted to ease the legislative complexity in the telecom.

- To build on to the transparency and timely mechanism, the government should move towards paperless operations in areas such a EMF (Electromagnetic Field Survey), self certification, SACFA clearances resulting in establishing the principle of reverse obligation. Moreover, Face to Face and timely grievance re-addressal

mechanism should be developed for the Telecom Players instead of creating a bureaucratic chain of letter correspondence, seeing that 'E-initiatives' are in vogue in present dispensation.

- There is an urgent need for the telecom policy to have a light touch policy regulations system instead of it being an overly regulated space which hinders product and service innovations, with additional disruptions due to high handed approach of the government officials clearing files. For instance: Wireless and Planning Coordination (WPC) Department requires telecom provides to apply for import licenses for telecom equipments which includes details regarding deployment in the circles, which cannot be altered. Such procedures seem unnecessary. Telecom companies can simply declare the equipments imported in their annual reports which are submitted to the Department and they should not need to waste time in getting approvals for re-deploying those same equipments in other circles/regions.

2.3. Business and Cost Issues

- Definition of Adjusted Gross Revenue (AGR) is one of the most contentious issues between telecom players and regulator. In the CAG audit of the records, there was an understatement of AGR valuing INR 40,046 cr for the period of 2006-07 and 2009-10 leading to short payment of INR 3,752 cr in license fee. Telecom companies argue that revenue that was not accounted for was from non-telecom streams such as investments (dividends, interest, etc.), real estate rent and sale, and other miscellaneous items while the DoT has said that this revenue would not exist without the telecom licence and spectrum, for which the telecom companies pay revenue share. There is an urgent need to rationalize the definition of AGR to further not subject the industry to such scepticism. The earlier suggestion of the regulator regarding the Applicable Gross Revenue (AGR) which will distinguish between non-telecom and telecom revenue need to be further explored and concluded at the earliest.

- In line with TRAI recommendations, license fee and USOF charges may be considered for a reduction to 6% and 3% respectively from the current levels of 8% and 5%. Subsequent to this, we also need to rationalise the annual charges of spectrum usage. The TSPs in India pay 5% for spectrum acquired after 2014 and 3-5% for spectrum acquired before 2014, which for South Africa is 0.15-0.35% of revenue, for Singapore it is maximum of 1%, for Bhutan it is 1% of AGR etc. We need to consider that over and above this, there is Corporate Tax to the rate of 34.61%, dividend distribution tax to the rate of 20.36%, with a GST rate of 18% for telecom services, resulting in extremely high tax for TSPs. Thus, these taxes will require to be rationalised for the telecom industry to prosper and to actually provide affordable services – which is one of the objectives stated in the National Telecom Policy Consultation Paper.

- Telecom has been given infrastructure status but it does not have the benefit of that status as yet. Tax holiday under Section 801A, can be extended to the tower companies as in the case of other industries conferred with 'Infrastructure' status. The period could be reduced for this tax holiday as comparative to the other such sectors but this idea need to be expounded further, considering that the telecom infrastructure is high capital and low dividend (initially) business discouraging companies to invest in it.

2.4. Spectrum Management

- There is a need to overhaul the complete spectrum allocation and pricing system. The main objective of the Spectrum Management, including Pricing, Valuation etc., should be to maximize the benefits to the nation, rather than simply maximizing the government revenues by setting extremely high prices which are detrimental to the industry. This aspect can be achieved by fair and transparent mechanism of auction. There should be a consultation mechanism with the industry where industry should have an equal say in setting the price of spectrum. Further, the idea of revenue maximisation need to be replaced with revenue neutrality principle i.e. instead of setting arbitrarily high prices, there is a requirement to set a fixed price in resonance with the financial condition of the industry. *Additionally, there should be a fixed annual frequency availability and auction chart that need to be circulated much in advance of the spectrum auction.*

- There is an urgent need to liberalise the satellite spectrum policy. Currently, service providers have to approach various government agencies such as ISRO, WPC for the allocation of satellite spectrum, which has a considerable level of adhoc-ness attached it and it also causes significant delays in the spectrum allocation process and, subsequently, also impacts the timely operationalization of the respective satellite network. As mentioned earlier in the procedural simplification, a single-window clearance process needs to be established to enable faster assignment of spectrum to satellite service providers. Further, Service Providers should be allowed to hire/sub-lease the satellite transponder capacity based on their business requirements, from those which have been coordinated by the WPC. The present situation puts restrictions on spectrum sharing and requires various types of service providers to apply for various licenses. The Service Provider should also be allowed to use/share the hired spectrum for any application, i.e., VSAT/DTH/Teleport or other telecom services. This will facilitate the optimum utilization of the satellite spectrum resources, ensuring the provision of quality services to the customers.

CONCLUSION

While the proposed National Telecom Policy touches the right chords when it comes to increasing the access of internet to people, pushing India towards a global power in ICT, propelling the level of innovation solutions in the country to generate more exports, and

moving towards the 21st Century systems, the government system is still rigid; legislations are archaic with no certainty around decisions. This aspect needs to be changed first and foremost before the new "ICT Policy" can actually push India towards a more global role. It is only when the business environment is friendlier in the country that we can expect the ICT market to function properly.

Key Suggestions

- Spectrum is a National Resource, must be allocated in a fair, transparent and equitable manner for any commercial utilisation. However, Revenue Maximisation should not remain the solitary objective after having collected the costs of the resource transparently. The on-going levies should not be taxed in perpetuity at fixed rates, but calibrated by the government to collect adequate revenues by revenue neutralisation approach to meet their social obligations from telecom sector. **Revenue Maximisation versus Revenue Neutralisation should be the policy.**
- Complete overhaul of Licensing and Registration Policy is required to remove any ambiguity. Further these policies need to be **TECHNOLOGY AGNOSTIC, APPLICATIONS ORIENTED FOR THE BENEFIT OF HUMANITY.**
- Clear definitions of Adjusted Gross Revenues for calculations of various Levies
- Clear road Map of the availability of the spectrum by having a re-farming policy as well as preventing spectrum hoarding possibility, by a process of reward or penalty
- Unbundling of local loop, as a matter of policy
- DOT to move from being unresponsive to responsive in a given set of time
- The theme of the policy should be **"APPLYING TECHNOLOGY TO REACH OUT TO THE MASSES"**.