



Response to TRAI Consultation  
Paper on Enabling Unbundling of  
Different Layers Through  
Differential Licensing

October 2020

# NASSCOM RESPONSE TO TRAI CONSULTATION PAPER ON ENABLING UNBUNDLING OF DIFFERENT LAYERS THROUGH DIFFERENTIAL LICENSING

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## Question-Wise Responses:

**Q.1 Do you agree that in order to attract investment and strengthen the service delivery segment, Network services layer and Service delivery layer needs to be separated by introducing specific license for Network Layer alone? Please justify your answer.**

### NASSCOM Response:

Yes, a separate licensing regime may be introduced for the network provider who establishes the network and sells their services on non-discriminatory basis to the service delivery operator for retail purposes; and the obligations that are mandated for the network providers should not be imposed on the service delivery licensees. Light-touch regulation should be adopted for the service delivery layer.

Currently, only one Unified License (“UL”) is required to procure network, infrastructure, and provide all telecom services. However, because of technological developments, there is a need for delinking the underlying networks from the provision of services. As elaborated below, any regulatory framework for the service layer should not attract a high compliance cost which may be a deterrent to the healthy development of the industry.

The primary purpose of unbundling would be to bring in greater competition at various layers and hence there is an immediate and dire need to evolve a regulatory framework that enables unbundling of the current UL which can foster:

- Efficient utilization of the network infrastructure already available and that can be effectively exploited and productively used;
- Promotion of niche application services to be developed and provided by such new breed of service providers who can just subscribe the access resources, in capacities as may be required and grow at such capacities, without any regulatory overheads whatsoever (including any light touch mechanism); and
- Building captive / shared platforms and application services by such bulk users / aggregators, without the need for any regulatory overheads.

**Q2. Should the Network Services Layer licensee be permitted to take the Service Delivery Category licenses and provide the service? If yes, what kind of restrictions and safeguards are required to be built, in order to protect the competition and innovation in service delivery segment? Please justify your answer.**

### NASSCOM Response:

Yes, the network service layer licensees should be permitted to expand their services offering and take the service delivery category license. The regulatory framework should not bar any business entity from obtaining such multiple licenses as long as they are in compliance with the terms and conditions of its licenses, instead it should facilitate any forward and/or backward integration in this area. Therefore, we do not believe that any restriction or safeguard should be imposed; however, to the extent that there might be conclusively

determined concerns of adverse effect on competition arising from vertical integration across the network and service layer, the same may be addressed through *ex-post facto* regulatory interventions.

**Q.3. Whether certain obligations should be imposed on the existing Unified Licensees, and other measures should be taken to encourage UL licensees to provide their network resources to VNO licensees particularly in mobile service segment? Please suggest the measures in detail**

**NASSCOM Response:**

In our view, there is no need for any regulatory intervention in business dynamics. Every entity must retain the flexibility of shaping their business strategy based on independent evaluations of business needs, instead of having regulations shape and drive their business strategy. The objective of regulation should instead be to facilitate the ease of doing business while ensuring proper and responsible functioning of markets.

However, if some intervention is desired, there can be a mandate for UL licensees to offer basic services to VNOs on non-discrimination basis and in fair and equitable manner. There are multiple services which can be offered to VNOs, based on the service-offering matrix and locations of the UL licensees.

**Q.4. In case network layer and service delivery layer are separated by creating separate category of licenses, as proposed in Q1;**

**a) What should be the scope for Network layer license and Service Category licenses?**

**NASSCOM Response:**

The scope of the network layer license should cover deployment and maintenance of the main telecom infrastructure (such as spectrum, fibre, tower etc.) and the network layer operator should provide access to the service category licensee.

The scope of the service category licenses should primarily cover the current VNO (Virtual Network Operator) regime. The service licensees should also be permitted to sell the services along with telecom resources in a bundled manner.

**OSPs should not be covered as part of Service Layer and should not be subject to regulation**

It appears to be suggested in para. 2.23(ii) of the CP, while discussing the Singapore model, that the service layer will comprise of OSPs and that light-touch regulation may be adopted for the service layer “without compromising on any security/ KYC/ Audit-trail requirements”. We would like to highlight that Other Services Providers (“OSP”) should not form part of the service layer. OSPs are not subject to licensing under the Indian Telegraph Act, 1885. OSPs are in fact part of the application layer, as the term ‘Application Services’ indicates. Currently, the OSPs are governed under the Terms and Conditions for registration of Other Service Providers, which is a registration framework and not a license *per se*. Under this registration framework, the OSP can take telecom resources from the authorised telecom service providers and are not allowed to provide switched telephony services. TRAI has also conducted a separate consultation process in this regard and has issued its recommendations. NASSCOM had previously recommended<sup>1</sup> that the OSP regime should be done away with and have highlighted the practical challenges that are faced during the implementation of the OSP regulations. Hence, any inclusion of OSP into the new regime will only lead to more confusion and increase in regulatory barriers. Discussions on the OSP regime should therefore continue separately and should not be included as part of the present CP’s scope.

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<sup>1</sup> <https://community.nasscom.in/communities/policy-advocacy/nasscom-recommendation-to-trai-to-abolish-osp-registration.html>

- b) **Out of various responsibilities and obligations enumerated in Unified License, what should be the respective responsibilities and obligations of Network layer licensees and Service delivery category licensees? Please elaborate with justifications.**

**NASSCOM Response:**

As stated in our response to Q.1., the obligations that will be mandated for the network providers should not be imposed on the service delivery licensees. A service delivery category licensee does not invest on the core telecom resources; hence a light-touch regulatory mechanism may be adopted for the service delivery layer. Further, both network layer licensees and the service delivery category licensees should be encouraged to improve their security and privacy for prevention of fraud.

- c) **What mechanism should be put in place to regulate the access to network services of Network layer licensees by the service delivery Category licensees? Whether certain obligations should be imposed on Network layer licensees to provide the network resources in a time-bound, transparent and non-discriminatory manner?**

**NASSCOM Response:**

A network service licensee should enable access to their network for all service delivery licensees on non-discrimination basis and in fair, equitable and time-bound manner. In case of any delay in delivery of network services by the network layer licensees beyond a period of (say) 4 weeks, then such delay may be reviewed by the licensor/TRAI to determine the reason for the delay.

- d) **What incentives (for example, lower license fee, lower SUC, etc.) could be provided to Network Layer licensees in the new unbundled licensing regime to encourage the investment in the Network layer? Please justify your answer.**

**NASSCOM Response:**

TRAI may consider lowering the license fee to ensure that the network layer licensees are not overburdened with a heavy cost of compliance. Further, non-telecom services offered by a network layer licensee should be exempted from the telecom levy calculations.

- e) **Whether the existing Unified Licensees should be mandated to migrate to the unbundled licensing regime, or the new regime should be introduced, while keeping the existing regime continued for existing licensees till the validity of their license, with an option of migration?**

**NASSCOM Response:**

The new regime should be introduced with the existing regime continuing for existing licensees and the existing UL licensees may be given an option to migrate to the new unbundled regime with some relaxations once their existing ULs expire.

- f) **Whether existing VNO licensees be mandated to migrate to service delivery category licenses as per unbundled licensing regime?**

**NASSCOM Response:**

Yes, the existing VNO licensees should be mandated to migrate to service delivery category licenses which should be a light-touch regulatory framework under the new unbundled regime. Currently, the scope of Unified License for VNO is very similar to the UL granted to the TSPs. Most of these clauses are minimally applicable to the business activity of VNOs. There is a need to review the existing VNO license since VNOs are service delivery operators who do not necessarily own the underlying network(s) but are dependent on the network and infrastructure of the TSPs for providing the telecom services to end customers and VNOs also work on a lean cost business model. Thus, the existing regulatory framework should be re-visited since it not only attracts a high compliance cost but hinders the opportunity for additional revenue streams in the telecommunication space.

Further, the entry barriers to the VNO license needs to be reconsidered. Many VNOs have non-telecom businesses and generate revenue through such businesses; the payment of the adjusted gross revenue (AGR) fee on the revenue from all such businesses becomes a significant financial burden. Hence, if the AGR regime is intended to be continued in its present formulation, VNO entities (current or prospective) would need to restructure their businesses such that the licensed entity provides only the VNO service. Once this restructuring is done, meeting the net worth requirements may become challenging and would hinder the entry of innovative entities that have not yet reached the specified net worth. TRAI has recognized in the context of its Recommendations in 2016<sup>2</sup> on audioconferencing, audio-tex and voice mail that the financial terms and conditions for the recommended Audio conferencing/Audiotex/Voice Mail authorisation under UL should be very liberal with no minimum equity and minimum net worth requirements. A similar approach should be adopted for VNOs for similar reasons.

Additionally, currently the VNOs can have agreements with more than one TSP for all services except access services, and services which need numbering and unique identity of the customers. However, in order to facilitate growth and faster proliferation of innovative and newer services (M2M) at more competitive tariffs, VNOs should be allowed to partner with more than one TSP for reselling access services as well. This will also ensure optimum utilization of telecom resources and will help in expanding the market.

**g) Whether service delivery category licensees be permitted to parent with multiple Network Service layer licensees? Please justify your answer**

**NASSCOM Response:**

Yes, a service delivery category licensee should be permitted to partner with multiple Network Service layer licensees. This will provide the service delivery licensee to work with different providers at different locations and it will also encourage a network service layer operator to invest and establish infrastructure in the remote areas having poor connectivity or fiber connectivity. This may bode well for competition and innovation. However, if service delivery category licensees are only allowed to partner with one network service layer licensee then the same may lead to operational challenges for the service delivery category licensee.

**Q.5. Any other issue related to the subject may be raised with suitable explanation and justification.**

**NASSCOM Response:** No

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<sup>2</sup> [https://traigov.in/sites/default/files/Recommendation\\_16\\_12\\_2016.pdf](https://traigov.in/sites/default/files/Recommendation_16_12_2016.pdf)