Vodafone Response to TRAI's Consultation Paper on "Inputs for Formulation of National Telecom Policy-2018" dated 3rd January, 2018

I. Preamble

1. National Telecom Policy (NTP-18) is an important public policy document to achieve the stated objectives of the Government under its Digital India vision for the evolution of a Digital ecosystem as a whole.

2. As the Consultation rightly notes that there is a growing convergence of the digital eco-system which is transforming the way electronic communication and digital services can be offered, it may be more appropriate for the nomenclature of the Policy to look beyond only telecoms. Policy may thus be called National Digital Policy/National ICT Policy which appropriate reflects the growing convergence of the eco-system and encompasses the entire Digital eco-system. Thus the references to the new policy or NTP-2018 in our response, may be understood as our submissions on the Digital/ICT Policy.

3. Our submissions in this regard will largely focus on the telecom sector, being one of the critical components of the Digital eco-system. This sector plays a critical role in nation-building, thus there is a need to create policies that would strengthen the sector. **Telecom sector should be recognized as a Core Infrastructure** and be **treated as an economic enabler rather than a revenue generator**.

4. The key objective of NTP-18 should be to ensure that the Indian telecommunication sector is recognized as a **key driver for socio-economic growth** and creation of a sustainable digital economy in a long term.

5. For achieving the inclusive socio-economic growth in the country, it is essential that benefits of health, education, and digital financial services reach to the population of urban as well as rural areas; ubiquitously available and affordable connectivity plays a vital role in delivering these benefits to every Indian citizen across the country.

6. NTP-2018 should **not only ensure competition, affordability, quality of service** but **also a vibrant sustainable telecom sector**. For this it is important that the policy should ensure a **conducive, predictable and stable policy, licensing and regulatory framework** to impart certainty into the sector, which is vital to attract long term investments.

7. NTP-18 should **address the growing convergence of networks, services, technologies**, etc and **put in place a future fit framework** that encompasses the emerging digital ecosystem and ensures level playing field for all players.

8. The policy should also include a **migration path for existing licensees** to the new framework, **based on the principles of no worse off and choice of migration**.

Against the above backdrop, we respond to the Governments proposed telecom policy statement of 2018 and the proposed structure of policy framework mooted by TRAI in its consultation paper.

II. Government's proposed Telecom Policy Statement of 2018

1 As noted by TRAI, the New Telecom Policy will be governed by the key guiding principles of alignment with the national vision and that its major themes will be :

a. the regulatory & licensing framework impacting the sector,
b. connectivity for all,
c. quality of services (QoS),
d. ease of doing business and
e. absorption of new technologies including 5G and IoT.

2 We support the major themes that have been enunciated by the Government and urge that the policy should clearly lay down the strategies for achieving these themes.

a. **Regulatory & licensing framework** - We are gratified that the Government recognizes the importance of the regulatory and licensing framework as being one of the key pillars of NTP-2018. It is submitted that a clear enunciation of the licensing and regulatory framework that will govern the sector is an absolute pre-requisite for the success of any policy.

We have already made detailed submissions to the TRAI on Licensing issues, submitting that the licensing and regulatory framework needs to be, inter alia, simple, consistent and transparent and future fit. Our note already submitted to TRAI, is enclosed as Annexure-1.

b. **Connectivity for all** – This objective in terms of achieving coverage and availability of services has been largely achieved with telecom services being available to over 90% of the population. The policy now needs to enunciate steps /strategies to facilitate increased rural tele density in terms of increased subscriptions to the services. This may be by way of addressing various demand side as well as supply side gaps that have already been identified by the TRAI.

c. **Quality of services** – this is a very important issue, in which various ground level challenges have been identified, especially relating to right of way issues. Several positive steps have already been taken in this regard, including the notification of the Right of Way

Rules in 2016. These initiatives needs to be built upon to further streamline right of way permissions.

d. **Ease of Doing Business** – this is a stated Government objective not only for telecoms but across all sectors. There have already been several positive steps taken by the Government on this front, including Right of way Rules, Aadhaar based E-KYC, doing away with wireless import licenses, etc. Further steps are also on the anvil such as taking WPC online. The TRAI has also recently submitted its recommendations to the DoT on Ease of Doing Business. We support these recommendations and hope that these will be accepted by the Government

e. **5G and IoT** – India is on the cusp of these new technologies that have the potential to transform the way we work, live and operate. The Government is already working actively of a framework for M2M and IOT – which includes issues such as 13-digit numbering scheme, KYC for M2M, issues related to roaming, etc. The TRAI has also submitted its recommendations in this regard. It is our submission that M2M should be a part of the licensing framework and that there should not be any differential licensing /regulatory treatment for M2M connections/services.

III. OUR SUBMISSIONS ON THE PROPOSED POLICY FRAMEWORK

A. Goals of NTP-2018:

1. We support the goal /objective laid down by TRAI to facilitate development of communication infrastructure and services to achieve inclusive socio-economic growth in the country.

2. It is submitted that a **world class telecom infrastructure is the foundation** for achieving the vision of Digital India
   a) Telecom and its benefits cut across all sectors & industries - Education, healthcare, agriculture, digital payments ,digitization of Government records,
   b) Telecoms is the enabler for Future Connected India – Smart Cities, M2M, IOT, connected cars, robotics.
   c) It is already contributing to 6.1% of GDP, which is expected to go up to 8.2% of GDP & 30 lakh Direct jobs by 2020.

3. It is thus submitted that a key goal of NTP-2018 should be to **facilitate the transformation to a Digital India** as has been envisaged by the Government.

4. Another goal of policy should be **recognize Telecom as a core Infrastructure sector** that is an **Economic enabler rather than a revenue generator**.

5. The Policy should also seek to **balance the interests of the consumers, the service providers and the Government.**

B. Mission :

1. We believe that the mission statement of the Policy should incorporate a specific reference and a special emphasis on rural connectivity - providing affordable and quality telecommunication services in rural and remote areas.

2. The Policy should also have a mission statement to ensure viability of the sector in a competitive environment.

3. Financial inclusion is an important objective of the Government and should be included in the mission statement and also reflected in the objectives and strategies.

4. It is suggested that the Goals of NTP-2018 and the Mission statement under policy should be merged and should draw upon the themes that have already been enunciated by the Government.

C. Objectives :

1. With regard to the objectives enunciated in the proposed policy structure, it is first suggested that the objectives should be laid down in a technology neutral manner. Technology neutrality has for long been the cornerstone of policy and policy should not specify objectives based on technology – fixed/wireless/satellite/WiFi, etc. Connectivity should be delivered to the consumers as per their demand and requirement and as per optimal mix as may be determined by the market.

   In view of the above, we suggest that TRAI may like to review objectives (c), (d) and (f)

STRATEGIES TO ACHIVE ENUNCIATED POLICY OBJECTIVES

1. In respect of the strategies that are laid down in the draft policy structure, we first submit that the strategy statements should clearly indicate the direction and intent of the strategy. This is because a general worded statement is open to interpretation, which can lead to a difference in the understanding, the interpretation and implementation of the Policy.

2. Further, we submit that the NTP-2018 should carry with it a detailed explanatory memorandum that clearly lays down the understanding and the intention of each policy statement.

3. It is also our suggestion that as there are several common strategies that can be used to achieve multiple objectives, it may be better to classify the strategies under different classifications /heads.

4. We are however, in this response for the purposes of ease of reference responding to strategies enunciated for achieving respective policy objectives. Our submissions in this regard are as below:

D. Common Strategies to leapfrog India amongst top-50 nations in international rankings in terms of network readiness, communications systems and services , to attract an investment of USD 100 billion in telecommunication sector, and to attain average speed of 20 Mbps for wireless and 50 Mbps for wireline internet connectivity:

It is suggested that the Strategies in this regard may be sub classified under the following heads:

1. Licensing & Regulatory Framework

a) We have already made our submissions to the TRAI on the Licensing issues – which may be read as a part of our response to this consultation. A copy of our submission are enclosed as Annexure-1 for ready reference.

b) The policy should expressly enunciate the need for a conducive, predictable & stable framework – as a pre-requisite for attracting investments.

c) Whilst recognizing the benefits of convergence, the policy should also enunciate that there will be a **unified /converged licensing and regulatory framework** that will extend uniformly to all converged services.
   - For example, use of unlicensed spectrum cannot mean the provision of an unlicensed service. Any player offering WiFi services must come under the ambit of the converged licensing & regulatory framework.
   - Similarly, the concerns related to OTT Communication players need to be specifically addressed in the Policy

d) Needless to say that any changes in the framework should also be accompanied with a migration path for existing licensees based on the principles of no worse off and choice of migration.

e) As mentioned in pre-paras, a technology neutral approach should continue to be maintained.

f) One Nation-One License is desirable, but may be offered as a choice instead of a mandate this will ensure that smaller /regional players are not excluded.

2. Regulatory Costs

a) The policy should recognize that the sector is over burdened with various duties and levies and there is a need to **reduce, rationalize and streamline the cost burden on the sector**. Specific measures in this regard may include

i. **Subsume license fee & Spectrum Usage charges (SUC) into GST** - In other sectors excise duty has been subsumed with GST. This should be done in the case of telecom as well.

ii. With the introduction of auctions, there is no case for a SUC as the market price of spectrum is now being recovered through auctions. **If however SUC is to be applied separately should only be as a nominal fixed charge** – in order to cover costs of administration & Regulation. A revenue share based SUC punishes performance and those who make efficient use of their spectrum, which goes against the tenets of a rational spectrum policy. The higher the revenue share, the higher is the punishment for performance. At most SUC may be applied at 1% of revenues.

iii. License fee (including any USO levy), if not subsumed into GST, may be prescribed at 3%.

iv. The **USO levy to be discontinued**. Over 5 lakh villages have already been covered and the balance coverage can be easily met with the existing corpus in the USO Fund. In the event that this is sought to be done in a phased manner – we suggest that the USO levy should be brought down or phased out immediately, which was to 3% as recommended by TRAI way back in 2015 and then phased out over a period of 3 years.

v. If license fee is continued, it is suggested that going forward, there should be a **simple, non-controversial base for application of License fee.**

vi. The present rate of 18% GST applied to telecom is too high. Whilst we learn from media reports that the DoT has recommended that this be brought down to 12%, we believe that given that telecom is a core sector and a key enabler for socio-economic growth, there is a **strong case for the GST on telecom to be reduced to 5%.**

vii. **No license fee/SUC should be applied on trading proceeds** as is presently prescribed. This only acts as an added tax increasing the cost of spectrum.

A brief note substantiating the need for a reduction in the USO levy and SUC charges is enclosed as Annexure-2.

b) Another aspect of regulatory costs is the costs of compliance – **Policy should also enunciate the need to reduce compliance costs**. Some steps that may be considered for inclusion in the policy could include:
   i. **Avoiding micro-regulation** and focusing on a light touch, market based approach. A fair and free functioning market is the best regulator.
   ii. **Rationalization of penalty structure** - Penalties should only be considered for substantive violations – not for non-substantive discrepancies as has become the current practice.

3. Right of Way

a) We **support the strategy of engagement with the State Governments for faster rollout** of infrastructure and the **development of a nation wised common portal** for application and approval for ROW permissions.

b) We suggest that the policy should also **provide for laying of overhead fibre using existing infrastructure** such as electricity poles.

c) With respect to facilitating the deployment of underground fibre it is desirable that a **common service duct be included in definition of road**. Engagement with the Ministry of Roads Transport and Highways would be required in this regard.

d) There should be collaboration with Ministry of Urban Development to ensure that **new buildings are given approvals only if they are telecom infrastructure ready.** This will also facilitate the Smart cities initiative of the Government.

e) There are also very high costs associated with right of way permissions, which not only lead to delays and disputes but raises the costs of service. Further, there have been instances of states / municipal bodies imposing property tax on towers on the grounds that towers is a building. This issue can be resolved through the Policy by **clarifying that telecom is an infrastructure /equipment, not a building and needs to be treated as such.**

f) Electricity is required to run the mobile infrastructure. The Policy should enunciate in its strategy the need to ensure **uninterrupted electricity for towers on priority basis and at industrial rates.**

4. Ease of Doing Business

a) The TRAI has already submitted its recommendations in this regard to the DoT and we submit that these should be included in the strategies for NTP-2018.

b) In addition to the measures already highlighted by TRAI, the policy may also look at including the following:

i. Automate SACFA approvals, There should only be one approval per location – with height of the tower and distance from airport being the only criteria.

ii. Removing the need for **import license on RF equipment**.

iii. **Allowing equipment re-deployment freely across service areas**. This will also encourage active infrastructure sharing. At present, equipment can only be redeployed in the band that has been allocated to the licensee. But in the case of infrastructure sharing it is likely that an infrastructure provider may need to deploy equipment in a band that is only allocated to the infrastructure seeker.

iv. **Allowing exporting of active equipment that may have become redundant –** this would pave the way for flow of funds for investments in the new technologies and supporting infrastructure.

v. **Assessment** of Gross revenues/Adjusted Gross Revenues [if this is continued with as the basis for license fee] **on a central rather than Circle**. This will avoid different interpretative positions being taken by different Circles /CCAs.

vi. To **introduce online reporting of data for service providers**, online payment of fees, introduction of LFDS.

vii. Support for **Simplified E-KYC processes**.

viii. To look into the issue of **speeding up clearances by Government Departments** such as The Wireless Planning & Coordination (WPC) wing of Ministry of Communication.

ix. **Reduction of the application fees for SACFA and doing away with multiple clearances wherever possible**.

x. Do away with biennial self-certification as with the launch of the Tarang Sanchar Portal, the information is current at all times.

xi. The EMF Limits should be prescribed in line with the standards endorsed by the World Health Organization.

5. **Financing**

a) **Allowing Telecom/ telecom infrastructure industry**, which have been granted infrastructure industry status, **to issue tax free bonds** – this would reduce the overall cost of capital and mobilize cheaper funds for growth of the telecom/ telecom infrastructure sector at large thereby help achieve the national vision of a connected India.

b) **Creation of a Telecom Finance Corporation** (as also envisaged in NTP-2012) as a vehicle to mobilize and channelize financing for telecom projects in order to facilitate investment in the telecom sector **to provide loans at preferred rates to Telecom Companies**.

c) Telecom/ telecom infrastructure industry be eligible for access to **long term low cost debt for infrastructure projects** to be provided by **Infrastructure Debt Funds (IDFs).**

6. **Spectrum Related**

a) Revenue maximization deleted as an auction objective – instead direct indirect socio economic benefits to be a stated objective.

b) The policy may like to distinguish between access spectrum and backhaul spectrum and state that whist access spectrum will be allocated through auctions, in the case of **backhaul, which is more in the nature of an infrastructure, the same will be allocated based on the total quantum of access spectrum** held by a particular operator.

c) Spectrum lying unused is the most inefficient use of this natural resource. As noted above, with the emphasis being changed to maximization of socio economic benefits, it is desirable that spectrum is put to use at the earliest. For this objective it is desirable that **all available spectrum should be put to auction**; further it is desirable for purposes of certainty and more rational bidding that **auctions should be conducted at regular intervals;** in case of auction of new bands indicative timelines may be given.

d) The **Reserve prices should be set at reasonable levels** to deter non serious bidders; reserve prices should not be based on early auction discovered prices

e) Unlicensed spectrum is not safeguarded against interference, such bands must be identified judiciously and conservatively. **No spectrum identified for IMT should be considered for delicensed use**. In any event, there should not be any unlicensed spectrum below 5GHz.

f) **Global harmonization** is a well-recognized policy objective and the 2018 policy should continue to enunciate this position.

g) **Harmonization of allocations** to ensure optimal use of allocated spectrum should be an **ongoing policy objective**.

h) The proposed policy talks monitoring efficient utilization of spectrum by conducting regular audit of the spectrum allocated to both commercial as well as government organizations. In this regard, it is submitted that an **audit is required to ascertain use of spectrum allocated to Government organizations** – use of spectrum by commercial organizations easily ascertainable from reports file with TRAI.

i) It is also suggested that any spectrum allocated for experimental/trial purposes should be for a time bound period, with clear restrictions on scope of use. This may be clearly enunciated in the 2018 Policy.

j) Whilst the policy talks about mapping of digital assets, we submit that it is equally desirable to map the spectrum assets. Policy should provide that **Spectrum availability and allocation details shall be made transparently available in the public domain.**

k) Whilst spectrum sharing is permitted, the guidelines appear to be confined to sharing of access spectrum. It is not clear whether backhaul is permitted to be shared. Given that the Government has permitted all types of sharing – passive, active, spectrum – and these initiatives lead to cost effective and efficient utilization of resources, it is submitted that **backhaul sharing should also be explicitly permitted.**

7. Consumer Related Issues

a) Mobile number portability has given freedom to the consumers to port to a service provider of his choice. This freedom and choice should also be made available in case of fixed numbers and **all India Fixed number portability** should be a part of the new policy.

b) The policy should seek to **avoid creating a multiple layers grievance redressal approach** /mechanism, which can only lead to delays in the settlements of disputes. Further, the amounts in the case of telecom are often very small and very high in number, thus raising the issue whether this should be dealt with by an Ombudsman or within the existing grievance redressal system. Also establishment of an Ombudsman will require

amendment in the Telegraph Act. Therefore, if at all an Ombudsman is to be mooted, it is suggested that – overlap, duplication & multiple layers can be avoided if bifurcation can be done basis quantum of dispute

E. Strategies to increase rural tele-density to 100% and to provide data connectivity of at least 1 Gbps speed to all the Gram Panchayats

1. In this regard, it is first submitted that despite odds, mobile coverage is over 90% of the population and only around 50,000 of the total 6 lakh villages are yet to be covered. This means that in terms of supply, the objective has already been largely met; however to translate that availability of coverage into **increased tele density will require demand side initiatives.** These have been captured by the TRAI in its recommendations on delivering broadband quickly, which we submit can also be reflected in the 2018 Policy.

2. We maintain that the rural market being a primarily incoming call market, the business case for rural coverage and services rests primarily on the revenues from termination charges. We believe that the **MTC needs to be looked at not only from a cost compensatory approach – including all costs, but also as a tool to encourage increased rural coverage and tele density.**

3. We have also always maintained that **increasing rural coverage should be anchored on an incentive based approach**. Such approach was briefly introduced by DoT by proposing a reduction in the USO levy for increased rural rollout, before being withdrawn. We submit that the Policy should provide for an incentive based approach for achieving this policy.

4. Active infrastructure sharing has been proposed as a policy strategy for achieving this policy objective. We support this approach as we believe that the cost reduction due to active infrastructure sharing will definitely make the business case more feasible. Our suggestions with regard to encouraging active infrastructure sharing have already been made in the pre-paras above. These include – allowing free movement of equipment across service areas, import licenses to be disbanded, import not tied to frequency allocation, etc. We believe that intra circle roaming is also a good way to achieve cost effective reach of competition and services into the rural areas.

5. The policy should also enunciate a clear statement with regard to the BBNL – which has been tasked with the responsibility of reaching fibre to 250000 Gram Panchayats. This should also be included in the objectives.

6. As submitted above, we suggest that rather than bifurcate /identify strategies to achieve specific objectives, which leads to overlap as a singly strategy may be used to meet multiple objectives, it may be desirable to classify the strategies into sub heads. For example, spectrum related strategies should all come in one place and not be repeated

objective wise. Further, it is reiterate that he Policy should continue to maintain a technology neutral approach – satellite, fixed wireless – all technologies to be permitted – no technology to be incentivized /promoted at the cost of another

F. Strategies to enable access for wireline broadband services to 50% households in the country; to enable access for high-quality wireless broadband services at affordable prices to 90% population; to develop 10 million public Wi-Fi hotspots in the country; and to achieve 900 million broadband connections at a minimum download speed of 2 Mbps, out of that at-least 150 million broadband connections at a minimum download speed of 20 Mbps:

1. We note that the strategy for this objective endorses a technology neutral approach – laying down a single target that may be achieved through optimal use of available technologies. We support this approach and request that it be used ubiquitously in the new policy.

2. The draft policy talks about facilitating the development of Open Access Networks to improve access and affordability of communication services. It is not clear what this strategy means or entails. We **request that the same not be included in the Policy without proper deliberation or consultation on the issue.**

3. Regarding **Upgradation of cable TV networks** for delivery of converged broadcast and broadband services, it may be clarified that this will be **within the defined licensing & regulatory framework.**

4. With respect to the strategy on **incentivizing fixed-line broadband services**, we reiterate that emphasizing/incentivizing/**promoting one technology over another is not desirable**. This will be a deviation from clearly stated technology neutral approach of Government and can lead to a regime of cross subsidization & non level playing field.

5. Similarly, we believe that **sustainable provisions should be devised for development of all infrastructure and service**, and **not confined to Wifi only**. As submitted above the existing licensing framework or the converged future fit licensing and regulatory framework when devised should also be equally applicable to public WiFI hotspots

G. **Strategies to enable access for connecting to 10 billion IoT/ M2M sensors/ devices:**

1. We respectfully submit that there is **no requirement to prescribe a separate regulatory framework for IOT/M2M service providers**. The **current license regime – allows provision of all types of access services – which will include IOT/M2M.**

2. If the intention is that the M2MSP will use the SIMs/resources of existing licensees, it, in effect becomes – either a bulk customer [own use] or a reseller [third party use]. License for resellers has already been notified by way of a VNO license which allows resale of all services permitted under UL.

3. We reiterate that permitting the same service to be offered through licensing on one hand and registration on another will lead to regulatory arbitrage unfair competition and no level playing which is not desirable.

4. Recognizing that the policy is being formulated in the era of convergence, we emphasize that the foundation has to be a converged licensing and regulatory framework.

5. We do not believe that licensed or unlicensed spectrum should be separately earmarked for IoT/M2M – this may lead to sub optimal utilization of resources.

6. The issue of a framework for M2M is already being discussed – in this regard, we submit that a separate [13 digit] numbering scheme for M2M has already been decided. Strategies to facilitate the development and growth of the IOT M2M market should include simplified KYC norms, allowing Global M2M SIMs in India & vice versa, etc.

7. Collaboration with sector specific council for specific use cases is desirable – but must be within defined framework of common enunciated principles.

H. **Strategies to establish India as a global hub for data communication systems and services:**

1. We believe that **laws pertaining to Data protection, privacy and net neutrality should be in the form of a horizontal regulation across all sectors** and not confined to telecom alone. In the context of net neutrality, we believe that **Net neutrality may be as already defined under the telecom licenses** as **allowing unrestricted access to all content, except that which is prohibited by law.** This definition can be a good working definition of net neutrality across all sectors.

2. We submit that **cross border data transfer is already permitted under the IT Act**, but there are some restrictions under license leading to confusion and ambiguity. We submit that the IT Act being a horizontal regulation should prevail and provisions pertaining to cross border data transfer may be removed for license. We believe that **in an increasing globalizing economy of which India hopes to be a key player, permitting cross border transfer of information is both desirable and necessary.**

3. It is submitted that the **concept of a interconnect exchange for data services is not clear –** it is desirable that **should not form part of the policy until there has been a**

proper consultation on this issue so that the concept, rationale, etc of a interconnect exchange for data services is well defined and understood.

I. **Strategies to become net positive in international trade of telecommunication systems and services:**

1. As submitted above, **allocating of any spectrum for demonstration/experimental** purposes should be for a **time bound period, with clear restrictions on scope of use.**

2. We submit that the **strategy of development of own test labs & infrastructure will result in duplication** – will **impact ease of doing business**; rather we believe that the **objective should be for India to set up a global certification lab.**

3. We do not agree that there should be any body for enforcement of standards for telecom products and services. This will lead to micro regulation and will impact ease of doing business. The products and globally certified and no enforcement is necessary.

New Delhi
19 January 2018

Vodafone's Inputs to TRAI on Proposed New Telecom Policy – Licensing Issues

A. KEY POLICY OBJECTIVES

1. **Vision & Objectives:**
   a. Need to create world class infrastructure to contribute to Digital India

2. **Simplicity:**
   b. Clear enunciation of framework under New Policy, including what is permitted / not permitted ;
   c. Provide time bound, web-based & single window application & approval processes; least scope of discretion
   d. Simple license + some general conditions publicly notified
   e. Remove archaic processes /approval requirements like import license / SACFA – Ease of Doing Business

3. **Consistent & Transparent**:
   a. Regulatory Impact Analysis-pre-requirement for any change or recommendation of any change
   b. Public disclosures about spectrum holdings / availability
   c. Accountability for decisions/ recommendations

4. **Future-Fit:**
   a. Encompasses all communication services
   b. Technology neutral services / spectrum approach
   c. Encourages Innovation
   d. Encourages Investments
   e. One India One License as an option
   f. Commitment to address legacy issues – appropriate migration schemes
   g. Follow international standards and best practices, eg ICNIRP for EMF

B. PRESENT SCOPE OF LICENSING - WHICH ONE IS THE RIGHT SCOPE?

1. Licensing framework presently laid down under Section 4 of the Telegraph Act
   a. Licensing is for establishment, operation & maintenance of Telegraph – message /signals sent on telegraph
   b. Network and Service inextricably linked
   c. Even MVNO framework is tethered/linked to network as MVNO offers services through arrangements with Licensees

2. Section 4 –how it is implemented

Types of Messages	Who can send/transmit?	License Required (Y/N)	Security Obligation	Revenue Share Obligation
Voice – PSTN/PLMN/Packet	Licensee	Y	Y	Y
Data –All kinds of Data Packets (including video)	Licensee	Y	Y	Y
SMS	Licensee	Y	Y	Y

3. Some recent exceptions / proposals not conforming to Licensing framework:
   a. Messages sent/transmitted within India by entities which are non-licensees (OTT Communication)

Diametric Applicability - Case of OTT Communication players

	Licensees	OTT Communication (Non Licensees)
Privileged by Government	*Yes*	*No*
Restrictions/Conditions	Yes	No
Financial Conditions:		
Consideration to Government	Yes – Revenue Share	No
USO fund Obligation	Yes – 5% of Revenues	No
Can Government Order Intercept / Detain / Disclosure of any messages?	Yes	No
Prevention of improper interception/disclosure of messages	Yes	No
Restriction on "possession of message"	Yes	No
Conditions for setting up networks	Yes	No
Encryption Restrictions	Yes	No
Inspections	Yes	No
Routing Restrictions	Yes	No
Tariff Regulations	Yes	No
Consumer Privacy	Yes	No
Penalties	Yes	No
KYC	Yes	No

b. Recent recommendations on:
   - "Internet Telephony" where a Licensee without Access Network can Provide Telephony/use network of another operator
   - Wifi Hotspots to be created by Non-Licensee
   - M2M services to be offered by Non-Licensee
   - Services to be offered using de-licensed spectrum for network
c. Present licensing framework does not provide for registration for network/telecom services
d. Creates a non-level playing field, WiFi/M2M is still a communication service- requires licensing under Section 4

C. GOVERNMENT TO DECIDE – LICENSING OR REGISTRATION

1. In case of Registration –
   a. Whether permissible under the Telegraph Act or amendment needed
   b. Legacy concerns of existing licensees to be addressed – another migration package?

2. OTT Communications use networks of Licensees to offer similar/same services – concerns need to be addressed – no simple /straight solutions

D. KEY QUESTIONS:

1. Can & Should service be de-linked from network, but both licensed?, Or
2. Can & Should service be de-linked from network, and service de-licensed but network licensed?

3. <u>Any change in Licensing Framework will require:</u>
   a) Amendment in Indian Telegraph Act
   b) Migration Offer to existing operators to migrate to new regime
   c) License Fee will have to be subsumed in GST, considering revenue share on service will not be possible
   d) Security obligations to be met through Horizontal regulations – Information Technology Act, lawful interception, data protection, privacy, subscriber verification, etc
   e) Network operators to be responsible for the security of their networks
   f) Number Series only to be allocated to Network Operators
   g) Mandatory Interconnection only between Network Operators
   h) Interconnection with pure Service Provider requiring interconnection – not mandated and can be done only on revenue share/ mutual agreement
   i) Only Network Operator eligible to bid for Spectrum – no SUC, at best a nominal fixed fee

j) QOS to apply to both Network [network related QOS] as well as service operators [service related benchmarks]

E. OTHER ISSUES:

1. AGR issue for the past needs earliest resolution – going forward – a simple unambiguous approach – only GST recommended.
2. SUC at 1% of AGR with glide path to nominal fixed fee and ultimately no SUC
3. USO contribution to be removed in glide path 3% from 1 April 2018 and to reduce by 1% each in subsequent years , in case LF is subsumed in GST then no more USO - USO may be met from auction proceeds
4. Access Spectrum and Microwave to be allotted to only Network licensees
5. Wifi for commercial use , only by licensed service providers (including NW with service license)
6. Sharing of infrastructure (active, core, passive, transmission) to be promoted to optimise resources
7. Spectrum Sharing and Trading to be simplified further in line with broad policy – conditions to be harmonized across guidelines
8. TERM offices to be leveraged for creating telecom/IOT awareness, supporting right of way issues
9. Fixed Number Portability to be introduced.
10. Net Neutrality to be considered in light of technology development keeping interest of country and stakeholders in mind
11. Light touch approach - micro-management increases regulatory costs – focus on transparency, awareness, choice, etc.

New Delhi
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Annexure-2

Note of Reduction in Regulatory Costs

A. High Burden of Duties and Levies

1. It is a well acknowledged fact that the **Indian Telecom sector is overburdened with various duties and levies that have only been increasing over time.**

2. At present, the **sector pays approximately 30%** by way of taxes and levies 8% license fee, including 5% USO, upto 5% as SUC, around 2% for Microwave charges and now 18% GST. In addition to the above there are added costs attached with Right of Way permissions, taxes at the state level, etc.

3. The USO levy continues at 5% even though 5 lakh villages have been covered [4.5 lakhs by Vodafone alone] and there are stringent rollout obligations prescribed as a condition of spectrum auctions, leading to double costs on the operators.

4. The SUC revenue share regime, which was a relic of the era when spectrum was allocated administratively, continues even today even though the spectrum is now being allocated through auctions, leading to double costs to the operators.

5. The service tax also increased over time and now GST has been pegged at 18%, which is completely contradictory given the essential nature of this service. Further, whilst in other sectors, excise duty has been subsumed with GST – however license fee not subsumed in GST in case of telecom, again leading to double costs

6. A rational and responsible taxes and levies regime will reduce the onerous burden on the sector and will allow it to have greater investible surplus, both for increased rollout of infrastructure but also more affordable services for the consumers.

B. Sector Review as on date showing a sharp decline in ARPU, revenue and profitability

1. The growth in total subscribers has been 19.6% CAGR over a period from 2007 to 2017. In terms of absolute numbers the total subscribers have increased from 205 million in 2007to 1.118 billion in 2017.

2. Telecom sector revenue during the above period has risen from INR 1.51 lakh crores to INR 2.70 lakh crores, which is much less than the proportionate growth in the number of subscribers. If one notionally looks at the growth of revenue vis-à-vis the growth of subscribers, the revenue should have grown much more. This shows a substantial drop in the ARPU.

Average Revenue Per User (ARPU), which is the key indicator of financial health of the telecom sector has dropped down from INR 275 in September 2007 to INR 131 (Mar Qtr 2017). In FY-17, it is the first time since inception that the telecom industries' revenue and EBITDA has declined.

3. A number of tariff plans have launched with Voice service free, thereby **leading to a sharp decline in the Average revenue per user for voice service from INR 180 (Aug 2016) to INR 68 (March 2017)**. Voice Revenue Per Minute (RPM) has fallen down by around 25% between Q2 FY17 and Q4 FY17.Revenue from Post-paid category of subscribers has also shown a downward trend. **The average monthly mobile bill is currently reduced to INR 240- 280 from INR 349 (2016 End).**

4. The debt of the telecom service providers has substantially grown from INR 83,000 Crores to INR 4.6 Lakh Crores in the same period. **TSPs are currently in a situation where their total debt is approximately double the value of revenue generated**.

5. The increased debt burden on the operators coupled with continuous pressure on profitability has adversely affected the financial health of the telecom sector. This is evidenced by the fact that a number of small telecom service providers have merged with other TSPs during the last one year.

6. With the factors as mentioned herein above, the telecom sector can only sustain with the help of reduction in license fee as well as SUC. **This will give respite to the declining profitability and in turn will improve all the other factors to promote growth while maintaining the quality of service. A reduction in license fee and SUC, will result in more investments in the networks and services which in turn will lead to generation of more revenues for the sector and in turn for the government. Thus, for long term healthy return to the government, it is essential at this stage to reduce these costs. Investments in the network at this stage is an absolute necessity for improving the quality of service, which in turn will not only improve the performance level but will also increase the revenue and thereby the License fee also as a percentage of AGR.**

C. Need for decrease in USO Fund levy

1. In present context operators are on the one hand themselves investing in rural and on the other hand paying the USO levies to the government, which is a sort of double whammy.

2. There is also a substantial collection in the USO fund and an amount of USO fund to the tune of INR 42,687.38 Crore is lying un-utililized. This un-utilized corpus is being continuously topped up by further collection from the operators, thus leading to sub optimal utilization of valuable investible funds.

3. The powers, therefore, as per the statutory provisions are vested with Department of Telecommunication to charge USO Fund. The overwhelming fact of non-utilization of the existing USO Fund to the tune of more than 42,000 Cr and increase in rural tele density from 5.89 in 2007 to in 52.97 in Nov 2016 are substantially good reasons to reduce the USO Fund levy as per the discretion of DoT. When this fund was envisaged in the year 2003, the rural teledensity was only 1.49.

4. Keeping the available USO Fund to the tune of more than INR 42,000 Crore is a waste of national resource and DoT can reduce the collection of the same till the utilization of the already available funds, for securing a sound growth of the telecom sector. This will give a great respite to the operators, for paying back their debts, which has already mounted to the extent of twice to their revenue earing capacity, because of the onerous burden of duties and levies, which has been further aggravated by the cut throat competition in the sector.

5. In any case the telecom coverage is now extensive with only marginal areas left uncovered, which position is remarkably different from 1999 when there was hardly any rural telephony. There is need of impetus from demand side and it should be left to operators, with the help of some suitable incentives, to further increase the tele-density.

D. Reduction in Spectrum Usage Charges

1. Spectrum Usage Charge of up to 5% of AGR not only tantamount to punishing the performers but is also a double whammy in case of auctioned spectrum. In a situation when spectrum is sold through auctions, a SUC charge based on revenues acts as punishment to the operator which is more efficient and is generating more revenues from such spectrum.

2. There is a strong case to remove SUC as the market price of the spectrum has been discovered through auction and, therefore no recurring additional charges need to be paid in the form of SUC. Therefore, SUC should only be a nominal charge in present day context and it should be a fixed charge to cater to administrative expenses.

E. Additional considerations for reduction in levies

1. As on date 38% to 40% of the revenue is payable to exchequer by the telecom licensee in the form of levies & taxes such as License fee, SUC, GST, ROW charges and local taxes. The cost of spectrum for PAN India operation earlier pegged at INR 1658 Cr in 2004 has increased exponentially with the introduction of spectrum auctions.

2. The working group on the telecom sector for the twelfth five year plan (2012-2017) had recommended that rationalization of levies and taxes in the sector may be reviewed from time to time to ensure affordable delivery of services to the consumer.

3. TRAI in its recommendations on Allocation and pricing of spectrum for 3G and broadband wireless access services on September 27, 2006 has quoted the draft strategy paper on telecom sector prepared by Ministry of Finance, wherein it was observed that in India, telecom services face multiple taxes and levies and these levies and duties are one of the highest in the world. The TRAI further recommended that the annual spectrum fee should be reduced to allow operators to reinvest a larger portion of their revenue in infrastructure development, and yet allowing the licensor to cover the costs of spectrum management and administration.

4. The relevant portion of the TRAI's recommendation paper is reproduced herein below for ready reference.

   "4.87 In its draft strategy paper on the telecom sector, the Union Ministry of Finance emphasized the need of reducing the licensing fees burden from the present level. The paper mentioned that telecom services face multiple taxes and levies and these levies and duties on the sector are one of the highest in the world. A reduction in the absolute amount of these duties and levies will allow telecom service providers to plough-back profits into enhancement of networks and services.

   4.88 The Authority believes that it is necessary to reduce the WPC fees based on AGR for all operators, irrespective of the band of spectrum in which they operate. The Authority thus recommends that the annual spectrum fee should be reduced to allow operators to reinvest a larger portion of their revenue in infrastructure development, and yet allowing the licensor to cover the costs of spectrum management and administration. This will be especially useful if there will be a substantial up front fee for acquisition of 3G spectrum."

5. Reduction in LF and SUC will at least compensate the increase in Service Tax to the level of Goods and Service Tax, which is presently at 18%. This is an added burden on the consumers. While in other sectors, Excise Duty has been subsumed with GST, however License fee has not been subsumed in GST.

6. Further, Custom duty of 4% on 4G equipment, is an additional burden on the TSPs, already burdened with falling revenue and debt which is difficult to be serviced. It will further push the TSPs in red and will hamper the expansion of the network to provide a quality of service.