ASIA PACIFIC CARRIERS' COALITION

(Incorporated in the Republic of Singapore)

3 December 2009

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BY EMAIL ONLY

Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi – 110 002
India

Attention : Mr Sudhir Gupta

Dear Mr Gupta

Asia Pacific Carriers' Coalition – Submission on Overall Spectrum Management and Review of Licence Terms and Conditions

We refer to the above matter.

Please find enclosed our submission dated 25 November 2009 entitled Overall Spectrum Management and Review of Licence Terms and Conditions.

We look forward to any comments that you may have on the same.

Yours sincerely

Rajesh Sreenivasan
Secretary, Asia Pacific Carriers' Coalition

Enclosures

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Asia Pacific Carriers Coalition Response to TRAI Consultation Paper No. 6/2009, on Overall Spectrum Management and Review of License Terms and Conditions

BACKGROUND

This submission is provided by the Asia Pacific Carriers' Coalition (**APCC**) in response to the consultation paper number 6/2009 issued by the Telecom Regulatory Authority of India (**TRAI**) on Overall Spectrum Management and Review of License Terms and Conditions.

The APCC is an industry association of global and regional carriers operating in the Asia Pacific region, formed to work with governments, national regulatory authorities and consumers to promote open market policies and best practice regulatory frameworks throughout the Asia Pacific region that will support competition and encourage new and efficient investment in telecommunications markets.

This submission, made by the APCC, reflects the opinion of the majority of its members.

GENERAL COMMENTS

APCC's comments are limited to the proposal to establish a uniform licence fee for the telecom sector set forth in Chapter 2 of the Consultation Paper, and which is the subject of Questions 42-44.

1. *APCC supports the lowering of licence fees*

   APCC supports the lowering of applicable telecommunications licence fees in all markets. APCC would be concerned by any increase in licence fees and is aware of the current media reports suggesting that a new uniform licence fee in India might be set at 8.5 percent of Adjusted Gross Revenue (AGR), which would increase the present 6 percent licence fee for certain licensee categories, including ILD and NLD licensees.

   Apart from USO contribution, which is meant for the development of telecom in rural sector, the objective of the licence fee should be to recover the administrative costs of running the regulatory authorities. APCC would hope that, over time, as has been observed in other developing telecommunications markets, the overall % of revenue required to cover the administrative costs of the regulatory authority should reduce, reflecting an increase in effective competition as well as an improvement in the efficiency of the regulatory authorities. It is also understood that there is a significant amount of unutilised USO fund with the Government. Thus there appears to be a case for a reduction (rather than an increase) of licence fee.

2. *Any changes in licence fees should be transparent and objectively justified*

The basic principles of how ongoing licence fees (excluding spectrum fees) are calculated should be transparently based on (a) an administrative fee – based on the cost recovery of the costs of running the regulators who manage the licence holders; and potentially (b) other special fees (i.e. universal service fees,). These principles are as supported by the ITU.

We note that the current 6% licence fee for ILD and NLD licensees comprises a 5% USO contribution and a 1% administrative fee. APCC submits that any increase in licence fees should be directly and objectively justified. We understand that there is no intention to increase the USO charge. APCC suggests that any change in licence fees should be accompanied by a quantitative explanation for such changes.

Any unsupported change in policy would fail to provide the regulatory predictability that is an important factor in telecom market investment decisions by both existing market participants and new market entrants alike.

3. *A reduction in licence fees encourages infrastructure and investment and should ultimately results in lower prices for consumers*

Any increase in licence fees adds to the cost base of service providers which will (directly or indirectly) filter to end customers. This may potentially impact India as an attractive location for certain end customers who depend on competitive and reliable telecommunications services.

In contrast, lower licence fees should enhance the take-up of service (facilitating the achievement of the Government of India's national telecom objectives) and will also encourage service/network expansion by service providers. APCC notes that a lower licence fee for ILD and NLD licensees has already served to encourage the growth of the data services that play an important role in India's ICT-based economy post January 2006 with the advent of simplification of guidelines for the ILD and NLD licence regime.

4. *Licence fees are a significant consideration for new market entrants*

One key element of the business model for a potential new entrant into the Indian telecommunications market (or sector) is the applicable licence fees which will be payable throughout the tenure of the licence. We note that the lowering of the applicable licence fees for NLD and ILD licensees from 15% to 6% of AGR (effective from 1 January 2006), together with the increase in permitted foreign equity investment, resulted in a number of new international carriers entering the India market. APCC respectfully submits that any arbitrary increase in licence fees may discourage further new international (and potentially domestic) entrants from entering the telecommunications market in India.

5. *Licence fees in India are already high, when compared to other international jurisdictions*

APCC observes that licence fees in India are already high, when compared to other international jurisdictions. European Union countries, for example, are subject to Authorization Directive 2002/20/EC requiring that licence fees cover only those costs of the relevant licence administrative functions. In Pakistan, licence fees have been reduced from 4 percent to 1.5 percent and then 0.5 percent. Singapore has required a licence fee of 1 percent of annual gross revenue since 2000 for carrier licences. In Hong Kong, the regulator, OFTA, has repeatedly reduced the annual fee for facilities-based licences since market liberalization in 2001, to reflect that as competition in the sector has increased, OFTA's resources and costs to oversee that sector have decreased. APCC also notes that in many markets (both developing and developed) licence fees represent significantly less than 1% of relevant revenue of the licensees.

6. *DoT/TRAI has regulatory enforcement mechanisms available to ensure that integrated carriers do not arbitrage revenues across difference licences*

DoT already has a number of mechanisms to prevent the revenue arbitrage which has been highlighted as one of the key reasons for a uniform licence fee being considered. More specifically, the DoT has extensive auditing powers, including the right to appoint a Special Auditor at any time or to conduct specific DoT Telecom Enforcement & Monitoring division inspections on licensees.

APCC submits that the arbitrage activity would not be a reasonable justification to change (increase) the licence fees of those carriers who already have a uniform licence fee on all their services like standalone ILD, NLD and ISP licensees. Specifically, the TRAI could take immediate steps to clarify the regulations governing the treatment of different revenue under the licence regime and the relevant licence fees applicable to this revenue as well as to require adequate reporting to allow the TRAI to monitor compliance with these regulations. A more narrowly-tailored measure of this type would avoid harm to other licensees that have no ability to engage in the targeted misconduct, and to the enterprise and multinational customers in India that are served by those licensees.

RESPONSE TO SPECIFIC CONSULTATION QUESTIONS

42. What are the advantages and disadvantages of a uniform license fee?

APCC believes that any advantages of a uniform licence fee are outweighed by the resulting disadvantages of this approach. Any increase in the annual licence fees may impede growth and market entry in critical ICT services and would be significantly out of step with best practice policies of other Asia Pacific countries that are reducing rather than increasing annual licence fees. Any change in licence fee should be accompanied by associated justification or evidence of either (a) changes in relevant administrative and regulatory costs of the regulatory authority and/or (b) changes in any other special fees (i.e. universal service charges) which are incorporated within the licence fees (c) should be based on a transparent industry consultation process.

An unsupported change in licence fee policy would not provide the regulatory predictability that is an important factor in telecom market investment decisions.

43. Whether there should be a uniform License Fee across all telecom licenses and service areas including services covered under registrations?

APCC believes that a uniform licence fee across all telecom licences and service areas is necessary to address the arbitrage activity. However, the solution lies in the DoT/TRAI's current powers which provide adequate mechanisms for the detection, prevention and deterrence of any such arbitrage activity. Therefore, APCC does not support any uniform licence fee that would result in a fee increase for any licence category.

44. If introduced, what should be the rate of uniform License Fee?

Any uniform licence fee should in no event exceed the 6 percent level specified in the *Recommendation on a Unified Licensing Regime* issued by the TRAI in 2005, comprising a USO contribution of 5 percent and an administrative cost of 1 percent. APCC, however, submits that the DoT/TRAI should strive to reduce all applicable licence fees which we believe would stimulate investment and deliver consumer benefits across the industry section. This is also in line with TRAI's earlier recommendation of 2005.

APCC would be pleased to provide any further information that would be helpful to the Authority.

November 25, 2009