



Counter comments on TRAI Consultation Paper on Enabling Unbundling of Different Layers through Differential Licensing

1. At the outset, BIF wishes to compliment TRAI for bringing out a very important Consultation Paper on a subject that is contextual, timely and has the potential to help achieve the national priority of Digital India. Our counter-comments are as follows:
2. Some of the stakeholders have pointed out that unbundling of Different Layers through Differential Licensing is not required. However, this is an incorrect position because under the “Propel India” mission of the National Digital Communications Policy – 2018, enabling unbundling of different layers (e.g. infrastructure, network, services and applications layer) through differential licensing has been recognised as an important strategy for reforming the licensing and regulatory regime to catalyze investments and innovation, and promote Ease of Doing Business.
3. Some stakeholders have suggested that existing Unified License regime should be continued and no reforms should be introduced. However, this is also an incorrect position because the NDCP has set many objectives for governance framework for India’s digital economy. Needless to say, a harmonized view of these needs to pervade our regulatory rules in this area. Keeping in mind the overall liberal thrust of NDCP it is considered vital that a ‘light touch’ approach is adopted in all concerned sections of the digital economy - viz., infrastructure, networks, digital content and applications. Our respectful submissions in this regard are given below:

I. The overall harmonious view of NDCP

- i. Restructuring the regulatory and licensing system to secure the benefits of convergence.
- ii. Facilitate and IPR framework that encourages innovation. Review, as required, the existing legal framework applicable to patents, trademarks and copyrights.
- iii. Net neutrality is already been written into the license and may be reinforced in require to ensure the non-discriminatory treatment of content and the necessary levels of disclosure and transparency.
- iv. Again, inconsonance with principles of liberalization and facilitating increased investment, enable the unbundling of different layers through appropriate differential licensing.

The above considerations would lead to the following resultant actions:-

- a) The core network layer - This enjoys special/exclusive rights and fundamentally responsible for the processing and completion of all digital communications using “telegraph” equipment as defined in the India Telegraph Act 1885, would naturally be governed by the licensing requirements of that act and the regulatory requirements of the TRAI Act.
 - b) Services layer - Here there would be some sub - categories like services provided by ‘Other Service Providers’ (“OSPs”) and Virtual Network Operators (“VNOs”) and appropriate differential treatment would apply. However, software and software - based services (IT & ITES) are already governed by the IT Act and moreover do not have “telegraph” equipment as defined in the Telegraph Act; hence they do not warrant any further licensing consideration by DoT.
 - c) Applications layer - These are also governed by the IT Act as well as by the Copyright Act and Patents Act hence no additional licensing or regulatory control required.
- II. When unbundling the licensing framework into network layer, service layer etc. there is a clear functional difference being recognised between the categories. This is in tune with the direction of NDCP. Since net neutrality is an accepted rule in India now, the same must inform the exercise of license unbundling.
- III. IPR Treatment: NDCP has unambiguously indicated the need to comply with the mandates of the national IPR Policy 2016. Therefore the license unbundling action should also reflect and comply with the above Act.
4. Further, some stakeholders have suggested that MVNOs/service delivery category licensees should not be permitted to parent with multiple Network Service layer licensees. However, this is an incorrect position to take in the current environment. We would like to highlight that though the VNO Guidelines came out in 2015 and were revised in 2016 with an intention of encouraging more competition and investments in this segment, the concept of VNOs has not been successful so far in India. One major reason for this is Multi-TSP (NSO) parenting not being allowed as it limits the options available to VNOs and leads to a monopoly situation. Allowing multi-TSP parenting will encourage competition the sector and make the market more vibrant.
