

**ISPAI Response to TRAI Consultation Paper on ‘Introduction of Digital Connectivity Infrastructure Provider (DCIP) Authorization under Unified License (UL)’**

At the outset, ISPAI on behalf of its member ISPs thank TRAI for providing us an opportunity to share our inputs on this important consultation paper on introduction of Digital Connectivity Infrastructure Provider Authorisation as separate chapter under Unified license.

As has been discussed in the CP, TRAI in its recommendation dated 13.03.20 has opined that IP-I registration scope should be expanded to include the right to own, establish, maintain, and work all such infrastructure items, equipment, and systems which are required for establishing Wireline Access Network, Radio Access Network (RAN), and Transmission Links.

However, in the legal opinion sought by DoT on this issue, it has been observed that:

- (i) Active Infrastructure can be provided only by Telecom Licensees.
- (ii) IP-I registration holders cannot be allowed to provide active infrastructure under their IP-I registration unless they are shifted to licensing regime.

New/existing businesses can obtain UL Authorisation in case they wish to deploy active infrastructure. Accordingly, the recommendation could not be accepted.

Therefore, in the backdrop of the recommendations, Government has decided to create a new category of licensee namely Telecom Infrastructure Licensee (TIL) who may be permitted to establish, maintain, and work all equipment for wireline access, except the core equipment and holding of spectrum.

ISPAI is of the view that the current Unified License regime is a vertically integrated licensing regime outlining the right to provide Infrastructure services, Network services and services to the end-customer comprehensively. It is also pertinent to note that permitting to provide the elements of active Infrastructure through IP1 registration only will result in loss to exchequer and defeat the purpose of NLD authorization as the provision of end-to-end bandwidth and other active infrastructure was initially permitted to IP-II providers, and they were covered under the licensing regime. In 2005, IP-II license was discontinued and then existing IP-II licensees were asked to migrate to NLD (National Long Distance) license, which allows NLD licensees to provide leased circuit connectivity to end customers and other active infrastructure related activities. As such there are no advantages of introducing another new category of license for the telecom sector rather it may increase the complexities and compliance requirements, apart from disrupting the present structure. .

The Current UL-NLD authorization holders are mandated to pay 8% of AGR whereas as per DoT reference to TRAI the new category of licensees should be charged nominal fee to make the license attractive to new players. This will lead to discrimination and encourage exiting UL-NLD holders to discontinue/service closer under the ULNLD authorization and migration to IP registration. . It is also to be noted that the same is totally against the spirit of National Digital Communications Policy (NDCP) 2018 and can therefore prove to be an impediment in promoting “ease of business” in telecom sector.

We further believe that any change in licensing framework should adhere to following core principles:

- fair and equitable with the perspective of the existing licensing framework/ existing licensees

- same service same rules
- maintenance of level playing field
- no revenue arbitrage opportunities causing a loss to Government exchequer.

The current licensing regime provides space for required segregation of layers, while ensuring the optimum utilization of telecom resources, and suggest that there should not be any change in the current licensing regime just to enable active infrastructure provision by IP-I registration holders.

Further, we wish to submit that instead of making existing Unified license regime more fragmented, TRAI should strongly recommend to DoT for simplification of UL-VNO regime as per the global norms which are presently very onerous for UL-VNO licensees especially smaller players as compared to global standards of licensing terms for SDOs (Service Delivery Operators). Globally, the SDO layer is usually kept under light- touch regulation wherein license conditions of UL – VNO license is almost identical to Unified license thereby making it more compliance burden on UL-VNO licensee.

**ISPAI Issue wise comments:**

**Q1. Comments of stakeholders are invited on the proposed DCIP Authorization under UL (attached at Annexure V). They may also offer their comments on the issues flagged in the discussions on terms and conditions and scope of the proposed authorization. Any suggestive changes may be supported with appropriate text and detailed justification.**

**ISPAI Response:**

- **There is no need to introduce another new license for providing telecom infrastructure to telecom service providers.**  
The current Unified License regime is a vertically integrated licensing regime having the right to provide Infrastructure services, Network services and services to the end -customer and should remain as such.
- ISPAI believe that any unpredictability or potential disruption in future owing to change in licensing regime leads to instability in the sector and drives investors away. Given the huge capex requirement and long gestation periods associated with infrastructure creation in the telecom sector, it would be very difficult for any new operator with DCIP (Digital Infra Connectivity Provider) authorisation to get return on the investments on a large capital infused by it, by only offering it to telecom service providers.
- There is no need for any structural change in the licensing regime apart from simplification of UL-VNO regime as per global norms. Globally, the SDO layer is usually kept under light- touch regulation wherein license conditions of UL – VNO license is almost identical to UL-VNO license making it more compliance burden on UL-VNO licensee. Therefore, it is submitted that instead of making existing Unified license regime more fragmented, TRAI should strongly recommend to DoT for simplification of UL-VNO regime as per the global standards.
- The introduction of the new license is likely to distort the level playing field for existing telecom service providers as network layer services will be provided by new DCIP licensee and TSPs at differential I terms for example the service providers with DCIP authorisation would be offering services without payment of any license fee to the Government while TSPs would still be obligated to pay. We also apprehend that under existing telecom service providers would serve their own licensed service provider as well as others under the new license and not under TSP license. Such arrangement is likely to impact the Government exchequer revenues and would cause an arbitrage opportunity to new category of licensee vis-a-vis existing telecom licensees.

- Globally, there is precedence of stable and predictable regulatory frameworks, with many global Regulators proactively removing the previous mandated unbundling. Global practices on licensing framework shows that most of the countries incl. Australia, UK, USA, South Africa, Malaysia, Singapore etc. have only two separate categories of licenses for (a) Network Service Provider, who are integrated operator enabling n/w and providing services to end customers including Service delivery operators and (b) Service Delivery Operators i.e. the Service Delivery Operators are very lightly regulated. Separation between infrastructure layer and network layer is not prevalent.
- **It is suggested that there is no need to create a new category of licensing regime under Unified license.** However, in case it is still considered desirable to devise a new category of Digital connectivity infrastructure providers (DCIP) under Unified licensing regime, it is suggested that the terms and conditions of the new DCIP operator should be framed in such a manner so that there is a level playing field with respect to existing licensing regime. Some of the suggestions are as follows:
  - It is submitted that Part I of the Unified License should also be fully made applicable to proposed DCIP licensees DCIP license should not be proposed as standalone license and rather, it should fall under UL regime.
  - The Entry Fee of the Unified Licensee with DCIP authorisation should be fixed at a such level so that it does not distort the level playing field. At the same time, the Entry fee should ensure the entry of serious players and should also deter the existing telecom service providers against any potential misuse resulting into losses to the Government exchequer.
  - TRAI has suggested that the maximum penalty for DCIP operator should be like ISP Category B operator i.e., Rs 20 Lakh. It is suggested that since the DCIP would be operating on a Pan India basis, the penalty should be levied as per equivalent service area i.e., the penalty being levied on Pan India ISP Category A operator i.e., Rs 1 Crore per violation for each occasion in a service area.
  - As per para 2.2 of Annexure V of the paper, scope of services of DCIP authorisation includes to own, establish, maintain, and work all such apparatus, appliance, instrument, equipment, and system which are required for establishing all wireline Access Network, Radio Access Networks (RAN), Wi-Fi systems, and Transmission links. However, it is noted that under Para 2.7.(b), The scope of the DCIP authorisation should not include provisioning of end- to- end bandwidth using transmission systems to any customer or to any eligible service providers. The inclusion of transmission links under Para 2.2 will create unnecessary confusion. Hence, the provision of transmission links should be excluded from the scope of the proposed DCIP licensee while finalising the recommendations.

**Q 2. Are there any amendments required in other parts/chapters of UL or other licenses also to make the proposed DCIP authorization chapter in UL effective? Please provide full details along with the suggested text.**

**ISP AI Response:**

No, there is no amendment required in other parts/chapters of UL or other licenses.

The proposed change in licensing regime would not meet any purpose of the Government. And would essentially be against the principles of regulatory certainty which is a hallmark of successful telecom regulatory practices.

**Q3. Are any issues/hurdles envisaged in migration of IP-I registered entities to the proposed DCIP Authorization under UL? If yes, what are these issues and what migratory guidelines should be prescribed to overcome them? Please provide full text/details.**

**ISPAI Response:**

No Comments in view of our response submitted to Q1 & Q2 above.

As stated above, we do not recommend any change in existing licensing regime of integrated UL and UL -VNO regime.

**Q 4. What measures should be taken to ensure that DCIP Licensee lease/rent/sell their infrastructure to eligible service providers (i.e., DCI items, equipment, and system) on a fair, non-discriminatory, and transparent manner throughout the agreed period? Please provide full details along with the suggested text for inclusion in license authorization, if any.**

and

**Q 5. How to ensure that DCIPs lease/rent/sell out the DCI items, equipment, and system within the limit of their designed network/ capacity so that the service delivery is not compromised at the cost of other eligible service provider(s)? Please suggest measures along with justification and details.**

**ISPAI Response:**

ISPAI is of the view charges for sharing of infrastructure between service providers, inter-se, is beyond the remit of TRAI.

Further, we believe that the Principal – Agent type of relationship agreements as proposed by TRAI between DCIP as an agent and TSP as Principal may not be sufficient to ensure meeting of service level agreements between DCIP and licensed entities. The DCIP should be made responsible for the infrastructure being maintained and installed at its level to ensure consistent service delivery to licensed entities.

**Q 6. Stakeholders may also submit their comments on other related issues, if any.**

**ISPAI Response:**

ISPAI wish to submit as follows:

- Additional measures should be taken to reduce the cost burden of existing operators to incentivize them to invest more in Network Infrastructure deployment. Currently one of the major cost elements for Telecom Network is maintaining quality of service by not only spending in operation and maintenance costs of fiber (repairs), but also to create multiple diverse fiber paths for same traffic due to multiple unplanned fiber cuts across the country.
- Telecom Infrastructure should be identified as a Critical Infrastructure in India for preventing frequent fiber cuts by other agencies working on the roads. Declaring Fiber infrastructure in country as a critical infrastructure and creating a robust legal framework around speedy Right of

Way permission at reasonable charges etc. would help in increasing investments in Telecom Infrastructure by Telecom Service Providers (TSPs), by utilizing the saved capital.

- Investments can also be further encouraged in the existing licensing regime by simplification of license regime in terms of levies required to be paid by the Operators, compliance processes and costs in the licenses, right of way process and cost structure simplifications, identifying Telecom Infrastructure as a critical infrastructure to enable better uptime on fibers, thus ensuring better Network quality as a whole etc.

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