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June 3, 2008

Sh. N. Parameswaran
Pr. Advisor
Telecom Regulatory Authority of India
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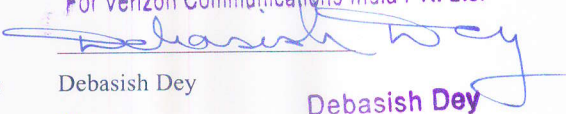
By hand and by email to:
param.tra@gmail.com

Dear Sh. N. Parameswaran

Response to Consultation Paper No. 9/2008 on Mobile Virtual Network Operator (MVNO)

We are pleased to provide our responses to the questions and issues posed in the Consultation Paper No. 9/2008 issued on May 5, 2008.

Sincerely,

For Verizon Communications India Pvt. Ltd.
By: 
Name: Debasish Dey
Title: Director
Debasish Dey
Director

Enclosure

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Introduction

Verizon Communications India Private Limited (Verizon Business) welcomes the opportunity to provide input for this important consultation by the Telecom Regulatory Authority of India (TRAI) on Mobile Virtual Network Operator (MVNO) pursuant to its consultation Paper No. 9/2008 of May 5, 2008 (Consultation Paper).

In its Consultation Paper on MVNO, TRAI has asked for recommendations on the technical, licensing, and regulatory issues that must be addressed for introduction of MVNO in India.¹ Verizon Business is pleased to have the opportunity to provide the following comments.

In general, TRAI should take steps to ensure that the process of opening up its MVNO market is conducted in a transparent, non-discriminatory and competitively-neutral manner. India has made great strides in opening its market to competition, and Verizon Business has often commended both the Department of Telecommunications (DOT) as the policy-maker and the TRAI as the regulator for these pro-competitive reforms. The additional competition in India's telecom markets resulting from these measures will benefit Indian businesses and consumers and the economy as a whole by ensuring competitive prices, new and innovative products and services and expanded customer choice. In addition, it is vitally important that TRAI work towards ensuring clarity and transparency in the rules and regulations that relate to MVNOs. Such clarity and transparency in India's regulatory framework provides new entrants the necessary assurance that they can compete on a fair and equitable basis and fully enjoy the benefits of market opening reforms such as these.

Issue 4(i) What Regulatory Model should be followed for MVNO in the Indian context?

Regulators around the world generally agree that the market itself, through commercial negotiations and legal enforcement, is best positioned to monitor the provision and growth of MVNO services, and in most countries, regulators have refrained from mandating that Mobile Network Operators (MNOs) grant MVNOs open access to their networks. This general trend is apparent in the international experiences described in the Consultation Paper.²

In this regard, TRAI should be guided, for example, by the evolution of the pro-competitive national deregulatory framework for Commercial Mobile Radio Service (CMRS) prescribed by Congress and implemented by the Federal Communications Commission (FCC), which has enabled both facilities-based and resale wireless competition to flourish in United States, with substantial benefits to consumers and the U.S. economy. The most recent report of the FCC on the state of competition in mobile services provides estimates that the resale sector in 2006 accounted for 7 percent of all mobile telephone subscribers, comprised of over 15 million subscribers served by more than 50 MVNOs.³ In the early days of cellular service, the FCC mandated resale of such service. As competitive choices grew beyond the two providers typical of the early era, the FCC withdrew the regulatory mandate for wireless resale, instead relying on the commercial arrangements that have led to a robust MVNO market.⁴

¹ Consultation Paper No. 9/2008, Telecom Regulatory Authority of India, Consultation Paper on Mobile Virtual Network Operator (MVNO), May 5, 2008 (Consultation Paper).

² See Consultation Paper at ¶¶ 1-15, pp. 38-52.

³ *In re* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Twelfth Report*, WT Docket No. 7-71, FCC 08-28, ¶¶ 21-22 (Feb. 4, 2008) ("*Twelfth Report*"). This report can be found on the FCC's web site at <http://wireless.fcc.gov/cmrsreports.html>.

⁴ In the book *Mobile Virtual Network Operators: Blessing or Curse? An Economic Evaluation of the MVNO Relationship With Mobile Network Operators*, NERA Economic Consulting Vice President Christian Dippon and former NERA Vice President Dr. Aniruddha Banerjee examine the MVNO market worldwide and the regulatory and public policy environment that led to MVNO market entry in the U.S. and in the member states of the EU. The authors observe that in the 1990s, after noting that broadband Personal Communication Services (PCS) licensees had built their networks and were competing with other existing mobile service providers, the FCC concluded that market forces, rather than explicit resale regulation, were sufficient to ensure competition in the mobile services market. As the authors note, "MVNO entry occurred at a much higher rate after the expiration of this resale rule, possibly signifying that mandatory resale or open access was not a meaningful prerequisite for MVNO growth. While the FCC

A handwritten signature in blue ink, appearing to be "A. Banerjee", is located at the bottom right of the page.

An equally important factor that has fostered MVNOs in the U.S. has been the flexibility with which the MVNOs are treated, such that entry barriers are very low. This flexibility has permitted proliferation of MVNOs of the many different types identified by TRAI. For example, the FCC does not require a MVNO to obtain a license specifically to resell wireless services. Thus, an authorized provider of long distance services may include resold wireless service in its package without any additional license specific to the wireless component. Verizon Business urges TRAI to consider adopting this approach and not require licensed operators to obtain an additional MVNO-specific license in cases where these operators simply resell the services of facilities-based carriers. This approach will benefit the public by facilitating the prompt offering of a wide range of services pursuant to different and innovative business models. (Note that we believe this flexibility to resell services should apply equally whether the already licensed carrier is reselling wireless or fixed services of other licensed carriers.)

Additionally, TRAI may wish to take note of the practice adopted in many international markets of exempting MVNOs from many of the regulatory obligations applicable to MNOs,⁵ given the fact that MVNOs often are niche players, as the Consultation Paper recognizes. For example, in the U.S., MVNOs are not subject to the same types of buildout rules that apply to MNOs that have licenses to use spectrum. Nevertheless, MVNOs and other wireless resellers generally fit the regulatory definition of CMRS and are subject to many of the consumer protection and other regulations applicable to other CMRS providers.

It is also important that TRAI ensures when opening up any reseller market that the license fee regime does not frustrate the very goal of promoting competition and creating a level playing field among all service providers. Specifically, the license fee should not operate as a multi-stage and cumulative tax. Facilities-based operators such as MNOs relying on their own networks need only pay the license fee once, while the services that operators such as MVNOs buy from other operators are subject to the license fee twice – once when they are sold from the first network owner (MNO) to the second operator (MVNO) and then again when the second operator sells them to the end user. Thus, a telecom operator who buys inputs from other licensed operators is placed at a competitive disadvantage with those who do not need to buy these inputs if the license fee is levied at every sales point in the supply chain. In addition to creating this inequity, the license fee may have the effect of frustrating the Consultation Paper's goal of promoting competition and creating a level playing field.

Verizon Business urges TRAI to consider the adoption of one of the following two suggestions as part of its MVNO licensing regime to avoid this double taxation: the application of an excise tax or a value-added tax. Under an excise tax regime, the license fee applies only to transactions where the service is provided to an end user. Intermediate or wholesale transactions where the purchaser is another carrier are not counted. Under a value-added tax regime, all providers would contribute on the basis of all of their sales; however, each carrier would be able to deduct the value of any telecom services it has purchased.

More generally, over time Verizon Business recommends that TRAI consider adopting a unified licensing regime such as those in Europe and the US where a single, easily-obtained authorization allows operators to provide a broad range of data and voice services, fixed and mobile, facilities-based and resold, which has created the most dynamic telecom markets in the world with providers continuously able to offer new and innovative packages of services in response to customer demand and technological developments.

Regardless of how TRAI eventually decides to treat MVNOs in India, however, it is vitally important that TRAI work towards ensuring clarity and transparency in the rules and regulations that relate to MVNOs as an affirmative signal to new entrants and established players alike that this segment of India's telecom market is open and that all are able to compete on a level playing field.

subsequently introduced other competition-facilitating programs, such as mobile number portability, none of those programs revisited the question of open access for MVNOs." *Mobile Virtual Network Operators: Blessing or Curse? An Economic Evaluation of the MVNO Relationship With Mobile Network Operators*, Christian Dippon and Dr. Aniruddha Banerjee, p. 36 (2006).

⁵ E.g., as TRAI correctly notes, in the U.K., MVNOs are subject to no service-specific regulations, and in Singapore, the 3G MVNO market is left up to market forces with the regulator intervening only to correct unduly restrictive or anti-competitive behavior. See Consultation Paper at ¶¶ 5.2 and 8.3, pp. 43-44 and 46-47.

