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The Authorisation Regime: TRAI Releases Recommendations on Service Authorisations under the Telecommunications Act, 2023

INTRODUCTION

In a significant development, the Telecom Regulatory Authority of India (TRAI) has issued "Recommendations on the Framework for Service Authorisations under the Telecommunications Act, 2023" (Recommendations). This move aligns with the ongoing, phased implementation of the Telecommunications Act, 2023 (Telecom Act) by the Department of Telecommunications (DoT). While the Telecom Act retains core elements of the previous regime under the Indian Telegraph Act of 1885 and the Wireless Telegraphy Act of 1933 (Prevailing Regime), it introduces key reforms that establish a more modern and flexible framework for regulating telecommunications (New Regime).

The Telecom Act envisages an 'authorisation' under the New Regime for providing telecom services; establishing, operating, maintaining or expanding telecom networks; or for possessing radio equipment. Since the 'authorisation' framework is set to replace the licensing framework in the Prevailing Regime, it is critical to carefully wade through the proposed changes and get a sense of the new position as it evolves.

In this update, we focus on the key Recommendations, though the Recommendation addresses several other changes as well.

KEY CHANGES PROPOSED BY TRAI UNDER THE NEW REGIME

1. *Revised approach for granting authorisations*: In line with the practices followed in other jurisdictions, TRAI seeks to simplify and streamline the process of granting authorisations under the Telecom Act. By proposing to do away with more than two-decade old format of granting licenses in the form of an agreement comprising of several sections and annexures, a simplified 'permission' has been proposed. To allay inhibitions of stakeholders regarding unilateral amendments by the Government, it may be necessary to seek TRAI's recommendations before introducing changes in the terms and conditions, except where such changes are required in the interest of national security.

2. *New classification of Service Authorisations*:

Main Service Authorisation
•TRAI has proposed that main service authorisations (covering all primary telecommunication services that are involved in the delivery to telecommunication services to public at large like Access Services, Internet services, Long Distance Services, etc.) should be granted based on applicant's choice to operate as a NSO or VNO. While NSOs can deploy full-scale networks and offer services, VNOs provide services using their parent NSO's network.

Auxiliary Service Authorisation
•TRAI proposes that in respect of each auxiliary service authorisations (covering services for which there is an existing service license/ regstratrion, but other than main services), a separate rule containing the terms and conditions for the provision of respective auxiliary services. This would include services like M2M and WLAN/ WPAN connectivity service, IFMC and so on.

Captive Service Authorisation
•TRAI proposes that captive authorisations should be granted for Mobile Radio Trunking Service, Captive Non-Public Network, Captive VSAT CUG and on case to case basis (C2C). However, C2C authorisation should only be grnated to government agencies. While this preserves the government's ability to maintain critical communication infrastructures, it appears that private entities will not be able to claim this benefit.

The authorisations referred above will be read together with rules that will be drawn up to govern administrative as well as service specific issues.

INTRODUCTION OF UNIFIED SERVICE AUTHORISATION TO BENEFIT FULL-FLEDGED TSPS

The newly introduced Unified Service Authorisation is expected to operate at a national level, allowing entities the flexibility to carry their own traffic across India. This authorisation will encompass key telecommunication services such as Access Services, Internet Services, Long-Distance Services, Satellite-based Telecommunication Services, and Machine-to-Machine (M2M) WAN Services. Entities under this authorisation will also be responsible for enabling lawful interception in all regions they operate, and a clear roadmap for establishing a pan-India network has been advised. This is aimed at creating a clear distinction between full-fledged TSPs and smaller players, which will aid regulations.

SHARING OF BOTH ACTIVE AND PASSIVE INFRASTRUCTURE

In April 2023, TRAI suggested sharing of both passive and active infrastructure between licensees. Additionally, TRAI proposed that Lawful Interception System (LIS) could be shared on a case-to-case basis, provided there are no security concerns. Under the Prevailing Regime, only passive infrastructure and certain active elements are permitted to be shared, with no provisions for sharing LIS. These recommendations, if adopted by DoT, could significantly lower capital expenditure (capex) for authorised entities.

The relaxation of infrastructure sharing norms would enable authorised entities to optimize resource utilization by avoiding the duplication of assets, translating into more cost-effective service delivery. Currently, service providers invest individually in network infrastructure, leading to inflated capex, which is ultimately passed on to enterprise and end customers in the form of higher service costs.

EXPANDED SCOPE FOR INTERNET SERVICE AUTHORISATION

One of the most impactful Recommendations is the enhancement of the scope of Internet Service Authorisation by permitting these entities to offer Domestic Leased Circuits (DLCs) and Virtual Private Networks (VPNs). Under the current framework, Internet Service Providers (ISPs) are permitted to deploy their own transmission links for internal use but are prohibited from selling bandwidth and leased circuits / VPN to third parties. Historically, DoT has been averse to ISPs providing VPN services. In 2005, DoT had withdrawn the erstwhile ISP-VPN permission and directed such players to migrate to National Long Distance (NLD) and International Long Distance (ILD) service license to continue providing VPN services. However, this may perhaps be offset by merging NLD and ILD services.

MERGER OF AUTHORISATIONS

Several notable mergers of service authorisations have been proposed to streamline regulatory compliance and bring in operational efficiencies.

(a) **NLD and ILD Authorisations**: Under the Prevailing Regime, these authorisations are granted separately under the Unified License framework. However, TRAI now recommends merging them into a single Long-Distance Authorisation. This merged authorisation would cover both national and international services, with specific compliance obligations depending on the services an entity provides. Additionally, the authorisation will include the establishment of Cable Landing Stations (CLS) for submarine cables, with provisions for streamlined CLS setups, the construction of domestic submarine cables, and permission for international submarine cables to carry domestic traffic. This merger is expected to simplify regulatory procedures while facilitating the deployment of advanced infrastructure that can cater to new age requirements. This may also negate the involvement of multiple service providers in certain situations e.g., where submarine traffic is required to be carried over terrestrial network to Cable Landing Station's point-of-presence (CLS PoP). It may also ease compliance in relation of carriage of correct calling line identification which is sometimes a challenge when handover takes place.

(b) **Global Mobile Personal Communications System and Commercial Very Small Aperture Terminal (VSAT) Closed User Group (CUG) Authorisations**: These authorisations, which cater to satellite-based communications, are also set to be consolidated under a new Satellite-based Telecommunication Service authorisation. This unification aims to provide broader and more efficient access to both public telecommunications networks and private, dedicated satellite services, particularly for enterprises.

(c) **M2M and WPAN:** TRAI has recommended merging Machine-to-Machine (M2M) and Wireless Personal Area Networks (WPAN) / Wireless Local Area Networks (WLAN) Connectivity Provider registrations into a single M2M WAN service which is to be included in the Auxiliary Service Authorisation category. This was done in recognition of the complementary nature of these services.

CHANGES IN THE UNIFIED LICENSE VIRTUAL NETWORK OPERATOR (UL VNO) REGIME

The framework governing Virtual Network Operators (VNOs) has also seen significant revisions. VNOs will be permitted to partner with multiple Network Service Operators (NSOs) for wireless access services, as recommended by TRAI separately as well.

Further, service-specific parenting as opposed to authorisation-specific parenting has been recommended. In other words, TRAI has prescribed which type of NSO will parent a VNO, depending on the service offering in question.

ENTERPRISE COMMUNICATION SERVICE AUTHORISATION

The Recommendations have expanded the scope of authorisations under the Telecom Act to include cloud-based EPABX services, signalling a significant regulatory shift for businesses. By bringing cloud-based EPABX under the Enterprise Communication Service Authorisation framework, authorised entities can now provide EPABX-as-a-service to enterprises, call centers, and Other Service Providers (OSPs) through cloud platforms hosted within India. Furthermore, the centralized routing and switching of audio-conferencing calls, which must remain within India, and the mandatory use of authorized telecom resources will ensure compliance with national security and telecom regulations.

This regulatory change introduces a new compliance requirement for businesses in this sector, as cloud service providers must now obtain formal authorisation from DoT to offer these services. Adhering to this framework imposes stricter requirements, including the obligation to ensure secure routing and switching of communication traffic within India and to source telephone number resources from authorised telecom entities. These measures are designed to prevent the illegal bypass of telecom traffic and reinforce regulatory oversight, adding a compliance layer that was previously absent.

For service providers, this shift means adapting to the new regulatory environment, which demands compliance with the DoT conditions. This will increase operational and administrative efforts.

FILLIP TO CLOUD-BASED INFRASTRUCTURE

Recognizing the growing reliance on cloud-based infrastructure in the sector, TRAI recommended that authorized telecom entities be permitted to lease or hire network resources from cloud service providers based in India. This flexibility aligns with global trends and allows telecom service providers, particularly small and medium-sized players, to optimize their operations by reducing costs, improving network resilience, and accelerating time-to-market. However, the authorized entities must ensure full compliance with security requirements under the Telecom Act, including adherence to national security measures and cybersecurity protections.

Cloud service providers used must either be empanelled by the Ministry of Electronics and Information Technology or authorized under the Telecom Act. Importantly, all telecommunication infrastructure and associated data must be located and stored within India. The responsibility for ensuring quality of service, security compliance, and trusted sourcing of telecommunication equipment rests with the authorized entity that utilises cloud infrastructure, ensuring both operational flexibility and strict adherence to regulatory and security standards.

NO OBJECTION CERTIFICATE FOR SALE/ RENT OF INTERNATIONAL ROAMING SIM CARDS

Under the Prevailing Regime, certain services such as Infrastructure Provider-Category 1 and grant of no objection certificate for sale/ rent of international roaming SIM cards is done by DoT on a standalone basis. The Recommendations propose that grant of NOC should also be included in the authorisation framework, however, it has been recommended that the terms and conditions for such authorisation should be light-touch and it should be granted online through digitally signed auto-generated authorisation.

MIGRATION TO AUTHORISATION FRAMEWORK

The Recommendations propose a migration framework similar to the one followed under the UL regime, allowing existing telecom entities to transition to new service authorisations without being subject to net-worth criteria. This framework facilitates migration for corresponding or merged licenses under the new regime, with the redefinition of service areas for Category-C licenses. Entities holding access service authorisations in 50% or more telecom circles are permitted to migrate to a unified service authorisation, while subsumed licenses will cease to exist upon migration. The Recommendations also address how spectrum holdings should be managed under the new structure, providing a practical framework that eases regulatory burdens. This ensures a smooth transition for businesses, especially smaller players, allowing them to shift without financial strain. By exempting existing entities from the net-worth criteria, the Recommendations acknowledge their current investments and market presence, fostering a more inclusive and supportive regulatory environment.

In parallel, licenses, registrations, or permissions granted under the Indian Telegraph Act, 1885, or the Indian Wireless Telegraphy Act, 1933, for telecommunication services prior to the appointed day, are allowed to continue operating under their current terms until the end of their validity. Alternatively, they may choose to migrate to the new authorisations. For licenses without a definite validity period, these will remain valid under the existing terms for five years from the appointed day, after which they too can migrate to the new authorisation structure.

FINANCIAL RECOMMENDATIONS

(a) *Reduced entry and application fees and other requirements*. Compared to prevailing rates under existing licenses, TRAI has recommended lower entry and application fees for most authorisations, including the new Unified Service and Unified Service (VNO) authorisations. Also, minimum net-worth and equity requirements have been rationalised for new Long Distance and Satellite based Telecommunication Services authorisations.

(b) *Changes to provisions relating to bank guarantees*. TRAI has recommended merger of performance and financial bank guarantee (BG) into a single BG with one-year validity, with comparatively lower first year 'floor' rates. BG value for subsequent years has been linked to each authorisation's revenue potential and the second (and subsequent) BG amounts are recommended to be pegged at higher of 'floor' BG amount or 20% of estimated license fees (for 2 quarters). TRAI also suggests use of BGs to cover violations of regulations and non-compliance with governmental instructions.

(c) *Conditions relating to authorisation fees*. No changes are suggested to current definitions of gross revenue, applicable gross revenue and adjusted gross revenue. New definitions for 'telecom' and 'non-telecom' activities (as sought by several stakeholders) are also not provided. This indicates that TRAI is not looking to reconsider these aspects as was being deliberated previously.

(d) *Recommendations on Migration*. TRAI has noted that no entry fees should be charged to entities migrating to new authorisation regime and if the migration is to a new authorisation, only a differential entry fee should apply. TRAI also notes that if entry fees already paid by existing licensees exceeds the new entry fees, no refund of excess amounts should be provided.

(e) *Other relaxations.* TRAI suggest replacing notarised affidavits that are currently submitted along with quarterly license fee and spectrum use charge payments with self-certificates. TRAI has also prescribed streamlined formats for revenue share and license fee statements.

EASE OF DOING BUSINESS

The Recommendations mark a significant step towards promoting ease-of-doing-business by advocating for a more flexible regulatory framework. One of the key aspects is the proposed shift from traditional telecom silos, allowing a broader sharing of infrastructure, which includes both active and passive elements. This change builds on TRAI's earlier recommendations that encouraged infrastructure sharing among licensees, and now it finds recognition in these Recommendations as well.

By supporting sharing of Lawful Interception Systems (LIS), TRAI has also taken a major step in easing the compliance burden on telecom operators. This relaxation not only reduces costs but also simplifies the complex infrastructure requirements for authorized entities.

The Recommendations also reiterate TRAI's previous recommendations titled "Recommendations on Ease of Doing Business in Telecom and Broadcasting Sector", where it advocated for measures such as centralised demonstration of LIM capabilities, fast-tracking and streamlining approvals for remote access and FDI compliance, expediting number allocation, simplifying the process of surrendering licenses, classification of submarine cable repair as "critical and essential service" and so on. If adopted, such steps will also go a long way in bolstering stakeholder confidence.

COMMENTS

TRAI's Recommendations under the Telecom Act reflect a decisive shift towards greater efficiency, flexibility, and modernization within India's telecommunications landscape. By transitioning from a complex license-based framework to a simplified authorisation-based regime, TRAI has significantly reduced the administrative burden on service providers, enabling quicker compliance and deployment of services.

The proposed consolidation of NLD and ILD authorisations and other services, signal a move towards eliminating redundancies and allowing service providers to more easily scale their operations to meet national and international demands. In the case of Internet Service Authorisations, the expanded scope represents a forward-thinking approach to market expansion, enabling ISPs to offer more comprehensive services such as DLCs and VPNs in today's day and age. The Recommendations on financial conditions appear to be well-considered and are a step in the right direction.

Acceptance and implementation of such Recommendations by the DoT could result in reduced costs and compliances for telecom entities. The proposed changes are likely to have a positive impact on the financial health of the telecom sector and represent a good balance of reduced requirements and robust measures to promote healthy competition. However, there are some aspects (like limiting captive authorisations to Government agencies only) and including cloud-based EPBAX services within the ambit of authorisation where TRAI could have adopted a broader approach to address present day requirements of enterprises.

In essence, the New Regime promises to propel India's telecommunications sector into an era of enhanced competition, infrastructure sharing, and regulatory clarity—cornerstones of a robust digital economy. It will have to be seen if DoT welcomes these suggestions and implements them going forward.

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