

U.S.-India ICT Working Group
U.S. Telecommunications Subgroup
Policy Agenda
July 1, 2008

The U.S. Telecommunications Subcommittee supports the collaborative nature of the U.S.-India ICT Working Group and the progress that has been made on telecommunications policy issues since the initiation of the Working Group in 2005. India has emerged as one of the world's fastest growing ICT markets. Between March 2006 and February 2008, India's total wireline and wireless telephone subscribers increased from approximately 142 million to 290 million, representing over 100% growth in two years. In March 2008, India reached a new high, adding over 10 million new mobile phone subscribers in that month alone.

Government initiatives have played a significant role in this growth acceleration. In that vein, we note the recent TRAI consultation papers on VOIP, mobile virtual networks and carrier selection. The reduction of import duties has reduced handset costs and the government's campaign to boost penetration in poor areas has increased demand for infrastructure equipment. In addition, the government has increased the level of FDI in the telecommunications sector to 74 percent while resolving international carriers concerns' over remote access restrictions. India has also issued new UAS licenses for new wireless service providers. This subgroup also recalls the importance of the June 2007 Telecommunications Regulatory Authority of India's notification that recommends the liberalization of access to cable landing stations on non-discriminatory terms. India is also moving toward eliminating onerous access deficit charges, reducing costs for international long distance communications.

Keeping these positive trends in mind, we encourage further liberalization to speed the development and adoption of new technologies, introduce new competition and promote multilateral collaboration. Below we consider new and unresolved issues for discussion during the July 1 U.S.-India ICT Dialogue in Washington, DC.

(1) Advanced Wireless Telecom Services and Spectrum

While the telecommunications subgroup acknowledges the progress India has made in issuing licenses in January of this year, U.S. industry continues to believe that making available additional spectrum for wireless telecom services will enable the deployment of technologies to rural areas and further encourage investment. Spectrum availability threatens to undermine the tremendous growth in India's wireless telecommunications services market, where subscribers are expected to reach 500 million by 2011.

Accordingly, in its August 2007 recommendations, TRAI clearly stated that there is a need to lay down a predictable path for allocation of spectrum for new entrants. In view of the massive demand for 2G and 3G spectrum, it is most important that the Department of Telecommunications (DoT) make this spectrum available as soon as reasonably possible. In doing so, we encourage the Indian Government to make available the globally identified spectrum bands for 3G and other services as rapidly as possible, while maintaining globally-harmonized satellite frequency bands.

We are encouraged by reports that the government has decided to release 3G spectrum through an auction process, which will be open to new-comers, once certain conditions have been met. Keeping in mind India's national security concerns, we encourage India to follow through on reports that the Ministry of Defense will vacate the 2.1 GHz band and quickly facilitate the transfer of spectrum through a process that also accommodates the needs of the existing user. DoT has not yet decided on a timeframe for 3G auctions, and the release of defense spectrum remains uncertain. With this in mind, we encourage DoT to establish the auction timeframe and for the Government of India to specify a date for the Ministry of Defense to vacate the spectrum.

We also strongly encourage the TRAI to allocate 700 MHz Spectrum and adopt a 700 MHz band plan and associated technical rules that will maximize opportunities for nationwide deployment of affordable mobile broadband services in India. Existing wireless carriers as well as potentially new entrants are well positioned to deploy mobile broadband technologies in a cost effective manner, by upgrading existing networks, and using technologies that have already achieved economies of scale, with lower capital investment and equipment costs. TRAI would take an important step in expanding India's broadband connectivity by licensing the 700 MHz band for these services.

India has a unique opportunity to implement international best practices in spectrum allocation and licensing to ensure that Indian consumers receive the advantages of the best wireless services the market can provide. In following international best practices, India should allow for a full and complete opportunity for new and international investors to participate in the auction process. The guidelines, timelines, manner and the eligibility criteria through which the auctions are conducted should allow new entrants – especially foreign companies who must form joint ventures with local partners and receive Foreign Investment Promotion Board (FIPB) approval – sufficient time and equal opportunity to meet the auction eligibility criteria.

(2) Licensing and Regulatory Efficiency

Global companies operating overseas are strongly committed to the rule of law and respecting host country laws and regulations. Companies prefer investment opportunities where the rules of the game are clear and easily understood. India will be successful in attracting greater foreign investment as it continues efforts to establish a clearly defined structure of laws and regulations.

We are encouraged that at the beginning of 2008, Verizon received its licenses to provide international (ILD) and national long distance services (NLD) in India, joining AT&T, BT, and Cable and Wireless among others in the market for these services. We note, however, that the licenses have not been modified to appropriately reflect policy considerations for the next generation of services and service providers and that certain aspects of India's ILD and NLD licensing processes and procedures continue to impose barriers that impede carriers' ability to fully operationalize these licenses. As presently written, many of the regulations cover policy concerns solely appropriate for mass market consumer voice telephony, and have not been updated to reflect data and IP services, or

the considerations of business enterprise customers. For example, the ISP licenses issued by the government of India have not been amended to include Press Note 3 of 2007. It is critical that international operators who hold up to 74% under their existing licenses receive such amendments as early as possible. Currently all other category of existing licenses except the ISP license have been amended, consistent with the new FDI regulations/obligations – included in Press Note 3 of 2007.

In the critical area of legal intercept and monitoring for non-voice, VPN/ MPLS related IP services, telecommunications carriers are extremely keen to comply with Indian regulations concerning legal intercepts. However, in order to install IP/data related state-of-the-art legal intercept equipment, telecommunications carriers require clarity with respect to the technical specifications of the equipment and compliance requirements. Despite the DoT's recognition of the importance of telecommunications carriers' IP and VPN services to India's BPO sector, as demonstrated by its December 2004 ISP guidelines and further amended by its November 2005 Press Note on ILD and NLD licenses, regulations for legal intercept compliance have not kept pace. We urge the Department of Telecommunications to update its legal intercept and monitoring specifications for telecommunications carriers' VPN/MPLS related IP services as current regulations continue to be applicable to traditional voice traffic.

In addition, companies support the freedom of business and consumers in India to use strong encryption to protect their corporate and personal information. Strong encryption uses robust encryption algorithms. The freedom to use strong encryption is a global standard for securing information online, such as confidential business information, financial information, online transactions and internal government communications, from intrusion by hackers thieves, competitors and other wrongdoers. Strong encryption also enables India's rapidly growing IT and BP industries, which rely on strong encryption to secure their global clients' confidential information. U.S. companies urge India to adopt policies that protect the freedom to use strong encryption online.

The lack of clarity and transparency in the terms and conditions of India's ILD licenses presents an obstacle to licensees' ability to fully operationalize these licenses. For example, the scope of resale authority by licensed operators is still unclear – as are the processes, timelines and criteria for processing of clearance and approvals under both the ILD and NLD licensing regimes. This lack of clarity stands to undermine the competitive reforms made thus far by both TRAI and DoT

To sustain communications services and applications, companies and end-users rely on robust infrastructure and the ability to select the technology and provider based on cost, effectiveness and availability. This ability to source the best-suited infrastructure for a given application or service enhances the resulting service and may advance its service launch or reduce consumer costs. For satellite infrastructure, the U.S. and many WTO members have adopted policies that permit users of satellite services the flexibility to work directly with any satellite operator that has the ability to serve them, without constraint by government preferences. U.S. industry encourages India to adopt such an

“open skies” satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements.

We urge India to reevaluate the basis for license application fees, capitalization requirements, and bank guarantees. As a general matter, application fees should reflect the cost of processing an application. In line with international best practices, requirements relating to capitalization, the rationale for which makes little sense in most cases, should be eliminated. While bank guarantees are appropriate in limited cases, such requirements should reflect the scope of business intended to be offered, and should be a temporary, not permanent requirement.

The inconsistencies that currently exist between licensing fees and capitalization requirements for different services in India demonstrate the need for reform. For example, an applicant for an ILD license must have a capitalization of \$625,000 and pay a license application fee of \$625,000 and a bank guarantee of \$625,000. For GMPCS (Global Mobile Personal Communications by Satellite), the capitalization requirement is \$25 million; license application fee is \$250,000 and there is a requirement for a \$250,000 bank guarantee. A capitalization requirement for FMPCS that is more than 25 times larger than what is required of ILD licensees cannot be justified – hence, as noted above, the capitalization requirements for both services should be eliminated. In addition, all license application fees should reflect the cost of application processing.

With respect to annual license fees, which are a percentage of annual gross revenue, we would appreciate knowing more about how the government currently arrives at the fee percentage and what is the basis for charging some services higher fees than others? We believe that annual fees as well as licensing fees should be based solely on the accepted principle of recouping administrative costs. It is not clear why holders of an ILD license are required to pay 6% of annual gross revenue and providers of GMPCS services are charged 10%.

Similarly, we urge India to take a closer look at the methodology it currently uses to calculate license fees for both ILD and NLD operators to ensure that India’s license fee regime does not frustrate the goals of promoting competition, creating a level playing field among all service providers, and reducing the sales price of services to consumers. Under the current methodology, license fees for these operators are based on revenues from both licensed and unlicensed activities, which make the calculation of such fees unnecessarily burdensome.

In addition, the license fee should not operate as a multi-stage and cumulative assessment. The fact that input costs (such as charges for interconnection or local loops which themselves already reflect the license fee) are not deductible, results in the double assessment of license fees in some cases. Whereas facilities-based operators using on their own networks need only pay the license fee once, services that operators such as ILDOs, NLDOs, ISPs, MVNOs and potentially ISPs buy from other operators and resell to end users are subject to the license fee twice – once when they are sold from the first network owner to the second operator, and then again when the second operator sells

them to the end user. The same applies to operators who interconnect to facilities-based operators' facilities. As a consequence of levying a license fee at every sales point in the supply chain, 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.

To avoid this double assessment of licensing fees, India could clarify that such fees apply only to transactions where the service is provided to an end user. Intermediate or wholesale transactions where the purchaser is another carrier would not be counted. Alternatively, India could specify that such providers are permitted to account for the value of any telecom services they have purchased in their license fee calculations. Either of these two approaches would eliminate the double taxation problem. For example, in the United States, the Federal Communications Commission (FCC) has adopted the excise tax approach purposes of USOF contribution, where each carrier reports only its retail sales to end users. This system has been in place for about ten years and has worked well. Lastly, should licensing fees be extended to additional ISP services, we urge that the methodology for calculating the revenue base should not result in double taxation of certain ISPs.

(3) Internet Protocol (IP) –Enabled Services and Business Process Outsourcing

Business Process Outsourcing providers rely on next generation telecom infrastructure in the provision of their services. The use of VoIP in the call center business can significantly reduce costs while improving service offerings and scale-ability at the enterprise level. Unfortunately in India, VoIP can only be used in CUGs (closed user groups, or just among sites). For example, if a company has two offices, they are allowed to link using an IP trunk and VoIP, but not out to the PSTN. So companies must maintain separate systems for internal and external communications, increasing establishment costs. We continue to note that VoIP provided over public networks that can connect to the Public Switched Telephone Network (PSTN) eliminates the requirement of users to have a dual-investment in infrastructure; that enterprise users realize enormous savings in the cost of moving telephones or adding telephones; and that company investment in Internet communications realizes higher return because more applications can be managed on a single infrastructure.

We note that at the December 2007 meeting of the U.S.-India ICT Dialogue, the DoT indicated that the issue of VoIP services would be taken up following the elimination of the Access Deficit Charge in April of 2008. The U.S. Telecommunications Subgroup notes that TRAI has issued a Consultation Paper on IP Telephony and express our hope that this will lead to regulations liberalizing the use of VoIP services in India.

We applaud the DoT for forming a committee to periodically review regulations that fall outside the licensing regime. The committee has identified seven critical issues that impede the provision of BPO/outsourcing and other enterprise services, including VoIP. Although the formation of the committee is a positive step, the committee has not yet presented a work plan or suggested timeframes for the resolution of these critical issues. To help move the process forward, we suggest the committee establish a formal

mechanism (such as regular open house/industry interaction/progress reports) to ensure the resolution of these issues in a timely manner.