U.S.-India ICT Working Group
U.S. Telecommunications Subcommittee
Policy Agenda
December 8, 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. The Subcommittee also takes this opportunity to acknowledge the momentous decisions undertaken by the Indian Parliament and the U.S. Congress to establish civilian nuclear cooperation, an important new cornerstone in the U.S.-Indian relationship.

India has emerged as one of the world's fastest growing ICT markets. Between March 2006 and October 2008, India's total wireline and wireless telephone subscribers increased from approximately 142 million to almost 353 million, representing over 140% growth in two and half years. In March 2008, India reached a new high, adding over 10 million new mobile phone subscribers in that month alone. Mobile broadband has grown 80% since 2007.

Government initiatives to liberalize the market have played a significant role in this extraordinary growth. While questions remain concerning details, the Telecommunications Subcommittee welcomes the Indian government's actions to move forward with plans to hold an auction for IMT spectrum as outlined in its August 2008 Guidelines and subsequent September 2008 revisions. The Subcommittee also recognizes the important Telecommunications Regulatory Authority of India (TRAI) recommendations issued in 2008 to liberalize VoIP services, enable Mobile Virtual Network Operators (MVNO), and permit competitive carrier selection. The subcommittee also welcomes the elimination of the Access Deficit Charge (ADC) on the provision of international long distance services. In addition, the government increased the level of FDI in the telecommunications sector to 74 percent in 2007 while resolving international carriers' concerns over remote access restrictions. The Subcommittee also recalls the importance of TRAI's June 2007 notification that recommends the liberalization of access to cable landing stations on non-discriminatory terms.

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 December 8, 2008 meeting of the U.S.-India ICT Working Group in New Delhi, India.

(1) Advanced Wireless Telecom Services and Spectrum
The Subcommittee is encouraged and welcomes the progress with respect to IMT spectrum. The Subcommittee would like to underscore the importance to all sides of understanding the terms and procedures for the auction well before the auction process begins. 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.

There are numerous questions that have arisen about the auctions since the Auction guidelines were initially announced August 1, and subsequently amended on September 11, 2008.

Auction Timeframe. Companies are interested in knowing when a notice inviting bids will be released by the Department of Telecommunications (DoT) and whether at such time whether the DoT intends to hold investor conferences to provide clarifications on the 3G notice inviting bids. When will DoT provide information on the amount of spectrum that will be made available in each circle in India, including the frequency bands and number of slots available per circle?

Treatment of Foreign Companies. Will India allow foreign companies to bid as 100% foreign-owned entities, permitting them to find an Indian partner and receive Foreign Investment Promotion Board (FIPB) approval later?

- **If so**, will the 74% FDI restriction for the telecommunications industry be amended to enable this? And how much time will companies be given to find an Indian partner after a successful bid? Will that be made public in advance of the auction?
- **If not,** how will foreign companies be given enough time to find local Indian partners, obtain FIPB approvals and put proper funding in place?

UAS Applications. New entrants bidding on 3G spectrum are required under the rules to pay $410 million to acquire a UAS license. Whereas previous UAS applicants received spectrum as part of their UAS license, in the case of 3G, companies will have to bid for spectrum in addition to paying for the license. This policy appears to discriminate against new entrants who will be competing against incumbents who will also be bidding on 3G spectrum and in many cases have received their 2G spectrum at the time of approval of their UAS license. Will spectrum be guaranteed for a company that acquires a UAS license only to provide 3G services? How does the Indian government plan to address this imbalance?

Future Spectrum. For companies that end up only providing 3G services, how does the government plan to allocate spectrum in the future after this initial auction of spectrum - through auctions or subscriber-linked criteria?

The Subcommittee also strongly encourages the TRAI to focus on harmonized spectrum allocations. India today utilizes 880 MHz, 900 MHz, 1900 MHz and 2100 MHz. Tomorrow, India will consider 700 MHz, 800 MHz 2.3 GHz and 2.5 GHz and in the future 3.4 GHz. Having affordable devices and services are key to reducing the digital divide. India should consider adopting 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. A harmonized approach is essential across Asia-Pacific to secure affordable high performance mobile services and easy cross border coordination and cooperation. TRAI would take an important step in expanding India's broadband connectivity by licensing the 700 MHz band for these services.

(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.

A new issue of concern has arisen, which has the potential to negatively affect all multinational telecom providers doing business in India. It concerns the ability to conduct "remote access" (RA) management of networks in India, from Global Network Operations Centers outside India (e.g., in the U.S.). The subject was previously raised and presumably resolved two years ago, when the Indian cabinet approved the use of RA with certain restrictions as part of the effort to increase the FDI limit to 74%. Industry had understood that remote network monitoring, repair and logical provisioning were fundamental aspects of remote access capabilities. However, the DoT has recently shared an interpretation that 'network provisioning' might not be an allowed RA function, because it would appear to involve customer information being sent overseas. This overly broad interpretation of prohibited uses with customer information has the potential to preclude virtually all RA functions, many of which involve awareness of customer network and account information. The DoT had previously approved several remote access applications by international operators, but now appears to be considering to restrict RA functions that require visibility of customer network information. The DoT also has been allowing trans-border transfer of customer account information for international/multinational accounts, as needed to enable billing. This potential limitation on RA has the risk of reversing the decision debated and settled two years ago, which allowed RA for a range of network management, monitoring and provisioning functions.

The Subcommittee notes that as of 2008, AT&T, BT, Cable and Wireless, and Verizon have received licenses to provide international (ILD) and national long distance (NLD) services in India. 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. In addition, the scope of resale authority by licensed facilities-based 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.

In the critical area of legal intercept and monitoring for non-voice, VPN/MPLS related Internet Protocol (IP) services, telecommunications carriers are 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.

Further, 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 BPO 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.

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 GMPCS 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. A paper providing additional detail on this issue was provided by a Subcommittee member directly to DoT. The Subcommittee looks forward to hearing how the DoT may address this issue.

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 from the adjusted gross revenue on which the license fee is calculated, results in the double assessment of license fees in some cases. Whereas facilities-based operators using their own networks need only pay the license fee once, wholesale inputs that operators such as ILDOs, NLDOs, ISPs, MVNOs and potentially ISPs buy from other operators as part of their own infrastructure-based service offerings 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 wholesale 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 license fees apply only to revenues from retail sales transactions where the service is provided to an end user. Intermediate or wholesale transactions where the purchaser is another carrier would not be counted. In this instance, revenues of a telecom operator from wholesale services sold as inputs would not be subject to a license fee. Since the service fee charged by the first telecom operator would not need to recover any license fee, all operators would be able to compete on a true level playing field. Alternatively, India could specify that for the purposes of license fee calculations, licensed providers are permitted to deduct from their adjusted gross revenue base the value of any wholesale telecom services they have purchased as inputs. 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 Universal Service Obligation Fund (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 (BPO)

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.

The Subcommittee is encouraged by the TRAI recommendation published in August of 2008 that call for liberalization of VoIP services and urges the DoT to implement them as soon as possible. The Subcommittee looks forward to learning the status of the DoT's deliberations on this issue

Please direct any questions to:

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