

No Objection Certificate for Sale/Rent of International Roaming SIM Cards/ Global Calling Cards of Foreign Operators in India

After deliberations on the suo-motu recommendations of Telecom Regulatory Authority of India (“**TRAI**”) on the sale/rent of international roaming sim cards/ global calling cards of foreign operators in India, the Department of Telecommunications (“**DoT**”) has issued the ‘*Revised Terms & Conditions for Issue/Renewal of No Objection Certificate (“**NOC**”) for Sale/Rent of International Roaming SIM Cards/ Global Calling Cards of Foreign Operators in India*’ dated January 17, 2022 (“**Revised Terms**”). The Revised Terms strengthen the mechanism to protect the interests of the Indian public visiting abroad and also streamlines the procedures in line with the other licenses/registrations. It mandates the NOC holders to make provision for providing information regarding customer care service, contact details, escalation matrix, itemised bills, information related to tariff plans, services offered, etc. Provision has also been made to strengthen billing and consumer grievance redressal mechanism to facilitate time bound resolution of grievance by the NOC holders.

Further, the Revised Terms also streamlines the application process/ other procedures for the NOC holders in line with the other licenses/ registrations etc. in the DoT and to facilitate the resolution/ management of the issues of the NOC holders.

DoT Amends Guidelines and License Agreements

The DoT, on January 17, 2022, has published the amended: (i) Unified License (“**UL**”) guidelines; (ii) UL (Virtual Network Operator) (“**VNO**”) guidelines; (iii) UL agreement; and (iv) VNO agreement, to include audio conferencing, audiotex and voice mail services as well as machine to machine (“**M2M**”) service as part of UL and M2M service as part of VNO by adding a new chapter for these authorisations.

With the amendment, the service categories available under the UL agreement are as follows:

- Access Service;
- Internet Service (ISP);
- National Long Distance (NLD) Service;
- International Long Distance (ILD) Service;
- Global Mobile Personal Communication by Satellite (GMPCS) Service;
- Public Mobile Radio Trunking Service (PMRTS) Service;
- Very Small Aperture Terminal (VSAT) Closed User Group (CUG) Service;
- Audio Conferencing/ Audiotex/ Voice Mail Service; and
- Machine to Machine Service (M2M).

The authorizations for services available under the VNO agreement are:

- Access Service;
- Internet Service (ISP);

- National Long Distance (NLD) Service;
- International Long Distance (ILD) Service;
- Global Mobile Personal Communication by Satellite (GMPCS) Service;
- Public Mobile Radio Trunking Service (PMRTS) Service;
- Commercial Very Small Aperture Terminal (VSAT) Closed User Group (CUG) Service;
- Resale of Resale of International Private Leased Circuit (IPLC) Service; and
- Machine to Machine Service (M2M).

Subsequently, on March 8, 2022, DoT issued an office memorandum stating that companies providing M2M solutions and connectivity for the M2M services may apply online via the Saral Sanchar portal to obtain a license for the same.

DoT amends the Mobile Number Portability (“MNP”) License Agreement

DoT amended the MNP License Agreement on January 19, 2022, to permit 100% Foreign Direct Investment (“FDI”) via the automatic route and, the interest rate for delayed payment of license fee. The rate of interest attracted on the delay in payment of license fee, or any other dues will be 2% above the one-year marginal cost of lending rate (MCLR) of State Bank of India existing as at the beginning of the financial year. Additionally, the provision that relates to the quarterly payment of total dues is deleted. The DoT has also deleted the language in Clause 20.8 of the VNO Agreement pertaining to the financial penalty imposed on the licensee in the event of shortfall in the amount paid as quarterly license fee.

Financial condition of the MNP License Agreement pertaining to bank guarantees has been amended to reflect the reduction in the maximum limit of financial bank guarantees from INR 2 crores to INR 40 lakhs and the maximum limit of performance bank guarantees from INR 1 crore to INR 20 lakhs. Further the financial bank guarantee is required to be at 20% of the estimated sum payable (of license fee for two quarters and other dues that are not securitized, and any other amount as deemed fit by the DoT). The MNP License Agreement is amended to introduce the concept of Applicable Gross Revenue (“ApGR”). The ApGR is arrived at by removing the following items from the gross revenue (which is inclusive of installation charges, late fees, sale proceeds of handsets, revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, etc.):

1. Revenue from operations other than telecommunication activities/operations.
2. Revenue from activities under a license/permission issued by Ministry of Information and Broadcasting.
3. Receipts from the Universal Service Obligation Fund. Revenue from operations other than telecommunication activities/operations.
4. Revenue from activities under a license/permission issued by Ministry of Information and Broadcasting.
5. Receipts from the Universal Service Obligation Fund.
6. List of other income to be excluded from gross revenue to arrive at ApGR.
 - a) Income from dividend;
 - b) Income from interest;
 - c) Capital Gains on account of profit of sale of fixed assets and securities;
 - d) Gains from foreign exchange rates fluctuations;
 - e) Income from property rent;
 - f) Insurance claims;
 - g) Bad Debts recovered;
 - h) Excess provisions written back.

Notice to E-commerce companies to stop the sale of illegal boosters & jammers

The DoT issued a notice dated January 24, 2022, to e-commerce platforms and offline merchants/dealers clarifying that the sale and use of any wireless device/ equipment without the authorisation/ license under the Indian Telegraph Act, 1885 and/ or Indian Wireless Telegraphy Act, 1933 is illegal. DoT, in its notice, advised e-commerce platforms

and offline merchants/dealers against the illegal facilitation and sale of wireless jammers and also warned them against selling or purchasing of any form of wireless jammers that are capable of disrupting the authorised telecom and other wireless networks. DoT has further stated that appropriate legal action will be initiated against any entity that is engaged in the illegal sale and use of any wireless device/ equipment.

Amendment in License Agreement in relation to the period of storage of Call Detail Record

The DoT has amended the INSAT mobile satellite system (INSAT-MSS) reporting services license, VSAT CUG license, voice mail/ audiotex/ unified messaging service license, international long distance license (other than UL), “sui-generis” category license issued to BSNL, and PMRTS license agreements vide various circulars, to change the time period of storage of call detail record (CDR)/ exchange detail record (EDR)/ IP detail record (IPDR) from one year to at least two years for scrutiny by the DoT for security reasons.

Amendments to the Telecom Tariff Order

TRAI issued the Telecom Tariff (66th Amendment) Order, 2022 on January 27, 2022 (“**66th Amendment**”). With this amendment, every telecom service provider (“**TSP**”) is required to provide at least one 30-day plan voucher, one special tariff voucher, and one combo voucher, which must be renewable on the same date each month. The 66th Amendment provides telecom customers additional alternatives in relation to tariff plans with improved validity period.

Pursuant to the 66th Amendment, TRAI received references from TSPs for consideration of certain issues including the next date of recharge in case subscriber recharges a voucher on the 31st of the month. After due consideration of the issues, TRAI issued the ‘Telecom Tariff (67th Amendment) Order, 2022’ dated March 31, 2022 to clarify that every TSP is required to offer at least one plan voucher, one special tariff voucher and one combo voucher which will be renewable on the same date of every month and if the date of such renewal is not available in a month, the date of renewal will be the last date of that month.

Guidelines for Registration Process of M2M Service Providers and WPAN / WLAN Connectivity Provider for M2M Services

The DoT has notified the guidelines for the registration process of M2M service providers and Wireless Personal Area Network (“**WPAN**”) / Wireless Local Area Network (“**WLAN**”) connectivity provider for M2M services (“**Guidelines**”) on February 9, 2022. Some of the highlights of the Guidelines are as below:

Definitions

1. The Guidelines define M2M Services as services offered through a connected network of objects/devices, with identifiers, in which M2M communication is possible with predefined back-end platform(s) either directly or through some gateway. The explanation to the definition elaborates that M2M services involve communication of end device/ object with predefined back-end platform(s) either directly or through some gateway.
2. An M2M Service Provider (“**M2MSP**”) is defined as an Indian company, registered under the Indian Companies Act, 2013 or a Limited Liability Partnership registered under Limited Liability Partnership Act, 2008 or a partnership firm or an organization registered under Shops and Establishment Act or a Legal Person which provides M2M services to third parties using telecom resources. The definition expressly excludes any organization which intends to provide M2M services for its own use (captive use) and not for commercial purpose.

General Conditions

1. An M2MSP or WPAN/WLAN connectivity provider who is applying for the registration under the Guidelines (“**Applicant**”) should not infringe upon the jurisdiction of any authorised TSPs and is only permitted to provide services for which they are registered. The registration is not transferable.
2. TSPs who intend to provide M2M services and connectivity for M2M services to third parties are required to register as M2MSPs and WPAN/WLAN connectivity providers respectively under Guidelines.

Technical Conditions

1. KYC guidelines and any related guidelines issued by the DoT to the TSPs from for all telecom resources including SIM enabled devices are to be adhered to, by the Applicants.
2. The details of all the customers of M2M services are required to be maintained by M2MSP.

3. The Guidelines requires that all devices sold in India which have embedded SIM inside the device, the packaging/ instructions/ supporting leaflet is to include instruction that “This device is having embedded SIM inside. At the time of re-sale/ loss/ transfer of this device, change of ownership details shall be shared with respective M2MSP / TSP”.

Security Conditions

1. Applicants are required to make their equipment available for technical scrutiny and inspection by the DoT. This includes facilities to counteract espionage/unlawful activity
2. Applicants are to ensure the maintenance of privacy of communications as per law in force.
3. Applicants’ equipment should meet norms set by international and Indian standardisation bodies,
4. The Guidelines require the Applicants to ensure that the data logs, event logs, system logs etc. handled by the system are tamper-proof and preserved at least for one year.

Amendment to the Flight and Maritime Connectivity Rules, 2018

DoT amended the Flight and Maritime Connectivity Rules, 2018 in light of Press Note 4 dated October 6, 2021, issued by the Department of Promotion of Industry and Internal Trade permitting 100% FDI in the telecommunications sector under the automatic route. The amendment also states that a certified copy of the Foreign Investment Policy and Promotion (FIPP) approval is required to be enclosed if the FDI in the In-flight and maritime connectivity service provider entity is from an entity located in or a citizen of a country that shares a land border with India or if the beneficial owner of an investment in India is in or is a citizen of such a country.

TDSAT Rules against Exemption of State-Owned Companies from AGR Dues

In an order dated February 28, 2022, passed in the review petition filed by Netmagic Solutions Pvt. Ltd. and Data Ingenious Global Ltd., the Telecom Disputes Settlement and Appellate Tribunal (“TDSAT”) has ruled that the Government of India cannot exempt state owned companies from computation of Adjusted Gross Revenue (“AGR”) for levying license fee in the same manner as Public Sector Undertakings (“PSUs”), on the ground that only a small portion of revenues of such companies are from telecom-related services. Further, the TDSAT also held that an exemption in parity of treatment with PSUs can be allowed only if it is also extended to private sector players.

The review petition was filed against the TDSAT’s order of November 19, 2020, wherein the plea for exemption of PSUs from paying AGR dues was rejected citing the Supreme Court’s judgment dated October 24, 2019, that had upheld the demand of license fee based on the computation of the DoT.

TDSAT denies interim relief to Vodafone Idea in a pre-activated sim sale case

The DoT imposed a penalty of INR 1.9 crores on Vodafone Idea Limited as 218 pre-activated SIMs were recovered by Uttar Pradesh (“UP”) Police (Cyber Crime Cell) from Lucknow district on March 11, 2021, from Vodafone Idea Limited – UP (East) licence service area before the sale of the SIM cards. Vodafone Idea Limited approached TDSAT seeking a stay on the demand of the DoT. After perusing the facts of the case, TDSAT ruled on March 22, 2022, that *prima facie* there was no case for interim stay on the demand of the DoT and directed Vodafone Idea Limited to deposit the amount with the DoT. Depending on the final outcome of the proceedings, it was held by TDSAT that the amount may or may not be refunded to Vodafone Idea Limited. The case has been listed for completion of pleadings while Vodafone Idea Limited has been directed to deposit INR 1.9 crore within two weeks.

Consultation Paper on Use of Street Furniture for Small Cell and Aerial Fiber Deployment

TRAI has issued a consultation paper on the ‘Use of Street Furniture for Small Cell and Aerial Fiber Deployment’ dated March 23, 2022 (“Consultation Paper”) with the aim to take views of stakeholders on existing concerns on issues related to outdoor small cell and aerial fiber deployment using street furniture for the successful rollout of next generation networks such as (i) identifying the suitable street furniture based on availability of backhaul and power, deployment heights, load bearing capabilities of street furniture for mounting suitable equipment; (ii) issues related to local approvals as street furniture are under various public and private authorities that have administrative jurisdictions; (iii) the process/ procedure for sharing of the street furniture amongst various users; (iv) permissions requisite for power supply under state electricity laws; and (v) exemptions or bulk permissions for small cell deployment.

Consultation Paper on Rating of Buildings or Areas for Digital Connectivity

TRAI has issued a consultation paper on the '*Rating of Buildings or Areas for Digital Connectivity*' dated March 25, 2022 (the "**Paper**"). The Paper introduces a roadmap for creating an environment that enables the development of an ecosystem in designing, implementing, operating, maintaining, expanding connectivity to meet any foreseeable future challenges of digital connectivity across the buildings/ residential or commercial areas.

The Paper also sheds light on the importance of collaborative partnerships between all relevant stakeholders in the telecom sphere which also includes the end-users. Further, details on the provisions in a plethora of laws and guidelines for the development of telecom infrastructure in an area/building and the various measures to include digital connectivity infrastructure as an essential component for the completion of a building and/or development of an area, with legal backing is also highlighted in the Paper.

For more details, please contact km@jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi

This newsletter is not an advertisement or any form of solicitation and should not be construed as such. This newsletter has been prepared for general information purposes only. Nothing in this newsletter constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this newsletter disclaim all and any liability to any person who takes any decision based on this publication.