

1180R/TRAI/ISPAI/06

25 January 2007

Telecom Regulatory Authority of India
Mahanagar Doosanchar Bhavan,
Jawaharlal Nehru Marg, Old Minto Road
New Delhi - 110 002

Kind Attention	Advisor (CN)
Registration No.	N/DL/00003
Your reference	Consultation Paper no. 19/2006
Subject	Review of Internet Services

Dear Sir,

At the outset we appreciate and welcome this initiative by the Authority which was one of the requests of ISPAI. We at ISPAI are equally concerned about the sluggish growth of Internet in the country as well as non - operational ISPs and ISPs with very low subscriber base.

Regarding the grey market, ISPAI is of the view that it is not only hurting the Industry but also affecting the revenue of the Government which needs to be curbed effectively. However, we strongly feel that "ONLY ISPs" are not responsible for the grey market.

Government should also look at the root of this problem. According to us it is the price differential between the normal ILD call and grey market call due to high ADC. We understand that review of ADC is under consideration by TRAI. The same should be done in a way that there will hardly be any scope of financial benefit from grey market operations.

We are enclosing herewith our reply on the above Consultation Paper and sincerely believe that these inputs would be found useful.

Thanking you,

Yours truly,

For Internet Service Providers Association of India

Col (Retd) R S Perhar
Secretary

Encl : As above

RESPONSE TO TRAI CONSULTATION PAPER ON

REVIEW OF INTERNET SERVICES

CHAPTER 5

Question No.1. At present, there are 389 licensed ISPs out of which only 135 are offering Internet Services. Top 20 ISPs cater to 98% Internet subscriber base. In your view, is there a rational for such a large number of ISPs who are neither contributing to the growth of Internet nor bringing in competition in the sector? Suggest appropriate measures to revamp the Internet Services sector.

Answer.

World over ISP sector has been un-regulated or softly regulated that is why almost in every country ISPs are more in number than any other service providers. In US there are over 5000 ISPs, Australia has about 500 ISPs; UK has about 400 ISPs; Pakistan has about 130 ISPs, Bangladesh has 200+ ISPs, Nepal has about 50+ ISPs. Keeping this in view 389 are not a big number for the country like India. We need rather more ISPs to expand the reach of Internet / Broadband across the country. In view of diversity of languages, cultural and geographical conditions etc. small ISPs have greater role to play in spreading the Internet/Broadband Services in the remote areas.

ISP policy was the most liberalized policy with no entry fee and no license fee for first 5 years after that Rs 1/- license fee is payable. It attracted several new entrepreneurs and professionals including even those who were working abroad and came back to India to contribute to the growth of Internet in the country.

It is worth mentioning here that after the privatization of the ISP sector standalone ISPs took a lead in bringing competitions, introduction of news services, applications and spreading the Internet across the country. There was sharp growth ranging between 100% to 240% in the Internet subscribers base during the year 1999- 2001 after that growth started declining as stated in the TRAI Consultation Paper itself.

Most of the companies signed the ISP license (especially regional category B & C) keeping in view the scope in their respective areas, city, circle. However, high cost of Inputs services/resources, predatory prices and policies of the incumbent operators forced several ISPs, including some of big players to quit business and several ISPs could not even start the services. Data shows that most of the license holders fall under Category 'C' & 'B'.

When Government announced the exit policy (surrender ISP license by paying 5% of PBG amount), for ISP license holders which could not started services – It received good response and so far about 300 ISPs opted the existing route and surrendered their ISP licenses.

Keeping this scenario in view we still feel that it is the smaller ISP's who will take the lead to go ahead and make a business case in remote and rural areas. Smaller ISPs may focus on particular region, community or specialized customer segments and their efforts should be encouraged by the government. We feel that to meet the Broadband penetration targets following steps need to be taken :

1. Support from USO fund should be available for ISPs as well who wish to roll out Internet / Broadband in remote and rural areas.
2. Tax incentives such as 100% depreciation on Infrastructure equipment used etc. should be available for ISPs who wish to provide Internet/Broadband services in remote and rural areas. Putting roll out obligations is not the answer. This has not worked earlier and will not do so again.
3. TRAI should ensure that resources are made available to ISPs on a non-discriminatory and non-predatory manner.
4. Vertical price squeeze and predatory practices by the Integrated operators needs to be checked to manage level playing field for ISPs.
5. Promote extensive use of wireless, provide customs duty, excise duty reliefs for equipment being used for such roll outs.
6. Allocate adequate spectrum to all serious players for rolling out services using Wi-MAX platform. Auctioning of spectrum in such a scenario is not a good idea.
7. Promote creation of local content in local language. It is the availability of this content which will make large difference in ensuring faster rollout.
8. Do not put financial burden (5% of PBG as per exit route) on the companies which wanted to surrender their ISP license.
9. Put a condition for every ISP new as well as existing ones (provide adequate time) to have their own AS Number as well as their own IP addresses if they want to remain in business. It will filter out most of non-serious players.

ISPAI is also of the view that the large players and the incumbent are providing Internet bandwidth at predatory pricing by cross subsidizing from other lines of business. This situation is going to lead to focused ISP's not having a level playing field and closing down. This will result in just a couple of large service providers being present in the market space. Lack of competition will have a detrimental effect on the services provided to the end consumer today and in future. Is this acceptable to us as a country and stated policies ?

Presently DoT has stopped issue of all ISP licenses. This is a retrograde step and a number of investors (both domestic as well as foreign) will divert their efforts to other countries / sectors.

Question No 2. Due to limited availability of spectrum for wireless broadband access, and high cost of creating last mile infrastructure, many ISPs are left with only option to provide Internet dialup access services. With increasing penetration of broadband, what efforts are required to ensure viability of such ISPs in changing scenario? Please give suggestions.

Answer

Out of 8 million Internet subscribers, there will be about 4 million subscribers using dial up service. It is a well known fact that in a dial up connection, access providers gets more revenue than ISPs. To support such ISPs which are offering services in small town and cities, TRAI should adopt "Flat Rate Internet Access Call Origination" (FRAICO) type of model wherein ISPs can buy bulk telephone minutes from access providers at a bulk discounted rate and bundled with the Internet package to their dial up subscribers with some margins to cover costs. In such case subscribers may pay one flat charge to ISPs and need not bother about the telephone charges.

The penetration of broadband is only possible with multiple players having access to shared infrastructure on fair revenue share. These multiple players will help in creating innovative and cost effective services. This would meet Network expansion, Infrastructure sharing, Broadband coverage which are the objectives of 10 point agenda of Hon'ble Minister Communication & IT. It will help in efficient and effective use of the precious resources of the country.

Keeping this in view serious efforts are required in allocating spectrum for using emerging wireless technologies e.g. Wi-MAX . This will allow larger ranges and bandwidth availability. The allocation of the bandwidth should be done to the ISP's based on viable business plans. As suggested earlier in such a scenario auctioning of spectrum may not be a viable proposition.

Question No 3. At present limited services are permitted under ISP licenses. There is no clarity in terms of some services whether they can be provided under ISP licensee. Do you feel that scope of services which can be provided under ISPs licenses need to be broadened to cover new services and content? Suggest changes you feel necessary in this regard.

Answer.

Yes we fully endorse the view of the Authority that there is no clarity about new applications, or services which are available to the ISPs. For example IPTV could have been much more prevalent by now had it been a clear policy that ISPs (which are in a position to start this service) could provide this service. The original ISP license condition Schedule C, Part II, Clause 24, defines Services or Service "all types of Internet access/Content services, except Telephony on Internet". Subsequently in April 2002 Internet Telephony (restricted) was allowed to ISPs with an amended license.

ISPAI strongly recommends that scope of ISP license should be broadened keeping further technological advancement in mind. All IP based services should be allowed to ISPs. Customers will demand these services which provide value addition and will lead to a viable business model for the ISP's.

Question No. 4 UASL / CMTS licensees have been permitted unrestricted Internet telephony however none of them are offering the service. ISPs (with Internet Telephony) can provide Internet Telephony within scope defined in license condition. The user friendly and cheaper device with good voice quality are increasing Internet Telephony grey market. Please suggest how grey market can be curbed without depriving users to avail such services ?

Answer.

ISPAI fully agrees with the observation. ISPs (with Internet Telephony) are not able to utilize it up to an optimum level due to certain licensing conditions which allows usage of specific devices only for Internet Telephony services. Today various user friendly and cheap IP devices are available in the markets which are beneficial for the consumers. It will help in popularizing this service amongst the masses at a cheap rate.

To curb the grey market following needs to be done :

1. Government should look at the root cause of grey market / illegal call termination. It is flourishing due to price difference between normal and grey market calls and the main reason is ADC. It is an economic arbitrage in favor of BSNL. Government should try to reduce the gap between grey market and ILD calls and review current ADC regime.
2. ISPAI is of the view that E1/PRI provided to ISP's have outbound facility barred . In case Grey market operations in telephony calls are found then the access provider should also be investigated to find out the methodology used to generate these calls.
3. Updated list of ISPs with Internet Telephony License should be available on DoT, TRAI website and should be updated regularly.

4. Educate users (SMEs/Corporate/BPO/KPO/Call Centres etc) to use the services (voice minutes) of licensed service providers only.
5. All existing as well as new Call Centres/BPO/KPO should be asked to produce a copy of bill from their respective Internet Telephony Service Providers at least twice a year.
6. ISPAI is of the opinion that if the above steps are taken by the Government, it will help in curbing the grey market to some extent as well as control the revenue leakage (12.24% Service Tax & 6% AGR) to the Government.

Question No. 5. How to address the issue of level playing field amongst the licensees of UASL, CMTS and ISPs ?

Answer.

There are fundamental differences in the scope of services, financial implications amongst these licensees.

UASL	ISP
Can provide telephone number as per National Numbering Plan (E.164)	Can't provide/allocate telephone numbers.
Can provide Internet/Broadband	Can provide Internet/Broadband
Can provide un-restricted Internet Telephony	Can provide restricted Internet Telephony
Own the Infrastructure	Depends on the infrastructure of UASL

ISPAI is of the view that Principle of "Arms Length Distance" should be maintained and ensured between the independent ISPs / ISP divisions of the TELCO (Integrated Players) and The TELCO itself. Arms Length Distance means that the independent ISPs and ISP divisions of TELCO should be treated on equal footing. This will ensure :

1. Availability of services and 'all resources' from the various TELCOs on a non discriminatory basis.
2. Level Playing Field between all resulting in an **end to cross subsidization*** and thus resulting in an environment where multiple players coexist with healthy competition resulting in benefit for all consumers.
3. Government may consider to allow ISPs to provide all IP based services e.g. IPTV, Unrestricted Internet Telephony, IPTV, IP-VPN Layer-3 or other IP based services as may develop in the future based on following :
 - a). ISPs will pay AGR as may be decided by the Government on additional IP based services e.g. IPTV, Un-restricted Internet Telephony (without allocation of numbers as per NNP), IP-VPN Layer-3 etc. AGR should not be available on non-license activities. They will maintain accounting separation statements as per TRAI regulation.
 - b). ISPs should be treated as a Interconnection party and Access Service Providers should be mandated to have Interconnection with ISPs.

c). Revenue from provision of simple Internet Access/Internet Bandwidth will not be taxed.

It will help in stabilizing the ISP sector as far as policy and regulations are concerned and avowed policy of Broadband proliferation of the government.

Question No. 6. The emerging technological trends have been discussed in chapter 3. Please suggest changes you feel necessary in ISP licenses to keep pace with emerging technical trends ?

Answer.

- A. Keeping in view emerging technical trends and fast adoption of new applications and protocols, ISP license should be technology agnostic so that ISPs can adopt new technologies, applications and services immediately for the benefit of the users. The changes in the licences should be made once and then followed for a length of time. Frequent changes to the licencing conditions result in a state of insecurity and uncertainty in minds of the investors and ISP's thereby driving away investment from this key sector. A case in point is where Internet in India has been subject to restrictions from the beginning e.g. ban on internet telephony, partial lifting of the ban, segregation of VPN services, and other doubts raised on the scope and service definitions by the policy makers themselves.
- B. We also recommend that TRAI should allow unhindered use of available and emerging technologies to create last mile links by ISPs including Wired, Wireless, Radio, Copper and specially Satellite including VSAT and DTH. Similarly, no restrictions or doubts should be allowed to hinder delivery of any content and/or application to any customer by any ISP. (case in point being the IPTV issue recently).
- C. With regard to Spectrum allocation. TRAI has to ensure that adequate spectrum is allocated to the ISP's so that they are able to make a business case for spread of Broad Band specially in the rural areas. The spectrum should be made available at a reasonable price and not follow the auctioning process. TRAI needs to list out all such frequency bands that can be made available for ISPs for their wireless requirements in a predictable manner rather than on adhoc basis.

Question No. 7. The service roll out obligations under ISP license is very general and can be misused by non-serious players. Do you feel the need to redefine roll out obligations so that growth of Internet can be boosted both in urban and rural areas ? Give suggestions.

Answer.

Rollout obligations have not worked in any sector. Recently Government has lifted roll out obligations from NLD & ILD sectors also. ISP license has the provision to start services within 24 months, we may continue with the same. Rather government should help in creating a healthy atmosphere/competition so that multiple ISPs can offer the services at the affordable rates to the users.

Statistics presently prove that a majority of the Internet Connections given are in urban areas. The bigger players have not gone into the semi rural or rural segment till now because of a business case not working out. With the incumbent further reducing prices of broadband internet connections it will need to be seen how the bigger players will go ahead to make a business case.

Keeping this scenario we still feel that it is the smaller ISP's who will take the lead to go ahead and make a business case in rural areas. To make this succeed the help of the incumbent would be required by way of sharing of infrastructure. We feel that to meet the Broadband penetration targets some of the steps that can be taken are as given below.

1. Support from USO fund, tax incentives etc. should also be available for ISPs who wish provide Internet/Broadband services in remote and rural areas. Putting roll out obligations is not the answer. This has not worked earlier and will not do so again.
2. Promote extensive use of wireless, provide custom duty ,excise duty relief's for equipment being used for such rollouts.
3. Spectrum charges may be levied additionally at 2% of AGR.
4. Serious efforts are required in allocating spectrum for using Wi-MAX platform. This will allow larger ranges and bandwidth availability. The allocation of the bandwidth should be done to the ISP's based on viable business plans. As suggested earlier in such a scenario auctioning of spectrum may not be a viable proposition. Providing incentives will also help in getting the services rolled out.
5. Promote e-governance initiatives and creation of local content in local language. It is the availability of content and useful online information which will make large difference in ensuring faster rollout.
6. For Rural areas, new empowered ISPs, who can provide all types of access, applications and content and if supported adequately by active non-discrimination policies, predictable availability of spectrum and bandwidth resources, can drastically alter the current lack of contribution.
7. Since most rural infrastructure is owned by the government incumbent operator, it must be the obligation of the TRAI to ensure that interested competitors are provided competitively priced bandwidth resources, so as to make a business case for commercially viable services in the rural areas.
8. USOFA has announced that a slot on the subsidised Telecom infrastructure will be made available for broadband service providers. Commitments such as these will encourage rural forays by private ISPs.
9. TRAI should recommend reservation of adequate and identified spectrum bands for rural ISP services only. This will emphasize and underline the need for Internet/broadband penetration in rural India.

Question No. 8. Do you feel that ISPs who want to provide unrestricted Internet telephony and other value added services be permitted to migrate to USAL without spectrum charges ? Will it boost Internet Telephony in India? What should be the entry conditions ? Give suggestions

Answer.

We must remember that financial condition, scope of services and focus of UASL & ISPs are different. It will not be fair to put these two service providers at par. However, as mentioned earlier in our response Unrestricted Internet Telephony (without assigning number) should be allow to ISPs (with Internet Telephony License) with some percentage of AGR as decided by the Government.

Question No. 9. UASL /CMTS licensees pay higher regulatory levies as compared to ISPs for provision of similar services. Do you feel that similar levies be imposed on ISPs also to maintain level playing field ? Give suggestions.

Answer.

ISPs have been facing resource and tariff discrimination from the Integrated Operators which are rendering the industry commercially unviable. Regulator has time and again failed to address and

stop discriminatory practices against ISPs, especially from the incumbent operators and still has no effective regulation to check predatory practices e.g. vertical price squeezing tactics.

TRAI has itself suggested that the CMTS services received the major boost when levies such as license fee, interconnection fee, IUC were rationalised. It has been recommending further lowering of levies/license fee to boost these services, especially to serve the rural areas.

It is therefore, inconsistent with the Regulators own principles, to suggest introducing any additional burden on ISPs on the pretext of introducing a level playing field, which is in any case skewed against the ISPs as pointed out earlier.

UASL / CMTS licensee are paying higher levy for Internet Services under their UASL/CMTS licenses. In case they provide the same services under their ISP license with authorized accounting separation statement as per TRAI, their levies may considerably reduce.

Government may consider exemption to 6% AGR on Internet / Broadband services to the UASL / CMTS licensee.

Question No. 10. Virtually there is no license fee for ISPs at present. The amount of performance bank guarantee and financial bank guarantee submitted by ISPs is low. Do you feel the need to rationalize the license fee, PBG, FGB to regulate the Internet Services ?

Answer.

No. FBG, PBG and the license fee have to be kept low to ensure cheap services to the end users. This is essential if we have to meet our target of Broadband penetration. Government should consider some other steps as suggested earlier.

However, the need for the current cumbersome process of submitting/resubmitting PBGs is unproductive. Need for PBG itself should not arise if the penalty for violating clearly laid down terms and conditions are specified properly. Licensor has not been able to effectively utilize the PBGs to check misuse/violation, hence should be done away with. TRAI itself has noted that:

1. Grey market operators corrode the market share of genuine licensed operators. This is specially true in the context of ITSP services.
2. Spectrum charges are unreasonably high compared to charging methodology for UASL/CMTS, because of which spectrum has not been utilised effectively for ISP services

Under such circumstances, to consider bringing levies on ISPs somewhere at par with UASL/CMTS will not be logical and rational.

Question No. 11. At present ISPs are paying radio spectrum charges based on frequency, hops, link length etc. This methodology results in high cost of ISPs prohibiting use of spectrum for Internet services. Do you feel that there is a need to migrate to spectrum fee regime based on percentage of AGR earned from all the revenue stream ? Give suggestions ?

Answer.

No. Moving to the revenue share regime is not a good idea. This would lead to very high cost thereby making ISPs un-economical. ISPAI suggests that license fee should be charged only on first BTS established in the designated area. On every additional BTS charges should be nil or very nominal. It will result in effective and efficient utilization of spectrum and cheaper cost to the customer.

However, unlike UASL with mobility/CMSTS, which are pre-dominantly spectrum based services, ISP services are a value added application and content dependent services, that may partially utilise the wireless spectrum.

Question No. 12. The consultation paper has discussed some strategic paths to boost Internet telephony, bring in level playing field vis-a-viz other operators, and regulate the Internet services. Do you agree with the approach ? Please give your suggestions regarding future direction keeping in view the changing scenario.

Ans. Yes we agree with the TRAI in its endeavors. We wish to state that :-

1. All IP based services including Un-restricted Internet Telephony should be allowed to ISPs on payment of AGR.
2. Computing device should be available at a reasonable cost which is user friendly and technology agnostic.
3. Check on similar services offered by Foreign Service Providers without coming under Government regulations and licensing conditions.
4. Security / Monitoring Eqpt should be required over the bandwidth of STM 4 or 1 GB and not at 2 mbps.
5. Limit of 40 bits encryption should be increased to 512 bits encryption. Over this limit, DoT should be informed by the users and not necessarily by the Service Providers.
6. ISPs should be recognized as Interconnection party.
7. UMS/Audiotex license should be part of ISP license.

While, the ISP policy of 1998 was remarkably clear in terms of the direction, barring only internet telephony, the amendments subsequently have truncated the broad objectives established earlier.

TRAI should use this opportunity to unshackle the Internet services once again, not only with a view to grow and boost broadband internet, but also to boost innovation and development of new content and applications. Attempt to make ISP/Broadband services as extensions only of Integrated Operator services will be against the principles behind the growth and popularity of Internet itself.

Internet has grown to this extent only because regulators such as FCC and Policy makers in the USA as well as world over have adopted not only a "hands off approach" to Internet but have effectively ruled against predatory tactics of telephone and large cable companies to choke the services of other ISPs.

Additionally, efforts were always made to support ISPs, by such regulators like Oftel, who introduced, FRIACO, ring fencing of services and regulating bandwidth pricing of the incumbent operators in the UK to ensure that ISPs were not disadvantaged. FCC ensured that last mile unbundling was introduced, so as to enable ISPs to use the infrastructure of telcos to grow the services. Most other developed Internet economies have followed suit, certain examples of which have been provided by TRAI in its consultation paper itself.
