



Telecom Regulatory Authority of India



**Clarification related to Recommendations
on
“Enhancement of Scope of Infrastructure Providers
Category - I (IP-I) Registration” issued on 13th March
2020”**

(Clarification sought by DoT through its letter dated 18th
November 2020)

New Delhi

11.01.2021

Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
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ANNEXURE:

DOT LETTER DATED 18TH NOVEMBER 2020

Chapter-I

TRAI's RESPONSE TO THE CLARIFICATION SOUGHT BY DoT

A. Background

1. Telecom Regulatory Authority of India (TRAI) issued its recommendations dated 13th March 2020 on “Enhancement of Scope of Infrastructure Providers Category - I (IP-I) Registration” (hereinafter referred to as the “recommendations”) to the Government. These recommendations have been issued by the Authority to implement the strategy “*Encourage and facilitate sharing of active infrastructure by enhancing the scope of Infrastructure Providers (IP) and promoting and incentivizing deployment of common sharable, passive as well as active, infrastructure*” as envisaged in the NDCP-2018. Department of Telecom. (DoT) through its letter dated 18th November 2020 (hereinafter referred to as “the letter”: attached in the **Annexure**) has communicated that the aforesaid recommendations of TRAI have been considered. In the letter some observations of DoT have been noted. It has sought clarification on these observations.
2. DoT through the letter has observed that, while making the recommendations, TRAI has relied on Hon'ble TDSAT judgment dated 10.04.2012 in the matter of “Reliance Infratel Ltd. vs Etisalat DB Telecom Pvt. Ltd.” (Petition No. 75 of 2012 - M.A. No. 112 of 2012). The judgment has inter alia stated that

“..... If, whether by way of grant of registration certificate or otherwise, any exclusive privilege vested in the Central Government is to be parted with or outsourced in favour of any other entity, the same would mean a license.....”

3. In the letter, DoT has also stated that in view of the above-mentioned Hon'ble TDSAT judgment, TRAI has stated that the registration certificate issued to IP-1 is a kind of licence/permission granted under Section 4 of the

Indian Telegraph Act. 1885, though on a different consideration and with specific scope.

4. DoT in the letter has further stated that the Hon'ble Delhi High Court in its judgment dated 11.11.2013 in the matter of “Viom Network Ltd. vs S Tel Pvt. Ltd.” (ARB.P. 236/2012) had examined this issue in the light of above observations of TDSAT and **held that the infrastructure providers cannot be treated as licensees under Section 4 of the Indian Telegraph Act, 1885** and Service Providers as defined in the TRAI Act. Some specific paras of the Hon'ble Delhi High Court judgment dated 11.11.2013 have been reproduced by DoT in the letter.
5. Thereafter, it has been mentioned in the letter that Hon'ble TDSAT in its judgment dated 05.07.2018 in the matter of “V-con Telecom Towers Pvt Ltd. vs Tata Teleservice Ltd.” (Petition No. 125/2017) accepted the above view taken by Hon'ble Delhi High Court.
6. In the letter DoT has further observed that:
 - “(v). The basic premise of TRAI while making recommendations dated 13.03.2020 on "Enhancement of Scope of Infrastructure Providers Category-I (IP-I) Registration" may perhaps require a relook as the subsequent judgments of Hon'ble Delhi HC (11.11.2013) and of Hon'ble TDSAT (05.07.2018) have overruled the above stand.*
 - “(vi). In view of the later judgments of Hon'ble Delhi HC (11.11.2013) and Hon'ble TDSAT (05.07.2018), it appears that such providers who have IP-1 registrations issued under guidelines of DoT are not to be considered as licensees under Section 4 of Indian Telegraph Act.”*
7. DoT has sought clarification from TRAI on its observations indicated in para (i) to (vi) of the letter dated 18th November 2020, which have been summarized above.

B. Response of the Authority to the clarification sought as per the observations of DoT

8. At the outset it is denied that the basic premise of TRAI while making recommendations dated 13.03.2020 on "Enhancement of Scope of Infrastructure Providers Category-I (IP-I) Registration" was based on Hon'ble TDSAT judgment dated 10.04.2012 in the matter of "Reliance Infratel Ltd. vs Etisalat DB Telecom Pvt. Ltd." (Petition No. 75 of 2012 - M.A. No. 112 of 2012). In this regard, kindly refer to the para 2.36 to 2.46 of the recommendations. In fact, the recommendations of the Authority are based on exhaustive consultation with stakeholders and the legal framework in place. The judgment of TDSAT dated 10.04.2012 was cited in support of the Authority's analysis.
9. The word 'licence', though not defined in the Indian Telegraph Act, 1885 (hereinafter referred to as "the Act") is granted by the Central Government (through DoT) under Section 4 (1) of the Act to any person to establish, maintain or work a telegraph on such conditions and in consideration of such payments as it thinks fit. Section 4 (1) of the Act reads as under:

"4. Exclusive privilege in respect of telegraphs, and power to grant licenses. —

*(1) Within India, the Central Government shall have exclusive privilege of establishing, maintaining **and** working telegraphs:*

*Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain **or** work a telegraph within any part of India.*

.....

....." (**emphasis provided**)

10. Therefore, any person other than the Central Government, requires a permission, in the nature of a licence or authorization or permission to

either establish, maintain or work a telegraph as defined in section 3 (1AA) of the Indian Telegraph Act which reads as under:

“telegraph” means “any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.”

11. It is an undisputed fact that the Registration of Infrastructure Providers Category-I (IP-I) enables IP-I to provide assets and services such as Dark fibres, Right of Way, Duct space & Tower. It is also a fact that as per the definition of ‘telegraph’ reproduced above any appliance, instrument, material or apparatus, which is capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, is a ‘telegraph’. **Accordingly, the Dark Fiber, establishment and maintenance of which is permitted under the IP-I registration presently, is a telegraph.**
12. As per first proviso to section 4 (1) of the Indian Telegraph Act, the Central Government can part with its exclusive privilege to establish, maintain and work a ‘telegraph’ to any person by granting the person a licence or permission to establish, maintain or work a ‘telegraph’. The ingredients of such grant of licence or permission could be as under:
 - a) The permission may be to establish, maintain or work a telegraph.
 - b) Terms and conditions which the Central Government may specify while granting such licence or permission; and
 - c) Payment of such consideration by the grantee, as the Central Government thinks fit.
13. Therefore, a licence or permission may be granted for carrying out either of the said activities, i.e., establish, maintain or work a telegraph or any combination thereof. For example, the Unified Licences granted by DoT permit the grantee to carry out all the activities. Similarly, IP-1 registration

permits the grantee to only establish a telegraph and maintain such telegraph but are not permitted to work such a telegraph established and maintained by them.

14. Further, the licence or permission so granted may be in consideration of some payment (licence fee as in case of UL etc.) or may be without payment of any consideration (as in case of IP-1 registration). Example of such permission or authorization without any consideration could be the Internet Service Provider (ISP) licence conditions prescribed in the year 1998 wherein the Telecom Authority decided to waive the Licence Fee for a period up to 31.10.2003.
15. It may be noted here that the Act or the Rules made thereunder do not delineate any particular format in which terms and conditions for grant of permission/ licence, including mode or quantum of payments, are specified. The licence/permission so granted may be in the form of a detailed contractual agreement as in the case of Unified Licence or in the form of a simple letter/registration certificate, granting thereby permission to a person to carry out the activity (ies) mentioned under section 4 (1) of the Act.
16. It is also pertinent here to refer to the “Flight and Maritime Connectivity Rules, 2018” dated 14th December 2018 notified by Ministry of Communications in exercise of the powers conferred by Section 4 read with Section 7 of the Indian Telegraph Act, 1885 (13 of 1885). These rules are for grant and regulation of authorisation for “In Flight and Maritime Connectivity (IFMC)”. The IFMC service provider, shall establish, maintain and work telegraph to provide wireless voice or data or both type of telegraph messages on ships within Indian territorial waters and on aircraft within or above India or Indian territorial waters. The IFMC service provider shall pay annual fee of one rupee to be paid on annual basis to the DoT through Bharat Kosh. In the above referred rules, instead of licence or permission,

the term 'authorization' has been used by the Government to part with its exclusive privilege under Section 4 of the Indian Telegraph Act, 1885.

17. The Department of Telecommunications has issued "Indian Telegraph Right of Way Rules, 2016" for setting up of mobile towers and laying of cables in November 2016, providing a framework for granting approvals and settling of disputes in a time-bound manner. As per these Rules, the appropriate authority shall exercise the powers under these Rules on an application for establishment and maintenance of underground or over-ground telegraph infrastructure by any licensee on whom the powers of the telegraph authority have been conferred by notification under Section 19B of the Act, subject to any conditions and restrictions as may be imposed in such notification. The section 19B of the Indian Telegraph Act, 1885, makes it amply clear that the powers of the 'telegraph authority' provided under Part III of the Act can be conferred only upon any 'licensee' under Section 4 of the Act. DoT through a clarification dated 22nd May 2018 has clarified that under clause 2(d) of the said Rules 'licensee' includes Infrastructure Providers Category-I (IP-I). Therefore, vide this clarification, **the Government itself has recognized Infrastructure Providers Category-I (IP-I) as a licensee under Section 4 of the Act.**

18. A perusal of the Hon'ble Delhi High Court judgment dated 11.11.2013 in the case of "*Viom Network Ltd vs S Tel Pvt Ltd*" and other connected matters (ARB.P. 236/2012) shows that the petitioners before the High Court who were registered as Infrastructure Provider Category-I had prayed for certain relief under the Arbitration Act. Their petition was opposed by the respondent on the ground that the remedy of arbitration was not available to those petitioners for the reason of TDSAT having exclusive jurisdiction over the disputes raised which were covered under section 14 read with section 15 of the TRAI Act. On behalf of the respondent, reliance was placed upon a TDSAT order dated 10.04.2012 in Petition No.75 of 2012 namely "*Reliance Infratel Ltd. vs Etisalat DB Telecom Pvt. Ltd., Mumbai*" and other

connected matters. The High Court, after threadbare discussion, chose not to agree with the said judgment of Hon'ble TDSAT by citing and culling out several reasons. The High Court chose to overrule the judgment of the Tribunal on the crucial issue as to *whether a registered Infrastructure Provider Category-I company like the petitioner is a Service Provider or not under TRAI Act* and, therefore, amenable to jurisdiction of TDSAT under section 14 of the TRAI Act or not. It ultimately held that such a registered Infrastructure Provider is not a Service Provider within the meaning of TRAI Act and is therefore, not amenable to jurisdiction of TDSAT under section 14 of the TRAI Act. On that basis, the High Court held the petitioners of these cases are entitled to arbitration proceeding.

19. It is important to note here that while the above cited Hon'ble Delhi High Court judgment dated 11.11.2013 has held that Infrastructure Providers Category-I cannot be treated as 'service providers' under TRAI Act to be amenable to jurisdiction of TDSAT, **it did not hold, as stated by DoT in the letter, that Infrastructure Providers Category-I cannot be treated as 'licensee' under Section 4 of the Indian Telegraph Act.** The question whether the IP-I registration can be treated as a licence under Section 4 of the Indian Telegraph Act, has been kept open by Hon'ble Delhi High Court in the above cited judgment. The Hon'ble Court has observed that need was not felt to answer this question. The relevant portion of the judgment is reproduced below:

"15. The first question which thus arises is whether the petitioners can be said to be 'licensee' within the meaning of Section 2(1)(e) of TRAI Act in as much as if it were to be so, they would axiomatically fall under the definition of service provider in Section 2(1)(j) which as noticed above, includes a licensee. That takes us to the Telegraph Act. The said Act, by Section 4 thereof vests the privilege of establishing, maintaining and working telegraphs, exclusively in the Central Government. However the proviso to Section 4(1) enables the

Central Government to grant a license to any person to establish, maintain or work a telegraph. The petitioners, notwithstanding being registered as a Infrastructure Provider Category-I, cannot be said to be having a license, at least to work a telegraph in as much as the Registration Certificate of the petitioners itself contains a clause as under: -

“In no case the company shall work and operate or provide telegraph service including end to end bandwidth as defined in Indian Telegraph Act, 1885 either to any service provider or any other customer”.

16. It next has to be considered whether the petitioners have been licensed, if not to work a telegraph, to establish or maintain a telegraph. **The proviso to Section 4(1) of the Telegraph Act, as aforesaid, enables the Central Government to grant a license not only to work a telegraph but also to establish or maintain a telegraph.** A connected question would also arise whether the license under Section 4(1) of the Telegraph Act can be either to only establish or to only maintain or only work a telegraph or only to establish, maintain and work a telegraph. However, **need is not felt to answer the said question as Section 2(1)(e) of the TRAI Act though refers to a license under Section 4 of the Telegraph Act but only to a license ‘for providing specified public telecommunication services’.** Telecommunication Services are defined in Section 2(1)(k) as ‘service...which is made available to users by means of any transmission or reception of signs or signals...’. The reference thus in Section 2(1)(e) of the TRAI Act to a licensee is to only such a licensee who is providing transmission or reception services to ‘users’ who are members of ‘public’ i.e. to consumers of such service and not to an intermediary or to a licensee

*providing public telecommunication services. In this view of the matter, the petitioners even if a licensee under Section 4(1) of the Telegraph Act for the reason of having a license to establish or maintain a telegraph are not a licensee within the meaning of Section 2(1)(e) of the TRAI Act.” **(emphasis provided)***

20. One more observation has been made by the Hon’ble Delhi High Court in para 28 of its judgment dated 11.11.2012 which brings out the difference between ‘licensee’ and ‘service provider’ which is reproduced below:

“28. Having held so, it is essential to notice the reasoning which prevailed with the TDSAT in Reliance Infratel Ltd. supra to hold such infrastructure providers to be service providers within the meaning of Section 2(1)(j) of the TRAI Act. An analysis of the said judgment shows the following reasons to have prevailed with the TDSAT. I have against each of the said reasons also given my own reasons for not agreeing therewith.

(A). The restrictions contained in the Registration Certificate could have been imposed only by way of a license envisaged under proviso to Section 4 of the Telegraph Act and not otherwise.

*I have already held above that **an infrastructure provider though may be licensed under Section 4(1) of the Telegraph Act to establish and maintain a telegraph, if not licensed to provide telecommunication services to users who are members of the public, would not be a service provider under the TRAI Act.** The TDSAT has presumed a licensee under the Telegraph Act and a service provider under the TRAI Act to be one and the same without noticing that only such licensees who are licensed for providing public telecommunication services to users have been made service providers under the TRAI Act. Moreover, restrictions in*

the Registration Certificate can also be contractual and merely because of the petitioners having agreed to such restrictions, they cannot be made service providers when under the TRAI Act they are not.....”(emphasis provided)

21. In view of the above-mentioned extracts of the Hon'ble Delhi High Court judgment dated 11.11.2013 in the matter of “*Viom Network Ltd. vs S Tel Pvt. Ltd.*”, **the contention of the DoT, that the Hon'ble Court in its judgment had held that the Infrastructure Providers cannot be treated as licensees under Section 4 of the Indian Telegraph Act, 1885, is factually incorrect.**

22. The Hon'ble TDSAT in its order dated 05.07.2018 in the case of “*V-con Telecom Towers Pvt Ltd. vs Tata Teleservice Ltd*” (TELECOM PETITION/125/2017) has accepted the view taken by Hon'ble Delhi High Court that Infrastructure Provider Category-I is not a service provider under TRAI Act. However, Hon'ble TDSAT has not changed its earlier finding in its order dated 10.04.2012 in Petition No.75 of 2012 namely “*Reliance Infratel Ltd. vs Etisalat DB Telecom Pvt. Ltd., Mumbai*”, that the power to lay down passive infrastructure would come within the purview of Section 4 of the Act. The Hon'ble TDSAT has observed that:

“.....In our considered view, the objection of the respondent to the maintainability of the petition the ground that petitioner is not a Service Provider has to be accepted because of the view taken by the Delhi High Court. No judgment of the High Court or Supreme Court taking as contrary view, has been cited before us. Once the High Court noticed the judgment of this Tribunal and chose to take a different view, we have no option but to follow the judgment of the High Court and not of this Tribunal. It may be noticed that the High Court judgment is of course a later judgment and considered the judgment of this Tribunal....”

23. As per the definition of the 'telegraph' under the Act, any appliance, instrument, material, or apparatus, which is **used or capable of use** for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature is a 'telegraph'. Therefore, whether the appliance, instrument, material, or apparatus, which is **capable of use** for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature and whose establishment and/ or maintenance is permitted by the Central Government to any person, is passive or active, does not make any difference and such permission is nothing but a license under Section 4(1) of the Act. Therefore, reading or interpreting any distinction between active and passive infrastructure based on the provisions of the Act would not be a correct interpretation of the provisions of the Act.
24. The Authority is of the view that the Central Government can part with its exclusive privilege to establish, maintain, and work a 'telegraph' to any person by granting the person a licence or permission or any other instrument to establish, maintain or work a 'telegraph' only under Section 4 of the Indian Telegraph Act. There is no other provision, other than the Section 4 of Indian Telegraph Act, 1885, to grant permission to any entity to own, establish, maintain, or work all such infrastructure items, equipment and systems which are required for establishing telecommunication networks.
25. Since the license or permission to establish and maintain a telegraph can only be given under Section 4 of the Indian Telegraph Act, 1885, the restrictions/ conditions specified in the IP-I Registration Certificate cannot be considered as mere contractual in nature sans Section 4 of the Act.
26. Further, as stated earlier, contrary to the contention of DoT, it is a fact that the judgments of Hon'ble Delhi HC (11.11.2013) and Hon'ble TDSAT (05.07.2018) did not hold that IP-1 registrations issued by DoT are not to be considered as licenses under Section 4 of Indian Telegraph Act. It is also a

fact that under the RoW Rules, 2016, the Central Government itself has recognized Infrastructure Providers Category-I (IP-I) as a licensee under Section 4 of the Act.

27. In view of the above, the Authority reiterates its view that the IP-I registration, within its existing scope of establishing and maintaining telegraph infrastructure is a separate class of licence under Section 4 of the Indian Telegraph Act, 1885, which is issued by means of a registration. Further, the Authority reiterates its recommendations dated 13th March 2020 on “Enhancement of Scope of Infrastructure Providers Category - I (IP-I) Registration”.
28. It is pertinent to reiterate here that for achieving the objectives of the Connect India mission of the NDCP-2018, *“Encourage and facilitate sharing of active infrastructure by enhancing the scope of Infrastructure Providers (IP) and promoting and incentivizing deployment of common sharable, passive as well as active, infrastructure”* is an important strategy; and an early decision of the Government on these recommendations of the Authority would enable implementation of this strategy envisaged in the policy.

Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110 001
(Carrier Service Wing)

No.10-12/2012-CS-III(Pt. II)/236

Dated 18.11.2020

To

The Secretary,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg, (Old Minto Road),
New Delhi - 110 002

Subject: Telecom Regulatory Authority of India (TRAI) recommendations dated 13.03.2020 on 'Enhancement of Scope of IP-I Registration': Clarification sought from TRAI.

This is with reference to the TRAI recommendations on 'Enhancement of Scope of Infrastructure Providers Category - I (IP-I) Registration'. The TRAI recommendations have been considered in the department and following have been observed:

(i) TRAI has relied on Hon'ble TDSAT judgement dated 10.04.2012 in the matter of Reliance Infratel Ltd vs Etisalat DB Telecom Pvt. Ltd. (Petition No. 75 of 2012 – M.A. No. 112 of 2012) while making the recommendations. The judgement has *inter alia* stated that:

".....If, whether by way of grant of registration certificate or otherwise, any part of the exclusive privilege vested in the Central Government is to be parted with or outsourced in favour of any other entity, the same would mean a license....."

(ii) In view of the above mentioned Hon'ble TDSAT judgement, TRAI has stated that the registration certificate issued to IP-I is a kind of license/permission granted under Section 4 of the Indian Telegraph Act, 1885, though on a different consideration and with specific scope.

(iii) However, Hon'ble Delhi High Court in its judgment dated 11.11.2013 in the matter of Viom Network Ltd. vs S Tel Pvt. Ltd. (**ARB.P. 236/2012**) had examined this issue and the above observations of TDSAT and held that the infrastructure providers cannot be treated as licensees under Section 4 of the Indian Telegraph Act, 1885 and Service Providers as defined in the TRAI Act. The relevant portion of the judgment is reproduced as under:

.....
24. Rather, the nomenclature evolved itself furnishes the answer to the question under adjudication. The petitioners have been classified not as service provider but as infrastructure provider. The word service, on a conjoint reading of the definitions of licensee, service provider and telecommunication services in Section 2(1) of the TRAI Act is service to users who are members of the public and not providing service to another who in turn may be providing such services to users who are members of the public. Providing a service to users who are members of public will necessarily entail establishment of an infrastructure and a service provider may on its own establish the entire infrastructure required for providing the service or may avail of the infrastructure of another. However merely because infrastructure of such another is being used to provide service to users who are members of the public would not make such another also a service provider under the TRAI Act.

25.

26..... Recommendations dated 16th April, 2012 on Guidelines for Unified Licence/Class Licence and Migration of Existing Licences links recommendations to bring infrastructure providers in the licensing regime to the need to permit hitherto before passive infrastructure providers to provide active infrastructure apparatus/equipment also with a view to enable quicker roll-out of services by the licensees of telecommunication services. However, the same axiomatically means that till the infrastructure provided is passive and not active, the infrastructure provider cannot be said to be providing any service to the public or to the user and which alone in the context of TRAI Act is a service provider.

27. I therefore hold the petitioners as infrastructure providers to be not service providers within the meaning of the TRAI Act. Resultantly, TDSAT would not have jurisdiction over disputes between the petitioners on the one hand and respondent on the other hand. Axiomatically, the remedy of arbitration under the Arbitration Act is not ousted.

28. the reasoning which prevailed with the TDSAT in Reliance Infratel Ltd. Supra to hold such infrastructure providers to be service providers within the meanings of Section 2(1)(j) of the TRAI Act. An analysis of the said judgement shows the following reasons to have prevailed with the TDSAT. I have against each of the said reasons also given my own reasons for not agreeing therewith.

(A) The restrictions contained in the Registration Certificate could have been imposed only by way of a license envisaged under proviso to Section 4 of the Telegraph Act and not otherwise.

I have already held above that an infrastructure provider though may be licensed under Section 4(1) of the Telegraph Act to establish and maintain a telegraph, if not licensed to provide telecommunication services to users who are members of the public, would not be a service provider under the TRAI Act. The TDSAT has presumed a licensee under the Telegraph Act and a service provider under the TRAI Act to be one and the

same without noticing that only such licensees who are licensed for providing public telecommunication services to users have been made service providers under the TRAI Act. Moreover, restrictions in the Registration Certificate can also be contractual and merely because of the petitioners having agreed to such restrictions, they cannot be made service providers when under the TRAI Act they are not.

(B) ...

(C)...

(D) ... Once it is found that the legislature in the definition of licensee in the TRAI Act has not included all licensees under Section 4(1) of the Telegraph Act but only such licensees who are providing public telecommunication services, inclusion in the name of purposive interpretation of other licensees not providing public telecommunication services to users would in my opinion tantamount to violating the express language of the statute. Surprisingly, the TDSAT did not take the view of TRAI or of the Government while forming such an opinion and also did not notice that TRAI in its various Consultation Papers and Recommendations has itself held infrastructure providers to be not licensees and IP-I Registrations to be not licenses under Section 4(1) of the Telegraph Act. The TDSAT thus could not have thrust infrastructure providers into the regulatory regime of TRAI without consulting TRAI and without TRAI itself claiming so. The recommendations of TRAI to bring IP-I registrants in the license regime is indicative of the TRAI, without the same, having control or regulatory powers over such registrants.

... ..”

(iv) Thereafter, Hon'ble TDSAT in its judgment dated 05.07.2018 in the matter of V-con Telecom Towers Pvt Ltd vs Tata Teleservice Ltd (**Petition No. 125/2017**) accepted the above view taken by Hon'ble Delhi High Court. The relevant portions of the TDSAT judgment are reproduced as under:

“..... In fact, the High Court chose to overrule the judgment of this Tribunal on the crucial issue as to whether a registered Infrastructure Provider Category-I company like the petitioner is a Service Provider and, therefore, amenable to jurisdiction of TDSAT under section 14 of TRAI Act or not. It ultimately held that such a registered Infrastructure Provider is not a Service Provider and is not amenable to jurisdiction of TDSAT under section 14 of the TRAI Act.”

In our considered view, the objection of the respondent to the maintainability of the petition on the ground that petitioner is not a Service Provider has to be accepted because of the view taken by the Delhi High Court. No judgment of the High Court or Supreme Court taking a contrary view, has been cited before us. Once the High Court noticed the judgment of this Tribunal and chose to take a different view, we have no option but to follow the judgment of the High Court and not of this Tribunal. It may be noticed that the High Court judgment is of course a later judgment and considered the judgment of this Tribunal.

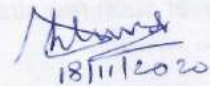
..... Since the petitioner is not a Service Provider as per law settled as held by the High Court, we have no option but to hold that the petitions are not maintainable before this Tribunal. They are accordingly closed with option to the petitioner to seek its remedy in appropriate proceedings in accordance with law.”

(v) The basic premise of TRAI while making recommendations dated 13.03.2020 on “Enhancement of Scope of Infrastructure Providers Category-I (IP-I) Registration” may perhaps require a relook as the subsequent judgements of Hon’ble Delhi HC (11.11.2013) and of Hon’ble TDSAT (05.07.2018) have overruled the above stand.

(vi) In view of the later judgements of Hon’ble Delhi HC (11.11.2013) and Hon’ble TDSAT (05.07.2018), it appears that such providers who have IP-1 registrations issued under guidelines of DoT are not to be considered as licensees under Section 4 of Indian Telegraph Act.

2. Therefore, TRAI is requested for the clarification as per the observations indicated in para (i) to (vi) above.

This issues with the approval of Secretary (T).



18/11/2020

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