

SIA-India Submission on Consultation Paper [CP]: ‘Need for a new legal framework governing Telecommunication in India

The objective and Scope of the Consultation Paper need to be well defined

The very objective behind this consultation is to do away with the antiquated regime and bring a modern and future-ready legal framework, however, it attempts to address just a few parameters.

The CP says, ‘India needs a new law which is clear, precise, and attuned to the realities of the sector for realizing the potential of telecommunication’. However, the paper flips across macro and micro issues in different sections of a short document and hence lends itself to ambiguity and a sense of incompleteness in achieving the desired outcomes that this consultation paper aims to achieve.

The consultation paper in the introductory lines states to promote a ‘Universal, resilient, secure, accessible, and affordable telecommunication is indispensable for an inclusive India as we strive towards the ideal of “*antyodaya*”.’ This in itself is an inadequate objective to guide the larger framework of a new legal framework.

Consultation Paper needs to define Modern Technologies

The CP talks about adopting and augmenting modern technologies and adhering to global best practices. Satellite communications play a vital role in the global telecommunications ecosystem in Satellite Internet • Cellular Backhaul • Enterprise Networks • Off-Shore Connect • Maritime Services. Satellite Communication (**SATCOM**) **Market** size was valued at USD 71.6 Billion in 2021 and is projected to reach USD 156.7 Billion by 2030.

Role of satellite connectivity in India has a very significant and strategic role to play. With more than 1300 Gati Shakti projects under National Master Plan by 2024, the need for broadband connectivity will become highly critical. The connectivity needs to be served through multiple access technologies for an added layer of resiliency and efficiency. Shipping, Ports, Waterways, Tolls, roads and Highways are increasingly blurring the lines between remote and near. Covid-19 has further pushed the idea of dynamic and reverse migration between rural and urban settings. National Missions like SMART CITIES, UDAAN, National Health Mission, New Education Policy and PM WANI – all align well with the DIGITAL INDIA mission and need multiple access technologies. Space-based satellite services are critical, along with terrestrial connectivity.

Technology Neutral Focus is Must for Non-Terrestrial Technologies

As mentioned in the introduction to the consultation, the technology and the nature of telecommunication have undergone a massive change since the original laws came into effect. The department of telecom has done a very good job of trying to bring in amendments to keep pace the technology and business models development, however, at some point the amendments become too unwieldy and it could not be a better time to consider a new legal framework in telecom sector. India in the last one and half decades has also adopted several strategies and brought out key policies such as BharatNet, 'Broadband Policy 2004', 'Digital India Programme 2015', 'National Broadband Mission 2019', 'National Digital Communication Policy 2018' which amended, augmented or replaced many aspects of the National Telecom Policy 2012.

All these policies have acknowledged the need for modern technologies, however, have had a predominant focus on terrestrial technologies and very limited focus on space-based technologies in practice.

The exploitation of space communication technologies in India has remained limited to broadcasting, and very few VSAT terminals are in use. The various international best practices suggest how regulators are balancing the policies to support the development of telecom services based on various technologies like mobile services, satellite services, wi-fi etc.

The current emphasis on limited technology choices has kept a huge section of the nation and its citizens bereft of the advantages that alternate technologies like satellite communications, public Wi-Fi etc or combinations of multiple technologies which could have been enabled many years back.

The new Framework must define the Value chain and form a Balancing Act

The CP states that the new law should provide framework for various players in telecom value chain to enable investments. The paper needs to define the Telecom Value Chain, the evolution of new players, and new avenues of growth. There has been a major shift in the traditional definitions of business models— wired, wireless telecom providers with the entrance of satellite operators.

The telecommunication infrastructure is the driver of GDP growth and employment generation by enabling digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises. The overall legal framework must balance the requirements of the overall telecommunication sector and its stakeholders. The stakeholders include the service providers bringing a mix of capabilities enabled by different technologies that includes Mobile telephony, Satellite communications, Public Wi-Fi, Fibre network etc. Each of these bring unique advantages and complementarity to the overall telecommunications infrastructure and capability to the nation.

As the CP states rightly that the new law needs to be attuned to the realities of the of telecommunication in 21st century India. Both terrestrial and non-terrestrial technologies will augment the digital connectivity reach to the corners of the nation.

Spectrum Allocation based on Global Best practices:

The CP states that the spectrum will be assigned to best serve the common good and enable widespread access to telecommunication services and that such a legal framework for Spectrum needs to enable the utilization of the spectrum in a liberalized and technologically neutral manner. This noble objective however needs to be aligned with the massive deliberations done at the ITU in terms of spectrum identification for different services with respect to the needs of different ITU regions. An ITU harmonized spectrum identification also facilitates the entry of new technologies and competitors into the market, encouraging and promoting innovation.

Since the CP as one of its objectives emphasizes upon adopting the global best practices, the country too needs to keep up with the global best practices, for spectrum for satellite. As per the global practice the spectrum for satellite use should be allocated in an administrative manner that is different from spectrum allocation for exclusive use as in the case of mobile services. Administrative allocation of spectrum for satellite use would help strengthen India's position in global economic setting even better.

Having stated the above, It is important that the whole of government approach is exercised and the overall regulatory framework is guided by the following objectives:

- Any new framework must encourage all digital communication technologies without a preference for limited technologies.
- Connectivity to the remotest corner of the country at affordable prices, for personal, enterprise and government use.
- Flexibility and agility of regulatory framework to adapt to changing technology and services trend.
- Ease of doing business for the industry stakeholders involved.
- Harmonized with global best practices arrived at international forums like ITU
- Spectrum allocation must be based on International best practices.

With respect to the objectives outlined above, SIA-India has the following key submissions:

1. The proposed reforms/reviews to the extant Wireless Acts/Regulations regime and substantive law should be soundly based on consistent, transparent and concurrent administrative principles, which are in tune with international practices and regulations in the telecommunication sector across the globe and truly reflects the legislative and regulatory acumen/standards of India among the comity of nations. The new rules and regulations should intend to implement enhanced administrative regime and address perceptions of a lack of robustness in decision-making, potential for confirmation bias and failure to meet the standards.
2. It may be ensured that the Rules/Regulations/Guidelines would be framed in a clear and unequivocal manner and provide a wide degree of latitude in its procedural approach following the best practices both for the regulators and stakeholders.
3. It should be emphasized that telecom sector is undergoing rapid technological evolution for the last two decades. Therefore, it is important that the rules/regulations are supportive and well managed to meet the growing needs of the stakeholders. Taking account of the evolving global telecom market, the review should strengthen the existing regulatory framework and additional regulatory approach, being contemplated, should remain relevant, effective and fit for evolving technological and market influenced factors.
4. To provide adequate provisions to ensure regulatory certainty and promote investment. Multiple layers of permissions and requests to DOT, WPC, SACFA etc that create project delays and lead to missed opportunities and cost overruns must be removed/eased. It is essential that both DOT/WPC and licence holders understand where the boundaries lie. There should be no ambiguity so that the licence holder with genuine intentions should not be penalized whereas those demonstrating rogue behaviour should not demonstrate plausibility and subject to proportionate penalties to deter recurrence.
5. The framework needs to provide clear understanding with spirit that should ensure minimal potential for different interpretations to avoid any requirement of judicial review.
6. Broadband policy should be at forefront wherein all media (terrestrial and space) should be encouraged without any discrimination with respective global practices in place. The current emphasis on limited technology choices of fibre laying and mobile coverage has kept a huge section of the nation and its citizens bereft of the advantages that alternate technologies like satellite communications, public Wi-Fi etc or combinations of multiple technologies could have enabled many years back.

7. It is of real concern that the current process of issuing licences/ clearances is time-consuming and cumbersome. It is highly essential that a robust online single-window platform should be made available to the stakeholders and the cases/requests should be processed in a transparent manner within a reasonable stipulated period. Any innocuous or unforeseen pitfalls for the delay in the process be made known to the stakeholders. In this regard, a clear timeframe shall be notified.
8. Ease of doing business and enhancement to policies that encourage FDI in India should be a focus of any framework
9. DOT should make the complaint/grievances processes of individual/organizational licence holder accessible through accessible channels in-clear/easy to understand language and due process/channels be implemented to address the issues. DOT should notify a binding and indicative timeframe for the redressal of the complaint/grievances. DOT should ensure that it has strong internal checks and balances integrated into its decision-making frameworks.
10. The proposed review should appropriately consider measures to encourage investment/innovation and promote competition while simultaneously ensuring that customers/end users are simultaneously protected from any unethical or unreasonable harms.
11. Recognition, acceptance and adoption to newer technologies must be the spirit of any framework. Examples include Dynamic Spectrum allocation etc for Mobile telephony and HTS versions and multi orbit scenarios for satellite communication. The existing framework has highlighted the limitations and inflexibility in introducing the technology advancements including ModCod enhancements, gateway flexibility, Spectrum refarming for mobile networks, VSAT terminal sizes etc. Ground station/gateway virtualisation, improvement in network architecture and antenna form factor must also be recognised to do away with legacy requirements and sizes in gateways and antennas. The fact that some of these changes had to be enabled by standards and licensing amendments highlights the need for the regulatory framework to be agile and adaptable to enhancements in technology, service and business models.

12. Even today the advantages that earth station in motion could bring across the large swathes of land in India has the artificial regulatory barrier of licensing instead of being an enabling framework. Role of satellite connectivity in India would only grow in significance. With more than 1300 Gati Shakti projects under National Master Plan by 2024, the need for broadband connectivity will become highly critical. The connectivity needs to be served through multiple access technologies for an added layer of resiliency and efficiency. Shipping, Ports, Waterways, Tolls, roads and Highways are increasingly blurring the lines between remote and near. Covid-19 has further pushed the idea of dynamic and reverse migration between rural and urban settings. National Missions like SMART CITIES, UDAAN, National Health Mission, New Education Policy and PM WANI – all align well with the DIGITAL INDIA mission and need multiple access technologies. Space-based satellite services are critical, along with terrestrial connectivity.
13. A framework should also take into consideration - global practices and examples, socio-economic benefits and respective quantification, cost-benefit analysis, reduction of digital divide, utility factor particularly in times of disaster management/emergency and climate change resolutions adopted by countries.
14. Telecommunications infrastructure and networks comprising of a broad range of technologies, from broadband and fixed-line networks to mobile connectivity and satellites quickly become outdated or is overtaken by evolving new technologies. In such a scenario, the Act should address the challenges of the investment by both the state and private sector and at the same time should leverage private sector capital, technology and expertise without any hindrances.
15. To give impetus to PM's Aatma Nirbhar Bharat Abhiyan (self-reliance) in the fastest growing telecom/satellite sectors, the review should safeguard innovations occurring in the sectors and protect intellectual property rights.
16. The proposed framework needs to enable the potential of the telecommunications to benefit the nation beyond geographical boundaries. In order to realize the vision of making India a space hub by the year 2030, satellite service providers in India should be allowed to establish gateways and TT&C centers (as being contemplated in the new space policy) that would serve both fixed and mobile satellite terminals in geographic areas beyond the borders of India and the Indian territorial waters in accordance with the rights granted to State under the international laws or that have been negotiated through bi-lateral agreements.

17. With the advent of High Throughput Satellites both in the geostationary and non-geostationary orbit, satellite broadband is becoming a very viable alternative for broadband connectivity, particularly in unserved and underserved areas of the country. The learnings from the expansive growth of mobile connectivity in the country that was enabled by regulatory reforms such as de-licensing of mobile phones under the Wireless Act, incentivisation of local manufacturing through PLIs and encouragement of technology absorption by national industry base through joint ventures, needs to be replicated for the satellite communications sector to benefit the nation and lead globally in the proliferation of satellite communications.

Besides these broader guidelines we also have concerns on certain sections of the consultation document that have the propensity of skewing the outcomes in a direction that is different from that desired for national benefit.

1. **The section 16.a)** mentions that the legal framework for spectrum needs to “Enable the utilization of the spectrum in a liberalized and technologically neutral manner and allow a spectrum assignee to deploy new technologies.”
 - a. Technology neutrality can be an aim towards achieving the desired outcomes and not towards the utilization of spectrum.
 - b. The spectrum usage is identified collectively at the ITU, wherein India is also a signatory, towards an interference free globally harmonised services enablement for Satellite communications, Mobile services, Wi-Fi and additional services that use the electromagnetic spectrum. Alignment to Global ITU norms: The compliance & alignment to global ITU norms are important to ensure alignment to available eco-system of equipment, protocols etc. so that consumer of the services continue to get best services at affordable price.
 - c. It will need to be ensured that existing services on the frequency range in question are not disrupt in anyway while execution of this repurposing of the frequency range.
 - d. Spectrum should be allowed to use for specific purpose only for which the spectrum is being taken from the regulator. Periodic review should be done wrt effective utilization of spectrum and if spectrum is not utilized that assignee should be required to surrender the spectrum back to regulator so that regulator may open allocations to qualified service provider as per rules.
 - e. In case if spectrum treatment were to be equal irrespective of technology and it is left to assignee to use as its own wish across various technologies then it may result in monopolistic market practice with only service provider with deep pockets, will control the overall telecom services in India.

2. **Section 24** of the consultation paper mentions that ‘The new framework also needs to consider ways in which to overhaul the current Universal Service Obligation Fund with the wider concept of a “Telecommunication Development Fund”. This can address the larger public purpose of ensuring delivery of universal telecommunication service to underserved rural and urban areas, research and development of new technologies, and promote employment and training activities. This can enable the growth of indigenous companies in the technology space.’
 - a. This dilutes the primary aim of the consultation paper to promote a ‘Universal, resilient, secure, accessible, and affordable telecommunication is indispensable for an inclusive India as we strive towards the ideal of “Antyodaya”’.
 - b. The USOF is also the vehicle where the technology neutrality is more appropriate to mention wherein the KPIs of the USOF and BBNL should be in terms of connectivity and reach for nation first rather than ‘mobile first’ of ‘fibre first’ policies that have kept the country behind other nations in providing G2C services and information across the geography.
 - c. There are multiple vehicles outside of USOF that address the research and development of new technologies and promote employment and training activities for enabling the growth of indigenous companies in the technology space.
3. Time and again, several interest groups have tried to influence government decisions on spectrum allocations for satellite communications and Wi-Fi. The allocation of spectrum in public interest needs to align with international best practices.
 - a. For exclusive spectrum use in mobile networks, spectrum auction has been the best tool to ensure efficiency of spectrum usage worldwide.
 - b. The same tool however cannot be used for shared spectrum applications like Satellite communications or Wi-Fi. The international norm is for administrative allocation of spectrum for satellite spectrum that is aligned and harmonized as per ITU identification.
 - c. Considering the above, it is important that a holistic view is taken w.r.t spectrum, so that different relevant technologies are allowed to co-exist, prosper, and serve the needs of various Industries/regions of India most optimally.

Conclusion

1. The overhaul of the telecom regulatory and legal framework is a serious exercise and should not be rushed through. Adequate response time should be available to stakeholders to collaborate with the department of Telecom in developing and evolving this new framework.
2. The Aim of the exercise needs to be sufficiently illustrated so that the acts, regulations and procedures that are drawn out align with the aim.
3. The satellite industry stakeholders through SIA-India are providing their comments on certain aspects of the existing framework and the consultation paper
4. We also raise concerns on certain sections of the consultation paper that goes against international best practices, global harmonization and standardization
5. We assure you of our cooperation always and hope to have additional consultations and request for comments towards this critical exercise that will impact the stakeholders across the ecosystem for decades to come.

