Annexure A

RESPONSE SUBMITTED BY IDEA CELLULAR LTD IN RELATION TO THE CONSULTATION PAPER ON REGULATORY PRINCIPLES OF TARIFF ASSESSMENT

INTRODUCTION:

Idea Cellular Limited (ICL) takes this opportunity to provide its feedback to the Telecom Regulatory Authority of India (TRAI) consultation paper on regulatory principles of tariff assessment (Consultation Paper). Our introductory remarks are as follows:

A. Any Tariff Assessment is incomplete without appreciating the evolution and current status of the Industry:

At the outset, we wish to state that any discussion on Regulatory principles of tariff assessment must be gauged in the context of the evolving market scenario including but not limited to the changes necessitated by:

- Evolution from 2G to 3G to 4G/LTE
- Government policies & Regulatory framework
- Court interventions
- Disruptive technology and the impact of newly introduced thrusts of Govt. policies such as digital payments and digital India.

Briefly, the Authority is aware that:

1. The telecommunications industry in India was a Government-managed monopoly relying only on fixed line services until the National Telecom Policy - 1994 (NTP 1994). The Government subsequently introduced mobile telecommunications services in the country by opening the sector to private companies and auctioning licenses. The licenses to offer mobile voice service and the necessary spectrum on which these services operated were bundled together. NTP 1999 allowed service providers to migrate their license fee structure from fixed to revenue sharing and extended initial license term from 10 years to 20 years. In an effort to encourage competition and

development, NTP 1999 also permitted DoT to issue more mobile telecommunications licenses in each Service Area. The high competitive intensity in the mobile telephony sector combined with relatively lower pan India spectrum cost, scale and nation-wide coverage coupled with TRAI's enabling Regulatory framework were able to deliver a voice call over a mobile network at much more affordable rates in comparison to delivering a voice call over a fixed line network. This played a crucial role in mobile voice service overtaking fixed voice service during this era.

2. However, in February 2012, Supreme Court of India through its landmark judgment quashed all licenses and spectrum issued pursuant to 2008 allocation as the method of allocation of these licenses followed by the Government was flawed. This led DoT to de-link spectrum and licenses going forward. DoT auctioned the cancelled licenses at new prices which were 8 – 10 times of that of earlier allocation prices, and issued telecom service licenses separately. In August 2013, DoT announced the Unified License (UL) guidelines as per which spectrum was de-linked from license. Entrants who wished to offer mobile voice service had to acquire necessary spectrum from auctions separately

3. Post quashing of licenses in 2012, the Indian Government adopted the auction mechanism for allotment of spectrum to TSPs. Thereafter, five auctions have been conducted by DoT for spectrum allotment (November 2012, March 2013, February 2014, March 2015 and October 2016). Government policies such as setting very high reserve prices in auctions, releasing limited quantum of spectrum for auction purposes (which drives prices up), and forcing 20 year old existing, in use spectrum, to be auctioned in the open market have led to a meteoric increase in the spectrum prices (this in effect forced incumbents to protect their existing business by purchasing spectrum at exorbitant prices). In the case of mobile voice services which are offered on 900 MHz and 1800 MHz frequency bands, the prices of 5 MHz of spectrum block on a pan-India basis have now risen to in excess of INR 45,000 crores and INR 15,000 crores respectively – a 10 to 30 times increase compared to the ~INR 1,650 crores charged in 2001 under the administered spectrum regime.

4. **While earlier spectrum constituted a relatively small proportion of costs involved in delivery of mobile voice telephony services in the pre-2010 era of the Indian wireless industry, spectrum related costs have multiplied manifold in recent times. The industry has invested an amount in**

excess of INR 85,000 crores as recently as in 2014 and 2015 for renewing the GSM spectrum for 20 years based on the policy of government in these two auctions. This has drastically altered the cost structure of TSPs who offer mobile voice service.

5. **The high prices of spectrum have led to a total commitment of ~INR 3.5 lac crores for spectrum acquisition so far. This high cost of spectrum has led to swelling up of debt of TSPs, with the cumulative industry debt now in excess of INR 450,000 crores against a consolidated gross block of over INR 1,050,000 crores, and an industry with an annual turnover of INR 190,000 crores. This is resulting in severe stress on balance sheets of TSPs and has led to conversion of several profit making operators into loss making companies. Based on published data by the TRAI, it is observed that the wireless industry is making losses for the last few years and industry's Return on Capital Employed (RoCE) is abysmally low. Such high levels of financial stress pose a serious threat to the viability of the TSPs.**

6. While changes in government policy including licensing framework and spectrum auctions continuously influenced the mobile voice service, rapid development and evolution of technology has also impacted the mobile voice service market in India:

    a. The 2G technology referred to as 2G (or GSM) was Primarily designed for offering Mobile Voice Services on Circuit Switched networks, and offer voice as a dedicated service (implying a dedicated frequency channel is reserved for transmission of voice signals for every voice call).

    b. 3G technology - The 3rd generation of cellular services, referred to as 3G was developed keeping in mind the growing need for faster mobile data connectivity, while continuing to provide mobile voice service.

    c. 4G technology - 4G technology offers substantially higher bandwidth and capacity for the same quantum of scarce spectrum and all transmission happens in form of the data packets over IP protocol (internet protocol) through Packet Switching.

7. **In financial year 2015-16, mobile voice service constituted an approximate INR 160,000 crores of the total INR 190,000 crores of the annual mobile telephony revenues. The entry of a new 4G only operator has led to the introduction of bundled plans which offer unlimited mobile voice service while charging subscribers for mobile data consumption.**

Thus any TRAI decision or discussion on issues concerning tariffs needs to necessarily appreciate the evolution of and the current state of the Industry. It cannot be the case that the TRAI ignores the massive investments made by the Industry under the specious logic of either March of Technology or Obsolescence. This sector requires large doses of capital investment. Investments in networks and spectrum that have been made, Investments that contribute huge revenues to the exchequer annually, but provide no adequate return on investment. Investors have the right to earn a return on their investment and TRAI being aware of the present condition should facilitate a competitive environment where all stakeholders stand to benefit.

B. <u>Critical Pillar / Principle missing in TRAI Consultation</u>

1. **Further, any review of the tariffing regime is incomplete and rendered nugatory if all the basic regulatory principles that the tariff plan(s) is/are expected to be consistent with, i.e., Interconnection Usage Charges (IUC) Compliance, Non-discrimination & Non-predation, have not been dealt with. <u>However, the current consultation does not even touch upon the aspect of IUC- Compliance, which happens to be one of the three key pillars enunciated by the TRAI time & again</u>**. In the absence of any logical reason or explanation for ignoring such a critical part, we submit that **the TRAI has not only failed to appreciate the strong linkage between the retail tariffs and IUC, it has also failed to appreciate the highly unique and challenging environment in which the established Indian operators have been offering services to nearly a Billion customers.**

2. That there is a close linkage between the retail tariffs and the IUC is clearly borne out from the following extract from TRAI's own Notification {The Telecommunication Tariff (Thirtieth Amendment) Order} dated January 16, 2004 (**2 of 2004**), the Explanatory Memorandum of which states as follows:

*"The Authority has already <u>laid down broad regulatory principles to determine as to whether a particular manner of pricing service is anti-competitive/discriminatory etc.</u> Further the Authority has forborne with the main tariff items in Cellular and Basic services (except rural subscriber's tariff & roaming tariffs). <u>The IUC regime specified by the Authority reflects the underlying costs providing the service. Also the IUC charges as specified will implicitly function as a floor to the retail tariffs and thereby scope for predatory pricing or cross-subsidization is limited</u>. … The Authority has, therefore, decided to allow the flexibility to all telecom service providers to report their tariff plans to the Authority within 7 days from the date of implementation after conducting a Self-check to <u>ensure consistency of the of tariffs with the relevant regulatory principles which inter-alia includes Tariffs being IUC Compliant, Non- discriminatory and Non-predatory</u>. … However, the **<u>Authority would intervene in matters where the stated tariff regulatory principles are violated by the service providers</u>**"*

The TRAI is also aware of our earlier submissions, wherein we had highlighted that the Authority after its analysis of TSPs traffic data had indicated asymmetry in the region of 4-14% (for Pan India operators) in its **IUC Regulation 2015**. The TRAI is fully aware that the asymmetry of traffic has only continued to worsen with the advent of a new operator that is offering free voice calls supported by below-cost IUC rate resulting in losses to TSPs. Hence the IUC MTC rates needs to be revised to reflect the actual cost, the details of which have been shared with the TRAI time & again from our end.

It is thus critical that the TRAI acknowledges the issue of IUC- Compliance to take a holistic view on the framework of tariffing related principles.

C. <u>Need for Right Perspective on Promotions:</u>

1. It is now well-acknowledged that India which is currently the second largest and the fastest growing telecom market in the World has a market construct that is unique across the World, because of the hyper-competition and the large number of players with varying age profiles, technologies, etc. The recent entry of a new player in the already hyper-competitive telecom market has led to a situation where the new entrant has been freely offering promotional offers and extending them beyond the prescribed limit.

2. The TRAI is aware that we have inter-alia filed an appeal that all such promotional offers that have got extended beyond the prescribed limits be restricted/withdrawn forthwith as "*too long a promotional period dilutes the promotional character of the tariff plan and in fact makes it a regular plan*." However, we are surprised to note that the Consultation Paper while dealing with the issue of promotional offers has made the following statement:

"The concept of "promotional Offer" was first addressed by TRAI on 19th June 2002 through an <u>*advisory*</u> *issued to all telecom service providers wherein TRAI advised service providers to restrict the validity of promotional packages and/or the benefits offered to customers under such packages on offer to a maximum of 90 days from the date of launch."*

3. In context of the above-mentioned letter dated 19th June 2002, it is submitted that we protest against the use of the term "advisory", as the Letter was in the nature of a General Direction and not an advisory as is being made out now. Infact, to quote from the same, It stated the following:

"Service providers have been offering promotional packages for their customers as a marketing strategy and the validity of such offers ranges from 15 days to 11 months. The Authority has considered the implications of offering concessions to customers and is <u>*of the view*</u> *that too long a promotional period dilutes the promotional character of the tariff plan and in fact makes it a regular plan….* <u>*Service providers are therefore advised to restrict the validity of promotional packages and / or the benefits offered to customers under such packages on offer to a maximum of 90 days from the date of launch*</u>*."*

We are thus surprised as to how TRAI has used the term 'advisory' for the above letter when the nature and spirit of the same is clearly that of a General Direction and Order.

<u>**Please note that our comments / response on this Consultation are without prejudice to our submissions/ contentions in Telecom Appeal nos. 1 & 3 of 2017, pending before Ld. TDSAT.**</u>

<u>SUBMISSION OF RESPONSES</u>:

Question 1: Do you think that the measures prescribed currently are adequate to ensure transparency in the tariff offers made by TSPs? If not, then, what additional measures should be prescribed?

<u>Idea Submission:</u>

As pointed out in the CP, "*Transparency in tariff is and has been prime issue of concern for the Authority.*" Over the years, the Authority has exhaustively and repeatedly dealt with this issue and has regularly introduced Regulations / Orders from time to time to ensure complete transparency in tariff offers made by TSPs. That the issue has received the Authority's undivided attention is clearly borne out from the long list of all the Authority's mandates, as outlined in the Consultation Paper.

ICL has consistently believed in transparency in all of its communications to its customers and would like to reiterate that it has a robust system in place to ensure that all tariffs are communicated to the subscribers in a transparent way. For maintaining transparency, the Telecom Regulatory Authority of India ("**TRAI**") has laid down certain guidelines based on the TTO / TCPR and Directions that are being followed by Telecom Service Providers ("**TSPs**"), some of these key measures being followed are as follows:

- Maximum Number of tariff plans that are currently offered are limited to a CAP of 25 plans (Prepaid + Postpaid);
- Tariff plans that are on offer are valid for minimum of 6 months and no changes are made to the same without subscriber consent / request;
- Tariff information is available to subscribers in vernacular languages as well;
- Blackout days are restricted to a maximum of 5 days in a year and these are also listed on website/ tariff advertisement/ prior SMS communication is also sent to the subscribers;
- In case of any reductions in tariffs due to regulatory changes, benefits are passed to subscribers without a pre-condition;
- No recharge is insisted to subscriber for less than 6 months for remaining connected in lifetime plans;

- Vouchers are categorized as PV/ Top up/ STV/ Combo and different color bands for its identification are used;
- Minimum font of 8 pt is used to display details in case of physical recharges;
- Itemized bill (for all chargeable events) is available for less than INR 50;
- Subscribers are informed about Benefits / its Activation / Validity in case of PV/Top up/ STV / Combo;
- Subscriber is pre-informed about charges in case the subscriber avails Premium Rate services;
- As directed, we publish our tariff plans once every 6 months for all telecom circles in one regional and one English daily for public;
- As directed, the advertisements are unambiguous and disclose all material information;
- Internal Audit as well as Metering and Billing audits (quarterly/ yearly) are also conducted to ensure all guidelines and directions are followed in the right manner;
- Customers can check information about packs / balance that they have subscribed to through a self-care portal;
- Post each transaction a subscriber is sent a notification providing details about call charges/ balance left, etc.;
- Data notification alerts are sent after customer reaches 500 Mb, 100 Mb, 10 Mb limit in their data balance;
- Additionally, a subscriber can also receive complete tariff information along with related Terms & Conditions over his mobile application.

The measures prescribed currently are adequate as they cater to the needs of several different categories of customers to ensure transparency in tariff offers made by TSPs, However, Transparency must be gauged in the context of the evolving market scenario as highlighted in the Introduction.

In that context TRAI has rightly noted in paragraph 1.8(ii) of the consultation paper that bundling of services is a marked feature of the industry. <u>The presently prescribed regime of transparency does not take into account any of the implications of bundling whether in relation to bundling of services or the costs attributable to the bundled services.</u> The TRAI would perhaps like to consider this issue holistically.

Question 2: Whether current definition relating to "non-discrimination" is adequate? If no, then please suggest additional measures/features to ensure "non-discrimination"

Idea Submission:

Based on Clause 2(k) of the TTO, "Non-discrimination" is defined as "*that service providers shall not, in the matter of application of tariffs, discriminate between subscribers of the same class and such classification of subscribers shall not be arbitrary.*"

We feel that discrimination must take into account all of the factors mentioned above and in particular new technology and its embedded costs; policy changes; and marked disparity in income levels of the metro/urban/semi-urban/rural population. There needs to be a balance between better service experience, what qualifies as a better service experience, the cost benefits of better service experience and the long term implications of such experience.

In this context we submit that new 4G services be treated as a separate class. Equally important the acquisition costs of 2G/3G spectrum are disproportionate to the cost of acquisition of 4G spectrum. This puts the TSPs which started out during the old regime at a disadvantage to TSPs that acquired 4G spectrum and operate without the legacy of 2G/3G technology.

Further, the cost of new technology is different vis-a-vis older technology. 4G networks are far more efficient from the perspective of spectrum utilization which means, 4G network can carry more bytes per MHz of spectrum. Further, the experience of consumer on a 4G network can be very different than on a 2G / 3G and it can help him to experience high speed mobile internet and enjoy all the benefits of digital world.

The 2G/3G customer and TSPs operating under the 2G/3G regimes both need to need to be incentivized to newer technology and adapt to new digital India policies through various offers / upgrades / promotions, and hence, 4G handset customers must be treated as a separate class. *e.g.* data benefits pertaining to the STVs are provided on the basis of a 'Class' of subscribers registering with the new 4G handsets or registered for the first time in the network, therefore it should be treated as a valid classification. The said classification is rational as it enables a TSP to propagate more 4G handsets in the network which benefits customers in terms of better speed, better experience, ease of digital transactions and in turn to promote Hon'ble Prime Minister's vision of Digital India.

Question 3: Which tariff offers should qualify as promotional offers? What should be the features of a promotional offer? Is there a need to restrict the number of promotional offers that can be launched by a TSP, in a calendar year, one after another and/or concurrently?

<u>Idea Submission:</u>

Based on our understanding, a promotional offer is an offer given by a TSP to incentivize the usage / subscription and is valid for a period of a maximum of 90 days. Currently promotional offers are differentiated from regular offers basis that the promotional offer is available to subscribers for a maximum period of 90 days. The TSPs need to communicate the eligibility criteria for the promotional offer with the Start Date and End Date of the offer (within the existing limit of 90 days).

Promotional offers may comprise of free or discounted voice calls, data, talk time, SMS benefits, rebate in rentals, free gifts, etc. **<u>subject to them meeting the TRAI cardinal principles of IUC Compliance, Non Discrimination & Non Predation, E.g., in case of voice calls, it should cover the IUC cost</u>**. Hence, any promotional offer which is lower than IUC cost (as mandated by TRAI) should not be allowed to be launched by any TSP.

In our opinion, the enrollment under any/all promotional offers <u>should be distinct and substantially different</u> and should not exceed 90 days for applicable class of subscribers. In addition, TSPs may use STVs for offering a price which should not be below cost or predatory.

<u>Specifically, the intent of the promotion cannot be to create disruption by violating or evading the letter and spirit of the TRAI cardinal principles of IUC Compliance, Non Discrimination & Non Predation</u>.

Question 4: What should be the different relevant markets – relevant product market & relevant geographic market – in telecom services? Please support your answer with justification.

<u>Idea Submission:</u>

Firstly, it is submitted that the TRAI is the one of the repositories of all understanding on telecommunications including the evolution and current status of Industry. Thus, the TRAI should evaluate the scenario and allow other statutes/ precedents to supplement its own evaluation, at-least until the market fully matures.

The current definition for **<u>relevant product market</u>** means "*a market comprising all those products /services which are regarded as interchangeable/ substitute by the consumer by reasons of characteristics of the products/ services, their prices and intended use*".

In our view, the relevant product market differentiation can be based on broad parameters of the services offered, demand and supply of services and on the technology used for providing the services and the historical costs as also the costs of adapting to new technology[ies]:-

- Wire line & Wireless services: Both of these are bifurcated on the basis of mobility constraints, wireless has higher mobility and wireline has no mobility.

- Pre-paid / post-paid based on services: The same is important since both are different in terms of Pay and Use and Use and Pay. Also, both services have different profiling of subscribers and Revenue/subscription.

- 4G/3G/2G compatible handsets, based on technology used: For instance, 4G is a different relevant market given the speed and technology it offers to its users.

The current definition for **<u>Relevant geographic market</u>** means "*a market comprising the area in which the conditions of competition for supply of goods / provisions of services / demand of goods or services are distinctively homogeneous and can be distinguished from the conditions prevailing in the neighboring areas"*.

In our view, the geographic market in India is broadly categorized based on 22 circles. These are further divided into Metro/CAT A/CAT B & CAT C circles depending on various parameters like gross domestic product (GDP), revenue potential of circle and purchasing power of customer in a particular geographic location.

Question 5: How to define dominance in these relevant markets? Please suggest the criteria for determination of dominance.

Idea Submission:

As stated above, we would like to reiterate that the TRAI is the one of the repositories of all understanding on telecommunications including the evolution and current status of Industry. Thus, the TRAI should evaluate the scenario and allow other statutes/ precedents, to supplement its own evaluation, atleast until the market fully matures.

Dominance has been traditionally defined in terms of market share of the enterprise. However, a number of other factors play a role in determining the market influence of an enterprise or a group of enterprises. Traditionally, in the telecom sector, dominance is measured on the basis of the following factors:

- Revenue market share;
- Customer Market share;
- Number of Sites (switching capacity);
- Traffic Market share (voice);

In addition to the above, the other factors that should also be relied while determining dominance are:

- Spectrum Market Share in particular band;
- Traffic Market share in Data— irrespective of incumbent or new player;
- Network coverage to cater to Smartphones and Smartphone Penetration taking into account regional economic variances.
- Economic power of the enterprise whereby it uses its dominant position in one relevant market to subsidize and enter into other markets;
- Number of sectors the enterprise is associated with that helps in forward and backward integration, countervailing buying power; and
- Extent of entry and exit barriers in the market.

We also submit that an Operator should not be allowed to give offers below Interconnection Usage Charge (IUC) cost nor create market position by unfair use of bundling without accounting for costs involved with respect to each individual services bundled together to acquire / consolidate market share and position by way of offering disproportionate benefits. All offers should be compliant based on the costs of each component of bundled services

Question 6: How to assess Significant Market Power (SMP) in each relevant market? What are the relevant factors which should be taken into consideration?

Idea Submission:

The Authority is aware that in the last 15 years, there has been a paradigm shift in terms of market shares of different TSPs and contribution of different services. It is submitted that the concept of SMP has become outdated in the context of Indian Telecom industry and should be done away with. This was also submitted by us in our earlier response to TRAI consultation on Interconnection.

Without prejudice to the same, Interconnection Usage Charges Regulation, 2003 has defined SMP as:

"*A service provider holding a share of at least 30% of the total activity in a licensed service area. These services are categorized as basic services, cellular mobile services, National / International Long Distance service. An Activity would mean and include any one or more of the following (A) Subscriber base; (B) Turnover; (C) Switching Capacity; and (D) Traffic Volume*".

These components are outdated as TRAI acknowledges, with the advent and increasing use of bundled services.

Other factors to be used for determination of SMP are:

- Number of broadband sites vis-a-vis Industry;
- Technology used & capacity available;
- Market share for data traffic;
- *Volume of promotional benefits such as, minutes vis-a-vis industry; and*
- Spectrum Holding Technology wise, more important in Latest Technology.

Separately, the other factor to be considered while determining SMP is by identifying offers which are way below minimum cost, such as IUC which is mandated by TRAI in its Guidelines issued in 2003.

Question 7: What methods/processes should be applied by the Regulator to assess predatory pricing by a service provider in the relevant market?

Idea Submission:

As stated above, the TRAI is the one of the repositories of all understanding on telecommunications including the evolution and current status of Industry. Thus, the TRAI should evaluate the scenario specifically in light of cardinal principles of IUC compliance & Non Predation. It may be noted that the Competition Act 2002 defines 'predatory pricing' in the context of a dominant undertaking. However in Telecom Regulation context, 'predatory pricing' must necessarily mean "below cost" services.

Further, Explanation (b) to Section 4 of the Competition Act, 2002 defines predatory pricing as "*the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provisions of services, with a view to reduce completion or eliminate the competitors*". The term cost referred to in the definition of predatory pricing under Section 4 is the average variable cost, which means total variable cost divided by total output during the referred period.

The main steps that are involved in assessment of predatory pricing are:

- Delineation of relevant market(s);
- Assessment of dominant position / SMP in relevant market;
- Evaluation of whether the dominant enterprise is resorting to pricing below average industry cost of production for the product/service; and all the mandatory regulatory costs put together such as, LF, SUC, IUC & Service tax and all other taxes/levies/fee in the operations.

We also need to lay down certain pricing principles wherein the specific cost (IUC) is safeguarded based on 2003 regulations.

- The offers should not be made available/ launched which are below cost of most of the operators in the relevant market.
- Also, the telecom operator should not cross subsidize from other business (apart from the telecom business) to enhance its subscriber case.

- Dominance in one sector should not be used to leverage predatory pricing in another sector thereby foreclosing such a market.

We also need to consider market practices of enterprises who are not dominant but indulge in predatory pricing and pricing below cost i.e. offers products/ services below average variable cost.

Question 8: Any other issue relevant to the subject discussed in the Consultation Paper may be highlighted

Idea Submission:

The TRAI needs to safeguard the financial viability of industry from a sustainability perspective especially given that the industry has invested heavily in building infrastructure during the course of the last two decades.

Further, as submitted earlier, any review of the tariffing regime is incomplete and rendered nugatory if all the basic regulatory principles that the tariff plan(s) is/are expected to be consistent with, i.e., Interconnection Usage Charges (IUC) Compliance, Non-discrimination & Non-predation, have not been dealt with. However, the current consultation does not even touch upon the aspect of IUC- Compliance, which happens to be one of the three key pillars enunciated by the TRAI time & again.

It is thus critical that the TRAI acknowledges and considers the specific issue of IUC-Compliance too for the purpose of this consultation.