COAI's PROPOSALS
FOR
UNION BUDGET 2006-2007

CELLULAR OPERATORS ASSOCIATION OF INDIA

INDEX

INDIRECT TAXES FOR CBEC; Customs / Service Tax / Excise

1. Additional Duty of Customs (ACD)

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
The Indian Government has fulfilled its commitments to the WTO by bringing down the basic customs duty (BCD) on IT/ Telecom products to zero. Pursuant to this, the Union Budget 2005-06 has exempted customs duty on specified items covered under the Information Technology Agreement (ITA). BCD has been removed on mobile phones covered under the Information Technology Agreement (ITA). Also, all goods required for the manufacture of the ITA bound items have also been exempted from the customs duty subject to end use condition. However, to compensate for the internal taxes like sales tax, proposed State VAT, central sales tax, which apply to sale, purchase or transportation of goods in India, an **additional duty of customs of 4% has been imposed / levied on ITA bound items** (including mobiles) and their inputs which attract 'nil' duty.	The **ACD paid can be availed as credit against payment of excise duty** on finished products and not against output service tax liability. Manufacturers are entitled to avail credit of this ADC for payment of excise duty on their finished goods. **However, telecom operators being service providers and not manufacturer are not eligible to avail credit of this 4% ACD. Hence, the 4% ACD paid on inputs would be an added cost on the telecom service providers** The cost of main equipments like MSC, BTS/ BSC, HDSL/DWDM/ Routers, ATM/Frame Relay/ Ethernet Switch/ VAS Equipment etc will be increased even up to 4.64%. Further, the additional duty cost of SIM card also will increase 4.64%. It may be appreciated that Microwave Equipment, both backbone and access, is integral to Cellular Mobile Network and therefore increase in cost of these items would translate into an increased cost of service. **Telecom Service Providers should be made eligible to avail credit of 4% ACD.**	Rate of Service tax was enhanced from 8% to 10% in Sept., 04 with an understanding that this is to take care of the loss that would occur due to CENVAT Credit to be allowed. Not allowing credit on ACD paid would be unjustified in view of the enhancement of the Service Tax rate. This would create disparity and undue hardship to the subscribers This benefit should be extended to the Telecom service providers as well as it will reduce costs **make the service more affordable.** **Lower capital cost will also enable faster roll-out of service.** **This in turn will lead to an increase in telecom sector revenues.** **Higher telecom sector revenues will mean higher tax revenues for the government**.

2. SERVICE TAX ISSUES

A. Credit of Service Tax paid on Mobile Phones Bills

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
Circular No. 59/8/2003, 20th June 2003, F. No. B3/7/2003-TRU. issued by Ministry of Finance that states as under. Point No. 2.8 Credit Of Service Tax Paid on Telephones: "In regard to credit of service tax on telephone connection, queries have been raised as to whether service tax credit would be admissible on telephone sets installed only in the business premises. The answer is in the affirmative, and credit will be allowed only on telephone sets installed in the business premises. **Mobile phones are not covered**."	Service tax credit is not allowed on amount paid in respect of mobile phones. All Telecom Service providers are to collect Service Tax from their user @ 8% of the amount billed. So any business / non-business entity using Telecom services pays service tax (unless specifically exempted for example: Embassies). However, entities using Fixed Line Services are able to offset Service Tax paid on Fixed Line services as the same can be netted off with entities' Service Tax Liability. However, for an entity using Mobile Services no such set-off is allowed. Communication cost being a significant cost for any business outfit; not being able to set-off the Service Tax component in case of Mobile services results in higher costs. This anomaly should be removed and **Service tax charged by Mobile companies should be allowed as credit to all who are covered by the Service Tax Act and are liable to charge service tax. Necessary clarification should be issued** in this regard. This is important in order to ensure a level-playing field.	**Today mobile telecom sector is one of fastest growing sector and is the** biggest contributor to the increase in tele-density. Mobile subscribers have already outnumbered the fixed line subscribers**. Therefore any anomaly that is a barrier for the growth of mobile sector should be removed and credit of service tax paid on mobile telephones should be allowed.** This will further enhance usage of mobile phones.

2B. Exemption of registration of our channel partners for Service Tax

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
Service tax is payable on commission received by agents who provide services to telecom companies and the agents need to register themselves and need to comply with various formalities under the Service Tax act. Promotion of services by an agent requires registration under "Business Auxiliary Service" then, agent/ franchise of telecom operators who are entitled to commission from the operators for promoting the service need to raise an invoice for commission and charge service tax thereon. This requires them to file periodic returns which causes undue hardship is an hindrance to the business operations.	***Distributors and Channel partners of telecom companies should be exempted from registration of Service Tax.*** The Government has allowed the same in case of insurance companies and their agents and distributors are exempt from the registration of Service tax. Insurance companies are taking care of Service Tax on behalf of its agents etc, Telecom is an important infrastructure sector and telecom companies have a large number of distributors and channel partners. Getting all to be registered is not only difficult but is also costly from the industry point of view. Thus, in the line with exemption provided to insurance agents, **similar exemption from service tax registration should also be provided to the agents promoting telecom services**.	This exemption **would obviate unnecessary complicated procedures** and administrative problems like filing of returns, claim of Service Tax credit etc by the small agents and **they can concentrate more on promoting the telecom services**. In any case **there is no loss to the government even if exemption is granted** as telecom operators are levying service tax on gross value of services. Thus any service tax charged by the agent will be an input for the operator who will claim credit for the same. Thus grant of this exemption to channel partners of telecom companies will be revenue neutral for the govt., **that is, there will be no revenue loss. On the other hand, it will remove unnecessary complicated procedures, administrative hassles and paperwork.**

2C. Applicability of Service Tax on Interconnect Charges

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
Telecom operators are receiving demand from the Service Tax Department towards charging of Service Tax on the amount of IUC charges receivable from other operators.	Interconnect usage charges are different from interconnection link charges and both should not be confused as the same. Interconnect usage charges are paid on a revenue share basis. Interconnect usage charges are levied for allowing the call from the cellular service provider to be carried over to the other service provider. Thus the Interconnect charges paid to other service provider are for **allowing this connectivity** for calls between mobile and land line telephones. **Thus Service Tax should not be applicable on interconnect usage charges paid by companies and necessary clarification / Notification should be issued** in this matter.	**This would obviate unnecessary complicated procedures and administrative problems to claim tax credit**. Moreover, **there is no loss of revenue to government** even if exemption is granted under the provision, since the payment of Service Tax amount would be setoff against the output service tax liability.

3. EXCISE DUTY ISSUE

Excise Duty CENVAT rule in respect of Cable / Shelter and Towers

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
Telecom service providers lay cables across the country and the same is covered under chapter 85 of the Excise Tariff rules hence it is treated as capital goods under the CENVAT credit rules. To avail the credit, capital goods should be installed with in the premises of the company, however in case of cable laid across the country the same is not possible. If capital goods are taken out of the premises of the output service provider and not returned within a period of 180 days then the CENVAT credit claimed on the same has to be reversed.	The telecom service providers have to install assets such as BTS, cables, RSUs, boosters across their respective service area. Suppose the operators were to consider BTS sites as business premises then there will be a need to inform the department about the same. This will entail informing for huge number of sites on account of additions and changes in addresses. Magnitude of administration, record keeping, both from the operator's point of view as well as department's perspective, would be very high. In view of the above, **the premises for telecom operators should be clearly defined so as to include the licensed service area in terms of the allotted telecom licenses.** This point should be clarified so that there is no unnecessary confusion at the time of service tax audit/ assessment.	CENVAT rules have been picked up from the manufacturing sector. After the marriage of service tax with excise, **there is a urgent need to re-look at the rules from the service industries point of view also.** A clarification this would **remove administrative problems.** **This will also enable smoother and faster roll-out of service.** **In the present scenario when TRAI on one side trying to motivate the industry to go in for expansion in rural areas and has also recommended subsidies to private operators setting up network in rural areas**, such restrictions on CENVAT credits is uncalled for particularly when this industry is booming and is generating huge revenues for the Central Govt..

4. CENVAT credits

A. For MOTOR VEHICLES

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
a) CENVAT credit is allowable on excise duty paid for Motor vehicles registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), zr), (zzp), (zzt) and (zzw) of clause (105) of Section 65 of Finance Act. (these sub clauses are related to courier agency, tour operator, rent a cab operator, cargo handling agency, goods transport agency, out door caterer etc.) **but does not include telecom sector.**	CENVAT rules do not have service sector perspective. Telecom sector invests a huge amount in motor vehicles for commuting between sites in the service area for network maintenance, installation and up keeping. Therefore, excise on such motor vehicles should be allowable under CENVAT rules in terms of clause f (105) of Section 65. As services rendered by other service industries is entitled to CENVAT for motor vehicles. **Telecom, being a service, should also be allowed the same benefits.**	The CENVAT credit on such a critical input for providing service is not being provided to the telecom sector. **This benefit will lower the burden of levies on the sector and would thus provide an incentive for greater investment** for expansion of service.

4B. CENVAT credit for Fuel

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
As per CENVAT credit rules 2004 input means "All goods, except light diesel oil, high speed diesel oil and motor spirit commonly known as petrol, used in or in relation to the manufacture of final products, whether directly or indirectly, and wither contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products, cleared along with the final product, goods used as paint, or as packing material, or as fuel or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;".	**In case of telecom company, input credit should be allowed for consumption of fuel used for maintenance and running of networks**. Telecom operators have to install BTS (Towers), etc across the service area and need to spend a huge amount on diesel / fuel for running and maintenance of these BTS sites. CENVAT rules have been picked up from the manufacturing sector. After the marriage of service tax with excise/ CVD, there is a need to look at the rules from the service industries point of view also.	This benefit will lower the burden of levies on the sector and would thus provide an incentive for greater investment for expansion of service. **Faster expansion of telecom service will result in higher tax and licence fee revenues for the government.** **More importantly, steps like these will lead to much greater benefits through economic growth.**

4C. CENVAT credit; 20% limit on CENVAT Claim

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
c) 20% limit on CENVAT claim w.e.f. 10/9/04 In case the manufacturer or the provider of output service, <u>opting not to maintain separate accounts :</u> The provider of output service shall utilize credit only to the extent of an amount not exceeding twenty percent of the amount of service tax payable on taxable output service. Earlier this limit was 35 % and w.e.f. 10^{th} September 2004 the same has been reduced to 20%.	Due to high capital investment there will be high amount of CENVAT accumulation on account of both CVD and excise. Hence, to ensure timely benefit to the service providers, it is recommended that the earlier limit of 35% be maintained.	This would benefit the service providers as a reduction in costs will make services more affordable, thereby increasing usage of service by the subscribers and hence higher revenues. Higher **revenues of telecom sector will mean higher Licence fee and Service Tax income for the government**. **Lower levies not only mean higher revenues for the government but also greater benefits through economic growth.**

5. Service Tax on Import of Services

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
In case of an Indian company availing any type of Services from any person/ organisation based outside the country whose services are liable to charge Service Tax as per Indian Service Tax Act, and the particular organization which is providing Taxable services is not having any establishment in India, then the Indian company who is availing the service needs to get itself registered in India as the particular service provider and need to deposit service tax amount with the Government. In case company is taking five type of service which are covered under the Service Tax net and none of these five companies is having any establishment in India, then Indian establishment first needs to get registered under five heads of Service Tax, and is required to deposit service Tax.	This is **resulting in LOT OF ADMINSITRATIVE PROBLEMS and wastage of time and money of Government** as well as of the Indian Company. As per the Service Tax credit rule, amount of Service Tax deposit on behalf of foreign company can be setoff against the output Service Tax liability. Thus the gain to Government is just Nil, rather the government is unnecessarily incurring lot of Administrative expenses and the same is resulting in wastage of time and money. The compliance of these rules requires lot of time and money as companies need to recruit specialist / consultants for such compliance. Necessary clarification in this regard doing away with this requirement of deposit of Service Tax in such cases should be issued.	This would obviate unnecessary complicated procedures and administrative problems. In any case there **is no loss of revenue to the government even if exemption is granted under the provision as the mobile companies are already taking input credit** at the time of depositing service tax with the department. Thus, this **will only remove unnecessary inefficiencies from the economy**.

6. Problems in getting C Form to avail Concessional Sales Tax

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
C Form is issued to avail concessional Sales Tax CST, in case material is being sold from one state to another state and buyer is purchasing the same as raw material or for consumption for providing Services. Some of the states are not issuing C Form to the Vendor saying that provision related to issue of C form is not part of including in their local sales tax act and in the absence of clarity ultimately cost of services is increasing.	Telecom operators are providing operations across the country and operators need to procure lot of input items on which concesssional sales tax is applicable but in the absence of support from the Department side, they are ultimately paying higher amount of tax. Notification should be issued clarifying that the C Form is not required in case of telecommunication **and Information Technology sector.**	**The Telecom sector is as critical infrastructure as Power** and should by all means qualify for similar facilities. An increase in the cost of laying of Telecom infrastructure due to non-availability of 'C' form facility shall hit the Telecom expansion plans – adversely affecting growth & availability of affordable telecom services to the rural and underserved areas.

DIRECT TAXES FOR CBDT

1. Deduction in respect of taxable profits of Telecom Infrastructure enterprise under Section 80-IA

Present Scenario	Measures recommended by COAI for consideration in the new Budget.	Benefits
As per Sub section 2A of Section 80 IA, a telecom operator is entitled to 100% exemption on taxable profits for 5 years and thereafter 30% exemption on profits of next 5 years during the initial 15 years from the date of commencement of commercial operation. However, for **other infrastructure** sectors as defined under section 80 IA exemption is available to the extent of 100% for the full term of 10 years in succession and these 10 years can be opted from the block of 20 years.	Compared to other infrastructure sectors such as power, the telecom sector has been growing at a much faster pace and has significantly contributed to economic growth. Therefore, telecom sector should be given equal importance and should be treated at par with other infrastructure sectors such as power. Benefits applicable to power should be extended to telecom as well. ***The period during which 80 IA can be claimed by the telecom operators should be extended to 20 years in place of existing 15 years*.** • Telecom operators have incurred heavy business losses and significant tax depreciation on account of capitalization in its initial years due to which 80IA benefits have not been triggered by many operators till now which is almost 10 years since the licenses were granted. ***100% exemption for successive 10 years out of the 20 years.*** • As significant capital investment and proliferation in rural area is envisaged, tax depreciation is anticipated to be high in the coming years as well.	This step will **result in a higher disposable surplus for reinvestment in the business.** This will thus enable faster expansion of service thereby resulting in higher revenues for the service providers. **These higher revenues will result in higher License Fee revenue and higher Service Tax revenue for the government.** **Therefore any measure that leads to expansion of service will also result in much higher tax revenues for the government.**

2. Tax Holiday under Section 80-IA

Present Scenario	Measures recommended by COAI for consideration in the new Budget.	Benefits
Under existing provision, to avail this exemption services should commence before 1.4.2005. Present clause (ii) of sub-section 4 of section 80IA states' any undertaking which has started or starts providing telecommunication services….. on or before the 31st day of March**, 2005'**	For the new licences issued in 2001, this period should be extended by 2 years i.e. upto 1.4.2007. Proposed clause (ii) of sub-section 4 of section 80IA should therefore states that any undertaking which has started or starts providing telecommunication services….. on or before the 31st day of March**, 2007'**	This would greatly enhance viability of cellular projects. This would also go a long way in enabling companies to achieve financial closure. As the projects become viable and the cellular industry grows, the government **would not only derive benefits from higher tax revenues but also from the resultant economic growth.**

3. TDS on Interconnection Charges

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
The income Tax department has been holding the Interconnection (IUC) charges payable by operators to each other as per their interconnection agreement amounts to charges received for provision of a technical services and therefore these should be covered by section 194J of the Income Tax Act and hence liable to TDS. .	Interconnect charges paid are not in the nature of fees for technical service on the following grounds: The term fees ***technical service*** has been defined in section 9(1)(vii) of the Act which reads as follows: "fees for technical services" means any consideration (including any lumpsum consideration) for the rendering of any managerial, technical or consultancy services…" Interconnect charges are levied for allowing the call from the cellular service provider to be carried over to the other service provider. What is used is the infrastructure of service provider and not any technical service of other service provider. Interconnect charges paid to other service provider are for **allowing this connectivity** for calls between mobile and land line telephones and not for any service rendered by the other operator to the Assessee. **Thus TDS should not be applicable on interconnect charges paid by companies and necessary clarification / Notification should be issued** in this matter.	**Intent of TDS is to widen the tax base.** **Telecom service providers are not small players, but are very high tax payers in the economy.** This measure **results in inefficiencies in the economy**. It is difficult to monitor the tax deducted and claim tax credit against **heavy load of TDS certificates** received for this amounts. This would **create administrative problems** for the Income Tax Deptt. for MTNL / BSNL as well as for other cellular mobile phone operators also. This would obviate unnecessary complicated procedures and administrative problems to claim tax credit.

4. Accelerated Depreciation for Telecom Industry

Present Scenario	Measures recommended by COAI for consideration in the new Budget.	Benefits
Sec 32 (1) (ii) (a) provides additional depreciation to the extent of 15% of actual cost of New Plant & Machinery to assessees <u>manufacturing any article or thing.</u> The additional depreciation is allowed to: (A) A new industrial undertaking during any previous year in which such undertaking begins to manufacture or produce any article or thing on or after the 1st day of April, 2002; or (B) Any industrial undertaking existing before the 1st day of April, 2002, during any previous year in which it achieves the substantial expansion by way of increase in installed capacity by not less than twenty-five per cent.	***The provisions should be further extended to New Plant & Machinery Capitalized by assessees engaged in providing Telecom Services*** and either setting up a new undertaking on or after 1 April 2002 or undertaking existing prior to 1 April 2002 and achieving substantial expansion during any year.	Since Telecom Industry is highly Capital Intensive and requires huge amount of Capitalization, providing additional depreciation would provide a boost to the Telecom sector. **Reduction in capital costs ultimately would benefit the consumer through availability of affordable telecom service**. Moreover, this **would accelerate network rollouts to semi-urban and rural areas.**

5. Application of MAT u/s 115JA

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
As per clause (II) of the explanation to Sub-Section 115JB of the Income Tax Act, the book profit of a company is reduced by the amount of income to which any of the provision of Section 10, 10B, 11 or 12 apply, if any. Such income is credited to the profit and loss account.	In the initial 4 to 5 years all telecom service providers incur heavy losses, which is a worldwide phenomenon. Recognizing this, Sec. 80-IA was amended with effect from 1st April, 2000 extending the tax exemption period from 10 years to 15 years, thus giving an incentive to the telecom service providers. However, MAT continues to be applicable to the Telecom Service providers. This means that though the taxable profits are exempted from tax, still the operators are liable for tax on book profit. This anomaly should be removed. ***The explanation to section 115JB should be suitably amended to provide for exclusion of incomes, to which section 80IA applies, from the Book Profits of the Company***. It is also pertinent to note that it is envisaged under the legislation that infrastructure companies should be exempted from payment of tax during the 80-IA period.	This step will **result in a higher disposable surplus for reinvestment in the business.** This will thus enable faster expansion of service thereby resulting in higher revenues for the service providers. **These higher revenues will result in higher License Fee revenue and higher Service Tax revenue for the government.** **Therefore any measure that leads to expansion of service will also result in much higher tax revenues for the government.** **Therefore lower levies not only mean higher revenues for the government but would also result in much greater benefits through economic growth.**

6. Benefits of Section 79 regarding Mergers and Acquisitions

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
Benefit of Section 79 on carried forward and set off losses to all the infrastructure companies covered u/s 10(23G) of the IT act is restricted to companies in which public are substantially interested.	As major consolidation is envisaged within the telecom sector; lot of mergers and acquisitions are anticipated. ***There should be clarity with respect to tax benefits available to the merged entity.*** Some years ago similar situation arose with respect to section 72A wherein benefit of carried forward losses was not available to the transferred entity in case of a merger. ***This anomaly was removed by bringing a suitable amendment.***	This will facilitate the process of consolidation in the industry which is helpful for accelerating growth.

7. Fringe Benefit Tax

Present Scenario	Measures recommended by COAI for consideration in the new Budget	Benefits
Finance Act, 2005 imposed a Fringe Benefit Tax on Employers for benefits given to its employees whether in direct or indirect form. Clause (D)of Sub-section (2) of section 115WB covers expenses incurred by employer for Sales Promotion including publicity and clause (F) of Sub-section (2) of section 115WB covers Conveyance, tour and travel (including foreign tour). Section 115WC defines 20% of the expenses charged to accounts as fringe benefit to employees relating to sales promotion including publicity and also conveyance, tour and travel (including foreign travel). Section 115WC further provides certain exception in sub-section (2) to the above sub-section (1) where the rate of Fringe benefit has been provided at 5% instead of 20% to employers engaged in construction of telecom towers, etc. .	Under trade promotion schemes the company provide incentives in kind to its customers/ subscribers on which rate of fringe benefit is 50%. Further, events organised for new launch of schemes which needs extensive publicity is also covered for fringe benefit at 20%. The Service providers are spending a large amount on advertisement and publicity. With telecom tariff already being one of the lowest in the world, this additional tax on the operators varying from 7 to 15% with no allowability of this expense in Income Tax of the company would require a relook by the Ministry of finance. The towers installed being scattered across the circle requires frequent traveling of employees for maintenance of the same to keep them in running condition to which there is no benefit going to employees. **Thus benefit of clause (b) of subsection 2 of section 115WC should be extended to telecom service provider for maintaining of towers and also expenses incurred for sales promotion including publicity.**	This benefit will enable faster rollout of service. **Extension of this benefit to telecom sector will ensure that there is no disincentive for the executives of the telecom companies to travel to rural and far-flung areas for network rollout and promoting the service.**