



**COAI's PROPOSALS
FOR
UNION BUDGET 2001-2002**

CELLULAR OPERATORS ASSOCIATION OF INDIA

September 2000.

SNO	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
<u>INCOME TAX ISSUES</u>			
	<p><u>Exemption under Sec10(23G)</u> Full benefits of section 10 (23 G) will be available to all the cellular operators on the condition that such infrastructure facility is approved by the Central Government.</p>	<p>Necessary clarifications should be issued to enable all the cellular service providers to avail the full benefits of Section 10 (23G) unconditionally with out any approval of the Government and the exemption should be on gross amount.</p>	<p>This would clear any confusion regarding the interpretation of the section and would promote 10(23G) as a funding option thereby making it easier to raise infrastructure funds.</p>
	<p>Interest income covered u/s 10(23G) accruing in the hands of recipient based on receipt/ provision made in the books of payer is subject to TDS u/s 194A</p>	<p>Interest earned attracts TDS under section 194A of the Income Tax Act. This anomaly should be removed & telecom operators who have been granted approval under Section 10 (23 G) should be exempted from Sec. 194A and no TDS should be required to be deducted and deposited by such infrastructure companies i.e. cellular operating companies.</p>	<p>By such exemption the telecom service operator would be able to retain the amount not actually required to be deposited by way of TDS, for their expansion / modernization of cellular services. Moreover, since the interest is exempted from tax u/s 23G, the department and public at large would be saved from the complicated process of refunds.</p>

SNO	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
3	<p><u>Tax Relief u/s 10(23G) to be extended to individuals</u> Current definition of an eligible investor u/s 10(23G) is too restrictive. Only companies and funds registered under the Registration Act 1908, investing in infrastructure companies get tax Exemption.</p>	<p>Definition of eligible investors should be amended to include individuals/HUF/ other non- corporate entities.</p>	<p>This will increase the scope of the market for these instruments thereby making it possible to raise greater amount of funds.</p> <p>This would enable the cellular service operating companies to raise larger amount's at lower cost thereby enabling passing of the benefits to the ultimate subscriber.</p>
	<p><u>Tax Holiday u/s 80-IA</u> This section presently allows a tax holiday of 5 years and a deduction of 30% of profit for a subsequent 5 year period "infrastructure facilities" can choose the block of 10 years out of the first 20 years of operation. Though the cellular Projects are eligible for tax exemption under this section , the cellular companies are restricted to choose 10 years out of a block of first 15 years instead of 20 years.</p>	<p>To neutralize the effect on infrastructure facility Cellular service projects should be allowed the Choice of the block of 10 years for tax benefits out of the first 20 years (licence period has been redefined for 20 years as per NTP 99) as in the case with other infrastructure projects. Besides this should be made effective from 01/04/1996 that is applicable for assessment year 1995-96 from the year in which the licence has been granted to operators. Further the cellular service operators who have reported their commencement of services before 1999-2000, be allowed to revise their option for availing tax holiday under the section.</p>	<p>This would greatly enhance viability of cellular service projects. This would also go a long way in enabling companies to achieve financial closure.</p> <p>As the projects become viable and the cellular industry grows, the government would benefit from higher revenues from the industry.</p>

SNO	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
Application of MAT u/s 115JA			
	<p>The explanation to Sub- Section (4) of Sec. 80IA specifies the meaning of Infrastructure Facilities which includes Road, Bridge, Airport, Rail system etc. but does not include Telecommunication Services.</p>	<p>In the initial 4 to 5 years all telecom service providers incurred heavy losses, which is a worldwide phenomenon. Recognizing this Sec. 80-IA was amended last year and tax exemption was extended from 10 years to 15 years. However, MAT continues to remain applicable to the Telecom Service providers. This anomaly should be removed and Public Telecom Service Providers should be given the status of undertaking providing infrastructure facilities.</p> <p>The above-referred explanation to Sub-Section (4) of Sec. 80-IA should be suitably amended and <u>telecommunication services should also be included in the definition of Infrastructure.</u></p>	<p>Would maximize the tax benefits to the companies and improve profitability. This would translate into lower cost of service to consumers thereby facilitating growth.</p>

S. No	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
	<p><u>Applicability of TDS for public mobile phone service</u> Presently certain subscribers are deducting / insisting for deduction / have been asked to deduct TDS from the payments towards the monthly Cellular usage bills, presuming such services to be covered u/s 194 C/ 194 J of the I.T. Act..</p> <p>TDS is not being deducted on MTNL landline usage bills since the day it has been corporatised</p>	<p>TDS should not be applicable on mobile phone bills and necessary clarification / Notification should be issued in this matter. as it is difficult to monitor the tax deducted and claim tax credit <u>against truck load of TDS certificates</u> received for small amounts. This would create administrative problems for the Income Tax Deptt. as well as for cellular mobile phone operators also.</p> <p>Telephone service bills (whether paging, basic or cellular) should be outside the purview of Sec. 194C/194J since the public telecom service is provided neither in the capacity of a contractor nor in professional/ technical capacity as defined under the IT Act It is only a public utility service like electricity, water etc. hence necessary clarifications/ notifications needs to be issued clarifying that deduction of TDS on bills of telephone services are not applicable. Further since the cellular mobile phone / paging ___ industry is an upcoming industry, where the subscriber base is multiplying in huge number every year, the problem would be further aggravated if the necessary amendment is not taken care of immediately.</p>	<p>This would obviate unnecessary complicated procedures and administrative problems to claim tax credit.</p> <p>In any case there is no loss to government even if exemption is granted under the provision, since the recipient of income is liable to pay advance tax in four installments under Sub Chapter C (Advance payment of tax) of Chapter XVII (Collection & recovery of taxes of the I.Tax Act 1961.</p>

S. No	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
<u>Carrying Forward of Accumulate Losses.</u>			
	Presently <u>as per Sec. 72A</u> of the Income Tax Act, only Industrial Undertakings are covered under rule 9 C of Income Tax Rules for Conditions for carrying forward or Set-off of accumulated loss and unabsorbed depreciation allowance in case of amalgamation.	The Section should be amended so as to include infrastructure facility providers for getting this benefit like industrial undertakings.	This would bring industrial undertaking and infrastructure facility providers at the same platform, thereby giving the effects of carry forward of losses even to public service telecom industry which has paid very high licence fees and also incurred heavy losses. Thus it will go a long way in improving the viability of telecom projects of these companies telecom industry.

S. No	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
Liability of TDS on import of software			
	<p>Cellular Operating companies had imported equipment having software embedded. The duty on such software has been made zero in 1996 to promote I.T. revolution in India but the same is not been extended to telecom. However the income tax department is asking details about such purchase as technical services / royalty to include the same under the provisions of TDS.</p>	<p>Necessary clarification / notification need to be issued to the effect that such software imported with the telecom equipment should be outside the purview of any TDS application as Cellular Companies are capitalizing the telecom software in their books.</p>	<p>Custom duty is being paid by the cellular operating companies on the total import of equipment with software, hence there is no loss to Government by non application of TDS deduction on such transactions.</p>

Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
SALES TAX ISSUE		
<p>Grant of 'C' Form facility to Telecom and IT sector so as to avail concessional Central Sales Tax like other registered dealers and Power Sector.</p> <p>The Central Sales Tax Act was enacted as far back as in 1956, when only Government of India was authorised to enter into Telecom Sector. In accordance with the provision contained in Section 8 of the CST Act 1956, now in force, only the government of India is authorised to issue 'D' Forms for all its inter-state purchases. Some other sectors, like generation & distribution of power and mining, were identified, at that time, as infrastructure sectors and were authorised to issue 'C' forms.</p>	<p>a. Notification be issued clarifying that the Information Technology Sector (IT Sector) includes the Telecom Sector.</p> <p>b. Notification should be issued advancing the schedule for progressive reduction of Central Sales Tax in respect of the Telecom & IT sector so as to achieve zero CST with effect from 1.4.2001 as per the announcement made during the State IT Ministers and Chief Ministers Conference on 17.7.2000.</p> <p>c. Alternatively, if the reduction of CST to zero is not feasible immediately, a notification may be issued by the Central Government in respect of Section 8(3) (b) of the Central Sales Tax Act, 1956, having the effect of including IT & Telecommunication Sector in the said clause, so as to allow the benefit of 'C' form in this sector. The revised wording for Section 8 (3) (b) can read as under:-</p> <p>“(.....)are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power or in the Telecommunication and Information Technology sector.</p>	<p>The Telecom sector is as critical infrastructure as Power and Mining and should by all means qualify for similar facilities. An 8% increase in the cost of laying of Telecom infrastructure due to non-availability of 'C' form facility shall hit the Telecom expansion plans of the country very badly.</p>

Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
SERVICE TAX ON LATE FEES.		
<p>The Central Board of Excise & Customs has issued a Circular No. 29/3/99 dated 15-07-1999, and clarified that Service Tax is leviable on delayed payment surcharge imposed by the Telegraph authority on the subscribers.</p> <p>Delayed payment surcharge or penal charge is nothing but recovery of Financing Costs or interest Costs and <u>there is no service of any nature attached to charging a subscriber late payment fee for default in paying in time or cheque bouncing.</u></p> <p>Moreover Service Tax on late fees was never made payable in case of MTNL bills since the day MTNL has been formed.</p>	<p>Such charges/ recovery should be excluded from the purview of Service Tax Act.</p>	<p>This would make law applicable uniformly to all the telecom service providers</p> <p>Consumer will get relief from the financial burden of unreasonable service tax.</p>

Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
Service Tax on International Roaming:		
<p>Vide Trade Notice No. 2/99. ST dated 21-06-1999 issued by the Commission of Custom and Central Excise, Rajkot, Service Tax is leviable on the gross bill raised by Home Network Operators on its subscribers including of foreign usage bill and roaming surcharge.</p>	<p>Inbound and out bound roamers should totally be out of purview of Service Tax Act since in the case of inbound roamers foreign nationals visit India mainly as tourist and give boost to tourism industry, while in the case of outbound roamers services are rendered outside India should be exempt under Service Tax Act.</p> <p>This is against the Service Tax legislation, as service Tax is chargeable on Telecom Service provided by the Telephone Authority in India. In this case, the telecom service is being provided by the foreign network operator and therefore, should be out of ambit of Service Tax Laws. The services used by foreign nations of an international operators and billed to their consumers outside India should also be exempted from Service Tax since the services have been provided outside the <u>Territorial Jurisdictions of India</u></p>	<p>Consumer will get relief from the financial burden of unreasonable service tax. (Collected from Consumer only).</p>

SNO	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
CUSTOMS DUTY ISSUES			
1	<u>HARDWARE</u>		
A	<p>Existing Duty on Telecom Hardware items like switching apparatus, Base Station Controllers (BSC), Base Transceiver Stations (BTS), Network Management System, Cellular Repeaters, BTS Ancillaries, Computers for billing and Customer services, VMS-Hardware, SMS Hardware, Transcoders, BSS text equipment's is at 21.8% (inclusive of countervailing duty @ 16%).</p> <p>Presently all spares, expansion & upgradation equipment's for MSC, BSC & BTS etc. under list</p>	<p>As none of these equipment's are Manufactured in India and there is no likelihood of getting manufactured in near future, it is proposed that countervailing Duty of 16% be removed in the forthcoming budget.</p> <p>This anomaly should be removed. All spares, expansion & upgradation equipments should attract the same duty as that of list 12 equipments. All telecom equipment and installation material which presently attract very high duty should be included in list 12.</p>	<p>This will greatly reduce capital cost, which will ultimately be passed on to consumers as lower tariff prices. (Lower capital cost would translate into lower rentals/ airtime rates.)</p> <p>This would result in an increase in telecom usage and network rollouts / coverage of service. Government will benefit from higher receipt of revenue from Licence fees as well as revenues from non-licence fee areas.</p>
B	<p>12 attract duty of 53.8%, whereas all new equipment under list 12 attracts 21.8% duty</p>		
C	<p>Special duty structure for telecom hardware item is valid till 31.03.2001.</p>	<p>Notification issuing extension of validity should be issued.</p>	<p>This will keep the capital cost under control, as most of cellular operating companies have not achieved break even.</p>

SNO	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
	<p>As per Notification benefits under 11/97, radio communication equipment including VHF, UHF and Microwave communication equipment with the following description-</p> <p>a) BTS is entitled for concessional duty.</p> <p>Existing duty on Backbone Microwave and Access Microwave equipment's is at 53.8%, which is very high even when compared to telecom hardware.</p> <p>BTS Ancillaries – Even though BTS Ancillaries are included in the List of items eligible for concessional rate of duty, customs are not extending the benefits of any ancillaries</p>	<p>Microwave Equipment, both backbone and access, is integral to Cellular Mobile Network and therefore should be included in the list of items eligible for concessional rate of duty.</p> <p>Notification benefits under 11/97 should be amended with the following telecom equipment items also to be included under Notification benefits for concessional duty as these items also form the integral part of equipment's required for network roll-out and needs to be imported:</p> <ol style="list-style-type: none"> 1. Antennas 2. Power Supply unit. <p>All Ancillaries of BTS (Base Transceiver Station) should be defined item wise viz.</p> <ol style="list-style-type: none"> 1. Antennas 2. Power Supply unit. 	<p>Reduction in capital costs ultimately would benefit the consumer through availability of telecom service at affordable price.</p> <p>Moreover, it would accelerate network rollouts to semi-urban and rural areas.</p>

S.N O	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
2	<p><u>GSM HANDSETS / MOBILE PHONES</u> Custom Duty on hand set is still on higher side.</p> <p>Present Total Duty on Cellular Handset is @ 26.672% (including counter valing duty @ 16%)</p> <p>High cost of a handset is also an entry barrier for potential cellular mobile subscribers in urban, semi-urban and rural areas..</p>	<p>The total duty to be reduced to '0' % as it does not have adverse impact on Indian products. Indigenous manufacturing facilities / capacities have not yet been established in India and is neither expected in the near future.</p> <p>The government should also allow import of secondhand handsets.</p>	<p>This will immediately eliminate the flourishing grey market which deprives the Government of huge revenues.</p> <p>This would also lead to a rise in cellular subscribers, as at present, high cost of handset is an entry barrier to the masses.</p> <p>This would also result in availability of better quality of handsets at lower prices to the subscribers.</p> <p>The above would stimulate growth resulting in higher collections of licence fee, service tax and interconnect revenues to the government.</p>

	Present Scenario	Measures that need to be adopted in the new Budget	Effects of the same.
<u>TELECOM SOFTWARE</u>			
	<p>The Custom Duty on software imported with telecom equipment is being charged at different rate other than the rate charged for Information Technology software.</p>	<p>It is very important that this anomaly be rectified in the forthcoming budget.</p> <p>Notification to be issued that telecom software imported with telecom equipment's should attract NIL custom duty since telecom equipment's are treated as IT products as per recommendations of National Task force on IT and Software.</p> <p>Applicability of the notification should be from retrospective effects.</p> <p>Categorical waiver of Custom Duty on all types of telecom software should be applicable.</p>	<p>This will enable telecom service providers to import software at reasonable price and provide better services at more affordable prices to the public.</p> <p>This will also solve the pending problems of Cellular Operating companies for past import cases.</p>