

May 25, 2018

Department of Telecommunications  
20, Sanchar Bhawan, Ashoka Road  
New Delhi, Delhi 110001  
India

RE: *Comments of ACT | The App Association on the Department of Telecommunication's Draft 2018 National Digital Communications Policy*

Dear Sir/Madam:

ACT | The App Association writes to provide comments to the Department of Telecommunications' (DOT) Draft 2018 National Digital Communications Policy (Draft Communications Policy).<sup>1</sup> The App Association represents more than 5,000 small- and medium-sized application development companies from around the world, including Indian startups such as iCoderz Solutions Pvt. Ltd. of Gujarat, and Exousia Tech of Chandigarh. The App Association is committed to preserving and promoting innovation generally as well as accelerating the growth of technology markets such as the Internet of Things through robust standards development and a balanced intellectual property system. ACT | The App Association applauds DOT for undertaking a public consultation on this matter.

ACT | The App Association supports DOT's efforts to develop policies and principles that will enable creation of a vibrant and competitive telecom market to strengthen India's long-term competitiveness and serve the needs of its citizens. Below, the App Association provides general feedback on the Draft Communications Policy, and, notably, specific responses to proposals related to standards-essential patents (SEPs).

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<sup>1</sup> See

[http://www.dot.gov.in/sites/default/files/2018%2005%2010%20NDCP%202018%20Draft%20for%20Consultation 0.pdf](http://www.dot.gov.in/sites/default/files/2018%2005%2010%20NDCP%202018%20Draft%20for%20Consultation%200.pdf).

## I. The App Association's General Views on the Draft National Digital Communications Policy

We appreciate DOT's efforts to develop its 2018 National Digital Communications Policy and supports its overarching goals. App Association members' innovations provide the interface for the internet of things ("IoT"), an all-encompassing concept where everyday products use the internet to communicate data collected through sensors. IoT will continue to enable improved efficiencies in processes, products, and services across every sector. The rise of IoT is demonstrating efficiencies in key segments of the Indian economy, including retail, agriculture, and healthcare, and is projected to be worth more than \$947 billion worldwide by 2019.<sup>2</sup>

The real power of IoT comes from the actionable information gathered by sensors embedded in connected devices. IoT devices are useful in direct consumer interactions, but have huge potential as part of what is now commonly referred to as "big data." For this document, we define this term to mean structured or unstructured data sets so large or complex that traditional data processing applications are not sufficient for analysis. As sensors become smaller, cheaper, and more accurate, big data analytics enable more efficiencies across consumer and enterprise use cases.

IoT deployment will be highly use case-dependent, yet will depend on standardized solutions to ensure the ability for data to flow between parties. To date, the technology industry has utilized open Application Programming Interfaces (APIs) and other widely-adopted standards (e.g., TCP/IP) to enable interoperability. For example, in healthcare, a miniaturized IoT sensor embedded in a connected medical device must be able to communicate bidirectionally in real-time. This capability enables a healthcare practitioner to monitor a patient's biometric data, and allows the patient to communicate with a caregiver in the event of a medical emergency. Other uses, such as sensors deployed to alert security of an unauthorized presence, may only require the ability to send data to security professionals with minimal (or even no) capability to receive communications.

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<sup>2</sup> "Internet of Things Market and M2M Communication by Technologies, Platforms and Services (RFID, Sensor Nodes, Gateways, Cloud Management, NFC, ZigBee, SCADA, Software Platform, System Integrators), by M2M Connections and by IoT Components - Global Forecasts to 2019," MarketsandMarkets (November 2014), *available at* [http://www.marketsandmarkets.com/Purchase/purchase\\_report1.asp?id=573](http://www.marketsandmarkets.com/Purchase/purchase_report1.asp?id=573).

Though the app industry has been in existence for approximately a decade, it has experienced rapid growth alongside the rise of smartphones. As detailed in our annual *State of the App Economy* report,<sup>3</sup> apps have revolutionized the software industry, touching every sector of the economy. The app ecosystem is worth \$950 billion today, and is largely driven by startups and small businesses. While IoT sensors can be found in nearly every fathomable object in our lives, apps will serve as the main interface for communicating with these devices. As a result, the rise of IoT will hinge on the app economy's continued innovation, investment, and growth. DOT's National Digital Communications Policy should strive to advance the app economy's growth in India, as the app economy we represent will be a crucial factor in meeting each of the following 2022 goals DOT puts forward:<sup>4</sup>

1. Provisioning of Broadband for All
2. Creating 4 Million additional jobs in the Digital Communications sector
3. Enhancing the contribution of the Digital Communications sector to 8% of India's GDP from ~ 6% in 2017
4. Propelling India to the Top 50 Nations in the ICT Development Index of ITU from 134 in 2017
5. Enhancing India's contribution to Global Value Chains
6. Ensuring Digital Sovereignty

Given the intertwined relationship between mobile smartphones, apps, and IoT-enabled connected devices, we strongly encourage DOT to enact clear and predictable policies that will help secure the Indian market's global competitiveness, and will not create barriers for Indian innovators to share their products and services with global customers.

The App Association emphasizes that mandates to localize manufacturing processes; requiring use of indigenous software in manufacturing design processes; preferring domestic products and services with domestically owned IPR in the procurement by government agencies, especially for the procurement of security-related products; among other discriminatory measures, make it difficult, if not impossible, for innovators to access and leverage global hardware and software development chains, putting Indian manufacturers and Indian consumers at a significant disadvantage. Such mandates ultimately lead to a lack of market choice and reduce the number of ways our members' innovations can provide new efficiencies and solutions to end users, also increasing prices for consumers; and we therefore strongly urge DOT to remove localization requirements from its National Digital Communications Policy. Moving forward, the App Association commits to work with DOT to help shape policies that promote IoT growth across all sectors of the Indian economy.

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<sup>3</sup> ACT | The App Association, *State of the App Economy 2018* (Apr. 2018), available at <http://actonline.org/2018/04/16/state-of-the-app-economy-report-highlights-american-leadership-in-the-950-billion-app-economy/>.

<sup>4</sup> Draft Communications Policy at 4.

## II. The App Association's Views on Proposals in the Draft National Digital Communications Policy Related to Standard Essential Patents

With respect to standard essential patents, the App Association reiterate our recommendation that India establish fundamental principles to guide standardization activities, help ensure SEP licensing on FRAND terms, prevent and effectively resolve disputes over the meaning of FRAND behavior in this context, and encourage the enforcement of FRAND commitments. With these established principles, private parties and standard setting organizations (SSOs) can focus on negotiating the specifics of FRAND licensing terms. We urge DOT's review of comments the App Association recently filed with the Telecommunications Regulatory Authority (TRAI) that explore the global consensus that has emerged as to the proper approach by governments to SEPs and SEP policy.<sup>5</sup>

We further offer the following specific input on the Draft Communications Policy specific to SEP issues:

- The App Association is concerned about the proposed inclusion of a provision to provide financial incentives for the development of Standards Essential Patents in 2.3(d)iii, and urges that it be deleted from the 2018 National Digital Communication Policy. It is unclear what is meant by "financial incentives," and we question the utility of providing such incentives when the open standards system already incents the development of SEPs. The Indian government's interjection into the open standardization system in such a manner would be improper, and would be particularly problematic if the government adopts market access requirements that favor the standard in which the SEP is used or otherwise advantages the rights holder.
- Noting that the App Association views efforts to require use of indigenous software in manufacturing design processes as overly prescriptive and having a deleterious effect on Indian innovation (e.g., 2.5(a)(v)), the App Association strongly recommends that the requirement for applying fair, reasonable and non-discriminatory (FRAND) obligations to "essential background IPR" in 2.5(a)(iv) be deleted. FRAND commitments are specific to SEPs that are voluntarily contributed to, and declared essential within, a standardization process, and should not be universally applied to non-SEPs unless the non-SEP holder has freely chosen to make such a commitment. Further, we question the meaning of the phrasing "essential background IPR" – if this phrasing means SEPs, DOT should use that terminology and avoid confusion by using alternative phrasing. We strongly caution DOT against mandating FRAND commitments for non-SEPs; such a requirement would be detrimental to the use of patented technology outside of SEPs.

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<sup>5</sup> See [https://actonline.org/wp-content/uploads/11132017\\_ACT-Comments-re-TRAI-Local-Telecom-Equip-Mnfr-Consultation-Paper\\_FINAL.pdf](https://actonline.org/wp-content/uploads/11132017_ACT-Comments-re-TRAI-Local-Telecom-Equip-Mnfr-Consultation-Paper_FINAL.pdf).

### III. Conclusion

The App Association believes that DOT's National Digital Communications Policy offers the opportunity for India to demonstrate its leadership in advancing connectivity to every citizen by fostering innovation and investment from the private sector. The App Association urges DOT to implement the suggestions above, and looks forward to assisting DOT in the development of its National Digital Communications Policy. Please do not hesitate to contact us with any questions.

Sincerely,



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