



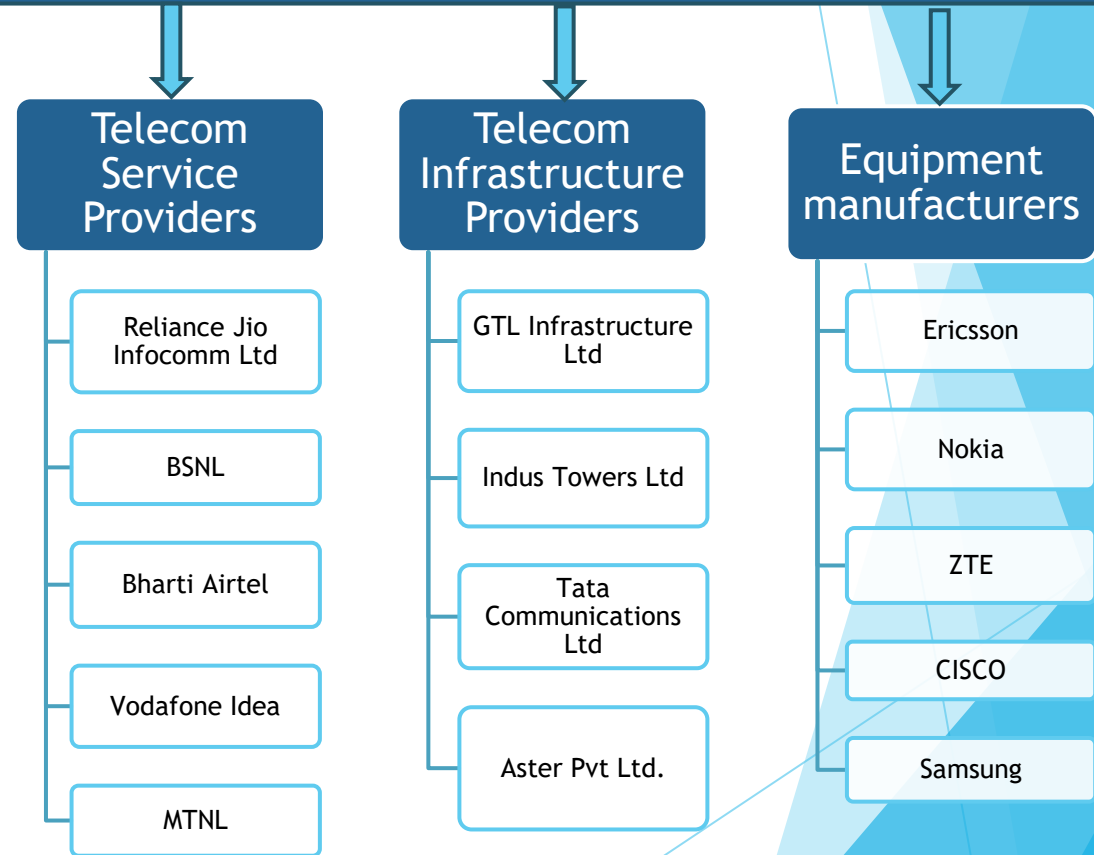
An Overview of Telecom Services GST perspective

Presented by Office of Additional Commissioner SGST, Zone II, Lucknow

From the conventional belief of being a communication service provider to providing multiple streams of value added services, the telecom sector has become one of India's core Economic Drivers.

Indian Telecom sector with its huge reach across the country is the second largest in the world in terms of consumers and contributes approximately 6.5% to GDP.

In present scenario this sector can be broadly classified into three categories.

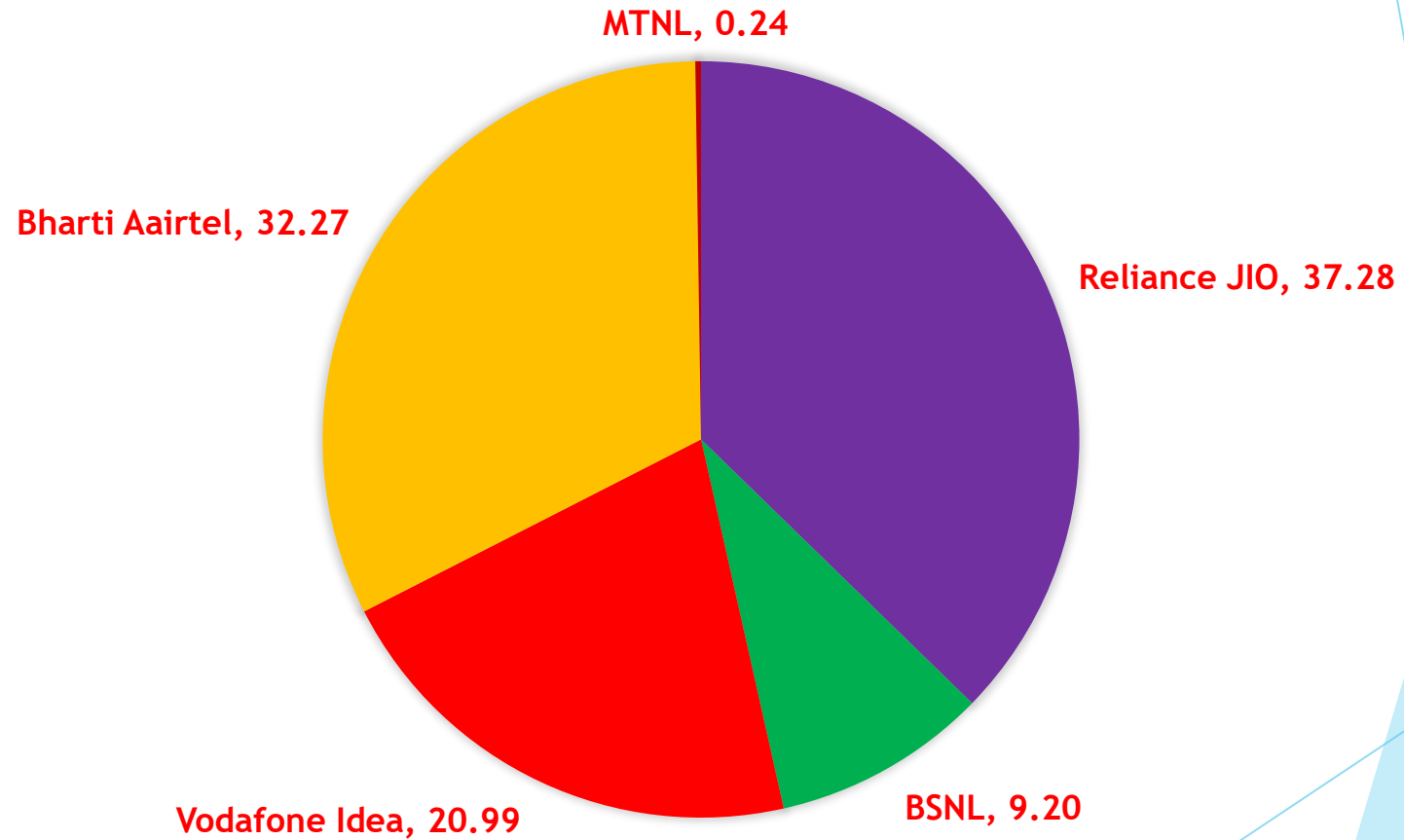


Revenue trend of Telecom Services in UP

	No of Dealers	Telecommunication Services (SAC 9984) (in Rs Cr)
FY 2021-22	11103	3997.18
FY 2022-23	12636	4264.32

Telecom market share in India

CONSUMER BASE %AGE

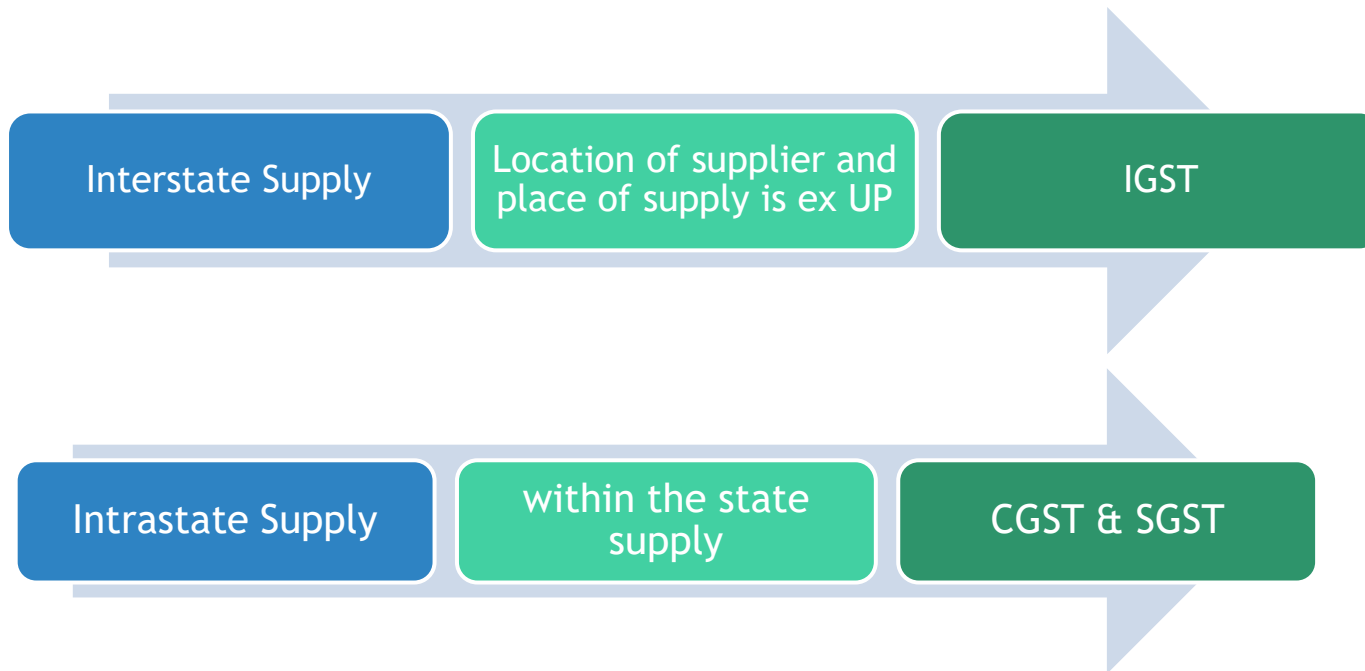


Definition of term “Telecommunication Services”

- Section 2(110) of the CGST Act 2017 defines the term Telecommunication Services as

a service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means.

- ▶ Telecommunication Services are listed under SAC 9984 and applicable GST rate is 18%.
- ▶ The scope of Tax to be charged on various Telecom Services depends on the Place of Supply.





The place of supply of different types of Telecom services has been provided under Sec 12(11) of the IGST Act 2017



S.No	Nature of Supply	Place of Supply
1.	Services by way of: a. Fixed telecommunication line b. Leased circuits c. Internet leased circuit d. Cable or dish antenna	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services
2.	Mobile connection for telecommunication & internet services provided on post-paid basis	Location of billing address of the recipient of services on the record of the supplier of services
3	Mobile connection for telecommunication & internet services provided on pre-paid basis through a voucher or any other mean	
3(a)	Through a selling agent or a re-seller or a distributor of SIM card or re-charge voucher	The address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply
3(b)	By any person to the final subscriber	The location where such prepayment is received or such vouchers are sold

S.no.	Nature of Supply	Place of Supply
4.	In other cases	The address of the recipient as per the records of the supplier of services and where such address is not available, be the location of the supplier of services.
5.	Online prepaid recharges (Through internet banking or other electronic mode)	Location of billing address of the recipient of services on the record of the supplier of services
6.	Where the leased circuit is installed in more than one State or UT and a consolidated amount is charged for supply of services relating to such circuit	All the States involved will be considered as place of supplies in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard

SIM Cards & E recharge

SIM Cards are classified under HSN 85235210 and attracts 18% GST.

E recharge is considered a Supply of Service instead of Supply of goods. Its SAC code is 998413, GST rate 18%.

GST on sale of Digital Product & Services

- ▶ There are many digital product and services which are subject to GST like e-books, online movies, online music, digital data storage facilities, online gaming, mobile apps, advertisements on internet and many more. Taxability on it is as described below -

When both service provider and recipient are in India GST will be levied at 18%.

When services recipient is not registered under GST it would be the responsibility of service provider to collect GST from recipient and deposit it with the Government.

When service provider is outside India and recipient is inside India, recipient is liable to Tax under Reverse Charge Mechanism

Meaning of non taxable Online Recipient

- ▶ It means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.
- ▶ The expression “governmental authority” means an authority or a board or any other body,
 - i) set up by an Act of Parliament or a State Legislature; or
 - ii) established by any Government, with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution

E- Book

- ▶ It is an electronic version of a printed book.
- ▶ It must be noted that only electronic version of printed book will be termed as an e-book. If there is no printed version or book is never printed on paper then such e-book will be treated as an online content and will be taxable at 18% .
- ▶ Whereas an e-book is taxable at 5% all telecommunication broadcasting and information supplies services at taxable at 18% .

News agency services

- ▶ It includes
 - ▶ News Agency services to newspapers and periodicals
 - ▶ Service of independent journalist and press photographers
 - ▶ News Agencies services to audio visual media
- ▶ However services by way of collecting or providing news by the following persons are exempt vide entry number 49 and includes
 - ▶ Services by independent journalist
 - ▶ Services by Press Trust of India
 - ▶ Services by United news of India

Mobile Apps in Phones

- ▶ Various type of apps used by subscribers are available on app stores installed in different models of Mobiles. There are two types of apps available for download
 - ▶ Free Apps
 - ▶ Paid Apps
- ▶ If the Telecom service provider charges the consumer on usage of a particular app then the GST will be charged on such amount.



Online gaming Apps

As decided in the 50th GST Council meeting dated 11th July 2023, they are taxed at uniform rate of 28% .

Mobile towers and its taxation

- ▶ Mobile Towers play a pivotal role in the Infrastructure of Telecom industry.
- ▶ In the erection of these towers the value of Input/ ITC is of crucial importance.
- ▶ In India Reliance, Airtel and Indus Tower Ltd etc are involved in construction and installation of mobile towers.
- ▶ Reliance Jio constructs its own towers and claims ITC on the materials thus utilized.
- ▶ Airtel is not directly involved in construction of towers but uses services of Indus Towers for around 90% cases or does a lease agreement with Indus Tower Ltd to use a Tower constructed by Indus Towers.
- ▶ Indus Tower Ltd is primarily involved in construction of Mobile towers and claims ITC on materials thus utilized.



- ▶ However claim of ITC on construction of Mobile Towers is not admissible as per Section 17(5) of UPGST Act 2017

Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course of furtherance of business .

- ▶ Further explanation of Section 17 is as follows

The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation -For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes

- (i) land, building or any other civil structures,*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises.*

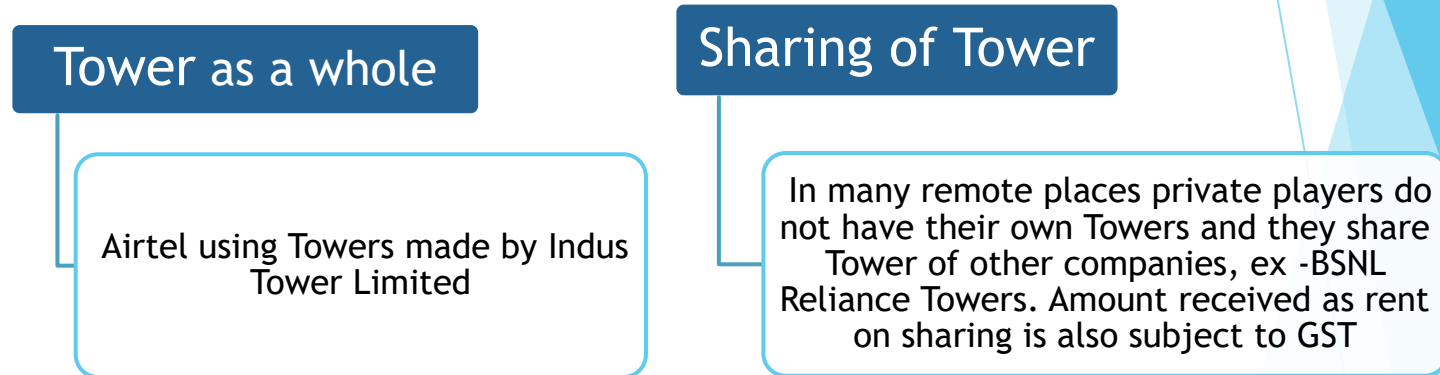
Definition of Telecommunication Tower

- ▶ In the Ahmedabad Municipal Corporation Vs GTL Infrastructure Ltd. & Others. Etc.. Supreme Court (India) Civil Appeal No. 5360 - 5363 of 2013, Hon Supreme Court of India observed in Para 22 that -
 - ▶ We may now see what a Mobile Tower is and consists of. In technical terms a Mobile Tower is called a “Base Transceiver Station.” It involves the making of structure consisting of the following:
 - a. A pre-fabricated shelter made of insulating PUF material made of fibres.
 - b. Electronic Panel.
 - c. Base Transceiver Station (BTS) and other radio transmission and reception equipment.
 - d. A diesel generator set.
 - e. Six poles of 6 to 9 meters length each made of hollow steel galvanized pipes.

- ▶ A mobile tower is constructed either on a vacant land or on the terrace of existing buildings on the basis of agreements with the owners of such properties.
- ▶ Hence from above deliberations it is clear that on the inputs of erection of a Mobile tower ITC is not admissible.
- ▶ Civil structure made at the Tower base is immovable, hence no ITC is admissible on such structures also.

Lease Rent of Towers

- ▶ Many Telecom companies are involved in Lease Rent Agreements for example - Airtel - 90% of its Towers are made by Indus Tower Limited and used by Airtel on Lease Rent basis. This rent is subject to GST.
- ▶ The Lease Rent is of two types



- ▶ BSNL has leased its towers to Private Operators. Agreements between these firms should be checked and verified while inspecting such Telecom firms.

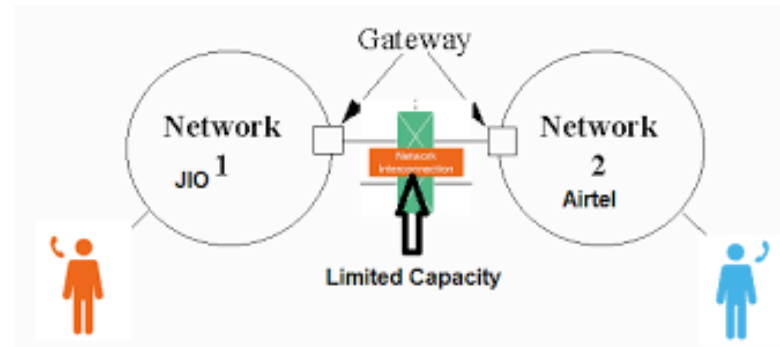
Telecom companies also act as Input Service Distributors

Telecom companies usually incur high cumulative service costs such as advertising expenses, legal expenses etc that are borne by the Head Office as the first point of contact. The ITC availed from the above is then split across the country amongst the dealers of that company.



- ▶ While assessing a Telecom company it is important to keep in mind that the ITC admissible as an ISD is distributed and availed as per defined rules and guidelines.
- ▶ Rule 39 of CGST Act 2017 states
 - ▶ *An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely,-*
 - (a) *the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in GSTR 6*
- ▶ While verifying the GSTR 6 available on Boweb Portal it should be checked that the ITC available for distribution and ITC distributed must match each other.
- ▶ ITC received for distribution, Receiver wise summary is available on Boweb portal but ITC distributed among the dealers by ISD, the details of such dealers is not available on the portal. Hence we are unable to verify that ISD has been distributed amongst same PAN or not. Information on this has to be procured from the dealer itself.

Interconnect user charges



- ▶ Inter-connect usage charges are charges paid between the telecom companies for usage of each other's networks and towers when their users are outside their subscribed region and the same would be subject to GST. Payments received against such supplies should also be keenly checked.

Points to be considered while inspecting Firms providing Telecom Services

- ▶ It has been observed in many cases where dealers procure invoices against services to be received and utilise the ITC involved in these invoices but when they fail to receive those services they simply issue a Credit note and reverse the ITC used. It is important to observe here that if this period of utilisation of ITC exceeds 6 months then interest is to be levied on ITC availed (Sec 16(2(d)) of UPGST Act 2017). It has been found in case of many cable operators.
- ▶ It is important to check for the ITC claimed by telecom companies on Capital goods. It is seen that many a times companies consider certain items as capital goods which are not legible for ITC claim such as Mobile Towers.
- ▶ Usually a Mobile tower requires maintenance and upkeep. A thorough check of Inward Supplies related to maintenance of these towers should be done in order to verify the ITC claimed on it.

- ▶ For running and managing Telecom Services various softwares are utilized. It is important to check such related inward supplies and ITC thus claimed.
- ▶ Usually Telecom companies sub let or under go contract with other Service Providers. It is important to check copy of such Contracts/ MoUs and the TDS deductions so made.
- ▶ If a company is involved in construction of Mobile Towers, then it is important to check where the erection and installation material etc. is warehoused, its rent and other expenses etc. should be verified.



Thank you

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