

The logo for Reliance, featuring the word "RELIANCE" in white, uppercase letters on a blue rectangular background. A small red triangle is positioned above the letter "I".

**RELIANCE**

**RCOM Comments on Consultation  
on  
Guidelines for Unified Licensing Regime  
&  
Migration of Existing Licenses**

# Comments on Draft Guidelines for Unified License & Migration of Existing Licenses

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1. RCOM welcomes the opportunity to comment on the Draft Guidelines for Unified License/Class License and Migration of Existing Licenses.

2. The objectives of bringing unified licensing are not clear from the beneficiary perspective of either the telecom service provider or the end consumer/subscriber or meeting the objective of the Government to promote competition. **The Unified Licensing objective in promoting competition and laying a roadmap for convergence is also not clear as media delivery services i.e DTH, Cable TV are removed from proposed Unified licensing scope excepting IPTV.** Hence the purpose of evolution to Unified Licensing needs much deeper and wider consultation.

3. The Draft NTP'2011 envisage technology neutral Unified Licenses to be in two separate categories:

- (i) Network Service Operator (NSO)/ Communication Network Service Operator (CNSO)
- (ii) Service Delivery Operator (SDO)/ Communication Service Delivery Operator (CSDO) Government

4. Although the draft guidelines cover service and service area neutrality but guidelines are totally muted on scope of network and service delivery operators and the technology neutrality part of the license. **RCOM suggests that the guidelines should clearly bring out the scope of NSO and SDO licenses and also cover technology neutrality especially related to the spectrum utilisation.**

5. **The new unified license regime should aim to create a regulatory framework for progressive liberalised use of spectrum in line with technological advancement. Service providers should be free to deploy any technology on the allocated spectrum.**

6. The TRAI through Unified License is proposing liberalisation of spectrum utilisation with a view to making spectrum utilisation voice/data/video neutral. This utilization at present is limited due to the scope of licenses. **The TRAI should ensure that when liberalized use of spectrum for voice/video/data is allowed there is complete level playing field between operators in terms of payment of spectrum charges, interconnection, numbering scheme etc.**

7. **For the purpose of level playing field there should a guiding principle in the Unified License (Restricted) that minimum quantity of spectrum should be provided to all the players under the same band.**

8. The draft guidelines do not touch important issues of AGR definition for payment of license fee, AGR definition for payment of spectrum charges. Since TRAI is proposing to migrate multiple licenses into one single license, the important issue of AGR must be addressed in these guidelines.

9. TRAI should also include Tripartite Agreement as part of the Guidelines and the existing TPAs linked to the current license should continue to be automatically assigned to the Unified Licenses after Migration. The tripartite agreement in the new Unified License should include modality for transfer of spectrum also as otherwise lender will not accept license as collateral especially for wireless services.

10. The TRAI should clarify in the Guidelines that the regime will not be extended to services which are not covered by licensing like IP-1, OSP etc.

11. The specific comments on issues for consultation are given below:

1. Kindly give your response to each clause of Chapters I to IV above.

## I. Unified License

### Chapter I

Clause 1.1 There shall be three levels of Unified Licence: National level, Service area level and District level. The applicant company can apply either for National level Unified Licence or Service area level Unified Licence or District level Unified Licence. District level Unified Licence will not be given for Metro areas of Delhi, Mumbai and Kolkata.

1. RCOM principally supports licenses at three levels viz National, Service Area and District **but with the legacy of service based and service areas based license, we are concerned that there are number of complications on migrations to new licensing regime which must be addressed.**
2. The National Level Unified Licensee is supposed to be service area, service neutral and therefore should not have a requirement to pay Spectrum Usage Charges on Service Area basis. The complete country should be considered as one common service area. However, for the following reasons National Unified License may not be able to operate on national basis:
  - (i) The existing UAS licenses have different quantum of 2G spectrum holdings in different service areas and as a result spectrum usage

charges are payable at different rates. Presently these UASLs pay AGRs on service areas basis and spectrum usage charge is payable on circle basis. **After migration to National Level UASL these service providers may have to continue to to prepare AGR on service area basis for payment of spectrum usage charge.**

- (ii) Existing UASL/ISPs have BWA spectrum in few service areas. **After migration to the National Level Unified License these service providers will still be required to prepare service area and service specific AGR for payment of spectrum usage charge.**
  - (iii) NLD and ILD License revenue cannot be included in AGR for payment of spectrum usage charge. After migration service provider may continue to prepare service specific AGR for payment of spectrum usage charge so as to exclude revenue from ILD/NLD etc.
  - (iv) Presently IUC is transferred from one circle to the other circle for purpose of payment of license fee and spectrum charges. After migration to a national Level License, service provider may still be required to make IUC adjustments for payment of spectrum usage charge.
3. **In view of the above even after migration to National Level License, licensee may continue to operate of service area basis which will nullify the objective to have service, service areas neutrality.**
  4. **To meet the objective of unified license which is service neutral and service area neutral, the TRAI is requested to address the above mentioned issues before finalising the migration policy or the Guidelines for a National Unified License. Thus a National Level Unified License should not be enforced and forcible migration to Unified License should not be mandated.**
  5. The proposed new regime of Unified License and present regime of multiple licenses like UASL, ILD License, NLD License etc have similar scope and differ mainly on account of bundled and de-linked spectrum. The requirement to delinked spectrum can be addressed through certain changes in the existing service area specific UASLs. Therefore rationale of National Level Unified License without service and service area neutrality is not clear. **We therefore propose the present multiple license regime of Unified License, ILD, NLD etc should continue.**
  6. **The District Level Licenses are likely to aggravate the present issues of interconnection, numbering, security etc and therefore these licenses may also not be allowed.**

## Chapter I

Clause 1.2 For the purpose of the Unified Licence, the service areas shall be as listed in Annexure –I.

1. The geographical boundaries for few service areas like Delhi, Mumbai and Haryana are defined on the basis of Telephone Exchanges. The geographical area under a service area license based on telephone exchange is not clear and lead to confusion and innumerable disputes. For example it is not clear which part of Gurgaon fall under Delhi or Haryana circle.
2. **Therefore RCOM suggests that all service areas should be clearly defined in terms of constitutional boundaries and not on the basis of telephone exchanges.**

## Chapter I

Clause 1.3: A company can apply for Unified Licence in more than one service area or district. However, if a company desires to apply for Unified Licence in more than four districts in a service area, it has to apply for Service area level Unified Licence.

1. We support the clause 1.3. However, District Level license should not be enforced unless there is clarity on interconnection, numbering, security issues etc. These are important details of the license must be clarified and finalised before deciding District Level Service areas.

## Chapter I

Clause 4.1 One time non refundable Entry fee for Unified Licence shall be:

- a. Rs. 20 (Twenty) crore for National level Unified Licence;
- b. Rs. 2 (Two) crore for Metro and 'A' Category Service area;
- c. Rs. 1 (One) crore for B category Service area;
- d. Rs. 50 (Fifty) lakh for C category Service area; and
- e. Rs. 15 (Fifteen) lakh for District level Unified Licence.

1. Many integrated licenses may prefer to continue on service area licenses as the guidelines do not explain the AGR definition and related issues of spectrum usage charges.
2. The entry fee for each of the 22 service area licenses should not be more than Rs 1 crore and the combined license fee may be kept at Rs 20 crores.

## Chapter I

Clause 5.1: Unified Licence will be service and technology neutral and the Unified licensee shall be permitted to provide any telecom service, as defined below on a

non-exclusive basis, anytime, anywhere, using any technology within its licence area as prescribed below:

### Chapter I

**Clause 5.1 b:** Unified licensee can provide dark fibres, Right of Way, duct space, towers on lease / rent / sale basis to the licensees of telecom services on mutually agreed terms and conditions. The Licensee will also be allowed to install and share active network limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission systems and to seek SACFA siting clearance for erecting towers with or without agreement with licensed Service Providers.

1. We do not support clause 5.1 if it is involving the any passive infrastructure related services. RCOM is of the view that dark fibres, Right of Way, duct space, towers on lease / rent / sale basis to the licensees of telecom services should not be included in the scope of the license as passive infrastructure like towers and dark fibre is a civil construction activity, and not a Telecom network activity. The civil activity like establishing towers, shelters expansion of power to such laying of fibre is not covered at the Section 4 of the Indian Telegraph Act 1985 for licensing. Service providers can undertake these activities even without bringing it under the license.
2. The Authority may also clarify and recommend that the revenue from sale, rent, lease of towers, ducts, dark fiber etc should not be included in the AGR.
3. The policy relating to active infrastructure sharing need not be mentioned in detail in the license. The TRAI may instead consider to recommend that the active infrastructure sharing shall be as per the prevailing policy of the Government.

### Chapter 1

**Clause 9.1:** There shall be a non-obstante clause in the licence which confers powers upon the Licensor to suspend, revoke or terminate the license, in whole or in part.

1. The above mentioned non-obstante clause in the present form is very strict.
2. **We request that the following clause may be considered in place of the non-obstante clause for suspension of licenses:**

***“The licensor should have the right to suspend the operation of this license if, in the opinion of the licensor it is necessary or expedient to do so in public interest or in the interest of the security of the State.”***

### Chapter I

**Clause 10.1.** The Licensor may impose financial penalty (as detailed below) based on either its own findings or on the recommendations of TRAI, for each violation of the terms and conditions of licence agreement:

Type of License	Minor violation	Major violation
National Level	Not exceeding Rs 5 Crore	Not exceeding Rs 50 Crore
Service Area Level	Not exceeding Rs 2 Crore	Not exceeding Rs 20 Crore
District Level	Not exceeding Rs 10 Lakh	Not exceeding Rs 1 Crore

- The penalty should always be proportionate to the nature of the breach of licence condition and the harm caused to the National Exchequer or to the consumers and whether the licensee knew or ought to have known of the breach. TRAI can take clues from the SEBI Act which provides guidance on the quantum of penalty that should be imposed. The relevant portion of the SEBI Act is reproduced below for reference:

***“15J - Factors to be taken into account by the adjudicating officer***

*While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
  - the amount of loss caused to an investor or group of investors as a result of the default;*
  - the repetitive nature of the default.”*
- Based on the guidance principles, it is suggested that the licensor should take full account of the particular facts and circumstances of the breach under consideration. The financial penalty may be considered only in the following circumstances
    - where the breach of a licence condition was committed deliberately or recklessly
    - the licensee was aware or should have been aware of the breach
    - repeated breach of a licence condition
    - whether there has been a repeated breach or failure
    - whether the breach continued after the licensee became aware of it
    - where the breach gave rise to un-proportionate financial gain
    - where the breach of a licence condition had a severe impact on customers
  - A financial penalty should not be used if :
    - the breach of a licence condition is minor in nature like minor delays in putting signage on towers, interruption of services etc.

- (ii) if the breach is not apparent to licensee
  - (iii) when license has provision of pre-estimated damages in form of liquidated damages.
4. **RCOM is of the view that the suggested ceilings on penalty are too high and should be considerably brought down. RCOM suggests that the penalties should only range from Rs. 5 lacs to Rs. 50 lacs.**
  5. **The TRAI should also give details as to what constitutes the major violations and what constitutes the minor violations so that the process of levying penalty is transparent and discretion is kept to minimum in imposing the penalties.**
  6. **In the interest of natural justice an opportunity must be extended to licensees to explain the reasons for alleged violation, orally and in writing.**

### **Chapter I**

**Clause 11.2.** License Fee – An annual Licence Fee as a percentage of Annual Gross Revenue (AGR), as defined in the licence agreement shall be applicable. From the second year of the effective date of the Unified Licence, this Licence Fee shall be subject to minimum of 10% of the Entry fee paid.

### **Adjusted Gross Revenue**

1. It is important that when a new licensing regime is being framed the corrective actions which were not part of earlier licensing regime are taken. **The definition of Adjusted Gross Revenue (AGR) for payment of license fee has number of flaws as it includes number of revenue components which are not purely from telecom services. The present definition of Adjusted Gross Revenue also includes notional income that is unrealized/remains uncollected by the Licencee.** The unrelated revenues include following components:
  - i) Income from Dividend;
  - ii) Income from Interest;
  - iii) Capital gains on account of profit on sale of assets and securities;
  - iv) Gains from foreign exchange fluctuations;
  - v) Income from property rent;
  - vi) Income from rent/lease of passive infrastructure like towers, dark fibre;
  - vii) Other income on account of insurance claim, sale of scraps, management consultancy fee, forfeiture earnest money etc;
  - viii) Income from sale of equipment including handsets;
2. The proposed guidelines does not deal with the definition of AGR. In TRAI's earlier recommendations on Unified License, the issue of AGR was part dealt



with and it was part of the recommendation on Unified License. The relevant portion of Guidelines is as under:

*“The existing licensing regime has AGR shall include only the revenue accrued out of telecom services and shall not include sale of capital goods, sale of handsets, dividend and interest earned on various deposits. To ensure that bundling of handsets with tariff schemes is not misused, the existing provision of tariff schemes with bundling to be made available to subscribers even without bundling, shall continue.”*

3. The TRAI in its recommendations on AGR had specified following principles for exclusion of revenue from the AGR definition:
  - (i) Exclusion of revenues from verifiable non-licensed activity.
  - (ii) Proper audit trails should be available for items which are to be excluded from AGR.
  - (iii) Revenue from bundled sale of goods and services to be considered as part of AGR unless sale of goods is clearly discernible and services offered remain unaltered even on a standalone basis.
4. **Any activities which do not require any telecom License should not be considered in the AGR on presumptive basis. Installation of equipments, providing Content and various VAS are few of the activities which do not require license and there are large number of players providing these services. The** income from these activities should not be included in AGR.
5. **It is suggested that the TRAI should include AGR definition in the Unified License guidelines and clearly define the new AGR definition based on revenue from the telecom services only.** A clear definition of AGR which includes revenue from the telecom activities only will facilitate easier and faster migration to the Unified License Regime.

#### Chapter I

Clause 11.3. The Fee/royalty payable towards Wireless Planning and Coordination Wing (WPC): WPC Charges shall be payable at such time and in such manner as the WPC Wing of the DoT may prescribe from time to time.

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#### Chapter I

Clause 35. The Licensee shall pay spectrum usage charges in addition to the Licence Fees on revenue share basis as notified separately from time to time by the WPC Wing. However, while calculating ‘AGR’ for limited purpose of levying spectrum charges based on revenue share, revenue from wireline subscribers shall not be taken into account.

1. The issue of payment of Spectrum Charges based on AGR TRAI has not been dealt in details in the Guidelines. **It should be explained in the Guidelines that the WPC charges are payable on wireless revenue only.** The detailed AGR definition must be laid down in the Guidelines and License in this respect

of wireless revenues. The existing AGR definition given below for payment of spectrum charges include revenues like leased lines and bandwidth and number of other streams discussed above which are not from wireless services.

*" In addition to the Licence Fee as per Clause 18.2, Annual Royalty and Licence Fee for wireless licence for Base Stations and wireless subscriber terminals shall be payable to the Wireless Planning & Coordination Wing as a percentage of Adjusted Gross Revenue (AGR) earned from wireless subscribers. The said percentage of AGR shall be 2% or as amended from time to time for utilizing spectrum upto 5 + 5 MHz. While calculating the AGR for the limited purpose of levying such annual royalty and licence fee, revenue from wire-line subscribers shall not be taken into account."*

2. The DoT insists that revenue from lease line and bandwidth subscribers should be part of AGR for payment of spectrum usage charges. **Unless new definition is provided in the Unified License even NLD and ILD revenues will be included for payment of spectrum usage charges which are even today not part of the AGR for payment of spectrum usage charges.** The AGR clarification in the new License Regime would end disputes and facilitate adoption of new regime by existing operators.
3. **Therefore, RCOM suggests that there should be a separate definition of AGR for payment of spectrum charges based only on wireless revenues.**

#### **Chapter I**

**Clause 12.1.** The Financial bank Guarantee (FBG) shall be equivalent to the Licence Fee payable for two quarters. The minimum annual Licence Fee is 10% of the entry fee. Therefore, for new entrants, initially FBG shall be for an amount of Rs. 1 (One) crore for National level Unified Licence, Rs. 10 (Ten) lakh, 5 (Five) lakh and 2.5 lakh for metro/category A, B and C Service area level Unified Licence respectively and Rs. 75,000 (Seventy Five thousand) for District level Unified Licence. The amount of FBG shall be reviewed on six monthly basis by licensor and subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to Licence Fee for two quarters and other dues not otherwise securitized and any additional amount as deemed fit by the Licensor.

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#### **Chapter I**

**Clause 31.** The applicant company shall submit a Financial Bank Guarantee (FBG) of an amount of Rs. 50 crore/Rs. 25 crore/ Rs. 5 crore for Category A, B and C Service areas respectively, which shall be submitted before the date of signing the Licence agreement in the prescribed proforma given in licence agreement. Initially, FBG shall be valid for one year. Subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to license fee for two quarters and other dues not otherwise securitised and any additional amount as deemed fit by the Licensor. The amount of FBG shall be subject to periodic review by the Licensor and shall be renewed from time to time till final clearance of all dues.

1. TRAI may consider to recommend replacement of Financial bank Guarantees by Corporate Guarantees. The replacement of Financial Bank Guarantees by corporate guarantees will result in release of huge fund parked in banks against bank guarantees. This will increase liquidity and help network expansion and network up gradation.

#### Chapter I

Clause 25.1. It shall be mandatory for the Unified licensee to provide interconnection to all eligible Telecom Service Providers (eligibility shall be determined as per the service provider's Licence agreement and TRAI's determination/orders/regulations issued from time to time) to ensure that the calls are completed to all destinations. Principle of non-discrimination shall be followed in the matter of interconnection.

#### Chapter I

Clause 25.5. The charges for accessing other networks for inter-network calls shall be based on mutual agreements between the service providers conforming to the Orders/Regulations/Guidelines issued by the TRAI from time to time.

#### Interconnection

1. TRAI has been conferred powers to decide the interconnection charges and interconnection terms and conditions. The TRAI Regulations on Reference Interconnection Offer, Port Charges, and Interconnection Usage Charges etc have been notified using these powers. However there are few inconsistencies in the TRAI Act and the License Conditions which cloud TRAI's clear mandate to decide interconnection charges.
2. The TRAI proposal that the charges for accessing other networks for inter-network calls shall be based on mutual agreements between the service providers conforming to the Orders/Regulations/Guidelines issued by the TRAI from time to time will bring consistency between the TRAI Act and the License.
3. **The TRAI must also suggest similar provisions in the existing ILD, NLD and Basic License or Unified License (Restricted) as otherwise inconsistencies will continue.**

#### 27. Security Conditions

##### Chapter I

Clause 27.1 The Licensee shall comply with the security conditions interalia relating to inspection of the installation/establishments, audit of networks, security of the network, restriction on employment of foreign nationals, transfer of information outside the country, remote access, monitoring of networks, confidentiality of

information relating to subscriber data and any other condition imposed by the Licensor from time to time

1. Extension of lawful intercept monitoring to a proposed CMS should be at the cost of the Government agency.
2. The cost of ensuring call traceability to the 50 mts/100 Mts accuracy as needed by the LEAs should be borne by the Government with adequate creation of a common national network infrastructure as an overlay to support such stringent LBS requirements.
3. The requirement of ensuring telecom network security and audit of compliance of network element security should be based on the mandate by the Government on global equipment manufacturers to comply to the relevant and applicable security compliance norms as per 3GPP2/ISO/CC etc.
4. The periodic audit for telecom network security compliance should be taken up by the Government at their cost and operators would offer the globally compliant equipments that constitute the network to such audits.
5. The licensor should assist the unified licenses to balance out the cost of setting up of the security related facilities which are specifically required for security purposes as it is collective responsibility for the security ecosystem with the Government and service providers and the vendors.

### III. Migration of Existing Licence to Unified Licence

#### Chapter III

Clause 1: On coming into force of the Unified Licence, all the existing licences issued under Section 4 of the Indian Telegraph Act 1885 shall stand automatically converted to the Unified Licence. This will be the Unified Licence (restricted). Necessary amendments shall be made by the Licensor under intimation to the Licensee.

1. **RCOM as a concept supports licenses at three levels viz National, Service Area and District.** However, we have legacy of service specific licenses like NLD, ILD and service areas based license and there are concerns that migrations to a new licensing regime will have number of complex issues concerning interconnection, payment of spectrum charges etc. The TRAI is requested to address all related issues mentioned below..
2. Service providers have different quantum of spectrum holding in different circles and therefore spectrum usages charge is payable at different rates. Since revenue from NLD and ILD is not to be included in AGR for payment of spectrum usage charge, these revenues will not be included in the AGR. Thus even after migration to National Level Unified Licensee service providers may continue to operate on service specific and service area basis.

3. The proposed new regime of Unified License and present regime of multiple licenses like UASL, ILD License, NLD License etc are similar in scope and only difference is with respect to de-linked spectrum. Therefore instead of moving to a national level unified license TRAI may consider to maintain multiple license.
4. **The above mentioned issues should be addressed before migrating to a National Unified License Scheme. Thus a National Level Unified License should not be enforced and forcible migration to Unified License should not be mandated.**

### Chapter III

Clause 9. On expiry of the validity of the Unified Licence (restricted), the licensee shall be required to take a Unified Licence.

1. As mentioned above the current multiple license held by service provider should not be mandated for forceful migration into Unified License (Restricted) by notifying a certain deadline.
2. Atleast a minimum of 3 to 5 years notice period should be given for such migration from the current licensing regime to Unified License(Restricted) Regime to do enable all financial and commercial closures with all interdependent other licensees.
3. Such migrated Unified License (Restricted) till the validity period of the current license holding.
4. On expiry of the validity of the Unified Licence (restricted), the licensee may migrated for Unified Licence. However, TRAI should also clarify the date of migration to the unified license if service providers are having multiple licenses with different expiry dates.
5. The TRAI should therefore start consultation process on renewal of license along with this consultation. It may also be noted that many Unified Access License are due for renewal in 2014.

### Chapter III

Clause 10: IP-I shall be covered under Unified Licence. The existing IP-I providers would be required to take the Unified Licence as soon as the same comes into being and the conditions in the Unified Licence will apply to IP-I provider too. IP-I shall have to pay the prescribed entry fee to take the Unified Licence.

1. IP – I should remain outside the ambit of Unified Licensing, as these are not services provided to end customers. RCOM believes that IP-I should not be brought under the licensing framework and no license fee should be levied, as

creation of passive infrastructure like towers and dark fibers is a civil construction activity and not a telecom network activity. Therefore the telecom infrastructure creation activity like establishing towers, shelters with extension of power to such telecom facilities and laying of fiber is not covered under Section 4 of the Indian Telegraph Act, 1885 for licensing.

2. However, in any case if IP-I operators are to be charged license fee, UASL operators need to be given deduction for payments made to IP-I as pass through charges else there will be double charging of license fee.

### **Chapter III**

**Clause 11.** In the event a holder of Unified Licence (restricted), having spectrum, obtains a Unified Licence, it will continue to retain the spectrum assigned for the remaining validity period of the existing Licence. In case of 3G /BWA spectrum holders, the spectrum assigned will be retained for the period for which the spectrum blocks have been assigned. The licensee holding access spectrum shall be required to maintain the net-worth and paid up equity as per existing licence, in case these are higher than the amount prescribed in the Unified Licensing Regime.

1. **Spectrum allocated bundled with UASL for 20 years should continue to be allocated even for Unified Licensing for the remaining period after migration.**
2. RCOM has been allotted spectrum for alternate GSM stream after payment of full Entry Fee. Since the entry fee is paid in full the validity of GSM spectrum should also be complete 20 years. The validity of GSM spectrum should not be linked to the validity of the license.
3. **RCOM suggests that necessary changes be made in the above mentioned clause to clearly bring out that the validity of the spectrum in each stream i.e CDMA and GSM is 20 years.**

**2. What are your views on the scope of Licence for Unified Licence (National level/Service area level/District level) and Class Licence? (Clause 5 of draft guidelines for Unified Licence and Clause 5 of draft guidelines for Class Licence)**

**Please refer to comments on Chapter I, clauses 1.1, 35 and Chapter III, clause 1.**

**3. What, in your opinion, are the actions that should be classified as minor violations and major violations? (Clause 10 of draft guidelines for Unified Licence)**

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4. Even within minor and major violations respectively, what, in your opinion, should be the factors to be taken into consideration while determining the actual amount of penalty? (Clause 10 of draft guidelines for Unified Licence)

Please refer to comments on Chapter I, clause 10.1

5. These draft guidelines do not provide for Licensing through Authorisation. In your opinion, considering the services that are already covered under Unified Licence and Class Licence, is there any need for Licensing through Authorisation? If so, which are the services to be so covered? And, what should be the guidelines for such a licence?

&

6. Whether Voice mail/Audiotex/UMS services and Radio paging should continue to be under licensing regime?

1. The concept of License through Authorisation is not very clear. As per the Section 4 of the Indian Telegraph Act, 1885 all Telecom Services are required to be licensed. The Section 4 of the Act is reproduced below for reference:

**“4. Exclusive privilege in respect of telegraphs, and power to grant licenses.**

(1) Within [India], the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs:

*Provided that the Central Government **may grant a license**, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]: .....*”

2. Therefore all telecom services are required to be licensed and there is no requirement to specify separate procedures like authorisation etc.

2. What are your views on the scope of Licence for Unified Licence (National level/Service area level/District level) and Class Licence? (Clause 5 of draft guidelines for Unified Licence and Clause 5 of draft guidelines for Class Licence)

Please refer to comments on Chapter I, clauses 1.1, 35 and Chapter III, clause 1.

3. What, in your opinion, are the actions that should be classified as minor violations and major violations? (Clause 10 of draft guidelines for Unified Licence)

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**4. Even within minor and major violations respectively, what, in your opinion, should be the factors to be taken into consideration while determining the actual amount of penalty? (Clause 10 of draft guidelines for Unified Licence)**

**Please refer to comments on Chapter I, clause10.1**

**5. These draft guidelines do not provide for Licensing through Authorisation. In your opinion, considering the services that are already covered under Unified Licence and Class Licence, is there any need for Licensing through Authorisation? If so, which are the services to be so covered? And, what should be the guidelines for such a licence?**

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**6. Whether Voice mail/Audiotex/UMS services and Radio paging should continue to be under licensing regime?**

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*Provided that the Central Government **may grant a license**, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]: .....*”

4. Therefore all telecom services are required to be licensed and there is no requirement to specify separate procedures like authorisation etc.

**7. Is there any other service(s), which needs to be brought under licensing regime?**

1. Passive infrastructure services provided by IP -1 operator should not be brought under licensing regime.

**8. In the new licensing regime, spectrum has been delinked from the Unified Licence. In such a scenario, should TRAI be entrusted with the function of**



granting all types of Unified Licence as is prevalent in majority of the countries in the world?

1. As per the Indian Telegraph Act, 1885 Central Government has exclusive privilege in respect of telegraphs, and power to grant license. In view of the statutory provisions, powers to issue license should continue to rest with the Central Government.

**9. Presently, in case of IP- I, there is no restriction on the level of foreign equity in the applicant company. However, in case of Unified Licence, the total foreign equity in the total equity of the Licensee is restricted to 74%. Please indicate the maximum time which should be given to the IP-I to comply with the FDI condition of 74% after grant of Unified Licence.**

1. Please refer to comments on Chapter III clause 10

**10. Presently, the access service licences viz. BASIC/CMTS/UASL have restrictions regarding holding of substantial equity by a promoter in more than one access service licence in the same service area. However, apart from access service licence, this condition is not applicable for any other licence. Accordingly, the proposed guidelines remove the restriction on holding of substantial equity in a company having UAS / CMTS/ Basic Licence in the same service area on migration to Unified Licence and also from the eligibility conditions given in Para 2.3 of the draft guidelines for Unified Licence. Please comment on the pros and cons of this proposal.**

1. **Spectrum being a scarce resource and the licenses hitherto held came with bundled spectrum were the prime reasons for enforcing/mandating cross holding restriction.**
2. The current cross-holding restrictions as in the current licenses should continue till the validity period of the current licenses.
3. **For the new unified licenses reasonable cross holding restriction should be mandated to avoid a single major investor group having stake in multiple unified licenses.**

**11. Please raise any other issues you feel are relevant and offer your detailed comments on the same.**

#### **Unilateral amendments in the Unified Access service license**

1. DOT has been issuing amendments in the licenses unilaterally without any consultation with stakeholders. The DOT issued 30 such amendments during the last 5 years relating to increase in the capacity of law interception systems, security related concerns, procedure for the purchase of equipment and expansion of networks, rollout obligations, lock in period on sale of equity,

location details of customers, introduction of calling cards, services in Boarder areas, FDI etc.

2. Many amendments have huge financial implications in terms of additional CAPEX and OPEX, flexibility to raise capital etc. These changes have far reaching consequences with respect to the investments, adherence to the timelines, customer acquisition and expansion of networks etc.
3. In future, all amendments in the license conditions, if any, should be with the full consultation and agreement with the stakeholders.

#### **Transfer or assignment of License and Spectrum as Security for Financial Assistance:**

1. **The existing TPAs linked to the current license should continue to be automatically assigned to the Unified Licenses after Migration.** The new tripartite agreement in Unified License should include modality for transfer of spectrum as otherwise lender will accept license as collateral especially wireless services.
2. The Telecom licences which are bundled with the spectrum are assigned to the lender based on the tripartite agreement entered among lenders, licensor and the licensee. This gives the right to lenders in case of default to replace the licensee by new operator but with the consent of the licensor. **The Tripartite Agreement takes care of possible eventualities in the case of material default by the licensee or termination of telecom licenses by the licensor.**
3. **The Tripartite agreement has served a very useful purpose for raising capital for telecom projects. This should continue be part of the new Unified License even after delinking of spectrum. The TRAI is requested to include guidelines for Tripartite Agreement in the new Unified License Guidelines.**
4. **Service provider holding multiple licenses based on geographical areas should be allowed to enter into single tripartite agreement as funding is generally through a single lender for the complete project and not on the service areas basis.**

#### **Interconnection and Numbering Scheme**

1. The numbering scheme and interconnection should continue to be based on SDCA level as large number of subscribers avail limited mobility facility which is restricted to the local area in which the subscriber is registered. While deploying limited mobility systems service providers are required to follow the SDCA based linked numbering plan so as to authenticate subscriber to a particular SDCA.

2. **Thus the guidelines should clearly specify that for Limited Wireless Service the numbering scheme should be based on SDCA level the terminal of such subscriber in wireless access system can be registered in only one SDCA.**

### **Right of Way**

1. The present license states that the licensee shall make its own arrangements for Right of Way (ROW). The license further provides that non-availability of the ROW or delay in getting permission / clearance from any agency shall not be construed or taken as a reason for non-fulfillment of the Roll-out obligations and shall not be taken a valid excuse for not carrying any obligations imposed by the terms of this Licence. These license conditions are not consistent with the Indian Telegraph Act, 1885 and therefore TRAI may review these conditions.
2. **All statutory clearances obtained for current licenses should be considered valid for Unified License also.**
3. The Indian Telegraph Act 1885, Section 12 provides that any permission by the local authority for telegraph lines or posts may be provided on reasonable conditions. The reasonable condition includes reasonable timeframe to process NOC applications for tower setting. Therefore it is statutory duty of the Central Government and the local authorities to provide NOCs in the reasonable time frame. The Central Government is entitled to lay down guidelines for granting permissions with the specified time period. **The TRAI may clearly bringout in the guidelines that the permission for erecting towers shall be granted within reasonable period and on reasonable conditions.**