

**Vodafone Response to
Consultation on the Draft Guidelines for Unified License/Class License and
Migration of Existing Licensees**

This is with reference to the Consultation Paper dated 10 February 2012 issued by the Authority on the above subject.

At the outset, we would like to submit as follows:

1. The guidelines for a unified license must be harmonized across different service specific licenses and ensure that no party is made worse off.
2. The scope of the unified license cannot be lower/lesser than the individual existing licenses that are now envisaged to come under its ambit.
3. The migration guidelines must consider and address all scenarios. For example at present, in the case of Vodafone, a group company holds a NLD, ILD and ISP License along with UAS License for few service areas, while its other group companies are holding UAS Licenses for different service areas. On migration to Unified Licensing regime, a situation will arise that a Group Company will have All India Unified License that will overlap with the Service Area Unified Licenses of its other Group Entities for the respective Service Areas. This overlap of licenses which is occurring due to legacy issues should not create any inadvertent conflict /violation of existing laws/provisions. In particular, we draw attention to the substantial equity restrictions that exist under the UAS license. We submit that in order to ensure the no worse off principle, the substantial equity restrictions should be waived/removed in case of unified licenses. We however submit that such restriction should instead be applied to spectrum holdings so as to clearly stipulate that no entity can bid/apply for spectrum in a service area where a group company has already been allocated/assigned spectrum, i.e. the spectrum assignment is restricted to only one company in a service area. In such cases that other group company which already has been allocated/assigned spectrum in the service area can only bid/apply.
4. There should not be any District Level Unified License as this would lead to excessive fragmentation as well as problems in monitoring and enforcement.
5. IP-1 should be kept out of the purview of the licensing regime as it would not only be against the provisions of the Indian Telegraph Act but would also inhibit the growth and rollout of the sector. We note that the DoT decision announced on 15 February 2012 has deferred its decision to bring IP-1 under the licensing regime.
6. License obligations should be the same between private operators and state-owned operators, BSNL and MTNL.
7. Migration to Unified License (Restricted) should be optional and not automatic and it should be in form of package.
8. License being a substantive material document, any proposed change in, needs to be critically examined and therefore it is requested that the guidelines should provide that the draft license will be shared for consultation with the stakeholders before finalization.
9. Spectrum Allocations and Charging: The current UASL is issued service area wise and the corresponding spectrum allocations are also made service area wise. Moreover, the

spectrum usage charges vary as per the spectrum allocations and are applicable service area wise. Thus, even if a national level unified license is issued, the respective spectrum holdings and spectrum usage charges shall continue to be applicable service area wise. Even though a uniform rate of license fee on AGR is being considered, but spectrum usage charges may continue to be on incremental rate basis. This shall mean that the unified license will still have to maintain AGR records service area wise for the purpose of payment of spectrum usage charges. The service area concept will therefore continue for spectrum licensing, its allocation and charging purposes even if the telecom license is otherwise at national level. For the purpose of payment of such spectrum usage charges, the books will have to be maintained at service area level and will require corresponding audit. Further for the purpose of spectrum auction, service area wise distinction will be required.

Thus considering all the above factors, it is submitted the spectrum licenses will, for all practical purpose be service area wise.

10. NLD/ ILD services: NLD and ILD activities are proposed to be covered under the unified license. It may be noted that NLD and ILD services are essential wholesale services and competition is necessary for these services. It is therefore important that the national numbering plan, including the existing service area wise allocation of number series for mobile connections, must not be disturbed.

ISSUE-WISE RESPONSE

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

Answer:

I. DRAFT GUIDELINES FOR NEW UNIFIED LICENSE

A. Unified License

1. Framework

- a) We strongly submit that there should not be any District Level Unified License as this would lead to excessive fragmentation as well as problems in monitoring and enforcement. This is our clear and unambiguous submission with regard to all references to District Level Unified Licenses in the entire consultation paper.
- b) We support that service license (unified license) and spectrum license should be separate.
- c) We however note that the revised consultation paper issued by the Authority on 10 February 2012 carries a qualifier on allocation of spectrum, stating that a Unified license will not “per se” carry with it any spectrum, which provisions lends itself to ambiguity and possible misinterpretation. The original draft dated 16 January 2012 was clear and unqualified, stating that the unified license will be given without any spectrum. We submit that this original unqualified wording be retained.

2. Eligibility

- a) We submit that the eligibility conditions must be harmonized across licenses following a no-worse off principle.

FDI Provisions

- b) We suggest that since FIPB guidelines prevail in case of FDI, clause 2.2(a) and (b) are not required in the license. The license should simply specify that licensees must comply with the FDI requirements set by the Government of India through FIPB.. Anything else in the license is setting up a parallel FDI requirement, which has the risk of getting misaligned over a period of time with FIPB guidelines.
- c) In this context, we note that the proposed guidelines put the FDI cap at 74% with FDI up to 49% being allowed through the automatic route. This limit proposed is lower than the existing limit of 100% FDI allowed for IP-1, which could place the IP-1s in a worse-off position in the proposed regime. In any event, it is our firm view that the IP-1 should be kept out of the purview of the licensing regime as it would not only be against the provisions of the Indian Telegraph Act but would also inhibit the growth and rollout of the sector. Our detailed submissions in this regard are given in the issue-wise response.

Net worth Requirements

- d) There is a need to harmonize the net worth requirements in the unified license regime with that applicable to individual licenses that will come under its ambit.
- For example, it appears from Clause 2.3 of the Consultation Paper, that the net worth requirements proposed under unified license will be combined net worth .
 - In respect of the additional guidelines that will be applied in case of spectrum assignment (Para 28), it appears that only the net worth of the promoters will be taken into account. This is out of line with the current UAS licenses which are bundled with spectrum, which take into account the combined net-worth of both the applicant and promoters (who have at least 10% equity stake or more in the total equity of the company).
 - On the other hand we note that the present NLD and ILD guidelines take into account the net worth of only the applicant company and not the promoters and specifically state that the net worth of promoters shall not be counted for determining the net worth of the company.
- e) Based on the principle of no-worse off, we request that for Unified License and for spectrum assignment, the net worth requirements proposed under Unified License take into account the net worth of both the applicant company as well as the net worth of the promoters who have an equity stake of 10% or more in the total equity of the company.

Cross holding Restrictions

- f) As the Authority is aware, at present, the cross-holding restrictions are applicable under UASL but do not apply to NLD/ILD and IP-1. These restrictions were prescribed under UAS License (which came bundled with spectrum) so that competition was not compromised.
- g) We note and agree with the Authority's proposal to remove the cross holding restrictions (holding of substantial equity by a promoter in more than one access service license in

the same service area) in the proposed regime, which envisages the license to be de-linked from spectrum.

- h) We also note the Authority’s proposal in Section B of Part I of the Consultation Paper which proposes that this condition continued to be applied to Unified License/UAS/CMTS/Basic license in the case of spectrum allocation.
- i) As pointed out in previous paras, at present, in the case of Vodafone a group company holds a NLD, ILD and ISP License along with UAS License for few service areas, while its other group companies are holding UAS Licenses for different service areas. On migration to Unified Licensing regime, a situation will arise that a Group Company will have All India Unified License that will overlap with the Service Area Unified Licenses of its other Group Entities for the respective Service Areas. This overlap of licenses which is occurring due to legacy issues should not create any inadvertent conflict /violation of existing laws/provisions. In particular, we draw attention to the substantial equity restrictions that exist under the UAS license. We submit that in order to ensure the no worse off principle, the substantial equity restrictions should be waived/removed in case of unified licenses. We however submit that such restriction should instead be applied to spectrum holdings so as to clearly stipulate that no entity can bid/apply for spectrum in a service area where its other group company has already been allocated/assigned spectrum, i.e. the spectrum assignment is restricted to only one company in a service area. In such cases that other group company which already has been allocated/assigned spectrum in the service area can only bid/apply. This is illustrated through the following table in this respect:

Group Companies	Present		Migration to Unified Licensee	
	Licenses	Spectrum	License	Spectrum
Vodafone South Limited (VSL)	ILD, NLD UASLs – Punjab, AP, Kar, Chennai, WB, UP(W)	No Yes in respect of all UASLs	Unified License – All India	Punjab, AP, Kar, Chennai, WB, UP(W)
Vodafone Mobile Services Limited (VMSL)	UASL - Delhi	Yes in Delhi	Unified License (may also not migrate and continue as UASL)	Delhi

As VSL in future may hold an All India Unified License it will overlap with VMSL license for Delhi Service Area. This should be valid so long in each service area only one group company holds the spectrum. For example, in this case VMSL will only hold spectrum in Delhi while VSL can have Delhi as part of its All India Unified License but it is not eligible to hold spectrum in Delhi. In this case spectrum should include only the access spectrum and not the microwave frequencies (backhaul or access).

In view of the above, Clause 29 of Section B of Part I should be suitably modified and clarified.

- j) We reiterate that there should be no district level licenses.
- k) The terms 'associate' and "stake" should be clearly stated.

3. Application Procedure

- a) We reiterate that there should be no district level licenses.
- b) We suggest that provision in Clause 3.8 of the Part I appears to be unnecessary. Still if at all required, the compliance with license conditions may be a part of the Articles of Association that lay down the rules and cannot be a part of the Memorandum of Association which lays down the objects of the company.

4. Entry Fee

- a) We reiterate that there should be no district level licenses.

5. Scope of License

- a) We first strongly submit that the scope of the unified license cannot be lower/lesser than the individual licenses that are now envisaged to come under its ambit.
- b) For example, we note that the scope of license proposed by the Authority does not include provide intra circle roaming provisions as existing in the current UASL/CMTS. Such oversights may kindly be corrected.
- c) In any case all the permissions given by the Licensor till now and agreed to by the Licensees have to be part of and carried forward either to the Unified License or Spectrum License as the services are being provided and investments have been made consequent to such agreements.
- d) We also note that the draft guidelines provide for the Authority to prescribe tariffs for "facilities" within the provision of the TRAI Act as amended from time to time. We are not clear what facilities are envisaged to be covered under this provision and apprehend that such terms could lend themselves to misinterpretation.
- e) It may kindly be clarified that a national level unified license can offer any or all services under a class license, since VSAT and INSAT-MSS services which can be offered under a Class License cannot be offered under a service area level unified license. It may further be clarified in Para 5.2 (b) that a national level unified license can offer VSAT and INSAT-MSS services.
- f) We reiterate that there should be no district level licenses.

7. Duration of License

- a) We suggest that the duration of license should be for a period of 20 years, extendable by 20 years at a time. This would be in line with the acquisition of spectrum rights which is for a period of 20 years.
- b) The license should also be allocated with a presumption for continual extension. This will ensure that business certainty is ensured, which is vital for investment in the market.

8. Renewal of License

- a) It is first submitted that the term renewal may be replaced with extension as the term used in the present license is “extension.” This has also been pointed out to the Authority by DoT in the context of its recommendations on Spectrum Management and Licensing framework.
- b) The license should also be allocated with a presumption for continual extension. This will ensure that business certainty is ensured, which is vital for investment in the market.
- c) It is also suggested that the extension may be given for 20 years at a time, instead of the 10 years as provided under the current licenses. This is because DoT has been auctioning spectrum rights for 20 years and it would be logical that the underlying operating license has similar tenure/duration.
- d) It will also be rational that if spectrum is allocated for 20 years to an entity under an auction then its corresponding Unified License be extended simultaneously up to that period.

9. Suspension/Revocation/Termination/Surrender of License

- a) We submit that the under the existing regime, the non-obstante clause in the license confers powers upon the licensor to cancel the license under certain defined circumstances; further these circumstances are clearly laid down in the licenses. Further there is also a provision for notice of 60 days to be given by the licensor, which is in consonance with the principles of natural justice.
- b) We submit that unfettered powers cannot be given under the license agreement to licensor.

10. Penalty

- a) We support the rationalization of the penalty provisions as proposed by the Authority. We also suggest that the penalty provisions under license should be in consonance with law.
- b) We submit that the penalty imposed should be commensurate with injury/ damage suffered by the Licensor/ Central Government; that the penal provisions in the license agreement should only be applied in case of a willful breach and not in case of inadvertent lapses/impossibility; that there should be a clear and evident threat to the national security that has been willfully caused and not on the pretext of a presumptive threat to national security. In cases like subscriber verification, due consideration has to be given to the aspects like scale of activity and the lack of IDs before any penalties are initiated. More importantly, sine qua non of regulations cannot be measured on the penalties but depends largely on clear enunciation of the conditions in the license which should be reasonably implementable.
- c) We also submit that there should be a proper hearing and sufficient time to the telecom service provider to defend their case. This would be in line with the principles of natural justice.

- d) We further submit that the Authority should recommend the principles that may be applied whilst determining the penalty amount to be applied in specific instances vis-à-vis the ceiling levels proposed by the Authority for minor and major violations.

11. Financial Conditions - Fee Payable

- a) We submit that this is an appropriate opportunity to revisit the definition of Adjusted Gross Revenues which is the basis for the payment of license fees. At present the definition of AGR under license is subject to misinterpretation, basis which the DoT is seeking to levy a license fee on revenues that have no nexus with the license that has been issued. We believe that
- as the license has been given for telecom services, license fee should be payable only on service revenues – i.e. revenues arising from the provision of licensed telecom services,
 - there should be a matching concept, i.e. both revenues as well as deductions should be allowed on the same basis - whether accrual or paid
 - all payments made to other telecom licensees should be allowed as a deduction.
- b) We believe that once spectrum is delinked from license, as envisaged under the unified licensing regime, it is irrelevant to include fees/royalty payable to WPC as a part of the license provisions. Payment of any charges to WPC would be government by separate agreements, subject to no worse off principle.
- c) AGR means Adjusted Gross Revenue and not Annual Gross Revenue as mentioned in clause 11.2.

General Conditions

1. It is submitted that the right of the Licensor to unilaterally amend the License can be confined to specific and exceptional circumstances of national security, public interest and proper conduct of telegraph. Exercise by the Licensor of this unilateral right must be demonstrably and explicitly justified.
2. In all other instances license being an agreement /contract between parties, can be amended if and only if bilaterally agreed in writing. The written consent of by the licensee is a pre-requisite. The guidelines must explicitly clarify the same.

25. Interconnection

- a) We submit that the unified license should specifically and explicitly state the jurisdiction of the TRAI on Interconnection. The jurisdiction issue has been languishing in Courts for almost seven years and is still to be addressed. On account of this, issues like competition in the intra circle calls from mobile to fixed line, port charges, etc have not been able to be effectively implemented on account of this ambiguity and the challenges to the jurisdiction of the authority. The introduction of the unified licensing regime is a

good opportunity to explicitly clarify this issue and put to rest the subsisting ambiguities on this issue.

27. Security Conditions

- a) It is submitted that the security conditions under license should be with respect to ensuring that Service Providers to take adequate measures to ensure the security of the communication flowing through their network by adopting contemporary information security standards.
- b) We also suggest that the provisions in relation to security should be limited to stating the desired outcomes rather than prescribing the method to achieve the same. This will give the operators the flexibility to ensure that they can implement suitable security arrangements at lowest cost, using the best methods available. Any provisions that prescribe/specify a prescriptive approach may not be able to keep pace with the fast changing developments in technology and would most likely/ may lead to sub-optimal solutions.
- c) As regards the communication assistance to be provided to the Law Enforcement Agencies (LEAs), we most respectfully submit that the role of the operators/licensees should be confined only to extending all facilitation and support to the security agencies. The responsibility for ensuring /meeting national security objectives as also the additional funding, if any required to achieve specific state security requirements should be borne by the Government.

B. ADDITIONAL GUIDELINES FOR SPECTRUM ASSIGNMENT ASSOCIATED WITH UNIFIED LICENCE

- a) As explained earlier, the migration guidelines must consider and address all scenarios. For example at present, in the case of Vodafone, a group company holds a NLD, ILD and ISP License along with UAS License for few service areas, while its other group companies are holding UAS Licenses for different service areas. On migration to Unified Licensing regime, a situation will arise that a Group Company will have All India Unified License that will overlap with the Service Area Unified Licenses of its other Group Entities for the respective Service Areas. This overlap of licenses which is occurring due to legacy issues should not create any inadvertent conflict /violation of existing laws/provisions. In particular, we draw attention to the substantial equity restrictions that exist under the UAS license. We submit that in order to ensure the no worse off principle, the substantial equity restrictions should be waived/removed in case of unified licenses. We however submit that such restriction should instead be applied to spectrum holdings so as to clearly stipulate that no entity can bid/apply for spectrum in a service area where a group company has already been allocated/assigned spectrum, i.e. the spectrum assignment is restricted to only one company in a service area. In such cases

that other group company which already has been allocated/assigned spectrum in the service area can only bid/apply.

- b) In addition to the guidelines proposed by the Authority, we would like to suggest that in view of the explicit service and technology neutral nature of the unified license, the current technology specific approach being adopted in the existing licenses (where there is an artificial segregation of GSM and CDMA spectrum both for allocation as well as charging) be dispensed with under the proposed regime.
- c) We would also submit that the spectrum usage charges be proposed by the Authority at a flat rate (uniform percentage of AGR or a fixed rate per MHz) irrespective of quantum or technology mix deployed.

This is especially desirable as all future spectrum is now to be allocated through auctions (in the light of the Supreme Court judgment dated 2 February 2012) and a flat rate for spectrum usage will ensure:

- Parity amongst all prospective bidders
- Integrity of the auction process
- Government realizes the highest value for spectrum on a composite basis
- Spectrum goes to the entity that values it the most and is therefore best placed to ensure its most optimal use

A uniform spectrum charge will also be easier to monitor and enforce as it will remove all possibilities of arbitrage between technologies and possible diversion or misreporting of revenues. In fact all the arguments and justifications that weighed with the Authority and the Government in introducing a uniform licensee fee regime will apply with equal force to the need for have a uniform charge for spectrum usage.

- d) The Authority may also like to use this opportunity to review the charges for spectrum for microwave access and backbone. This is highly desirable in order to facilitate the move to OFC for achieving national broadband objectives. At present even if a service provider uses MW frequencies in any part of the service area, the charges are payable based on the revenues of the entire service part of the service area, the entire revenues of the operator become exigible to payment microwave charges as per the specified rate. This will dis-incentivize an operator from using fibre in addition to Microwave as such an alternative would add and not reduce his costs. The fibre is laid from point to point and therefore would at best help avoid replacement of a MW Hub along the route of the fibre or create an additional/alternative redundancy option, but as pointed out above, given the structure of MW charging, fibre represents an additional cost and not a savings alternative. A review of the structure of MW charging may partially address this challenge and may incentivize operators to replace MW with Fibre.

III. MIGRATION OF EXISTING LICENCE TO UNIFIED LICENCE

- a) We reiterate that IP-1 should not come under the purview of a unified license but should continue to operate under a registration.
- b) While we support that the existing service specific /service area specific licenses will move to a unified license (restricted) with existing applicable terms and conditions, the terms of migration for migration to a unified license are not clear.
- c) For example, if a company has an NLD/ILD also a UAS/ license for all service areas, then at the very first stage of migration, it has a de facto unified license and therefore no entry fee should be payable for migration to a unified license regime.
- d) A company with an NLD and /or ILD license must per-force look at migrating only to a pan India license. However a pan India unified license envisages a fee of Rs. 20 crores, as against the Rs. 2.5 crores each payable for an NLD and ILD license respectively, thus making the terms of migration extremely unattractive. Further, if the company already has a pan India presence for access (on a service area wise basis) or it has a limited access footprint (only select service areas) and is not interested in providing pan India access, there is no incentive for it to move to a full unified license regime.
- e) The guidelines also do not cover a case where service specific/service area specific licenses have been acquired by different entities in the same Group. This is an area that needs to be specifically examined and addressed by the Authority. The issues like cross holdings etc. may need Authority's attention and may be addressed in the manner mentioned hereinabove. For existing cases, where Chennai and Tamilnadu are two Service Areas, the same should continue.
- f) There is also the issue of different effective dates for different licenses. We suggest that migration to unified license may look at re-setting the clock afresh and propose that all licenses, both new as well as existing be made co-terminous.
- g) It may also be noted that at present FIPB approvals have been taken for service specific licenses, i.e. separately for UAS, NLD and ILD services/licenses. It is not clear that in the event that there is an automatic migration to a Unified License (Restricted) whether there will be a need for amendment in the FIPB approvals. It is suggested that such migration should not affect any existing approvals and should automatically extend the existing approvals upon any such migration and the same should be stated in the guidelines and licenses.
- h) It has been stated by the Authority that on expiry, the licensee shall be required to take a unified license. It may once again be clarified and emphasized that the scope of the Unified license cannot be less than or lower than the scope of the individual service specific licenses that come under its ambit.
- i) We note that the DoT decision announced on 15 February 2012 has deferred its decision to bring IP-1 under the licensing regime. We once again request that IP-1 be allowed to continue to operate under a Registration.
- j) It may also be that the NIA for the auction of 3G spectrum (Clause 3.6) provided that "If the period of an existing UAS/ CMTS license of an operator expires before the expiry of the right to use the 3G Spectrum awarded by means of the current Auction, then the validity of the UAS/ CMTS license with respect to the 3G Spectrum only shall be extended to 20 years from the Effective Date on existing terms without any charges.

The extension shall be done on the application of the licensee made in the 19th year of the UAS/ CMTS licence for extension of the period to make it coterminous with the validity of the right to use the 3G Spectrum”

- k) It may therefore be kindly clarified that the UAS/CMTS/UAS (Restricted)/Unified License will be extended qua the 3G spectrum to 20 years from the Effective Date on existing terms without any charges.
- l) As explained earlier, the migration guidelines must consider and address all scenarios. For example at present, in the case of Vodafone, a group company holds a NLD, ILD and ISP License along with UAS License for few service areas, while its other group companies are holding UAS Licenses for different service areas. On migration to Unified Licensing regime, a situation will arise that a Group Company will have All India Unified License that will overlap with the Service Area Unified Licenses of its other Group Entities for the respective Service Areas. This overlap of licenses which is occurring due to legacy issues should not create any inadvertent conflict /violation of existing laws/provisions. In particular, we draw attention to the substantial equity restrictions that exist under the UAS license. We submit that in order to ensure the no worse off principle, the substantial equity restrictions should be waived/removed in case of unified licenses. We however submit that such restriction should instead be applied to spectrum holdings so as to clearly stipulate that no entity can bid/apply for spectrum in a service area where a group company has already been allocated/assigned spectrum, i.e. the spectrum assignment is restricted to only one company in a service area. In such cases that other group company which already has been allocated/assigned spectrum in the service area can only bid/apply.
- m) Migration to Unified License (Restricted) should be optional and not automatic and it should be in form of package.

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)

- a) **The scope of the unified license cannot be lower/lesser than the individual licenses** that are now envisaged to come under its ambit.
- b) **We reiterate our view that Infrastructure Providers should not come under the ambit of the licensing regime and should continue to operate under a Registration.**
- c) These IP-1s are passive infrastructure providers and are not providing services which are part of the definition of telegraph under the Indian Telegraph Act, 1885. It may also be noted that the current framework has led to IP-1 making a strong and positive contribution to the growth and development of the sector through:
 - Improved network rollout and growth of services in the most cost effective and efficient manner

- Better utilization of capital avoiding unnecessary duplication of capital and infrastructure
 - Greater competition through entry of several players in the sector who were not linked with telecom activities earlier, to provide their resources for infrastructure sharing.
 - Higher tele-density and overall revenue growth of the sector and the more contribution of the telecom sector to the national economy.
- d) Inclusion of IP-1 under the licensing regime would not only be against the provisions of the Indian Telegraph Act but would also inhibit the growth and rollout of the sector. It could also reduce the competition in the sector as it is very likely that entities for whom the IP-1 activity was an incidental or other business, would very likely move out of this business rather than get into unnecessary licensing and fee issues. In this context it may be noted that at present the Government seeks to impose a license fee on the entire revenues of the company irrespective of whether the same arises from non-telecom activities. Entities for whom telecom revenues are a fraction of their total revenues would prefer to exit the infrastructure business rather than make their entire revenues exigible to license fees.
- e) In view of the above, we believe that there are strong and logical reasons for IP-1 to continue under the existing framework rather than be brought under the purview of the licensing regime. We believe that the unified licenses should be awarded only at the national level and service area wise level. **We are not in favour of a district level unified license as it could lead to excessive fragmentation of the market as also problems in monitoring and enforcement.**
- f) It is also especially emphasized that **the national level or service area wise licenses should be the choice of the licensee /licensee applicant.**
- g) This is **especially important whilst formulating a migration package for existing licensees** that have a legacy of the existing service area wise licensing regime, especially with regard to allocation of spectrum, which is done on a service area wise basis, imposition of rollout obligations, different effective dates for different licenses, etc. This is especially important for the principle of no-worse off.
- h) Attention is also drawn to the **NLD/ ILD services which** are proposed to be included under the ambit of a unified license. It may also be noted that NLD and ILD services are essential wholesale services and competition is necessary for these services. **It is therefore important that the national numbering plan, including the existing service area wise allocation of number series for mobile connections be left undisturbed.**
- i) It may further be noted that the **terms and Conditions as regards eligibility may vary if an operator is National level or Service Level Licensee or holding different**

licenses in different names. The draft guidelines presume that all licenses are national level Unified License. It is submitted that all scenarios of migration from UASL, NLD and ILD to Unified License must be carefully examined and terms must be harmonized on a no-worse-off basis.

For example, there are instances where the **existing operators have different licenses under different corporate entities.** There will be complexities involved in migration that need to be addressed holistically after taking into account all facts and aspects.

- j) The Authority may also like to clarify the framework of the unified licensing regime proposed by it versus the framework that has been proposed in the draft NTP-2011, i.e. which envisages technology neutral Unified Licenses to be in two separate categories, i.e. Network Service Operator (NSO)/ Communication Network Service Operator (CNSO) and Service Delivery Operator (SDO)/ Communication Service Delivery Operator (CSDO).

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)

- a) We believe that the penalty imposed in various cases of violations of terms and conditions of the Licence should be commensurate with injury/ damage suffered by the Licensor/ Central Government keeping in view various aspects including National Security.
- b) We also believe that the penal provisions in the license agreement should only be applied in case of a willful breach and not in case of inadvertent lapses/impossibility. In cases like subscriber verification, due consideration has to be given to the aspects like scale of activity and the lack of IDs before any penalties are initiated. More importantly, sine qua non of regulations cannot be measured on the penalties but depends largely on clear enunciation of the conditions in the license which should be reasonably implementable.
- c) Further, there should be a clear and evident threat to the national security that has been willfully caused by the operator. There have been several instances in the past wherein the DoT had imposed the maximum penalty on a pretext of a presumptive threat to national security and without even giving any proper hearing or sufficient time to the telecom service provider to defend their case.

d) We support the penalty ceilings being proposed by the Authority for minor and major violations for service area /national level licenses. This of course needs to be granulated and certain principles need to be enunciated by the Authority based on which actual penalties can be imposed within the ceiling prescribed under license.

e) The principles that may be kept in mind are reasonableness, proportionality, willful or inadvertent, whether the licensee was in a position to prevent the violation/breach, extent of injury caused, etc. attention is specifically drawn to instances of non-proportional penalties being imposed in case of subscriber verification, penalties are imposed for upto Rs. 50,000 per form (going up to 2 lakhs per form in the North east)

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?

a. We suggest that IP-1 should not come under the purview of a unified Licensing regime but should continue to operate through a Registration. We have already given detailed justification in pre-paras on why IP-1 should not be included in the purview of a licensing regime.

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

a. We submit that Voice mail/Audiotex/UMS services and Radio paging should come under the purview of a Unified License.

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

We believe that once the unified license covers provision of “any telecom service” there is no scope for envisaging ‘any other’ service that needs to be brought under the purview of a unified license.

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?

We believe that under the current framework of the TRAI Act and the Indian Telegraph Act, the function of granting all types of licenses vests with the DoT.

- 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.**

We strongly believe that IP-1 should not come under the purview of Unified Licensing, but should continue to operate through a Registration. We have already given detailed justification in pre-paras on why IP-1 should not be included in the purview of a licensing regime.

- 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.**

We support the removal of the restriction on holding of substantial equity in the proposed unified license regime. We support the inclusion of this restriction whilst applying /bidding for spectrum in the spectrum license and not in the unified license for the reasons mentioned herein para-wise reply.

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

Transfer of License: The conditions of transfer of or assignment of license, including tripartite agreement are detailed in UASL. Some of the Licensees and DoT have executed tripartite agreement. There is no such provision in the guidelines on these issues and it must be clearly stated that the rights of the Licensees will not be disturbed by such migration.