ASIA PACIFIC CARRIERS' COALITION

(Incorporated in the Republic of Singapore)

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Telecom Regulatory Authority of India (TRAI)
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(No. of Pages: 3 Only)

Attention: Shri Sudir Gupta
Principal Advisor

Dear Sirs

APCC Comments on TRAI's Consultation (No.03/2012) on Draft Guidelines for Unified License / Class License and Migration of Existing Licenses

This submission is provided by the Asia Pacific Carriers' Coalition ("APCC") in response to the TRAI's request for comments on its draft Guidelines for Unified License/Class License and Migration of Existing Licenses.

The APCC is an industry association of global and regional carriers operating in the Asia Pacific region, formed to work with governments, national regulatory authorities and consumers to promote open market policies and best practice regulatory frameworks throughout the Asia Pacific region that will support competition and encourage new and efficient investment in telecommunications markets. APCC's submission reflects the consensus of opinion among at least a majority of the APCC members. Therefore none of the views expressed in this submission should be attributed to any individual member of the APCC.

The APCC welcomes TRAI's initiative in developing and drafting the guidelines for the Unified Licensing regime. The APCC would like to make specific comments on three of the issues listed in the consultation paper.

Unified Licence (UL) Scope

The APCC supports that the intent of the TRAI is for the UL to be service agnostic and technology neutral, allowing the provision of any telecom service on non-exclusive basis, anytime, anywhere, using any technology within the licence area.

However, we note that the proposed service and technology neutral approach seems to be subsequently qualified with specific restrictions to segment PSTN and VoIP/IP Telephony networks in general and more specifically, extending to the Closed User Group (CUG) environment. This effectively would impact the transition towards achieving telecoms regulatory maturity, contrary to the proposed NTP's objective to promote for the convergence of services, technology and devices.

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Specifically, we would recommend that TRAI reconsider its proposed approach to PSTN and VoIP/IP Telephony networks, the rationale behind the specific restrictions, in view of the objectives of the proposed NTP and international best practices, where VoIP/IP Telephony services are generally liberalised in developed markets (e.g. Australia, New Zealand, Japan, Hong Kong, Singapore, South Korea) at variance with being strictly regulated in emerging markets. Liberalising the VoIP/IP Telephony services market would provide further impetus to the growth of the telecoms sector in India. Further, we believe that an unrestricted VoIP/IP Telephony services market would significantly boost further growth of the IT (Information Technology), ITeS (IT enabled Service), and BPO (Business Process Outsourcing) sectors, being the sunrise industries which are driving exponential growth and contribution to India's GDP.

We also recommend TRAI to allow the resale of any telecom service at both wholesale and retail levels under the UL, in view of the international best practices as most of countries allow the resale of any 3rd party telecom services, some with specific reseller licence whilst a full fledge telecom licensee would normally be allowed to resell any 3rd party telecoms services without the requirement to provide any value add.

As a general note, APCC encourages TRAI to take into consideration the importance of ensuring the harmony between the proposed UL regime and the proposed National Telecom Policy 2011 (NTP), during the finalisation of the draft guidelines, in particular addressing any potential discrepancies between the two instruments. APCC's experiences in other jurisdictions looking to undertake a major exercise such a licence regime change is that it is critical to "get it right the first time" and avoid making numerous changes that could prove unsettling for industry. We believe that this point is particularly pertinent given news that the Department of Telecom (DOT) is looking to announce its timetable for implementation of the NTP by the end of April this year.

<u>Entry Fee</u>

The draft guidelines prescribe an entry fee of INR 20 crores for a nation-wide Unified License. However, it is not clear how the proposed amount is decided. While it is important to have an entry fee to deter fly-by-night operators, it is equally important to ensure that the existing service providers are not placed in a worse off situation. In this regard, we would suggest the following for TRAI's consideration:

a) The entry fee is generally applicable for new entrants. The existing service providers should not be asked to pay the said entry fee. By virtue of being existing licensees, the stipulated entry fee has already been paid. At best a nominal processing fee may be suggested in the event the relevant licensee decides to migrate its existing licence.

b) The entry fee should be based on the additional service(s) which the licensee wishes to provide. In the event of no new service being planned to be offered post migration, no additional or stipulated entry fee should be levied.

<u>Minor and Major Violation</u>

We believe that it may be too subjective to classify actions determining minor and major violation for the purpose of levy of penalty. Generally, minor violation may perhaps be related to administrative

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compliance issues whilst major violation may perhaps related to the security breach/financial loss to the ex-chequer/criminal offence.

In consideration that the rationale of imposing a penalty would often be intended for the purpose of maintaining order and deterring wrongdoing, we would not encourage TRAI to specifically classify actions which may be considered as minor or major violation. A potential action which may be considered as violation would essentially depend on the facts of the case.

Penalty Determining Factors

The APCC does not object to financial penalties but submits that such penalties should not be administratively imposed. Rather, TRAI should be authorised to apply to a court of competent jurisdiction to make an order imposing the appropriate penalty. This would be consistent with international best practice.

Further, we would recommend that TRAI considers a wider scope of sanctioning tools to enforce on violations, which may include recommendation of financial penalties besides warnings, specific directions/orders, public apologies, seizure of equipment, suspension/termination of licence, etc., where the sanction imposed should correspond with the degree of the violation.

The following aggravating and mitigating factors may be useful to facilitate TRAI's assessment on the appropriate sanctions:

- Severity of violation
- Mitigation actions taken by licensee
- Willful negligence
- Impact on end-user(s) and/or other licensee(s)
- Benefit from violation
- Prior and repetition of violation
- Early admission of violation
- Cooperation with investigation
- Financial standing of offender

In conclusion, the APCC and its members are interested in the development of the Unified Licence Regime as the outcome would either improve or impact the telecoms regulatory environment in India hence we would be glad to assist TRAI on any further consultation or international best practices info-sharing which TRAI may require.

Yours faithfully

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