

**Response
To
Consultation Paper On
Review of license terms and conditions and capping of number of access
providers
Dated June 12, 2007**

Should the substantial equity clause (1.4 of UASL) continue to be part of the terms and conditions of the UAS/CMTS license in addition to the M&A guidelines? Justify.

a. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.

b. If no, should such acquisition in the same service area be treated under the M&A Guidelines (in the form of appropriate terms and conditions of license)? Suggest the limit of such acquisition above which, M&A guidelines will be applied.

The substantial equity clause should continue to be part of the terms and conditions of the UAS. The reasons are as follows,

- 1) None of the parameters in the M&A guidelines captures this aspect(Legal Entity's cross holdings across telecom units) in a crisp manner
- 2) There may be no mergers happening in the service area but the legal entity can exercise greater amount of control in top 2 companies of the service area(by purchase of shares) which may result in cartelization
- 3) My proposal is the following.

a) The legal entity is allowed to have any percentage on his primary telecom company. Equity share holding of 20% and above on a company (say A) having more than 10% subscriber base on a service area becomes primary company for the legal entity. He's then disallowed to have more than 20% in any other telecom company of that service area.

b) If criteria (a) met, Sum of products of percentage subscriber base and percentage holding in the secondary telecom companies of the legal entity should be less than prescribed limit.

Example::

*0.1(10% subscriber base company B)*0.1(10% of equity holding by legal entity on company B) + 0.05(Company C subscriber base %) *0.2 (Legal entity's hold on Company C) should be less than or equal to 0.01(example value).*

c) For a legal entity that doesn't have primary company as described in criteria (a) should have sum of products less than or equal to 0.2.

Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?

Yes.....They should be taken out of the definition since that may help in future for the government to take control of the ailing companies in order to protect the subscribers of those companies during unforeseen circumstances.

Should present roll out obligations be continued in the present form and scale for the Access service providers or should roll out obligations be removed completely and market forces be allowed to decide the extent of coverage? If yes, then in case it is not met, existing provision of license specifies LD charges upto certain period and then cancellation of license. Should it continue or after a period of LD is over, enhancement of

LD charges till roll out obligation is met. Please specify, in case you may have any other suggestion.

The Indian teledensity has not reached substantial amount for the roll out obligations to be removed and it should be continued for some more time. The cancellation of license criteria should continue to be there because it's like severe most consequence which could be exercised. Otherwise operators will tend to ignore calls from TRAI as long as there's shield around their licenses.

Is there a case for doing away with the performance bank guarantees as the telecom licensees are covered through the penalty provisions, which could be invoked in case of non-compliance of roll out obligations?

PBG should continue to exist since getting the penalty amount from the operators on non-compliance is not an easy task. This also indicates that operator is capable of mopping up financial resource in the first place. If he can't mop up this little amount then there is no guarantee that he would meet the roll out obligation where it requires more fund in the first year of service.

What additional roll out obligations be levied on ILD operators?

NLD and ILD operators need not have any roll out obligation since the urban-rural gap will automatically filled if the roll out obligation of UASL is met.

As the licensees are contributing 5 per cent of AGR towards the USOF, is it advisable to fix a minimum rural roll out obligation ? If yes, what should be that. If no, whether the Universality objectives may be met through only USOF or any other suggestions.

USOF itself will not solve the problem. USOF is a resource and roll out obligation is a method. Both have their own purposes. The stated rural roll out obligation of 2.1 GHz band that 10% in 3 years and 15% in 5 years is not sufficient. The rural roll out obligation should be based on BTS with QoS.

In case of rural roll out obligation, whether number of BTS in a certain area a viable criterion for verification of rollout obligation?

BTS is a very good parameter but it varies from technology to technology and it has to be defined properly. Along with BTS, QoS is also very critical since operators might cheat with count of low power BTS. Hence I would propose number of BTS with specified QoS as the criteria for rural roll out obligation.

What should be the incentives and the penalties w.r.t. rural roll out obligations?

As I said earlier that we've to address both resource and method even in penalties. The contribution of the operator towards the USOF has to be increased and the operators have to be forced to share his already built rural passive infrastructure at low cost than the prevailing market rate.

As for as incentives are concerned the operator should be given more share in the USOF fund depending on the performance exceeding the expected roll out obligation. As said earlier performance is a mix of QoS and number of BTS.

Should there be a limit on number of access service providers in a service area? If yes, what should be the basis for deciding the number of operators and how many operators should be permitted to operate in a service area?

There shouldn't be any explicit limit on number of access service providers in a service area but it should get implicitly limited due to the available spectrum and technology used in the band. At any time there should be static prescribed transparent method of allocating available spectrum in a band for particular technology in particular service area as followed in 2G.

How should the market in the access segment be defined?

Since the market is more oriented towards subscriber addition I would say we can continue using subscriber base as market definition till this trend changes,

Whether subscriber base as the criteria for computing market share of a service provider in a service area be taken for determining the dominance adversely affecting competition, If yes, then should the subscriber base take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer

It should be sum of HLR and (cumulative weighted daily average of past 2 months on VLR). Obviously more weight applied to later calendar days.

As per the existing guidelines, any merger/acquisition that leads to a market share of 67% or more, of the merged entity, is not permitted. Keeping in mind, our objective and the present and expected market conditions, what should be the permissible level of market share of the merged entity? Please provide justifications for your reply?

This should be replaced by safe harbor methods followed in Hong Kong. That method is very good since it takes care of both HHI and CR.

Should the maximum spectrum limit that could be held by a merged entity be specified?

a. If yes, what should be the limit? Should this limit be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA operators? If yes, please specify the respective limits?

b. If no, give reasons in view of effective utilisation of scarce spectrum resource?

The spectrum limit should not be there since the "safe harbour" on M&A guidelines will take care of competition. In the identical technology merger, after the merger the total spectrum available with the operator should be compared against the normal flow of spectrum allocation wrt total subscriber strength of the merged entity. If found in excess operator should be asked to surrender extra spectrum. In the cross technology mergers the operator should be asked to choose the primary technology and that technology's spectrum allocation should follow the normal flow and the secondary technology's initial spectrum allocation should be reduced to the level of incremental band (2*2 MHz for GSM and 2*1.25MHz for CDMA) if substantial number of subscribers' for that technology are not available at the time of merger.

Should there be a lower limit on the number of access service providers in a service area in the context of M&A activity? What should this be, and how should it be defined?

There should be limit on the number of access service providers in a service area and it should be based on what we follow for concentration ratio method in safe harbour method. If its CR4 then minimum should be 4. If its CR3 then minimum should be 3.

What are the qualitative or quantitative conditions, in terms of review of potential mergers or acquisitions and transfers of licenses, which should be in place to ensure healthy competition in the market?

As a regulatory philosophy, should the DoT and TRAI focus more on ex post or ex ante competition regulation, or a mix of two? How can such a balance be created?

After thorough analysis I came to the conclusion that best method suited for India market situation would be safe harbour methods followed in Hong Kong. If the calculations come above the limits it doesn't mean that the merger should be nullified it only signals DoT to start the investigation and arrive at a conclusion whether to allow this merger or not. This is ex ante regulation. Suppose the calculations fall below the limits but very close to either of the limit then DoT can allow the merger and put the merged entity under its observation for next one year with power to

cancel the merger if it observes the market destabilization. This is post ante measure. I would propose above hybrid method.

In view of the fact that in the present licensing regime, the spectrum allocation is based on the technology chosen by the licensee (CDMA or TD MA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?

Should be assigned in the same license and as I discussed earlier in the merger section the initial allocation of spectrum in secondary technology should be in incremental band and shouldn't be like green field one(2*4.4 MHz or 2*2.5 MHz).

In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable or the chosen alternate technology

It should be like additional spectrum and the price will follow the similar normal incremental path for that technology.

What should be the priority in allocation of spectrum among the three categories of licensees given in ¶4.16 of the chapter?

- 1) The new licensees are waiting for initial spectrum allocation for starting the mobile service
- 2) The existing licensees are eligible for additional spectrum allocation as per the WPC criterion
- 3) The existing licensees wants spectrum for deploying alternate technology also.

As listed above with 1 being highest priority and 3 being lowest priority.

This is logical order if you consider monopolization factor. 3 is tending to higher monopolization and 1 is tending in opposite direction.

Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?

The same roll out obligations should be applicable as its applicable for another green field operator of that alternate technology. The spectrum shouldn't be wasted at any time.

Lastly, as such service provider would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to him?

As said earlier other than the initial smaller band allocation for alternate technology rest of the moves will be similar as per existing norms of each technology and depending on the number of subscribers in each technology.

LICENSING

We should completely have a new look at the licensing methodology. Have a look at the following picture which describes my proposal

Technology	FttX, ADSL, ADSL2+, Digital transmission over Coaxial Cable, Broadband over power cable, ISDN etc.,	GSM, CDMA, WiMax, HSDPA, EvDO etc.,
Operators	BSO, CSP, MSO, ISPs, Power Transmission Corporations, etc.,	Mobile (limited and full), FWP, ISPs, MSO (IPTV over WiMax) etc.,
	UAWSL	UAWLSL
	UASL	

My suggestion would be to have 3 different licenses.

- 1) UASL → Unified Access Service License
- 2) UAWSL → Unified Access Wired Service License
- 3) UAWLSL → Unified Access Wire Less Service License

UASP can work on both wired and wireless medium.

All the current UASPs can continue to hold the license.

The current CSP (Cable Service Provider), MSO (Multi system operator), ISP (internet service provider) can be migrated to UAWSL on payment of certain entry fee.

Current wired ISPs or MSOs interested in WiMax can bid for UASL.

Advantages of this 2 tier approach

- 1) Wired and Wireless world are separated
- 2) Wireless license will be costly because of the spectrum crunch so service providers can get less costly UAWSL if their capex capacity is low.
- 3) New green field ISPs and MSOs who want to directly enter wireless market can only buy UAWLSL license instead of UASL.
- 4) Helps power transmission corporations to enter broadband business with cost effective UAWSL once broadband over power cable matures.
- 5) For UAWSL, we can completely remove roll out obligations since the medium is their own investment.
- 6) Only UAWLSL portion of UASL will have roll out obligation.
- 7) Since the license doesn't specify about the technology, operators will be in advantageous position to use any of the technology in that domain
- 8) For wireless domain the alternate technologies can be deployed subject to availability of the spectrum and paying the corresponding spectrum fee.

- 9) Any licensee in any domain is allowed to provide telephone, broadband and television without any further license.
- 10) UAWSP can have wireless back-haul by becoming enterprise customer for UAWLSP/UASP.

After deployment of above licensing methodology, for Mergers & Acquisitions wired and wireless domain should be treated separately. Till wired market matures* M&A guidelines shouldn't be applied on wired domain. Market forces should be given free hand.

*till all the MSOs and ISPs provide IPTV and VoIP/Landline.

Supporting new Technologies

The following is an extract from the consultation paper. It quotes certain clause of UASL.

License agreement for unified access services

“23.1 The Licensee shall provide the details of the technology proposed to be deployed for operation of the service. The technology should be based on standards issued by ITU/TEC or any other International Standards Organization/ bodies/Industry. Any digital technology having been used for a customer base of one lakh or more for a continuous period of one year anywhere in the world, shall be permissible for use regardless of its changed versions. A certificate from the manufacturers about satisfactory working for a customer base of one lakh or more over the period of one year shall be treated as established technology”

If you look at the highlighted text of the quote it puts the obstacle on the deployment of new technology on Indian soil. India being a technology super power, DoT should support the new technology to be experimented on Indian condition for the first time in the world. In order to demystify the apprehensions about deploying untested technology, the operator who got the license for this technology should be allowed to prove that in any one of the circle of his choice. If it's satisfactorily proven then he should be allowed to deploy this technology pan-India. The other operators should also be allowed to license that technology from then on.

Suggestion on 3G Licensing ::

Since ITU is going to ratify WiMAX as one of the IMT-2000 technology, while licensing it should be treated as one of mobile technologies(others being HSDPA,EvDO) and not as fixed wireless broadband technology. DoT should not allow city wise allocation and it should be allotted only circle wise. WiMax handsets are just 6 months away and we should be prepared for it. DoT should put earnest effort in providing 2.5 GHz for WiMax, the band most suited for rural deployment and helps in economies of scale.

Ways to improve QoS ::

Although QoS has been talked length and breadth there has been no improvement in this aspect so far. Leaving out the steps required by the operators there are many good things which can be done by regulator to improve QoS.

- 1) The first and foremost is **number portability**. This is some thing which is possible when our teledensity is as low as 18% although difficult. It'll become insurmountable from just being difficult now if we try to implement when our teledensity reaches 50%.

2) TRAI can advice DoT and Government to support and subsidize 2-mode(GSM &CDMA) handsets. These are the days when the mobile price is as low as Rs.800. Hence if we can have dual-mode handset at around Rs.2000 people would be ready to spend. The above steps would help the people to overcome their inertia and seek better quality service.