

MTNL/RA/TRAI/CP on license terms & conditions/2007
Dated: 16.07.2007

To,
The Advisor (MN)
TRAI
Mahanagar Doorsanchar Bhawan
New Delhi – 110 002.

Sub: Comments on consultation paper on “ Review of key license terms and conditions and capping of number of access providers”.

TRAI has issued consultation paper NO. 7/2007 on 12.06.2007 on the subject “Review of key license terms and conditions and capping of number of access providers” and asked the stakeholders to comment on the issues mentioned in Chapter 7 of the consultation paper.

Before giving the comments on the issues raised in the consultation paper, the Authority is requested to consider the following:

- 1) MTNL and BSNL are both PSUs under DoT operating in complementary areas. The competitors have pan India presence and the two PSUs together only can give pan India services to effectively meet the competition. Thus, for licensing and regulatory issues the two PSUs need to be treated as a single entity.
- 2) It may please be noted that it is only because of the effective competition given by these PSUs to the private players that the subscribers of mobile services are enjoying the lowest tariffs. It was only after the GSM services launch by the PSUs that the private players were forced to bring down tariffs. Similarly, The CDMA services offered by the two PSUs prevented CDMA private players to offer tariff plans comparable to their GSM counterparts. Thus the two PSUs have played the important role of

providing effective competition and thus preventing the formation of cartels against the interests of the common consumer. The Licensor has very judiciously decided to allow the two PSUs to provide all types of telecom services to keep the market competitive for private players in all types of telecom services. This is also evident from the declaration by the Government that spectrum for 3G services will be allotted to the two PSUs along with other private players though not on the same terms.

- 3) MTNL is providing telecom services in Delhi and Mumbai only. After getting the NLD license, MTNL has made calls between these two cities much cheaper on local call rates. The concept can not be expanded further in view of high carriage charges to be paid by MTNL. On the other hand, the competitors of MTNL are integrated players providing access as well as long distance services across the country. This puts MTNL at a disadvantageous position. It is suggested that like terminating charge , originating charge of 40 paise /minute may be fixed and residual left to the NLDO.
- 4) The competitors of MTNL have migrated to UASL while MTNL has not been allowed. The same is the condition with BSNL. This has resulted in an anomaly that the CDMA services of the competitors are now full mobile services while the same services of the PSUs are limited mobile service. A subscriber of Delhi having Garuda service can not use it in neighbouring Faridabad, Ghaziabad, Noida, Gurgaon. This serious limitation prevents him for opting for this service while the same CDMA service of Tata or Reliance is working in all these areas along with operation throughout country on roaming. This example clearly shows that Garuda service of MTNL and Tarang service of BSNL are unable to meet the challenge of the competitors of the of same service due to outdated licensing restrictions. Limited mobile service has got no meaning in today's telecom scenario and needs to be replaced with full mobility in the interest of consumers as well.
- 5) Further certain value added services data services and internet telephony services have been allowed under Unified Access Licence. Since the licence of MTNL permits to provide new services, the modifications in the UAS licence should be deemed to have been incorporated in the Basic Service license of the MTNL as has already been done while allowing CDMA services.

It may please be noted that as per licensing conditions, mobile operators are not required to pay any fee for migration to UASL.

It is once again requested that Authority may take into account the above facts while considering the issues raised in the consultation paper.

Issue wise comments:

Ques.1. How should the market in the access segment be defined (see 2.22)?

Ans. The market in the access segment is presently measured as landline plus FWT and mobile separately. From the news in media it is learnt the internet telephony using VoIP is proposed to be provided by the ISPs in a big way. Further this may be using access using WIMAX. Since various technological developments will continue to be deployed in the network, measuring subscriber base on technology basis will become more cumbersome. Technological developments now permit access on wireless while outdoors and on wireline indoors on the same subscriber number enabling optimum utilization of scarce spectrum . Under these circumstances, it is difficult to say whether the subscriber is a wireline subscriber. It is therefore proposed that the combined subscriber base may now be used for assessing market share.

Ques.2. 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 located register (VLR) data? Please provide the reason in support of your answer?

Ans. Yes, subscriber base should be the criteria for computing market share of a service provider in a service area taken for determining the dominance.

The subscriber base should continue to be calculated as per the existing DoT guidelines i.e. as per the Home Location Register (HLR) and Exchange Data Record (EDR) as Visitor Location Register (VLR) gives the number of active subscribers hooked up in the network at that time which includes the number of in-

roamers in the network. So, it does not give the true picture of the customer base. HLR, therefore, should continue to be the criteria for computing the subscriber base. However, as mentioned in Ans (1)above, the market share should be computed taking all access segments into account together.

Ques.3. 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 the expected market conditions, what should be the permissible level of market share of the merged entity? Please provide justification for your reply?

Ans. In response to ques.1, it is proposed that the combined subscriber base may now be used for all licensing and regulatory issues. Accordingly, the market share cap of 67% in case of merger/ acquisition as per existing guidelines may be reduced to 50%.

Ques.4. 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 limit?

b) If no, give reasons in view of effective utilization of scarce spectrum resource?

c)

Ans. Yes, the maximum spectrum limit that could be held by the merged entity should be specified. The limit should be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA. For GSM/GSM, it should be 15 MHz & for CDMA/CDMA, it should be 10 MHz. Alternatively, the merged entity may be allowed to retain access segmentwise spectrum limited on the basis of total subscriber base of the service type.

Ques.5. 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?

Ans. The present limit of minimum three access service providers in a service area should be continued.

Ques.6. 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?

Ans. The criteria of 50% cap on the market share, 10% limit on substantial equity and minimum numbers of operators (3) will ensure healthy competition in the market. The method adopted by the TRAI for measuring competition level is Concentration Ratio. The HHI method of measuring competition is in use in US. From the details given in the consultation paper it appears that some well defined method of correlation in the two systems is already available and thus the existing proven method of measuring competition may continue to be followed.

Ques.7. 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?

Ans. More thrust should be given on ex ante as there will be fewer elements of confusion and disputes. Thus, the approach will be more investor friendly due to certainty & objectivity.

Ques.8. Should the substantial equity clause (14 of UASL) continue to be part of the terms and conditions of the UAS/ CMTS license in addition to the M&A guidelines? Justify.

Ans. Yes, the substantial equity clause (14 of UASL) should continue to be part of the terms and conditions of the UAS/ CMTS license in addition to the M&A guidelines to avoid the conflict of interest.

Ques.9. If yes, what should be the appropriate limit of substantial equity? Give detailed justification?

Ans. The appropriate limit of substantial equity should be 10% because if the limit of substantial equity is increased, it may lead to cross holding which shall be against the healthy competition.

Ques.10. 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.

Ans. Not Applicable.

Ques.11. Whether a promoter company/ legal person should be permitted to have stakes directly or indirectly in more than one access License Company in the same service area?

Ans. Yes, but the total sum of stake directly or indirectly in more than one access License Company in the same service area should be subject to the clause of substantial equity.

Ques.12. Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

Ans. Yes, the persons falling in the category of promoter should be defined. Any person who has substantial equity as per the substantial equity clause should be considered as a promoter of the company.

Ques.13. Whether the legal person should be defined and if so category of persons to be included therein and if not the reasons therefore?

Ans. Yes, the legal person should be defined as per Indian Legal system, Company Act & Income-Tax Act.

Ques.14. Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?

Ans. No, there should not be any exemption for the Central government, State governments and public undertakings for the purpose of calculating the substantial shareholding to ensure the level playing field.

Ques.15. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a license using one technology should be assigned additional spectrum meant for the other technology under the same license?

Ans. Status quo should be maintained. However, fresh allocation of spectrum for deploying alternate technology may be decided based on the availability of spectrum keeping in view the requirement of spectrum of the existing operators as per the existing WPC guidelines. Gross allocation of spectrum may only be considered when sufficient spectrum is available.

Ques.16. In case the licensee is permitted, then how and at what price the licensee can be allotted additional spectrum suitable for the chosen alternate technology?

Ans. Not applicable in view of response to Q(15) please.

Ques.17. What should be the priority in allocation of spectrum among the three categories of licensees given in 4.16 of the chapter?

Ans. As it is easy for an existing operator to roll out faster in comparison to the new entrant, therefore, the priority in allocation of spectrum among the three categories of licensees as given in 4.16 of the chapter should be as below:

- i). The existing licensees are eligible for additional spectrum allocation as per the WPC criterion. However, in view of massive task being done by MTNL and BSNL for getting spectrum vacated from Defence , they must be given priority in future spectrum allocations.
- ii). The new licensees are waiting for initial spectrum allocation for starting the mobile service.

- iii). The existing licensees want spectrum for deploying alternate technology. This may be considered only when sufficient spare spectrum is available.

Ques.18. Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?

Ans. Subject to response to Q(15) , when sufficient spare spectrum is available. There should be additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use.

Ques.19. Lastly, as such service provider would be using two different technologies for providing the mobile services, therefore, what should be the methodology for allocation of future spectrum to him?

Ans. Since the spectrum is issued after strict scrutiny under tight norms, the total spectrum for each service needs to be regulated separately. This is important because the frequency band for each service is separate. The customer base of the respective service should be the criteria for allocation of future spectrum.

Ques.20. 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.

Ans. Yes, present roll out obligations should continue in the present form and scale for the Access service providers. In case, it is not met, existing provision of license i.e. LD charges upto certain period and then cancellation of license should continue. Alternatively, a minimum annual license fee may be prescribed to

ensure that new licencees are forced to roll out network to achieve breakeven early.

The present discussion on Urban and Rural areas may only be continued and the new concept of semi-urban (para 5.23) may not be introduced now to avoid further complexities.

Rural Roll out obligations as mentioned in para 5.29 may help in bridging the rural –urban divide and need to be imposed on operators having licenses for circles with rural areas. However, the concept of VPT's already in vogue is apt in Indian conditions in view of the financial status of the rural masses. Till the time their basic requirement of life including food, shelter & clothing are met, community based communication facilities based on use & pay principle need to be made accessible to them.

Ques.21. 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?

Ans. Yes, it should be continued.

Ques.22. Should roll out obligations be again imposed on the existing NLD licensees? If yes, then what should be the roll out obligations and the penalty provisions in case of failure to meet the same.

Ans. No, roll out obligations should not be imposed on the NLD licensees. It should be left to market forces.

Ques.23. What additional roll out obligations be levied on ILD operators?

Ans. Roll out obligations are not required for ILD operators.

Ques.24. What should be the method of verification of compliance to rollout obligations?

Ans. In addition to coverage, subscriber base as per Home Location Register (HLR) and Exchange Data Record (EDR) along with

corresponding revenue should be considered for verification of compliance to rollout obligations.

Ques.25.What indicators should be used to ensure quality of service?

Ans. TRAI has already specified quality of service parameters for basic, cellular and broadband services. The same should be used to ensure quality of service.

Ques.26. As the licensees are contributing 5 percent of AGR towards the USOF, is it advisable to fix a minimum roll out obligations? If yes, what should be that? If no, whether the Universality objectives may be met through only USOF or any other suggestions.

Ans. AGR based contribution towards the USOF should be continued to boost the rural infrastructure. However, this alone may not be sufficient to increase the tele-density in rural areas. Therefore, there should be minimum roll out obligations to improve the penetration of telecom services in rural part of the country as envisaged in para 5.29 of the consultation paper. Licensees are contributing 5% of AGR towards USOF. The existing method of bids for USO fund utilization for rural roll out has not been very effective in optimizing utilization of USO funds as due to competitive bidding the off take is very low. The contribution may therefore be reduced to 2-3% from 5% and rural rollout obligation as mentioned above may be imposed.

Ques.27. In case of rural roll out obligations, whether number of BTS in a certain area a viable criterion for verification of rollout obligations?

Ans. Yes, Number of BTS installed in a certain area can be used for verification of rural roll out obligations.

Ques.28. What should be the incentives and the penalties w.r.t. rural roll out obligations?

Ans. The concept of rural roll out obligations is expected to give boost to rural coverage and thereby reducing the digital divide. However a combination of incentive and penalty, incentive for wider coverage and penalty for insufficient coverage appears appropriate.

Incentives may be given in the form of waiver/discounts on the license fee for certain period. Penalty may be decided in the form of LD charges.

Ques.29.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?

Ans. The telecom market in India is fiercely competitive. Also, the spectrum is a scarce resource and insufficient for the existing operators for needed expansion. The QoS to the subscribers is getting adversely affected due to non availability of required spectrum. Thus, the present cap of number of operators in each service area should continue till the availability of the spectrum is eased.

Ques.30.Should the issue of deciding the number of operators in each service area be left to the market forces?

Ans. No, it should be linked with the availability of spectrum.

RAJIV GOEL
Sr VP(RA&C)
MTNL,CO