

Response to TRAI Consultation Paper on Unified License Regime

A brief background on Equant Network Services India Pvt. Ltd. a France Telecom Group Company [Orange Business Services]: -

France Telecom Group (“FT Group” or “France Telecom”), is one of the world’s leading telecommunications carriers (telecom service provider and telecoms network operator) with 226 million customers in 220 countries and territories, spread over the five continents. Through ‘**Orange Business Services**’, one of the world’s leading communications brand, France Telecom provides businesses, consumers and other carriers with a complete portfolio of solutions that spans local, long-distance and international telephony, wireless, Internet, multimedia, data, broadcast and cable TV services. **Orange Business Service India** provide enterprise services to multi-sited corporations, Indian BPO outsourcing and ITES sector operating global networks and holds NLD, ILD & ISP license issued by Department of Telecommunications.

Executive Summary

The Orange Business Services is pleased to submit its comments to the Telecom Regulatory Authority of India (TRAI) in response to the Consultation Paper on *Unified License*. We are of the opinion that Unified Licensing Regime would increase competition in India’s telecom markets resulting from these measures will benefit Indian businesses and consumers and the economy as a whole.

We feel that data services is holding huge promise in the future, as data can render itself very well to the different segments created to target specific customer groups. Data revenues can maintain a high growth and help operators maintain stable and healthy revenues. Thus, a sound regulatory policy with focus on data services is obviously a prerequisite to start the data revolution. Thus, there is a need to have a well-defined and transparent migration path along with suitable provisions be made to allow both active and passive infrastructure sharing between various telecom operators and same entity holding multiple licenses.

Similarly, a need to redefine AGR enable pass-through for telecoms inputs for domestic and international operators. Level of encryption increased to sufficient level to boost confidence in the enterprise with respect to the security of the data being transmitted for their business needs.

Chapter I – Draft Guideline for Unified License

A. Unified Licensing

Clause 1- Framework

The present licensing regime is technology neutral, but the legacy of a license regime focused on voice presents certain difficulties for enterprise data services. Hence, it becomes very necessary to amend the licensing framework and allow the efficient provision of the telecom services that multi- national business in India require.

It needs to ensure that the players have requisite business and operational flexibility and prevent abuse of market power and ensure healthy competition.

There should be opportunities for both service providers who either currently do not have all licenses being combined under the Unified Licenses or those who wish to continue within their current line of service provisioning even if they are required to migrate. We believe that the Unified License would provide a simpler and **Voluntary migration** path and will ensure that no licensee is treated less favorably as compared to another licensee. The operators not wanting to migrate, would be allowed to continue to offer the service in the same manner as done earlier and also be allowed to renew the license on the expiry of the original term of the license.

Clause 2- Eligibility Conditions

FDI Policy

Foreign direct investment (FDI) in India has played an important role in the development of the Indian Telecom Sector. The telecom sector is among the leading sectors attracting FDI.

We believe going forward data will also play a vital role in transforming the Indian telecom industry, the way voice did in the previous decade. We request considering the FDI policy permitting foreign investment should be further liberalized and it should be

enhanced to 100 % foreign investment without any cap in line with other APAC countries like Australia, Japan, Hong Kong and Singapore who have relaxed foreign ownership.

Clause 11- Financial Condition

11.1 Entry FEE

The proposed onetime non refundable Entry fee for Unified License of Rs. 20 (Twenty) Crores for National level Unified License. We wish to state that there is no clarity on the basis on which this amount of Entry fee has been derived. We request that the Hon'ble Authority clarifies its method of calculation of the Rs. 20 (Twenty) Crores so as to better understand the same and be in a position to comment on the same.

We support the Hon'ble Authority's consideration of no entry for existing licensees who either do not wish to operate across all segments under the Unified Licensees (including those who may want to continue only within their current line of service provisioning) in your *chapter III of the draft guidelines for "Migration of Existing License to Unified License"*. *Clause 5 of this chapter stipulates 'For conversion to the Unified License (restricted), there shall be no additional entry fee to be paid by the licensee.'* We thus understand that Authority proposes that the existing ILD / NLD license holders after conversion to the Unified License shall not be required to pay any additional Entry Fee to offer the same services as eligible to offer under the pre-migration regime.

11.2 Uniform License Fee - 6% of AGR

It is a very well documented fact that the regulatory charges imposed on the Indian Telecoms Sector are among the highest in the world. We thus appreciate TRAI's recommendation in this regard wherein it advised DOT to set a uniform license fee at 6% AGR. However we are concerned with the recent development which indicates that the license fee for NLD/ILD shall be brought to 8% from current 6 % of AGR. This proposed increase to 8% of AGR would have a significant impact on our costs and returns on investment. In fact with the cumulative assessment of data operators, this will have double impact on the License Fees on operators offering data services. Moreover, It is imperative to mention here that any increase in the license fee would ultimately be borne by the customer.

Clause 22- Sharing of Infrastructure

Presently there are restrictions on the sharing of both active and passive infrastructure between **various telecom operators and also within the same operator having multiple Licenses**. This has resulted in unnecessary duplication of infrastructure, specially in light of the massive progression towards NGN environment and other new technologies. Due to the heavy investment required in these areas, the operators would want complete freedom on equipment deployment and clarity on the regulatory regime in order to safeguard the interest of the investor.

In order to achieve this outcome, however, thriving and well-regulated wholesale markets are absolutely critical, where essential inputs have to be provided on a fair and reasonable basis and at cost-based prices, and sharing of active and passive infrastructure should be positively encouraged.

Chapter III - Migration of Existing Licence to Unified Licence

We welcome the step of Hon'ble Authority in regard to Migration of Existing License to Unified License.

"Chapter III of their draft guidelines for "Migration of Existing License to Unified License". Para 5 of this chapter stipulates 'For conversion to the Unified Licence (restricted), there shall be no additional entry fee to be paid by the licensee.'"

We understand by the above clause that the existing ILD / NLD license holders after conversion to the Unified License (restricted) shall not be paying any additional Entry Fee .

Chapter V- Issue for Consultation

1. **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)**

Response ::

TRAI to consider future licenses as technology and service agnostic. The guidelines should create an enabling framework that amply supports convergence of services, networks and technologies. The way the licenses are currently drafted, there current restrictions that create barriers between segments of the market will remain and we are concerned as to how full convergence of services will be enabled under such a structure. With different license drafted in different time zones and by different department, there are always potential of them not compatible with each other and the multiple service offering that are available today. **More specifically we note that PSTN/VOIP convergence is still restricted under the draft guidelines, which would hinder the end users, realize full potential of a unified converged licensing regime.**

Therefore, we wish to recommend that the draft guidelines suitably address the issue of PSTN /VoIP convergence especially. Despite unrestricted telephony being allowed to access operator, the service has still not been rolled out by a single operator. Thus, the Authority should review the same and find out the reservation that the UASL operators have and ensure that the same situation does not happen under the Unified License.

Scope of licenses under Unified License:

- i) **National Level** - The scope of license for National Level Unified license should include the **all telecommunication/ telegraph services** covering various geographical areas **using any technology**. Thus, even other services like, passive infrastructure and bandwidth services to service provider(s), Radio Paging, PMRTS, Voice Mail, Audiotex, Video Conference, Videotex, E-Mail service, Unified Messages Services, Tele-banking, Tele-medicine, Tele-education, Tele-trading, E-commerce, should be allowed to a National Level Operator without requiring to take any separate license/registration.

It has been noted that clause 5.1 c stipulates that Public network is not to be connected with leased circuits/CUGs. We believe that in the fast changing telecom scenario moving ahead for convergence of various services / networks, there does not appear any need for this restriction. This restriction appears to be in contradiction of the spirit of unification of telecom services. Therefore, we suggest that, there should not be any restrictions for interconnectivity between public network/ PSTN and leased circuits /CUGs.

There should also be regulation to facilitate resale of all services which presently is limited to IPLC only.

- ii) Service Level** - This Licensee will be allowed to offer access services, PSTN, and Mobile (subject to availability of spectrum by the concerned operator), Internet Telephony, Internet services including IPTV and broadband services including triple play in the designated service area.
- iii) District Level** - This licensee would be allowed to offer only Internet/Broadband services and wireline services. Also resale of services, Migration to service level and national level should be permitted.

License through Authorisation- The scope of License through Authorisation should cover :: The category will cover the services for provision of passive infrastructure and bandwidth services to service provider(s), Radio Paging, PMRTS, Voice Mail, Audiotex, Video Conference, Videotex, E-Mail service, Unified Messages Services, and other applicable service mentioned under 'Other Service Provider'

2. 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)

Given that such interpretation can be subject to a large degree of subjectivity, it is important that the industry be given clarity on the criteria that the Authority would use to assess and distinguish between a minor versus major violation.

We believe, a minor violation is one that does not significantly and adversely impact the security of the state or result in loss to the exchequer. Even for the latter, a specific quantum of losses should be defined.

The following actions can be classified as minor and major violations:

Minor violations	Major violations
Issues related to operational compliances	Issues related to security aspects and misrepresentation of facts before the Authority / government agencies. Action resulting in threat to the security of nation.
Delay in compliance of orders / directions of Government / Authority	Action of the service provider resulting in heavy revenue losses to the Government
Delay in fulfilling rollout obligations within stipulated timeframe of the Licence Agreement.	Illegal conduct of the Licensee outside the framework of terms and Conditions of the Licence.

3. 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)

We would recommend that the Hon'ble authority also consider risk mitigation strategy, adopted by the licensee as well as intent to violate/ willfull negligence as key factors while determining the amount of penalty on the licensee for the violation.

Factor for determining amount of penalty for minor violations	Factor for determining amount of penalty for major violations
(i) For first time the amount of penalty should be 1% of Rs.5 crores, 2 crores and Rs. 10 lakhs in respect of National Level Unified Licensee, Service Area Level Unified Licensee and District Level Unified Licensee respectively.	(i) For first time the amount of penalty should be 10% of Rs.50 crores, 20 crores and Rs,1crore lakhs in respect of National Level Unified Licensee, Service Area Level Unified Licensee and District Level Unified Licensee respectively.
(ii) For second time violation it should	(ii) For second time violation it should be

<p>be 5% of Rs.5 crores, 2 crores and Rs,10 lakhs in respect of National Level Unified Licensee, Service Area Level Unified Licensee and District Level Unified Licensee respectively</p> <p>(iii) For 3 or more times, it should be 10% of of Rs.5 crores, 2 crores and Rs,10 lakhs in respect of National Level Unified Licensee, Service Area Level Unified Licensee and District Level Unified Licensee respectively.</p>	<p>50% of Rs.50 crores, 20 crores and Rs. 1 Crore in respect of National Level Unified Licensee, Service Area Level Unified Licensee and District Level Unified Licensee respectively</p> <p>(iii) For 3 or more times, it should be 100% of of Rs.50 crores, 5 crores and Rs.1 crores in respect of National Level Unified Licensee, Service Area Level Unified Licensee and District Level Unified Licensee respectively.</p>
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- 4. 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?**

We would suggest that the terms and conditions of licensing through authorization should be drafted in such a simplified manner that it ensures seamless delivery of services to the end user. The licensing through authorization should not entail burdensome compliance obligations on the service provider. This would boost the efficiency in the manner of providing service to the end user.

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

We wish to recommend that Voice mail / Audiotex / UMS services should be removed from the ambit of licensing regime. These services in a way serve and support the growing BPO / ITES sector of India. Therefore these are best served if placed under the category Licensing through Authorisation. TRAI has in its recommendations of 2005 on Unified Licensing has already recommended that such services be placed under an Authorisation regime. However, its also important for

the sake of clarity, that operators holding other primary license like National Level, Service Level etc. should be deemed to have already the requisite permission to offer such services and not required to take additional license/registration to offer the services like Voice mail/Audio text etc.

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

No, we don't recommend that any additional services need to be brought under the ambit of Unified Licensing regime.

7. 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?

Though the existing TRAI Act does not vest the powers of Licensing with the Authority. There may be some merits in the Authority taking up the function of issuance of license. This will greatly expedite the time taken for issuance of license and also in confidence building exercise amongst the investor community. There are many countries where the regulator and licensor are the same body.

8. 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 wish to recommend that FDI limit for Unified License should also be enhanced to 100% foreign investment without any cap. Further we don't support the proposed move to bring IP-I under unified License regime with a cap of 74% foreign equity

9. 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.

No comments.

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

I) Entry Fee of Rs. 20 Crores is too high for the standalone operators. Non-integrated standalone operator like Orange who are providing data services under NLD and ILD Licenses, the entry fee should be same as that they are paying today (i.e. Rs. 5 crores – NLD + ILD entry fees of Rs. 2.5 crores each) plus the amount equivalent to the existing entry fee for the service it wants to provide under the new regime. There seem to be no justification for levy of an entry fee of Rs. 20 Crores.

The total entry fee after migration should be the sum total of existing entry fee service wise. As entry fees is a charge levied to ensure that only serious players enter the market and the desired processing fees be recovered by the service provider. Thus, in the case of existing operators, who have already commissioned their services, the entry fees should be commensurate with the existing license fees paid by them viz the service they continue to offer. An additional processing fees be levied, whenever, they plan to enhance their service offering.

II) License Fee

Para 11.2 of the guidelines says that “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.

Imposition of licence fee to a minimum of 10% of the Entry fee paid (whether operator generates any revenue or not) is against the spirit of NTP'99 which proposes revenue share for license fee.