

Uninor's Comments on TRAI's Draft Response Paper on Exit Policy

This submission is being made by Unitech Wireless (Tamilnadu) Pvt. Ltd. ("**Uninor**") pursuant to Press Release No.68/2012 and accompanying Draft Response Paper dated March 26th, 2012 issued by the TRAI, regarding Exit Policy for various licenses. At the outset, it is submitted that these submissions are **without prejudice** to any rights and contentions that Uninor may have before any Court of law.

We may recall that the requirement of an Exit Policy, despite most licenses already having provisions for surrender, arose because of a sentiment that an Exit Policy would motivate licensees not currently using allocated spectrum efficiently, to voluntarily surrender spectrum, which could be used by other licensees in dire need of the same. The general understanding across the industry was that these moves would be in the larger interest of the consumers.

In Para 14 of the Draft Response Paper, TRAI has identified four categories of licenses, a) to d), and provided reasoning against each category, as to why an exit policy may not be necessary. We would like to submit our views regarding TRAI's contentions with respect to categories a) and d).

a) 122 UAS Licenses given on or after 10.1.2008.

TRAI has opined that *"as per the judgment of the Hon'ble Supreme Court, they stand cancelled after four months of the date of judgement. Therefore there is no need for any Exit Policy in respect of these UAS Licensees."*

Our humble submission is that all legal recourse against the cancellation of their licenses has not yet been exhausted by the 122 impacted licensees. Whereas, the Supreme Court's latest judgment has rejected the Review Petitions of the licensees, it has agreed to hear DoT's petition. The licensees also have the option of filing a Curative Petition to the Supreme Court and also file clarification application/s.

It is conceivable that the licensees maybe successful in getting ultimate relief from the Supreme Court in saving their licenses and, in that event, the original considerations which led to the proposal of an Exit Policy would become relevant once again.

Hence, it may be premature for TRAI to conclude that it should not carry out any further consultation on an Exit Policy with regard to this category of licenses.

Incidentally, even if the licensees are not successful in saving their licenses, there is enough legal argumentation to indicate that, the licensees should be entitled for full refund of the entry fee paid. In this regard, please see below a view provided by our legal advisors:

"The Supreme Court having declared the licenses granted to, inter-alia, Uninor, on or after 10.1.2008 pursuant to the two press releases dated 10.1.2008 as illegal; the contract with the DoT shall stand frustrated as it shall become impossible of performance. Accordingly, DoT which has received benefit under the contract, including by way of entry fees of Rs. 1658 crores is liable to return the same to Uninor, whose licenses stand cancelled pursuant to the Supreme Court judgment dated 02.02.2012.

Uninor had no prior knowledge or any reason to believe that the license granted to in 2008 in consideration of the entry fees would be declared as illegal by the Supreme Court. In the circumstances, DoT cannot be permitted to cause unjust enrichment to itself by retaining the benefits received by it in the form of license entry fees. Under the principle of restitution, Uninor is entitled to a refund of the entry fees of Rs. 1658 crores.”

d) Future Licenses

TRAI has stated in the Draft Response Paper that since, going forward, “TRAI had already recommended that all future licenses will be unified licenses” and “the provision for surrender of license is already prescribed in the draft guidelines” for unified licenses, therefore “the Authority does not find any justification for a separate exit policy in case of Unified Licensing Regime”.

We submit again that the genesis of the consultation on an Exit Policy was the release of spectrum, not so much the release of licenses. There could be a situation in the new regime wherein a licensee who has purchased spectrum through an auction carried out by DoT, is not able to make a success of its business, i.e. is unable to utilize his spectrum resources efficiently. Since spectrum trading is currently not allowed, we believe that there would be a case for debating whether he should have the access to an Exit Policy which allows him to return the spectrum to DoT in consideration for some refund of the price paid.

In the light of the above submissions, we urge TRAI not to abort the consultation process at this stage, but carry out a full consultation as envisioned earlier.