



# **TELECOM REGULATORY AUTHORITY OF INDIA**

## **Recommendations**

**on**

**Amendment in the ISP Licence Agreement for  
incorporating the terms and conditions mentioned in  
Notice Inviting Applications (NIA) dated 25.02.2010 for  
use of Broadband Wireless Access (BWA) spectrum**

22<sup>nd</sup> November, 2012

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## INTRODUCTION

1. Department of Telecommunication (DoT) issued the Notice Inviting Applications (NIA) No. P-11014/13/2008-PP<sup>1</sup> on 25<sup>th</sup> February 2010 for allotting the rights to use certain specified radio spectrum frequencies in the 2.1GHz band (paired) (the “3G Spectrum”) and in the 2.3GHz band (unpaired) (the “BWA Spectrum”) by means of auction in various telecom service areas in the country. DoT auctioned BWA spectrum in May-June 2010 in accordance with the terms and conditions mentioned in the aforesaid NIA.
2. DoT vide letter No. 820-964/07-LR dated 27<sup>th</sup> December, 2011 (Annexure-I) sought TRAI’s recommendations under Section 11(1) (a) (ii) of Telecom Regulatory Authority of India Act, 1997 (TRAI Act), on the amendment required in the ISP Licence Agreement, for incorporating the terms and conditions mentioned in Notice Inviting Applications (NIA) dated 25.02.2010.
3. DoT has already amended the licence agreements of UAS and CMTS licensees during September – October 2010, and included terms and conditions of NIA for use of BWA spectrum, without seeking TRAI’s Recommendations.
4. Section 11 (1) (a) (ii) of the Telecom Regulatory Authority of India Act, 1997 provides that notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the function of the Authority shall be to make recommendation, either *suo motu* or on a request from the licensor on the terms and conditions of licence to a service provider.

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<sup>1</sup>[http://www.dot.gov.in/as/Auction%20of%20Spectrum%20for3G%20&%20BWA/3G%20&%20BWA%20Auctions\\_Notice%20Inviting%20Applications.pdf](http://www.dot.gov.in/as/Auction%20of%20Spectrum%20for3G%20&%20BWA/3G%20&%20BWA%20Auctions_Notice%20Inviting%20Applications.pdf)

5. The second proviso to section 11 (1) further provides that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clause (i) and (ii) of clause (a) of sub-section (1) of section 11. This proviso makes it mandatory for the Central Government to seek recommendations of the Authority on the terms and conditions of licence to a service provider.
6. For framing the recommendations for amendment in the ISP Licence Agreement, TRAI issued a consultation paper on “Amendment in the ISP Licence Agreement for incorporating the terms and conditions mentioned in Notice Inviting Applications (NIA) dated 25.02.2010 for use of Broadband Wireless Access (BWA) spectrum” on 15<sup>th</sup> March 2012.
7. In the consultation paper, it was proposed that all the terms and conditions related to licence conditions mentioned in the NIA No. P-11014/13/2008-PP dated 25<sup>th</sup> February 2010, may be incorporated in the licence agreements of the ISPs, who have obtained BWA spectrum through the auction process.
8. Comments were received from five stakeholders. The general view was that the terms and conditions related to licence conditions mentioned in the NIA may be incorporated in the licence agreements of the ISP. However some of stakeholders raised the issue of maintaining the level playing field between the operators who were successful bidders for BWA spectrum and are UAS/CMTS licensees and those who are ISP licensees. Their contention was that the ISP licensees should not get any additional benefit because of the amendment. They also raised certain issues with respect to the amendments already carried out by DoT in UAS/CMTS licences to incorporate terms and conditions mentioned in the NIA. The present reference from DoT has only sought TRAI’s recommendations for amendment in ISP licence, but in order to ensure uniform and equitable

application of terms and conditions of NIA related to BWA spectrum to all the licensees (UAS, CMTS, ISP) who have obtained BWA spectrum in auction, and the fact that the DoT should have obtained the recommendations of TRAI before amending the UAS/CMTS Licence, the Authority has also examined the amendments notified by the DOT in UAS/CMTS Licence for the use of BWA spectrum. Relevant clause of NIA, comments of stakeholders, analysis and recommendations on various issues are given in succeeding paragraphs.

**A. EFFECTIVE DATE AND DURATION OF BWA SPECTRUM**

9. The relevant clauses of NIA related to effective date and duration of BWA spectrum are as follows:

**a. Effective date**

*“The Effective Date shall be the later of the date when the right to use awarded spectrum commercially commences and the date when the UAS licence or the ISP category ‘A’ licence, if and as applicable, is granted to the operator.”*

**b. Duration**

**“3.6 Duration**

*BWA Spectrum*

*The right to use the BWA Spectrum shall be valid for 20 years from the Effective Date unless revoked or surrendered earlier, subject to the operator continuing to have a UAS/ CMTS/ ISP-category ‘A’ licence. In case the UAS/ CMTS/ ISP-category ‘A’ licence it holds is cancelled/ terminated for any reason, the spectrum usage rights shall stand withdrawn forthwith.*

*If the period of an existing UAS/ CMTS/ ISP-category ‘A’ licence of an operator expires before the expiry of the right to use the BWA Spectrum awarded by means of the current Auction, then the validity of the UAS/ CMTS licence with respect to the BWA Spectrum, if applicable, shall be extended to 20 years from the Effective Date on existing terms without any*

*commercial charges. This extension shall be done on the application of the licensee made in the 19th year of the UAS/CMTS licence for extension of the period to make it co-terminus with the validity of the right to use the BWA Spectrum period.*

*The ISP licence, if applicable, shall be extended for 5 years at a time for a period extending up to 20 years, from the Effective Date on existing terms.*

*However, extension, if any, of the right to use any spectrum other than BWA Spectrum associated with the licence and the terms thereof, shall be specified in due course.”*

10. DoT has amended the UAS / CMTS Licences with regard to effective date and validity period for BWA spectrum. The relevant amended clause w.r.t. the UAS Licence is as follows:

**“23.8 Use of BWA Spectrum:** *The licensee is also authorised to use the BWA spectrum block (as earmarked in the Letter of Intent issued by WPC) for provisioning of Telecom Access Services as defined in the ‘Scope of the licence’ in the Schedule Condition 2 of the UAS Licence agreement, from the date of award of right to commercially use the BWA spectrum i.e. the date of issue of this amendment letter, till the validity of the UAS Licence agreement or for a period of 20 years from the date of issue of this amendment letter, whichever is earlier, subject to compliance of following conditions:*

**(i) Validity period for BWA Spectrum:** *The licensee is authorized to use this spectrum for a period of 20 years from the date of award of right to commercially use this allocated BWA spectrum block i.e. the date of issue of this amendment letter, for operation of Telecom Access Services as defined in the ‘Scope of the license’ in Clause 2, Part I General Conditions of the UAS License agreement, subject to the condition of validity of the UAS licence agreement. In case the UAS licence is cancelled/ terminated/ revoked/ surrendered for any reason, the spectrum usage rights shall stand withdrawn forthwith. If the validity period of the UAS licence agreement expires before the expiry of the right to use the BWA spectrum for 20 years, awarded by means of the said Auction, then the validity of the UAS licence for operation of Unified Access Services by using the said BWA Spectrum only, shall be extended to make it coterminous with the validity of the right to use the BWA Spectrum, without any charges and in*

*such manner as the Licensor deems fit. The extension shall be done on the application of the licensee made 3 months in advance of expiry of the validity period of the UAS licence. This does not include authorization or extension of period of validity of the UAS license for providing Unified Access Services using wireline and/ or spectrum allocated under Clause 43 of the UAS licence agreement.”*

11. In response to the consultation paper, some stakeholders raised the issue regarding the effective date for calculating the validity period for use of BWA spectrum and the target date for meeting the specified roll out obligations. They stated that though both UAS Licensees and ISPs have paid the same fee determined through auction of BWA spectrum, the UAS/CMTS licence agreement has been amended by DoT for use of BWA spectrum whereas the ISP licence agreement has not been amended so far. Their concern was that because of the amendment in UAS/CMTS licence, the effective date in case of these licences will be 1<sup>st</sup> September, 2010. However, in case of ISP licensees who have also obtained BWA spectrum through auction, amendment to their licences is yet to be carried out. This may result in different effective dates. Different effective dates for UAS/CMTS and ISP licensee will impact the actual date to complete the roll out obligations and use of BWA spectrum (duration).
12. Stakeholders were generally of the view that the effective date for all service providers should be in compliance with the provisions of NIA, so that there is no undue advantage to some service providers due to different effective dates leading to different target dates for roll out obligation and end date for the use of the spectrum.
13. Some stakeholders also mentioned that amendment in the ISP licence should specifically allow use of BWA spectrum and for this purpose a

clause, authorising the licensee to use BWA spectrum may be included in the ISP licence agreement.

14. The Authority noted that the condition relating to effective date in the NIA clearly states that

*“The Effective Date shall be the later of the date when the right to use awarded spectrum commercially commences and the date when the UAS licence or the ISP category ‘A’ licence, if and as applicable, is granted to the operator”.*

15. Further Clause 4.6 of NIA deals with the issue of assignment of spectrum and its usage for commercial purpose. Some of the relevant points in the said clause are quoted below:

Existing licensees

- Upon receipt of the Successful Bid Amount, the DoT (WPC) shall issue a Letter of Intent allocating the frequencies to the Successful Bidder (“allocation of frequency”);
- Necessary amendments to enable use of frequency allocated by WPC for provision of services under applicable license (including migration to ISP category ‘A’ licence, if applicable) shall be made to the existing UAS/ CMTS/ ISP licence (“assignment of frequency”) of the Successful Bidder or its nominated entity (as applicable), within 15 days of DoT receiving an application for such amendments;
- Successful Bidders in the BWA Auction can use the assigned frequency for commercial purposes immediately after assignment as per the terms of the applicable licence.

New entrants

- Upon receipt of the Successful Bid Amount, the DoT (WPC) shall issue a Letter of Intent allocating the frequencies to the Successful Bidder;
- Upon the Successful Bidder obtaining a UAS licence or an ISP-category 'A' licence, as applicable, the DoT shall assign the specified spectrum;
- In case the Successful Bidder acquires an existing licensee, necessary amendments to the licence of the acquired entity will need to be made prior to assignment of spectrum;
- Successful Bidders in the BWA Auction can use the allocated frequency for commercial purposes immediately after assignment and obtaining the necessary licence, as per the terms of the applicable licence.

16. From the reading of the above clauses along with the definition of effective date given in NIA, it is clearly established that the successful bidder will be first issued a letter of intent from WPC for the BWA spectrum. After which the bidder will have to obtain the relevant licence (for a new entrant) or get its licence amended (for existing licensees, if required). Subsequently, spectrum will be assigned to it for commercial purpose as per the terms and conditions of the licence. The effective date shall be the date when the right to use awarded spectrum commercially commences i.e. the date of its assignment.

17. The Authority observed that the issue of advantage to ISPs vis-à-vis UASs on account of effective date has mainly arisen because the amendment in UAS/CMTS licence mentions that *“The licensee is authorized to use this spectrum for a period of 20 years from the date of award of right to commercially use this allocated BWA spectrum block i.e. the date of issue of this amendment letter.....”*



18. Regarding amendment in the relevant licence for authorizing specifically the usage of BWA spectrum, the Authority is of the opinion that in case of UAS/CMTS licences, the licensee is presently authorized to provide wireless operations in subscriber access network using only the spectrum in the bands 800/900/1800 MHz. (Clause 43 of UASL) Therefore, it is necessary that their licences are amended so that they can use BWA spectrum also for commercial purpose. However, in case of ISP licence there is no such restriction and therefore after assignment of spectrum by the WPC, the ISP is permitted to use it for commercial purpose without any further amendment to its licence. In view of the forgoing, the Authority is of the opinion that the apprehensions of some stakeholders regarding non level playing field due to delay in amendment to the ISP licence are misplaced.

19. **Accordingly, the Authority recommends that**

- (i) Clause 23.8, which was inserted in UAS licence agreement of those licensees who have obtained BWA spectrum through auction should be amended as below:**

**Clause 23.8 of UAS Licence agreement**

**Use of BWA Spectrum: The licensee is also authorised to use the BWA spectrum block (as earmarked in the Letter of Intent issued by WPC) for provisioning of Telecom Access Services as defined in the ‘Scope of the licence’ in the Condition 2 of Part I (General Conditions) of Schedule (Terms and Conditions) of the UAS Licence agreement, till the validity of the UAS Licence agreement or for a period of 20 years from the date of award of right to commercially use the allocated BWA spectrum block, whichever is earlier, subject to compliance of following conditions:**

- (i) Validity period for BWA Spectrum: The licensee is authorized to use BWA spectrum for a period of 20 years from the date of award of right to commercially use the allocated BWA spectrum block for**

providing Telecom Access Services as defined in the 'Scope of the licence' in Condition 2 of Part I (General Conditions) of Schedule (Terms and Conditions) of the UAS Licence agreement, subject to the condition of validity of the UAS licence agreement. In case the UAS licence is cancelled/ terminated/ revoked/ surrendered for any reason, the spectrum usage rights shall stand withdrawn forthwith. If the validity period of the UAS licence agreement expires before the expiry of the right to use the BWA spectrum for 20 years, awarded by means of the said Auction, then the validity of the UAS licence for operation of Unified Access Services by using the said BWA Spectrum only, shall be extended to make it coterminous with the validity of the right to use the BWA Spectrum, without any charges and in such manner as the Licensor deems fit. The extension shall be done on the application of the licensee made three months in advance of expiry of the validity period of the UAS licence. This does not include authorization or extension of period of validity of the UAS licence for providing Unified Access Services using wireline and/ or spectrum allocated under Clause 43 of the UAS licence agreement.

- (ii) Similar amendment should be made in clause 24.17 of CMTS licence, which was inserted in the licence agreement of those licensees who have obtained BWA spectrum through auction.
- (iii) Similarly, in case of ISP licence agreement, following clause should be inserted regarding Validity period for use of BWA Spectrum:

The right to use the BWA Spectrum shall be valid for 20 years from the date, the BWA spectrum is awarded for commercial use (Effective date), unless revoked or surrendered earlier, subject to the operator continuing to have a ISP-category 'A' licence. In case the said category 'A' licence is cancelled/ terminated for any reason, the spectrum usage rights shall stand withdrawn forthwith.

If the period of an existing ISP category 'A' licence of an operator expires before the expiry of the right to use the BWA Spectrum, awarded by means of the auction held in the year 2010, then the validity of the ISP licence, if applicable, shall be extended for a

**period of five years at a time for a period extending up to twenty years, from the effective date on existing terms.**

**However, extension, if any, of the right to use any spectrum other than BWA Spectrum associated with the licence and the terms thereof, shall be specified in due course.**

**B. LICENCE FEE and SPECTRUM USAGE CHARGES**

**B1. Incidence of double Licence Fee and double Spectrum Usage Charges in UAS & CMTS licences**

20. In the NIA, provisions related to licence fee and spectrum usage charges for BWA spectrum given in clause 3.5 are as follows:

***“3.5 Spectrum usage charges***

*A spectrum usage charge (**over and above the spectrum auction price and the applicable licence fees**) as a percentage of the Adjusted Gross Revenue (“AGR”) shall be payable by Successful Bidders as per rules notified by the Government from time to time. (emphasis provided)*

*“Licensees using BWA Spectrum need to pay **1% of AGR from services using this spectrum as annual spectrum charge** irrespective of the licence held by them. Such revenue would be required to be reported.” (emphasis provided)*

*The following Schedule provides details for the applicable annual spectrum charges payable by different licence holders that are successful in the 3G Auction or the BWA Auction:*

Auction Type	Current Spectrum Allocation/Licence Category			
	UAS/CMTS with GSM only	UAS with CDMA only	UAS with Dual tech (GSM + CDMA)	ISP
3G Auction (frequency in 2.1 GHz band)	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule A to apply	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule B to apply	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule A & B to apply	Na
BWA Auction (frequency in 2.3 GHz band)	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)

*The following shall be considered while computing the annual spectrum charges:*

- ***Applicable AGR shall be computed in accordance with the provisions of the relevant service licence;*** (emphasis provided)
- *3G/ BWA Spectrum to be assigned in the two Auctions shall not be counted for calculating the slab of the total spectrum holding by a licensee for levy of spectrum usage charges;*
- *Revenues from services using the BWA Spectrum shall not be included in the AGR of the licensee, for the limited purpose of determining spectrum charges on spectrum other than BWA Spectrum;*
- *Annual spectrum charges shall be applicable from the date of award of right to use allotted spectrum commercially. However, there shall be a moratorium of one year from this date on the payment of spectrum charges for the standalone 3G as well as stand-alone 3G + BWA operators (i.e. winners of 3G/BWA Spectrum who do not hold 2G spectrum);*

- *For BWA Spectrum, no annual spectrum charge shall be payable in the first year from the date of award of right to use allotted spectrum commercially.”*

21. The relevant clause of amendment in UAS licence for Licence fee and Spectrum Usage Charges are as follows :

*“23.8 (iii) **Licence Fee for BWA spectrum:** Over and above the ‘Licence Fees’ payable by the licensee as per Condition 18.2 of the UAS licence agreement, the licensee shall also pay the annual licence Fee as share of Adjusted Gross Revenue (AGR) from the services using BWA spectrum as per rates mentioned in Condition 18.2 of the UAS licence agreement. All conditions contained in Part-III Financial Conditions of UAS Licence Agreement will continue to be applicable to the Licensees as amended by government from time to time”.*

*“23.8 (iv) **Spectrum Usage Charges for BWA Spectrum:***

- Over and above the ‘Radio Spectrum Charges’ payable by the licensee as per Condition 18.3 of the UAS licence agreement, the licensee shall also pay 1% of AGR from the services using BWA spectrum as annual spectrum charges payable Quarterly in advance.*
- The revenue from BWA services shall be reported separately in the ‘APPENDIC-II TO ANNEXURE-II, Format of Revenue and Licence Fee’ as amended.”*

22. Similar amendments in CMTS licence agreement for use of BWA spectrum have been made by DoT by inserting clause 24.17.

23. Clause 18.2 and Clause 18.3 of UAS Licence agreement mentioned above in clause 23.8 (iii) and clause 23.8 (iv) are as follows:

**“18.2 Licence Fees:**

*In addition to the Entry fee described above, the Licensee shall also pay Licence fee annually @ x % of Adjusted Gross Revenue (AGR), excluding spectrum charges.*

*Annual Licence fee w.e.f. 1.4.2004 shall be @ x % of AGR. The Licensor reserves the right to modify the above mentioned Licence Fee any time during the currency of this Agreement.”*

**“18.3 Radio Spectrum Charges:**

*18.3.1 The LICENSEE shall pay spectrum charges in addition to the Licence Fees on revenue share basis as notified separately from time to time by the WPC Wing. However, while calculating ‘AGR’ for limited purpose of levying spectrum charges, based on revenue share, revenue from wireline subscribers shall not be taken into account.*

*18.3.2 Further royalty for the use of spectrum for point to point links and other access links shall be separately payable as per the details and prescription of Wireless Planning & Coordination Wing. The fee/ royalty for the use of spectrum /possession of wireless telegraphy equipment depends upon various factors such as frequency, hop and link length, area of operation and other related aspects etc. Authorization of frequencies for setting up Microwave links by Licensed Operators and issue of Licenses shall be separately dealt with WPC Wing as per existing rules.”*

24. Further, relevant Clause of UAS Licence related to AGR is reproduced below:

**“19. Definition of ‘Adjusted Gross Revenue’:**

**19.1 Gross Revenue:**

*The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.*

**19.2** *For the purpose of arriving at the “Adjusted Gross Revenue (AGR)” the following shall be excluded from the Gross Revenue to arrive at the AGR:*

- I. *PSTN related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;*
- II. *Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;*
- III. *Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.”*

25. Relevant Clause of CMTS Licence related to AGR is reproduced below:

**“20. Definition of ‘Adjusted Gross Revenue’:**

*20.1 Gross Revenue:*

*The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.*

*20.2 For the purpose of arriving at the “Adjusted Gross Revenue” the following will be excluded from the Gross Revenue to arrive at the adjusted gross revenue:*

- (i) PSTN related Call charges (access charges) actually paid to Bharat Sanchar Nigam Ltd. (BSNL) / Mahanagar Telephone Nigam Ltd. (MTNL) or other telecom service providers within India.*
- (ii) Roaming revenues actually passed on to other telecom service providers, and*
- (iii) Service Tax on provision of service and Sales Tax actually paid to the Government; if gross revenue had included the component of Service Tax.”*

26. In response to the consultation paper, some of the stakeholders pointed out that the amendments by DoT in the licence agreements of UAS and CMTS for the use of 3G & BWA spectrum mention that, “**over and above the ‘Licence Fees’ payable by the licensee as per the present**

***provisions of the UAS/CMTS Licence agreements, licensee shall also pay the annual licence Fee as share of Adjusted Gross Revenue (AGR) from the services using BWA spectrum as per rates mentioned in provisions of existing licences***". As per these stakeholders, the revenue earned through services using BWA spectrum become part of the AGR by the nature of the definition of GR & AGR in the respective licences (Clause 19 in case of UASL and Clause 20 in case of CMTS licence) and licence fee is calculated on the overall AGR. Therefore, again charging licence fee on revenue from services using BWA spectrum will lead to charging double licence fee on revenue earned through services using BWA spectrum.

27. Similarly as per the amendment carried out by DoT, in case of Spectrum Usage Charges, the UAS/CMTS licensees will be paying Spectrum Usage Charges on the total AGR, which also include revenue from BWA spectrum and will also pay 1% of AGR from the services using BWA spectrum. Thus these amendments in UAS/CMTS licence are tantamount to double Spectrum Usage Charges on revenues from services using BWA spectrum.

28. The Authority examined provisions of NIA with respect to Licence fee which provides that

*"Applicable AGR shall be computed in accordance with the provisions of the relevant service licence;"*

29. The Authority is of the view that NIA does not envisage applicability of licence fee twice, therefore separate clause for licence fee for the revenue generated from the services using BWA spectrum is not required.

30. **Accordingly, the Authority recommends that clause 23.8 (iii) of UAS licence and 24.17 (iii) of CMTS licence should be deleted.**



31. With regards to spectrum usage charges, NIA provides that:

*“Licensees using BWA Spectrum need to pay **1% of AGR from services using this spectrum as annual spectrum charge** irrespective of the licence held by them. Such revenue would be required to be reported.”*  
(emphasis provided)

32. It is clear from NIA that revenue derived from services using BWA spectrum is subjected to only 1% spectrum usage charges and therefore to calculate spectrum usage charges, revenue from services using BWA spectrum may be separated to apply 1 % of spectrum usage charges. Accordingly revenue from services using BWA spectrum will have to be excluded from AGR for the purpose of calculating spectrum charges for spectrum other than BWA spectrum and conditions of NIA related to spectrum usage charge on BWA spectrum need to be included in UASL and CMTS licence.

33. **Accordingly, the Authority recommends that in order to avoid double spectrum usage charges, clause 18.3 of UAS licence and clause 19.3 of CMTS licence of those licensees who have obtained BWA spectrum through auction should be amended as follows:**

#### **UAS Licence**

##### **18.3 Radio Spectrum Charges:**

**18.3.1** The LICENSEE shall pay spectrum charges in addition to the Licence Fees on revenue share basis as notified separately from time to time by the WPC Wing. ***BWA Spectrum assigned to the licensee shall not be counted for determining the slab of the spectrum applicable to the licensee for levy of spectrum usage charges.*** While calculating ‘AGR’ for limited purpose of levying spectrum charges ***for spectrum other than BWA spectrum,*** based on revenue share, revenue from wireline subscribers ***and from services using BWA spectrum*** shall not be taken into account.

**18.3.2** Further royalty for the use of spectrum for point to point links and other access links shall be separately payable as per the details and prescription of Wireless Planning & Coordination Wing. The fee/royalty for the use of spectrum /possession of wireless telegraphy equipment depends upon various factors such as frequency, hop and link length, area of operation and other related aspects etc. Authorization of frequencies for setting up Microwave links by Licensed Operators and issue of Licenses shall be separately dealt with WPC Wing as per existing rules.

**18.3.3** *Over and above the ‘Radio Spectrum Charges’ payable by the licensee as per Clause 18.3.1 above, the licensee shall also pay 1% of AGR from the services using BWA spectrum as annual BWA spectrum usage charges payable Quarterly in advance.*

**18.3.4** *Applicable AGR from the services using BWA spectrum shall be computed in accordance with the provisions of clause 19 of UAS licence;*

**18.3.5** *Annual BWA spectrum usage charges for BWA spectrum shall be applicable from the effective date;*

**18.3.6** *For BWA Spectrum, no annual BWA spectrum usage charges shall be payable in the first year from the effective date.*

## **CMTS Licence**

### **19.3 Radio Spectrum Charges:**

**19.3.1** *The LICENSEE shall pay spectrum charges in addition to the Licence Fees on revenue share basis as notified separately from time to time by the WPC Wing. BWA Spectrum assigned to the licensee shall not be counted for determining the slab of the spectrum applicable to the licensee for levy of spectrum usage charges. While calculating ‘AGR’ for limited purpose of levying spectrum charges for spectrum other than BWA spectrum, based on revenue share, revenue from services using BWA spectrum shall not be taken into account.*

**19.3.2** Further, royalty for the use of spectrum for point to point links and access links (other than Cellular Service Spectrum) shall be separately payable as per the details and prescription of Wireless Planning & Coordination Wing. The fee/royalty for the use of spectrum /possession of wireless telegraphy equipment depends upon various

factors such as frequency, hop and link length, area of operation etc. Authorization of frequencies for setting up Microwave links by Cellular Operators and issue of Licences shall be separately dealt with WPC Wing as per existing rules.

**19.3.3 Over and above the 'Radio Spectrum Charges' payable by the licensee as per Clause 19.3.1 above, the licensee shall also pay 1% of AGR from the services using BWA spectrum as annual BWA spectrum usage charges payable Quarterly in advance.**

**19.3.4 Applicable AGR from the services using BWA spectrum shall be computed in accordance with the provisions of clause 20 of CMTS licence;**

**19.3.5 Annual spectrum charges for BWA spectrum shall be applicable from the effective date;**

**19.3.6 For BWA Spectrum, no annual BWA spectrum usage charges shall be payable in the first year from the effective date.**

34. The present definition of Gross Revenue does not exclude the revenue derived from the services using BWA spectrum, therefore the revenue derived from services using BWA spectrum have to be included in the gross revenue of the licensee. However, to make it explicit, the Authority is of the view that the definition of Gross Revenue may be amended to include the revenue arising from the services using BWA spectrum also.
35. **Accordingly, the Authority recommends that revenue from services using BWA spectrum should be included in the definition of GR by amending clause 19.1 of UASL and 20.1 of CMTS licence agreement (for the licensees who have obtained BWA spectrum through auction) as given below:**

#### **UAS licence**

##### **19.1 Gross Revenue:**

The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue

on account of interest, dividend, value added services, supplementary services, access **including through BWA spectrum** or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

### **CMTS licence**

#### **20.1 Gross Revenue:**

The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access **including through BWA spectrum** or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

## **B2. Licence fee and Spectrum Usage Charges in ISP Licence**

36. Relevant Clause of ISP Licence related to AGR is reproduced below:

### **“18. Definition of ‘Adjusted Gross Revenue’:**

18.1 *Gross Revenue: The Gross Revenue shall be inclusive of revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects etc., revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense etc.*

18.2 *For the purpose of arriving at the “Adjusted Gross Revenue (AGR)” the following shall be excluded from the Gross Revenue to arrive at the AGR:*

- (i) Charges from pure Internet service, activation charges from pure internet subscribers. Pure Internet Services shall mean any method / device / technology to provide access to Internet unless explicitly prohibited and all content available including web-*

*hosting, web-colocation which is available on internet without access restriction.*

*(ii) Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.*

*(iii) Roaming revenue actually passed on to other eligible/entitled telecom service provider.”*

(Recent amendment w.r.t. AGR and licence fee for Internet Service Providers dated 29.06.2012 is annexed as Annexure II)

37. One of the stakeholders has mentioned that the current definition of AGR in ISP licence, allows a benefit of pass through on the revenue earned on account of provision of pure internet services, whereas such a deduction is not allowed to a UASL and requested the Authority to allow the exemption/deduction of the revenue from Pure Internet Services from the AGR of UASL for level playing field between UASL and ISPs.
38. In this regard the Authority has noted that DoT, vide its letter No. 820-01/2006-LR (Vol-II)Pt. dated 29-06-2012 (Annexure-II), has amended the ISP licence for levying a uniform licence fee of 8% of AGR from all ISP and ISP-IT licensees. As per this amendment revenue for the purpose of licence fee for ISP and ISP-IT category shall provisionally include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses.
39. The Authority is examining the issues referred by DoT in the letter and will send its recommendations on the issues in due course.
40. Regarding the licence fee and spectrum usage charges to be paid by an ISP having BWA spectrum, the definition of Gross Revenue in ISP licence need to be amended to include the revenue arising from the services

using BWA spectrum. In addition, conditions of NIA related to spectrum usage charge need to be included in ISP licences also.

41. **Accordingly, the Authority recommends that the clause 17.3 and 18.1 of the ISP licence agreements of those licensees who have obtained BWA spectrum through auction, should be amended as follows:**

**17.3 Radio Spectrum Charges:**

**(i)** The LICENSEE shall pay spectrum charges in addition to the Licence Fees on revenue share basis as notified separately from time to time by the WPC Wing. However, while calculating 'AGR' for limited purpose of levying spectrum charges based on revenue share, revenue from wireline subscribers shall not be taken into account. ***In addition, the licensee shall also pay 1% of AGR from the services using BWA spectrum as annual spectrum charges payable quarterly in advance.***

**(ii)** Further royalty for the use of spectrum for point to point links and other access links shall be separately payable as per the details and prescription of Wireless Planning & Coordination Wing. The fee/ royalty for the use of spectrum /possession of wireless telegraphy equipment depends upon various factors such as frequency, hop and link length, area of operation and other related aspects etc. Authorization of frequencies for setting up Microwave links by Licensed Operators and issue of Licenses shall be separately dealt with WPC Wing as per existing rules.

***(iii) Applicable AGR from the services using BWA spectrum shall be computed in accordance with the provisions of clause 18 of ISP licence;***

***(iv) Annual BWA spectrum usage charges for BWA spectrum shall be applicable from the effective date;***

**(iv) For BWA Spectrum, no annual BWA spectrum usage charge shall be payable in the first year from the effective date.**

**18.1 Gross Revenue:**

The Gross Revenue shall be inclusive of revenue from Internet access service **including provided using BWA spectrum**, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects etc., revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense etc.

**C. Other amendments in ISP Licence**

**C1. Roll-out obligations**

42. The condition of NIA related to roll-out obligations for use of BWA spectrum is reproduced below:

***“Metro service area***

*At least 90% of the service area within five years of the Effective Date.*

***Category A, B and C service areas***

*At least 50% of the rural SDCAs are covered within five years of the Effective Date. Coverage of a rural SDCA would mean that at least 90% of the area bounded by the municipal/ local body limits should get the required street level coverage.*

*The Effective Date shall be the later of the date when the right to use awarded spectrum commercially commences and the date when the UAS licence or the ISP category ‘A’ licence, if and as applicable, is granted to the operator.*

*If the licensee does not achieve its roll out obligations, its spectrum assignment shall be withdrawn.”*

43. **In accordance with the NIA provisions regarding roll-out obligations, the Authority recommends that following clause related to roll-out obligation for BWA spectrum should be included in ISP licence for use of BWA spectrum:**

**Roll-out obligations for BWA spectrum:**

**The Licensee shall ensure compliance of following network roll-out obligations for the service area(s) for which the BWA Spectrum has been earmarked:**

**Metro service area**

**The licensee shall be required to provide required street level coverage using the BWA spectrum in at least 90% of the service area within five years of the ‘Effective Date for BWA spectrum’.**

**Category A, B and C service areas**

**The licensee shall ensure that at least 50% of the rural SDCAs are covered using the BWA spectrum within five years of the ‘Effective Date for BWA spectrum’. Coverage of a rural SDCA would mean that at least 90% of the area bounded by the municipal/ local body limits should get the required street level coverage.**

**The Effective Date shall be the later of the date when the right to use awarded BWA spectrum commercially commences and the date when the ISP category ‘A’ licence is granted to the operator.**

**If the licensee does not achieve its roll out obligations, its spectrum assignment shall be withdrawn.**

**C2. Breach, revocation and surrender**

44. The condition of NIA related to Breach, revocation and surrender for use of BWA spectrum is reproduced below:

***“ 3.7 Breach, revocation and surrender***



*“The spectrum assignment may be revoked, withdrawn, varied or surrendered in accordance with applicable licence conditions or any other applicable laws, rules, regulations or other statutory provisions.*

*The spectrum assignment may also be revoked if the Government determines the user of the spectrum to be in serious breach of any of the conditions of the award of the spectrum (including adherence to the Auction Rules) and the consequent obligations.*

*In case of less serious breaches, the Government may impose penalties at its discretion. Seriousness of the breach shall be determined by the Government at its sole discretion. In case neither the Successful Bidder nor any of its Associated Licensees has the relevant service licence for a service area where it has been declared a Successful Bidder, it must apply for, or otherwise acquire the relevant service licence in the service area in accordance with the terms of this Notice, within three (3) months of it being declared a Successful Bidder, failing which the Government shall have the right to revoke the spectrum.*

*The operator may surrender the spectrum, by giving notice of at least 60 calendar days in advance. In that case, it shall also notify all its customers of consequential withdrawal of service by giving 30 calendar days notice to each of them. The operator shall pay all fees payable by it until the date on which the surrender of the spectrum becomes effective. The effective date of surrender of the spectrum shall be the later of the dates of expiry of the two notices mentioned in this clause.*

*If at any stage, the spectrum allocation is revoked, withdrawn, varied or surrendered, no refund will be made.”*

45. **The Authority recommends that following clause related to Breach, revocation and surrender for BWA spectrum should be included in ISP licence for use of BWA spectrum:**

**Breach, revocation and surrender for BWA Spectrum:**

**The BWA spectrum assigned to the licensee may be revoked, withdrawn, varied or surrendered in accordance with applicable licence conditions or any other applicable laws, rules, regulations or other statutory provisions. The spectrum assignment may also be**

revoked if the Licensor determines the user of the spectrum to be in serious breach of any of the conditions of the award of the spectrum (including adherence to the Auction Rules) and the consequent obligations. In case of less serious breaches, the Licensor may impose penalties at its discretion. Seriousness of the breach shall be determined by the Licensor at its sole discretion. The licensee may surrender the spectrum, by giving notice of at least 60 calendar days in advance. In that case, it shall also notify all its customers of consequential withdrawal of service by giving 30 calendar days notice to each of them. The licensee shall pay all fees payable by it until the date on which the surrender of the spectrum becomes effective. The effective date of surrender of the spectrum shall be the later of the dates of expiry of the two notices mentioned in this clause. If at any stage, the spectrum allocation is revoked, withdrawn, varied or surrendered, no refund will be made.

### **C3. Merger of BWA spectrum blocks**

46. The condition of NIA related to Merger of BWA spectrum is reproduced below:

#### ***“4.8 Mergers & Acquisitions***

*M&A guidelines, as prescribed and amended by DoT from time to time, will apply to Successful Bidders.*

*Unless otherwise notified by DoT in due course, if two or more licensees holding 3G Spectrum blocks in a service area merge, then they shall be allowed to retain only one 3G Spectrum block and surrender the remaining 3G Spectrum blocks in that service area.*

*Unless otherwise notified by DoT in due course, if two or more licensees holding BWA Spectrum blocks in a service area merge, then they shall be allowed to retain only one BWA Spectrum block and surrender the remaining BWA Spectrum blocks in that service area.”*

47. **The Authority recommends that following clause related merger of BWA spectrum should be included in ISP licence for use of BWA spectrum:**

**Merger of BWA spectrum blocks:**

**Unless otherwise notified by the Licensor in due course, if two or more licensees holding BWA Spectrum blocks in a service area merge, then they shall be allowed to retain only one BWA Spectrum block and surrender the remaining BWA Spectrum blocks in that service area.**

**M&A guidelines, as prescribed and amended by DoT from time to time, shall apply to licensee.**

**C4. Applicability of the NIA for BWA Spectrum**

48. **The Authority further recommends that following clause related to applicability of all terms and conditions of NIA should be suitably included in ISP licence for use of BWA spectrum:**

**Applicability of the NIA for BWA Spectrum:**

**The licensee shall comply with all the terms & conditions of the Notice Inviting Applications (NIA) for “Auction of 3G and BWA Spectrum” vide No. P-11014/13/2008-PP dated 25.02.2010 unless and otherwise amended by the licensor by way of amendment of the Licence agreement from time to time.**

**820-964/07-LR**  
**Government of India**  
**Ministry of Communications & IT**  
**Department of Telecommunication**  
**Sanchar Bhawan, 20-Ashoka Road, New Delhi-110001**  
**(DS Cell)**

To,

Secretary,  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg  
New Delhi.

**Dated : 27/12/2011**

**Sub:- Amendment in the Licence Agreement for provision of Internet Services (ISP) to incorporate the terms and conditions for use of Broadband Wireless Access (BWA) Spectrum**

Terms and Conditions for use of Broadband Wireless Access (BWA) Spectrum, as specified in the Notice Inviting Applications (NIA) No. P-11014/13/2008-PP dated 25.02.2010 for "Auction of 3G and BWA Spectrum", have to be incorporated in the ISP Licence Agreement. Accordingly the ISP licence is required to be amended for the successful bidders of BWA Auction.

2. Unified Access Service Licence Agreement (UASL) for the successful bidders of BWA auction holding UAS Licence has already been amended to incorporate the terms and conditions specified in the NIA dated 25.02.2010 for the use of BWA Spectrum. The same is enclosed herewith (Amendment dated 31/08/2010 and 1/09/2010).

3. It is also to mention that the provisions of NIA dated 25.02.2010 regarding spectrum usage charges are same for ISP and UAS licencees. However the definition of Adjusted Gross Revenue (AGR) is different in both the licences.

3.1 Para 3.5 of NIA pertains to **Spectrum Usage Charges**. As per this, licencee using BWA Spectrum has to pay 1% of applicable Adjusted Gross Revenue (AGR) from BWA Services as annual spectrum usage charge (with such revenue to be reported separately) and applicable AGR is to be computed in accordance with the provisions of relevant service licence.

3.2 Definition of **Adjusted Gross Revenue (AGR)** in ISP licence is reproduced below-

**"18. Definition of 'Adjusted Gross Revenue':**

*18.1 Gross Revenue: The Gross Revenue shall be inclusive of revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects etc., revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense etc.*

18.2 For the purpose of arriving at the "Adjusted Gross Revenue (AGR)" the following shall be excluded from the Gross Revenue to arrive at the AGR:

- (i) Charges from pure Internet service, activation charges from pure internet subscribers. Pure Internet Services shall mean any method / device / technology to provide access to Internet unless explicitly prohibited and all content available including web-hosting, web-colocation which is available on internet without access restriction.
- (ii) Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.
- (iii) Roaming revenue actually passed on to other eligible/entitled telecom service provider."

3.3 Definition of **Adjusted Gross Revenue (AGR)** in UAS Licence is reproduced below-

**"19. Definition of 'Adjusted Gross Revenue':**

**19.1 Gross Revenue:**

The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.


19.2 For the purpose of arriving at the "Adjusted Gross Revenue (AGR)" the following shall be excluded from the Gross Revenue to arrive at the AGR:

- I. PSTN related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;
- II. Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;
- III. Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax"

4. In view of above, I have been hereby directed to seek the recommendations of Telecom Regulatory Authority of India, under Section 11(1)(a)(ii) of TRAI Act, on the amendment to the terms and conditions of ISP Licence Agreement signed with the successful BWA bidders, in order to incorporate the provisions of NIA dated 25.02.2010.

Enclosure-

- (i) UASL Amendment No. 20-271/2010-AS-I dated 01.09.2010
- (ii) UASL Amendment No. 20-271/2010-AS-I dated 31.08.2010

  
(Ritu Pande)  
Dir(DS-III)

No. 20-271/2010-AS-I-UASL  
Government of India  
Ministry of Communications & IT  
Department of Telecommunications  
(Access Services Division)  
1203, Sanchar Bhavan, Ashok Road, New Delhi-110001.

31<sup>st</sup> August, 2010

To  
All the UAS Licensees Company

**Subject: Amendment of Unified Access Services (UAS) Licence Agreement regarding  
Format of Statement of Revenue and Licence Fee.**

In pursuance of Condition 5.1 of the UAS licence agreement(s), the LICENSOR hereby substitutes the 'APPENDIX-II TO ANNEXURE-II - Format of Statement of Revenue and Licence Fee' of the Unified Access Services (UAS) Licence Agreement with the 'APPENDIX-II TO ANNEXURE-II - Format of Statement of Revenue and Licence Fee' as annexed to this amendment with effect from 01.09.2010.

2. All other terms and conditions of the UAS licence agreement including amendments and instructions issued from time to time shall remain unchanged.

3. Please acknowledge receipt.

Encls.: As above.



(R. K. Gupta)  
Director (AS-I)

For and on behalf of the President of India  
Ph.No.2303 6284

Copy To:

1. Administrator USOF/ Wireless Advisor/ Sr.DDG(TEC)
2. JS(T)/ DDG(Security)/ DDG(Security-Term)/ DDG(CS)/ DDG(DS)/ DDG(LF-I)/ DDG(LF-II)/ DDG(WPF)
3. Secretary, TRAI
4. Director (IT) may kindly arrange to upload this letter on the website of DoT.

**APPENDIX-II TO ANNEXURE-II**

Format of Statement of Revenue and Licence Fee  
 \_\_\_\_\_ (Name and address of operator)  
 Unified Access Services in \_\_\_\_\_ ( Service Area)  
 Statement of Revenue and Licence Fee for the Quarter  
 .....  
 of the financial year.....

*(AMOUNT IN RUPEES)*

S.N.	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.
<b>1</b>	<b>Revenue from services</b>			
<b>A</b>	<b>Revenue from wireline subscribers:</b>			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			
(vii)	Service charges			
(viii)	Charges on account of any other value added services, Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from wireline subscribers.			
<b>B</b>	<b>Revenue from WLL subscribers : (Fixed)</b>			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			

(vii)	Service charges			
(viii)	Charges on account of any other value added services, Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from WLL subscribers.			
<b>C</b>	<b>Revenue from WLL subscribers : (handheld)</b>			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			
(vii)	Service charges			
(viii)	Charges on account of any other value added services, Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from WLL subscribers.			
<b>D</b>	<b>Revenue from Mobile Services:</b>			
<b>D (a)</b>	<b>Revenue from GSM and 3G spectrum based Mobile Services:</b>			
<b>D(a) 1.</b>	<b>Post paid options:</b>			
i.	Rentals			
ii.	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
vii.	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from			



	post paid options.			
<b>D(a) 2.</b>	<b>Pre-paid options:</b>			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from pre-paid options.			
<b>D(a) 3.</b>	<b>Revenue from Mobile Community phone service including full value of all components charged therein.</b>			
i.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.			
<b>D (b)</b>	<b>Revenue from CDMA based Mobile Services:</b>			
<b>D(b) 1.</b>	<b>Post paid options:</b>			
i.	Rentals			
ii.	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
vii.	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from post paid options.			
<b>D(b) 2.</b>	<b>Pre-paid options:</b>			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from pre-paid options.			

D(b) 3.	Revenue from Mobile Community phone service including full value of all components charged therein.			
i.				
ii.	Any other income/miscellaneous receipt from Mobile Community phone service.			
D (c)	Revenue from BWA Services:			
D(c) 1.	Post paid options:			
i.	Rentals			
ii	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
vii	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/miscellaneous receipt from post paid options.			
D(c) 2.	Pre-paid options:			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii.	Any other income/miscellaneous receipt from pre-paid options.			
D(c) 3.	Revenue from Mobile Community phone service including full value of all components charged therein.			
i.				
ii.	Any other income/miscellaneous receipt from Mobile Community phone service.			
E	Revenue from Voice Mail /any other value added			

	<b>service</b>			
<b>2</b>	<b>Income from trading activity (all including of sales tax)</b>			
(i)	Sale of handsets			
(ii)	Sale of accessories etc.			
(iii)	Any other income/miscellaneous receipt from trading activity.			
<b>3</b>	<b>Revenue from roaming.</b>			
i.	Roaming facility revenue from own subscribers.			
ii.	Roaming revenue from own subscriber visiting other networks including STD/ISD/pass thru charges for transmission of incoming call during roaming.			
iii.	Roaming Commission earned.			
iv.	Roaming revenue on account of visiting subscribers from other networks (provide operator-wise details).			
v.	Service Tax if not included above.			
vi.	Any other income/miscellaneous receipt from roaming.			
<b>4</b>	<b>Income from investments</b>			
(i)	Interest income			
(ii)	Dividend income			
(iii)	Any other miscellaneous receipt from investments.			
<b>5</b>	<b>Non-refundable deposits from subscribers</b>			
<b>6</b>	<b>Revenue from franchisees /resellers including all commissions and discounts etc. excluding the revenues already included in IA&amp;IB</b>			

7	Revenue from sharing/ leasing of infrastructure			
8	Revenue from sale/ lease of bandwidth, links, R&G cases, turnkey projects etc.			
9	Revenue from other OPERATORS on account of pass through call charges (provide operator-wise details).			
10	Revenue from other OPERATORS on account of provisioning of interconnection (provide operator-wise details)			
11	Miscellaneous revenue			
AA	GROSS REVENUE OF THE LICENSEE COMPANY: (Add 1-11)			
BB	DEDUCT:			
1	Charges actually paid to other SERVICE PROVIDER(s) (OPERATOR- wise)			
2	Roaming revenues actually paid to other CMSPs And GMPCS service providers. (operator-wise)			
3	Service Tax paid to the Government			
4	Sales Tax paid to the Government			
BB	TOTAL DEDUCTIBLE REVENUE (1+2+3+4)			
CC	ADJUSTED GROSS REVENUE (AA-BB)			
	REVENUE SHARE @ ----- ----- OF ADJUSTED GROSS REVENUE			

No. 20-271/2010-AS-I-Bharti-BWA  
Government of India  
Ministry of Communications & IT  
Department of Telecommunications  
(Access Services Division)  
1203, Sanchar Bhavan, Ashok Road, New Delhi-110001.

1<sup>st</sup> September, 2010

To

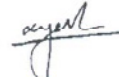
M/s Bharti Airtel Ltd.,  
Bharati Crescent, 1 Nelson Mandela Road,  
Vasant Kunj, Phase-II,  
New Delhi-110070

**Subject: Amendment of Unified Access Services (UAS) Licence Agreement(s) to use BWA spectrum for provision of telecom access services.**

In pursuance of Condition 5.1 of the UAS licence agreement(s), Clause 4.6 of the Notice Inviting Applications (NIA) for "Auction of 3G and BWA Spectrum" vide No. P-11014/13/2008-PP dated 25.02.2010, WPC Wing's Letter of Intent (LoI) no. L-14035/08/2010-BWA/13-15 dated 07.07.2010 and on the request of the licensee vide letter no. Nil dated 31.08.2010, the LICENSOR hereby insert following Condition 23.8 in the UAS licence agreement(s) for the **Karnataka, Kolkata, Maharashtra and Punjab** service area(s), with immediate effect:

*"23.8 Use of BWA Spectrum: The licensee is also authorised to use the BWA spectrum block (as earmarked in the above said Letter of Intent) for provisioning of Telecom Access Services as defined in the 'Scope of the licence' in the Schedule Condition 2 of the UAS License agreement, from the date of award of right to commercially use the BWA spectrum i.e. the date of issue of this amendment letter, till the validity of the UAS licence agreement or for a period of 20 years from the date of issue of this amendment letter, whichever is earlier, subject to compliance of following conditions:*

*(i) **Validity period for BWA Spectrum:** The licensee is authorised to use this spectrum for a period of 20 years from the date of award of right to commercially use the allocated BWA spectrum block i.e. the date of issue of this amendment letter, for operation of Telecom Access Services as defined in the 'Scope of the license' in Clause 2, Part 1 General Conditions of the UAS License agreement, subject to the condition of validity of the UAS licence agreement. In case the UAS licence is cancelled/ terminated/ revoked/ surrendered for any reason, the spectrum usage rights shall stand withdrawn forthwith. If the validity period of the UAS licence agreement expires before the expiry of the right to use the BWA Spectrum for 20 years, awarded by means of the said Auction, then the validity of the UAS licence for operation of Unified Access Services by using the said BWA Spectrum only, shall be extended to make it coterminous with the validity of the right to use the BWA Spectrum, without any charges and in such manner as the Licensor deems fit. The extension shall be done on the application of the licensee made 3 months in advance*



of expiry of the validity period of the UAS licence. This does not include authorisation or extension of period of validity of the UAS license for providing Unified Access Services using wireline and/or spectrum allocated under Clause 43 of the UAS licence agreement.

(ii) **Roll-out obligations for BWA Spectrum:** The Licensee shall ensure compliance of following network roll-out obligations for BWA Spectrum for respective category of the licensed service area(s):

(a) **Applicable for Metro service area licence(s):** The licensee shall be required to provide required street level coverage using the BWA Spectrum in at least 90% of the service area within five years of the Effective Date.

(b) **Applicable for Category A, B and C service area licence(s):** The licensee shall ensure that at least 50% of the rural SDCAs are covered within five years of the Effective Date using the BWA Spectrum. Coverage of a rural SDCA would mean that at least 90% of the area bounded by the municipal/ local body limits should get the required street level coverage.

The Effective Date shall be the date when the right to use awarded spectrum commercially commences i.e. the date of issue of this amendment letter.

If the licensee does not achieve its roll out obligations, its BWA spectrum assignment shall be withdrawn.

(iii) **Licence Fee for BWA Spectrum:** Over and above the 'Licence Fees' payable by the licensee as per Condition 18.2 of the UAS licence agreement, the licensee shall also pay the annual licence Fee as share of Adjusted Gross Revenue (AGR) from the services using BWA spectrum as per rates mentioned in Condition 18.2 of the UAS licence agreement. All conditions contained in Part-III Financial Conditions of UAS Licence Agreement will continue to be applicable to the Licensees as amended by government from time to time.

(iv) **Spectrum Usage Charges for BWA Spectrum:**

- i) Over and above the 'Radio Spectrum Charges' payable by the licensee as per Condition 18.3 of the UAS licence agreement, the licensee shall also pay 1% of AGR from the services using BWA spectrum as annual spectrum Charge payable Quarterly in advance.
- ii) The revenue from BWA services shall be reported separately in the 'APPENDIC-II TO ANNEURE-II, Format of Revenue and License Fee' as amended.

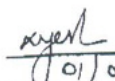
(v) **Merger of BWA spectrum blocks:** Unless otherwise notified by the Licensor due course, if two or more licensees holding BWA Spectrum blocks in a service area merge, then they shall be allowed to retain only one BWA Spectrum block and shall surrender the remaining BWA Spectrum blocks in that service area.

(vi) **Breach, revocation and surrender for BWA Spectrum:** The BWA spectrum assignment may be revoked, withdrawn, varied or surrendered in accordance with the

applicable licence conditions or any other applicable laws, rules, regulations or other statutory provisions. The BWA spectrum assignment may also be revoked if the Licensor determines the user of the spectrum to be in serious breach of any of the conditions of the award of the spectrum (including adherence to the Auction Rules) and the consequent obligations. In case of less serious breaches, the Licensor may impose penalties at its discretion. Seriousness of the breach shall be determined by the Licensor at its sole discretion. The licensee may surrender the BWA spectrum, by giving notice of at least 60 calendar days in advance. In that case, it shall also notify all its customers of consequential withdrawal of service by giving 30 calendar days notice to each of them. The licensee shall pay all fees payable by it until the date on which the surrender of the BWA spectrum becomes effective. The effective date of surrender of the spectrum shall be the later of the dates of expiry of the two notices mentioned in this clause. If at any stage, the spectrum allocation is revoked, withdrawn, varied or surrendered, no refund will be made.

(vii) **Applicability of the NIA for BWA Spectrum:** This amendment of the UAS licence agreement is subject to all the terms & conditions of the Notice Inviting Applications (NIA) for "Auction of 3G and BWA Spectrum" vide No. P-11014/13/2008-PP dated 25.02.2010. The licensee shall comply with all the terms & conditions of the above said Notice Inviting Applications (NIA) unless and otherwise amended by the licensor by way of amendment of the UAS licence agreement from time to time."

2. All other terms and conditions of the UAS licence agreement including amendments and instructions issued from time to time shall remain unchanged.
3. Please acknowledge receipt.

  
(01/09/2010)  
(R. K. Gupta)  
Director (AS-I)

For and on behalf of the President of India  
Ph.No.2303 6284

**Copy To:**

1. Administrator USOF/ Wireless Advisor/ Sr.DDG(TEC)
2. JS(T)/ DDG(Security)/ DDG(Security-Term)/ DDG(CS)/ DDG(DS)/ DDG(LF-I)/ DDG(LF-II)/ DDG(WPF)
3. Secretary, TRAI
4. Director (IT) may kindly arrange to upload this letter on the website of DoT.

## Annexure-II

**Government of India**  
**Ministry of Communications and IT**  
**Department of Telecommunications**  
**(Data Services Wing)**  
**Sanchar Bhawan, 20, Ashoka Road, New Delhi-110117**

No. 820-01/2006-LR (Vol-II)Pt.

To,

All Internet Service Providers (ISPs)

Dated : 29.06.2012

**Subject: Amendment with respect to Licence Fee (LF)-regarding**

In pursuance of the right of Licensor to modify at any time the terms and conditions of the License Agreement for provision of Internet Services, in public interest or for the proper conduct of the service, the Licensor hereby intimates that:

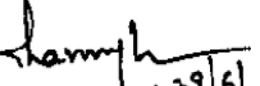
A uniform licence fee rate of 8% of "Adjusted Gross Revenue (AGR)" shall be adopted for all ISP and ISP-IT licences, in two steps starting from 01.07.2012 as follows:

Category of licence	Details	Annual Licence Fee rate as % of AGR	
		For the period from 01.07.2012 to 31.03.2013	For year 2013-14 and onwards
ISP	Licence for provisioning of Internet services issued under 1998 guidelines (without Internet Telephony)	4%	8%
ISP-IT	Licence for provisioning of Internet services (including Internet Telephony) issued under 2002 guidelines, Licence for provisioning of Internet services issued under 24.08.2007 guidelines	7%	8%

*Shamsh* 29/6/12  
1



2. Revenue for the purpose of licence fee for ISP Category shall provisionally include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses. Revenues from Internet services will also be included in the definition of applicable AGR provisionally for ISP-IT category till government takes a final decision after obtaining TRAI recommendations in this regard.
3. Necessary amendment(s) to the Licence Agreement(s) to above effect will be issued in due course of time.
4. Please acknowledge receipt.

  
(Sanjay Kumar) 29/6/11  
ADG(ISP-I)

**Copy to:**

1. Secretary TRAI, New Delhi
2. Sr. DDG(AS)/DDG(CS)/DDG(Security-TERM)/ Sr. DDG WPF/ DDG (LF-I/II)/WA /DOT
3. Director (IT) for uploading on the DOT Site
4. ISPAI
5. DG P&T Audit
6. Secy...., MOF

## Annexure-III

820-1/2006-LR Vol(II)Pt.  
Government of India  
Ministry of Communications & IT  
Department of Telecommunication  
Sanchar Bhawan, 20-Ashoka Road, New Delhi-110001  
(DS Cell)

To,

Secretary,  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg  
New Delhi.

Dated : 22/10/2012

**Sub:- The definition of "Adjusted Gross Revenue (AGR)" in all categories of Licence Agreement for provision of Internet Services (ISP &ISP-IT) and minimum presumptive AGR.**

Licence Agreements for the provision of Internet Service, have been classified into following two categories:-

Category of licence	Details
ISP	Licence for provisioning of Internet services issued under 1998 guidelines (without Internet Telephony )
ISP-IT	Licence for provisioning of Internet services (Including Internet Telephony) issued under 2002 guidelines, Licence for provisioning of Internet services issued under 24.08.2007 guidelines

2. The ISP licences issued under 1998 guidelines provide only for a token licence fee and AGR was not defined in these licences.

In the ISP-IT licences issued under 2002 guidelines, initially there was only a token licence fee. Subsequently with an amendment dated 3.3.2006, Licence Fee as 6% of AGR was imposed on these licensees and AGR was also defined in this amendment. No minimum licence fee was stipulated for these licensees. Definition of AGR, as per the said amendment, is reproduced below:-

"Definition of 'Adjusted Gross Revenue':

a) Gross Revenue:

The Gross Revenue shall be inclusive of Internet access service, internet content service, Internet Telephony service installation charges, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

b) For the purpose of arriving at the "Adjusted Gross Revenue (AGR)" the following shall be excluded from the Gross Revenue to arrive at the AGR:

- (i) Charges from Internet access, Internet content and Internet access related installation charges.
- (ii) Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax."

In the ISP-IT licences issued under 2007 guidelines, Licence Fee as 6% of AGR was imposed on these licensees and a minimum licence fee to be paid by the licensee was specified. Definition of AGR in these licences is reproduced below:-

"Definition of 'Adjusted Gross Revenue':

18.1 Gross Revenue: The Gross Revenue shall be inclusive of revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects etc., revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense etc.

18.2 For the purpose of arriving at the "Adjusted Gross Revenue (AGR)" the following shall be excluded from the Gross Revenue to arrive at the AGR:

- (i) Charges from pure Internet service, activation charges from pure internet subscribers. Pure Internet Services shall mean any method / device / technology to provide access to Internet unless explicitly prohibited and all content available including web-hosting, web-colocation which is available on internet without access restriction.
- (ii) Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.
- (iii) Roaming revenue actually passed on to other eligible/entitled telecom service provider."

3. While considering TRAI recommendations dated 11.05.2010 on "Spectrum Management and Licensing Framework", with respect to AGR under Licences for provision of Internet Service (with and without Internet Telephony), the government, inter-alia, decided the following:

"Revenue for the purpose of licence fee for ISP Category may provisionally include all types of revenue from Internet services, allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for expenses. Revenues from Internet services will also be included in the definition of applicable AGR provisionally for ISP-IT category till government takes a final decision after obtaining TRAI recommendations in this regard."

This has been informed to the ISPs as a part of communication dated 29.06.2012, revising the licence fee. (copy enclosed). Therefore the definition of "Adjusted Gross Revenue" is to be included /amended in various categories of Licences for provisioning of Internet Services (with and without Internet Telephony), granted since 1998 and amendment in the licence(s) thereof.

4. TRAI is therefore requested to give its recommendations w.r.t. inclusion/amendment of the definition of AGR in all the categories of ISP Licence. These recommendations are being sought with respect to existing licensees only and do not take into account the impact of liberalization of spectrum and future licences under Unified Licensing regime. However this definition should also cater to ISP licensees with standalone BWA spectrum.

Further TRAI may indicate the various components of service provisioning by these Licensees which may be included/excluded from the AGR definition like revenue from web-hosting, web-colocation, cloud services, sale of IT Components, bundled/unbundled services with Internet/broadband bandwidth etc.

5. TRAI in Para 2.133 of its recommendations dated 11.05.2010 on "Spectrum Management and Licensing Framework" has given recommendations with respect to minimum presumptive AGR for licensees holding GSM and CDMA spectrum but no specific recommendation has been made with respect to minimum presumptive AGR for UAS/ISP licensees holding BWA Spectrum.

6. TRAI is therefore requested to give its recommendations with respect to minimum presumptive AGR for BWA Spectrum holders under ISP/Unified Access Service licence(s) keeping in view the provisions of NIA for 3G/BWA spectrum auction.

Further, TRAI is requested to examine the issue related to presumptive AGR in case of other licences with or without spectrum, including access service licences, while giving their recommendations.

In addition, TRAI is requested to give its recommendations with respect to requirement of separate stream wise AGR accounting for each type of spectrum.

7. In view of above, I have been hereby directed to seek the recommendations of Telecom Regulatory Authority of India, under Section 11(1)(a)(ii) of TRAI Act, on

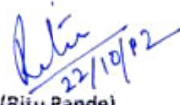
(i) The definition of AGR in the ISP License Agreements for provision of Internet Services, and amendment in the licence(s) thereof, in the following categories:-

- ISP licence(s) granted under 1998 guidelines (ISP Category Licence)
- ISP licence(s) granted under 2002 guidelines and subsequently under 2007 guidelines (ISP-IT Category Licence)

(ii) Applicability of minimum presumptive AGR and value, if applicable, for BWA Spectrum holders under Internet Service /Access Service licence(s), keeping in view the provisions of NIA of 3G/BWA spectrum auction and in case of other licences with or without spectrum, including access service licences.

(iii) Amendment in the "Format of Statement of Revenue and Licence Fee" to be reported by various categories of Internet Service Licensees and UAS Licensees.

8. While considering the matter above, TRAI may keep in view the feasibility/desirability of maintaining stream-wise AGR in multi band scenario for various types of licences (unliberalised and future liberalised spectrum scenario in same band may also be considered).

  
22/10/22  
(Ritu Pande)  
Dir(DS-III)

**Government of India**  
**Ministry of Communications and IT**  
**Department of Telecommunications**  
**(Data Services Wing)**  
**Sanchar Bhawan, 20, Ashoka Road, New Delhi-110117**

No. 820-01/2006-LR (Vol-II)Pt.

To,

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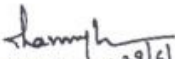
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*Shamph* 29/6/12

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4. Please acknowledge receipt.

  
(Sanjay Kumar) 29/6/16  
ADG(ISP-I)

**Copy to:**

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