

Information Note to the Press (Press Release No. 27/2009)

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TRAI recommends Three year Lock-in period for Promoter's Equity and related conditions for Unified Access Service Licensees (UASL)

New Delhi, 12th March, 2009. Telecom Regulatory Authority of India (TRAI) has today released the recommendations on “Lock-in period for Promoter's Equity and other conditionalities for Unified Access Service Licensees (UASL)”.

1. The Telecom sector in today's India is intensely competitive with 281 Access service licensees. Of these, 121 UAS licenses were awarded in January, 2008. The total number of telephone connections stood at 400.05 million at the end of January, 2009. Despite the phenomenal growth, the overall tele-density is 34.50% and the rural tele-density is only 13.13%. Clearly, there is tremendous scope for further expansion of network requiring further infusion of capital. With the growth being contributed mainly by mobile telephones, availability and efficient utilization of spectrum, which is a scarce national resource, assumes importance. Any exploitation for undue gains either in terms of price of the spectrum or its framework for usage under a telecom license should not be allowed as it would defeat the

goals of competition and would also be counterproductive for the industry as a whole.

2. Telecom Regulatory Authority of India (TRAI) received a reference dated 24th November 2008, from the Department of Telecommunications (DoT) seeking recommendations on the considered views of the Telecom Commission on the restrictions that should be there in the license agreements “...in order to prevent fly-by-night operators making a windfall gain.” These restrictions relate to the issue of lock-in period for promoter’s equity for Unified Access Service Licenses (UASL), restriction on declaration of special dividend in case of additional equity etc. While similar conditions had existed in the initial licenses when the sector was opened up for private participation, these underwent changes over time, and were removed from the licenses issued from 2007 onwards. With spectrum coming bundled with the license, and its limited availability, regulation of transactions in equity of UAS Licensee Company has assumed significance particularly where the entry fee determined in 2001 has been the basis for grant of license.
3. The Authority initiated a consultation process on January 9, 2009. Based on the comments of the stakeholders, and examination of the various other factors like growing market, current policy & regulations, competitive scenario etc., the Authority has framed its recommendations on the issues raised by the DoT. The Authority also received valuable inputs from the Securities and Exchange Board of India (SEBI). The Authority has examined the matter under clauses 11(1)(a) (ii) and 11(1)(a)(iv) of the TRAI Act, 1997, as amended by TRAI (Amendment) Act, 2000 and its recommendations are under Section 11(1)(a) (ii) of TRAI Act.
4. While dealing with the issues, the main objective of the Authority has been to recommend measures to block the unearned gains arising from transaction in stakes of promoters particularly when

the value of spectrum is not getting correctly reflected in the entry fee. The Authority has also attempted to address the requirement for stability, competitiveness and positive environment for investment from domestic and foreign sources .In these recommendations, the attempt has been to maintain a level playing field, ensure efficient utilization of spectrum and transparency in the system while fostering growth in telecom sector.

5. **The salient features of the recommendations are:**

Lock-in period for Promoter's Equity

- There should be a lock-in of the equity share capital of promoter(s), whose net-worth has been taken into consideration for determining the eligibility for grant of UAS license, for a period of three years from the effective date of license.
- However, with prior written approval of the Licensor and on fulfillment of roll out obligations, the promoters may be permitted to sell their equity share even during the lock-in period, subject to the condition that 50% of the profit earned on sale transaction of promoter(s) equity shall be retained in the business as a special reserve and utilized for telecom network expansion only. The balance 50% of the profit shall be transferred to the Licensor.
-The profit on sale of such shares shall be defined as the difference between sale value/agreed value of equity shares on the date on which the transfer of such shares takes place and their face value on the date of application for UAS License.
- Where the present promoter (s) is/are different from the promoter (s) based on whose net-worth the license was granted, the stake of such present promoter (s) shall also be subject to the above lock-in conditions.

Promoters

- Introduction of definition for Promoters in the License Agreement. The suggested definition is “A person who, acting alone or in conjunction with other persons, directly or indirectly takes the initiative in founding or organizing the business enterprise to establish, maintain or work a telegraph within any part of India.”
- Disclosure of the details with complete break-up of 100% of equity and net-worth of the licensee company including that of promoters on the effective date of license.

Reporting & Certificate requirement

- In addition to the present reporting system, any change or dilution in the stake of promoters' share in the total equity share capital of the licensee company shall be informed by the **Board of Directors** to the **Licensor** (DoT) within 2 days of such change taking place. A Certificate from the Company Secretary and Statutory Auditors to be filed within 15 days from the date of transaction.

Additional Share Capital

- Issue of additional equity share capital by the licensee companies/their holding companies by way of private placement/public issues should be permitted in accordance with statutory provisions (SEBI and Companies Act) subject to the condition that during the period coinciding with the lock-in period on sale of promoters' equity, the equity of the promoter (s) shall not fall below 10% of the total aggregate.
- Management control of the licensee company shall be governed by the terms and conditions of the License Agreement.

Dividend/Special Dividend

- The declaration of dividend/special dividend shall be governed by the statutory provisions under the Companies Act, 1956.

Pledging of Shares

- Transfer of shares of promoters', whose net-worth has been considered to determine eligibility for grant of UAS license, pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers shall not be allowed during the lock-in period without prior written approval of the Licensor. This provision to also apply to the present promoters where they are different from the original promoters.

Licensees holding UAS/CMTS licenses for a period of 3 years

- All the above mentioned recommendations to apply mutatis mutandis to the licensees holding UAS/CMTS licenses for a period of 3 years, if they acquire from the Licensor any new UAS license in some other service area in order to enlarge their area of operations.
6. The Authority hopes that with these measures, there will be renewed confidence in the commitment of the UAS licensees. The Authority also believes that these recommendations would meet not only the concerns raised by the DoT, but would also promote a healthy growth in the sector. The Authority is of the view the Department of Telecom may take an urgent view for immediate amendment in the license conditions.

7. Full text of the recommendations is available on TRAI's website (www.trai.gov.in).

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