

Information Note to the Press (Press Release No. 3/2009)

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**TRAI releases Consultation Paper on Lock-in period for Promoter's Equity and Other Related Issues for Unified Access Service Licensees (UASL)**

**New Delhi, 9<sup>th</sup> January, 2009.** Telecom Regulatory Authority of India has today released a consultation paper on “Lock-in period for Promoter's Equity for Unified Access Service Licensees (UASL) and other related issues”.

2. The Telecom Sector in the country is set to grow at an increased pace with the introduction of new technologies and services like 3G, Next Generation Network (NGN), Mobile Virtual Network Operator (MVNO), Mobile Number Portability (MNP), Voice Over Internet Protocol (VOIP) etc.
3. A large number of operators have entered in the market to tap its immense and ever increasing potential. Under the current licensing regime there are no direct and specific provisions on lock-in of equity shareholding and increase of equity. There are growing expressions of concerns on making windfall gains through financial restructuring. This could distort the market economics and also affect the sustained growth of the industry. As spectrum is a limited national resource, any exploitation of the spectrum allocated under a telecom license for undue gains may not be allowed as it would defeat its very purpose and would also be counter productive for the industry as a whole.

4. A reference has been received from the Department of Telecommunications (DoT) informing that the Telecom Commission had deliberated upon the matter of prohibition of sale of promoter's equity for Unified Access Service (UAS) License holders and that the Commission was of the considered view to put certain restrictions in the license agreements. DoT has sought recommendations of TRAI on the issues of lock-in period for promoter's equity for Unified Access Service Licenses (UASL), restriction on declaration of special dividend in case of fresh equity etc. TRAI is examining 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.
5. Recognizing the concerns involved and since the issue of Merger and acquisition and Substantial Equity had been extensively deliberated during the Consultation process on 'Review of license terms and conditions and capping of number of access providers', it has been decided to initiate a short consultation process before the recommendations of TRAI are sent to the Government.
6. **The issues for consultation are:**
  - Whether there should be a condition in the Unified Access Service license agreement providing for a lock-in period on sale of equity of promoters, who have 10% or more stakes in the Licensee Company and whose networth have been taken into consideration for determining the eligibility for grant of license?
  - What should be the minimum lock-in period for sale of equity of such promoters?
  - What should be the date from which the lock-in period be reckoned?
  - Can there be a mechanism to address the earlier licenses which did not have a lock-in condition?

- What measures may be taken to prevent entry of fly-by-night operators in the telecom sector? Please also indicate conditions, which should be stipulated as part of these measures.
- Whether the sale of such equity should be linked to fulfilling roll out obligations under the terms of the license?
- Whether in addition to linking up with the roll out obligations, prior intimation/permission should also be introduced for any change in the equity holdings?
- Whether the lock-in provision should not be applicable to the shares, which are transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers with the condition that such shares should have been pledged for investment only in the particular licensed project? Whether the conditions relating to transfer of license need any modification and if so, what should be those modifications?
- Whether issue of additional/fresh equity share capital by the licensee companies/their holding companies by way of private placement/public issues should be permitted without observing any lock-in period but subject to all necessary statutory provisions?
- Whether the dilution of equity of promoters, having 10% or more stake and whose net worth was taken into consideration for determining the eligibility for grant of UAS license, should be restricted in terms of percentage of shareholding and/or the number of shares held at the time of grant of license?
- Whether there should be any restriction on change in management control in addition to conditions restricting dilution of equity?
- Whether there should be a restriction on declaration of special dividend by the company for a period coinciding with the lock-in period, in case money is brought into the company by issue of fresh equity?

- Whether an existing UAS/CMTS licensee should be allowed to acquire any UAS license (including newly issued, notwithstanding the lock-in period) in some other service area? If yes, under what conditions should this be permitted? If no, the reasons therefor?
  - Under what circumstances would the existing licensees be exempt from the conditions of lock-in provision on sale of equity and declaration of special dividend in case of issue of fresh equity, if they acquire any new UAS license in some service area in order to enlarge their area of operations?
7. The comments and inputs from stakeholders would enable TRAI to formulate the recommendations on the issues raised before forwarding to the Department of Telecommunications, Ministry of Communications & Information Technology, Government of India.
8. Full text of the Consultation Paper is available on TRAI's website ([www.trai.gov.in](http://www.trai.gov.in)). Written comments on the issues raised may please be furnished to Pr Advisor (FA & IFA), TRAI and also through email: [pradvfa@traigov.in](mailto:pradvfa@traigov.in); [srofa3@traigov.in](mailto:srofa3@traigov.in); [manoj4619@yahoo.co.in](mailto:manoj4619@yahoo.co.in). The last date for sending comments is January 20<sup>th</sup>, 2009. For any further clarifications please contact Smt. Sadhana Dikshit, Pr. Advisor (FA & IFA) on 011 – 23221856

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