



सत्यमेव जयते

भारतीय दूरसंचार विनियामक प्राधिकरण

महानगर दूरसंचार भवन, जवाहर लाल नेहरू मार्ग,
(पुराना मिनटो रोड), नई दिल्ली-110002

TELECOM REGULATORY AUTHORITY OF INDIA

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No. 102-1/2012-MN

Dated:-18th April 2012

To

The Secretary,
Department of Telecommunications,
Sanchar Bhawan,
Ashoka Road,
New Delhi-110001

Subject: - Exit Policy for various telecom licences - reg.

**Ref:- DoT letters no. 20-281/2010-AS-I (Vol II)(Pt) dated
10-10-2011 and 23-12-2011**

DoT vide their above referred letters had sought TRAI's recommendations on exit policy for all types of licences.

2. In this connection, TRAI issued a pre-consultation paper on 'Exit-Policy for various telecom licences' on 6th January 2012. Comments/views from all the stakeholders were solicited on issues like implications, advantages & disadvantages, to the individual licensees, to the Government revenues and to the telecom sector as a whole. The stakeholders submitted their comments on the pre-consultation paper.

3. On 2nd February 2012, the Hon'ble Supreme Court in a judgment on petition no. 423 of 2010 (CPIL Vs. Union of India and Ors.) and petition no. 10 of 2011 (Dr. Subramanian Swamy Vs. and Ors.) has *inter-alia* ordered:

"(i) *The licenses granted to the private respondents on or after 10.1.2008 pursuant to two press releases issued on 10.1.2008 and subsequent allocation of spectrum to the licensees are declared illegal and are quashed.*

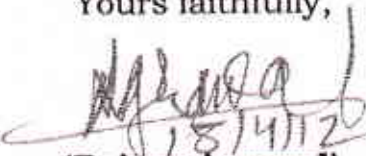
(ii) The above direction shall become operative after four months."

4. In view of above judgment of the Supreme Court, comments of the stakeholders on pre-consultation paper, and its own analysis, the Authority issued a 'Draft' response paper on Exit Policy for various telecom licences' on 26th March 2012. Comments have been received from the stakeholders which have been placed on TRAI's website www.trai.gov.in

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5. Based on analysis of the comments received on the draft response paper from the stakeholders and its own analysis, the Authority has finalised its recommendations which are enclosed herewith.
6. In keeping with practice, a copy of this letter, along with enclosures, is being placed on the website of TRAI www.trai.gov.in
7. This letter issues with the approval of the Authority.

Yours faithfully,


18/4/12
(Rajeev Agrawal)
Secretary

Encl: as above



Telecom Regulatory Authority of India
(IS/ISO 9001-2008 Certified Organisation)



**RECOMMENDATIONS ON
EXIT POLICY FOR VARIOUS TELECOM LICENCES**

18th April, 2012

TRAI recommendations on Exit Policy for various telecom licenses

1. The Department of Telecommunications (DoT), vide its letter dated 10th October 2011, had requested TRAI to recommend an exit policy for the licensees who want to exit from the provisioning of telecom services under a licence.
2. TRAI vide its letter dated 03rd November 2011, intimated DoT that being a new reference, the Authority will need to carry out a consultation with the stake holders and that the recommendations on this subject will be sent in due course to the Government.
3. In order to initiate the consultation process, TRAI, vide its letter dated 16th Dec 2011, requested DoT to intimate the categories of the license holders for whom the exit policy is required to be formulated.
4. In response, the DoT, vide its letter dated 23rd December 2011, requested TRAI to formulate the exit policy for all types of licences.
5. Accordingly, TRAI issued a pre-consultation paper on 'Exit-Policy for various telecom licences' on 6th January 2012. The Comments/views from all the stakeholders were solicited on issues like implications, advantages & disadvantages, to the individual licensees, to the Government revenues and to the telecom sector as a whole.
6. In response to the pre-consultation paper, various stakeholders submitted their comments on the issues namely partial exit (surrender of spectrum in part or complete), refund of entry fee, release of bank guarantee, time frame of exit from the business etc.
7. On 2nd February 2012, the Hon'ble Supreme Court, on the petition no. 423/2010 (CPIL Vs. Union of India and Ors.) and petition no. 10 of 2011 (Dr. Subramanian Swamy Vs. and Ors.) has, *inter-alia*, ordered:

"(i) The licenses granted to the private respondents on or after 10.1.2008 pursuant to two press releases issued on 10.1.2008 and subsequent

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allocation of spectrum to the licensees are declared illegal and are quashed.

(ii) The above direction shall become operative after four months."

8. In view of above judgement of the Supreme Court, comments of the stakeholders on pre-consultation paper, and its own analysis the Authority issued a 'Draft response paper on Exit Policy for various telecom licenses' on 26th March 2012. In the draft response paper, the Authority categorised licenses in the following four categories for which the Exit Policy was proposed to be formulated:

- a) 122 UAS licenses given on or after 10.01.2008
- b) Basic/CMTS/UASL given prior to 10.01.2008
- c) All other licenses like NLD, ILD, ISP etc.
- d) Future licenses.

9. Comments have been received from the three stakeholders on the draft response paper. These comments have been placed on the TRAI website www.traigov.in.

10. On the issue whether there is any need for a separate Exit Policy, one stakeholder mentioned that a well-defined exit policy addressing the various dimensions linked with a license exit is an important element for inducing transparency and fostering perfect competitiveness. It was contended that such a policy also helps trigger reallocation of resources for efficient utilization enabling better service provisioning to the end consumer thus fulfilling policy objectives in the long run. The stakeholder submitted that there could be number of circumstances like law and order, change in technology, wrong projection on available market etc which may make long term comments and investment unviable. In such conditions, he felt that it is not always viable for operators to remain invested and an exit policy would be necessary in such cases.

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11. One of the stakeholders mentioned that partial exit in terms of surrender of excess spectrum could be one of the dimensions, which may arise in following situations:

- Surrender of spectrum beyond the contracted limit(6.2/5MHz).
- Surrender of spectrum in a particular frequency band, if the service provider is holding spectrum in more than one technology and desires to surrender one of the band due to business reasons.
- Surrender of spectrum in cases of intra-circle merger of two licensees, wherein the merged entity may have spectrum beyond the combined requirement. In such a scenario the merged entity may be allowed to return the spectrum in part.

The stakeholder has suggested that refund of the entry fee on a pro-rata /proportionate basis for the remaining period of the license be considered.

12. Referring to the judgment of the Supreme Court, one of the stakeholders has suggested that even if the licensees are not successful in saving their licenses, they should be entitled for full refund of the entry fee paid. Another stakeholder mentioned that there are certain licensees who have not even received spectrum, and in the event of cancellation of licenses, there is a justified case for refund of the Entry Fees on a pro-rata basis to such licensees. Another stakeholder argued that there can always be a possibility, in future, that due to extraneous reasons (where the Licensee is not at fault) like war, force majeure etc the existing licensees may face a similar fate (as the current cancelled licensees) therefore an exit Policy involving refund is justified.

13. On the proposal of the Authority in the draft response paper that the present conditions in various licenses with regard to surrender of licenses, whereby licensee can surrender its license by giving a notice of at least 60 calendar days in advance should continue to be applicable, one of the stakeholders agreed with the proposal and submitted that the present provision of UAS License of 60 days advance notice to the licensor and 30 days advance notice to customers regarding consequential withdrawal of service

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seem appropriate. As per the stakeholder this timeline would be sufficient for customers to move to some other operator by means of Mobile Number Portability (MNP). This would also be sufficient for the business partners of the exiting operator to accommodate for any business plan changes.

14. On the issue of 122 UAS licenses given on or after 10.01.2008, one of the stakeholders argued that the licensees have the option of filing a Curative Petition to the Supreme Court and also file clarification application/s and in the event they are successful in getting relief from the Supreme Court, the original considerations which led to the proposal of an Exit Policy would become relevant once again. Therefore, in its view, it may be premature not to carry out any further consultation for this category of licenses.

15. On the issue of future licenses, one of the stakeholders commented that there could be a situation in the new regime wherein a licensee who has purchased spectrum through an auction is not able to make a success of its business, i.e. is unable to utilize its spectrum resources efficiently. It was further contended that in absence of permissibility of spectrum trading in India, it needs to be decided whether there should be an Exit Policy which allows such licensees to return the spectrum in consideration for some refund of the price paid.

16. The Authority has carefully analysed the comments of the stakeholders along with the related provisions in the various licenses. The Authority is of the opinion that presently all the licenses carry clauses for non-refundable entry fee. The relevant portion from the various licenses is given at **Annexure-I**. Further, various telecom licenses already have provision for surrender of licenses. Summary of relevant license conditions in different licenses in this regard is kept at **Annexure-II**. The relevant condition taken from UAS Licence, as an illustration, is as follows:-

LICENSEE may surrender the LICENSE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till

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the date on which the surrender of the LICENSE becomes effective. The effective date of surrender of License will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

It shall be the responsibility of the LICENSEE to maintain the Quality of Service even during the period when notice for surrender of LICENCE is pending and if the Quality of Service is not maintained during the said notice period, it shall be treated as material breach liable for termination at risk and consequent of the licensee.

However, in case of ISP license the surrender of license condition states that:

10.9 TERMINATION FOR CONVENIENCE: *If the LICENSEE desires to surrender the licence, it shall give an advance notice of 30 days to the Licensor to this effect. If the service is in operation, the licensee shall also intimate its subscribers of consequential withdrawal of service by serving a 15 days notice to them. The financial liability of the licensee company for termination of the licence for convenience shall be as below:-*

1. After start of service:- *No surrender charge is payable. However, if during the notice period, acceptable level of service is not delivered to the customer, the licensee shall forfeit all claims on the Performance Bank Guarantee which shall be encashed and the amount shall be adjusted towards damages.*

2. Before start of service:- *The licensee who have completed the allocated period to roll out Internet services counted from the date of issue of the ISP license and have not yet rolled out their services have option to surrender the license paying 5% of PBG as surrender charge within six months of such notification. Further the licensee who has not completed the allocated period to roll out Internet services counted from the date of issue of the ISP license and want to surrender ISP licenses may be permitted to do so within six months form date of such notification by paying 2.5% of PBG as surrender charges.*

17. In view of the foregoing discussion, it can be said that as per the existing licence terms and conditions of the various telecom services, there is already a provision for the licensee to surrender the licence by giving a prior notice. The notice period is 60 days in most of the licences. However, the entry fee paid by the operator is non-refundable and there is no provision in any of the licence agreements for any refunds.

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18. As mentioned in para 8 above, in the draft response paper the Authority had categorised various license in the following four different categories for the Exit Policy:

- (a) 122 UAS licenses given on or after 10.01.2008
- (b) Basic/CMTS/UASL given prior to 10.01.2008
- (c) All other licenses like NLD, ILD, ISP etc.
- (d) Future licenses.

Regarding the licenses listed under Category (a), the present status is that as per the judgment of the Hon'ble Supreme Court, they stand cancelled after four months of the date of judgement. The Authority does not agree with the argument of one of the stakeholders that the licensees have the option of filing a Curative Petition to the Supreme Court and also file clarification application/s and in the event they are successful in getting relief from the Supreme Court, the original considerations which led to the proposal of an Exit Policy would become relevant once again. The Authority cannot formulate a policy based on the stipulations or likely outcome of a futuristic event. Accordingly, the Authority is of the opinion that, at present, there is no need for an Exit Policy in respect of these UAS Licensees.

19. In so far as licenses falling under category (b) are concerned, in view of the fact that these Licensees are operational for a number of years and have substantial network and subscribers, there seems to be no requirement for an exit policy for them. The argument of one of the stakeholders that in case of extraneous reasons (where the Licensee is not at fault) like war, force majeure etc., an Exit Policy with provision of refund should be available, does not have any merit. The Authority is of the view that considering the unique nature of such unlikely events, these can be dealt with on the case to case basis.

20. Regarding licenses like NLD, ILD, ISP etc. falling under category (c), most of these licenses carry low entry fee and the licensee has an option to surrender its licence at any time subject to certain license conditions. Therefore, there seem to be no need for separate exit policy for such licenses.

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21. Regarding future licenses under category (d), TRAI had already recommended that all future licenses will be unified licenses and as per the draft guidelines for unified licenses, the entry fee for unified licence has been kept low, which will be non-refundable. Further, the provision of surrender of license is already prescribed in the draft guidelines on Unified Licences. As such, the Authority does not find any justification for a separate exit policy in case of Unified Licensing Regime.

22. On the submission of one of the stakeholders that there could be a situation in the new regime wherein a licensee who has purchased spectrum through an auction is not able to make a success of its business, i.e. is unable to utilize his spectrum resources efficiently, therefore provision for return of the spectrum in consideration for some refund of the price paid should be there, the Authority is of the opinion that in view of delinking of Unified license and spectrum in future, the issue of return of spectrum will be governed by the respective Notice Inviting Applications(NIA) at the relevant point of time and there is no justification to specify the same at this stage.

23. In view of the forgoing, the Authority recommends that:-

- a) Presently there is no need for a separate Exit Policy for all types of licenses and the entry fee paid by the licensees will continue to be non-refundable as per their license terms and conditions.
- b) Present conditions in various licences with regard to surrender of licences, whereby licensee can surrender its licence by giving a notice of at least 60 calendar days (30 calendar days in case of ISP license) in advance shall continue to be applicable.


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(Rajeev Agrawal)
Secretary

Relevant portion from the various licenses in respect of Entry Fee

Entry fee:

1. UASL:

One Time non-refundable **Entry Fee** of Rs. _____ Crore has been paid by the LICENSEE prior to signing of this Licence agreement.

2. NLD:

5.1 The LICENSEE shall pay one time non-refundable Entry Fee of Rs 25 crores, before signing of the LICENCE.

3. ILD:

5.1 LICENSEE shall pay one time Entry Fee of Rs 25.00 crores (Rupees twenty five crores only), which shall be non-refundable and shall be payable before signing of LICENCE.

4. VSAT:

5. LICENSEE shall pay one time Entry Fee of Rs.30 lakhs (Rupees Thirty lakhs only) which shall be non-refundable and shall be payable before signing of LICENCE.

5. CMTS:

19.1 One -Time **Entry Fee** of Rs. _____ Crore has been paid by the LICENSEE based on the bidding process prior to signing of this license agreement.

6. GMPCS:

19.1 One -Time **Entry Fee** of Rs. **One Crore is payable by the LICENSEE at the time of signing of the Licence Agreement.**

35.1 The time period of delivery of the Service stipulated in this Licence shall be deemed as the essence of the contract and the service must be brought into commission not later than such specified time period. No extension in delivery date will be granted. If the Service is brought into commission after the expiry of the due date of commissioning, without prior written concurrence of the licensor and is accepted, such commissioning will entail recovery of **additional entry fee** under this Condition. Provided further that if the commissioning of

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service is effected within 15 calendar days of the expiry of the due commissioning date then the Licensor shall accept the services without levy of **additional entry fee**.

35.2 In case the Licensee fails to bring the Service or any part thereof into commission (i.e., fails to deliver the service or to meet the required coverage criteria) within the period prescribed for the commissioning, the Licensor shall be entitled to recover **additional entry fee as below**:

- (a) Delay up to 1 year : Rs. 5 Lakh shall be payable on the first day of the second year.
- (b) Delay of more than one year : Rs.5 Lakhs as at (a) above plus and upto than two years Rs. 5 lakhs payable on the first day of the third year.
- (c) Delay of more than 2 years : Rs. 10 Lakhs as of (b) above plus Rs. 5 lakhs payable on first day of the fourth year and also the licence is liable to termination in accordance with Condition No.10, Part-I.

7. Resale of IPLC:

8. "ENTRY FEE" The prescribed non-refundable amount of fee to be paid before signing of LICENCE AGREEMENT to provide IPLC.

8. ISP:

17.1 Entry Fee: One Time non-refundable Entry Fee of Rs. _____ Lakh has been paid by the LICENSEE prior to signing of this Licence agreement.

9. VOICE MAIL/AUDIOTEX/ UNIFIED MESSAGING SERVICE:

17.1 There will be no **Entry Fee** as well as **Licence Fee**.


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Relevant license conditions in different licenses on Surrender of Licenses

Surrender of license:

1. CMTS:

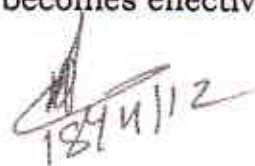
10.3 LICENSEE may surrender the LICENCE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENCE becomes effective. The effective date of surrender of Licence will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

10.4 It shall be the responsibility of the LICENSEE to maintain the Quality of Service even during the period when notice for surrender of LICENCE is pending and if the Quality of Service is not maintained during the said notice period, it shall be treated as material breach liable for termination at risk and consequent of the licensee.

2. GMPCS:

10.3 LICENSEE may surrender the LICENCE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENCE becomes effective. The effective date of surrender of Licence will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

10.7 It shall be the responsibility of the LICENSEE to maintain the Quality of Service, even during the period when the notice for surrender/termination of LICENCE is pending and if the Quality of Service is not maintained, during the said notice period, it shall be liable to pay damages. The quantum of damages and to whom payable shall be determined by the TRAI. The licensee shall also be liable to pay the Licence Fee till the end of the notice period and more specifically till the date on which the surrender/termination becomes effective.


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3. NLD:

13.3 The LICENCEE may surrender the LICENCE by giving notice of at least 60 days in advance. In that case the LICENCEE shall also notify all its subscribers of consequential withdrawal of SERVICE by sending a 30 days notice to each of them. The LICENCEE shall pay all fees payable by it till the date on which the surrender of the LICENCE remains effective.

13.4 It shall be the responsibility of the LICENCEE to maintain the Quality Of Service even during the period when notice for surrender of LICENCE is pending and if the Quality of Service is not maintained during the notice period, it shall be treated as material breach of liable for termination.

4. UASL:

10.3 LICENSEE may surrender the LICENSE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENCE becomes effective. The effective date of surrender of Licence will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

10.4 It shall be the responsibility of the LICENSEE to maintain the Quality of Service even during the period when notice for surrender of LICENCE is pending and if the Quality of Service is not maintained during the said notice period, it shall be treated as material breach liable for termination at risk and consequent of the LICENSEE.

5. VOICE MAIL/AUDIOTEX/ UNIFIED MESSAGING SERVICE:

10.3 LICENSEE may surrender the LICENCE, by giving notice of at least 60 calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30-calendar days notice to each of them. The effective date of surrender of LICENCE will be 60 Calendar days counted from the date of receipt of such notice by the LICENCOR.

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10.4 It shall be the responsibility of the LICENSEE to maintain the Quality of Service, even during the period when the notice for surrender/termination of LICENSE is pending and if the Quality of Service is not maintained, during the said notice period, it shall be treated as material breach liable for termination at risk and consequent of the LICENSEE and Performance Bank Guarantee of Rs.3 lakhs shall be forfeited.

6. ILD License:

13.3 LICENSEE may surrender the LICENCE, by giving an advance notice, of at least 60 days to the LICENSOR to this effect. The LICENSEE shall also notify all its subscribers of consequential withdrawal of SERVICE by sending a 30 days notice to them. The LICENSEE shall pay all dues payable by it till the date on which the surrender of the LICENCE becomes effective. The EFFECTIVE DATE of surrender of LICENCE will be effective on the 60th calendar day, counted from the date of receipt of such notice by the LICENSOR.

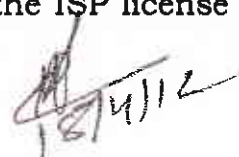
13.4 During the period when a notice for termination or surrender of LICENCE is pending, the QUALITY OF SERVICE to the subscribers as per prescribed standards, shall have to be maintained by the LICENSEE, failing which, it shall be treated as material breach without prejudice to any other remedy available to the LICENSOR.

7. ISP:

10.9 TERMINATION FOR CONVENIENCE: If the LICENSEE desires to surrender the licence, it shall give an advance notice of 30 days to the Licensor to this effect. If the service is in operation, the licensee shall also intimate its subscribers of consequential withdrawal of service by serving a 15 days notice to them. The financial liability of the licensee company for termination of the licence for convenience shall be as below:-

(i) After start of service:- No surrender charge is payable. However, if during the notice period, acceptable level of service is not delivered to the customer, the licensee shall forfeit all claims on the Performance Bank Guarantee which shall be encashed and the amount shall be adjusted towards damages.

(ii) Before start of service:- The licensee who have completed the allocated period to roll out Internet services counted from the date of issue of the ISP license and have not yet rolled out their services have option to surrender the license paying 5% of PBG as surrender charge within six months of such notification. Further the licensee who has not completed the allocated period to roll out Internet services counted from the date of issue of the ISP license and



want to surrender ISP licenses may be permitted to do so within six months form date of such notification by paying 2.5% of PBG as surrender charges.

10.7 It shall be the responsibility of the LICENSEE to maintain the Quality of Service, even during the period when the notice for surrender/ termination of LICENSE is pending and if the Quality of Service is not maintained, during the said notice period, it shall be liable to pay damages. The LICENSEE shall also be liable to pay the Licence Fee till the end of the notice period and more specifically till the date on which the surrender/termination becomes effective.

8. VSAT:

13.3 LICENSEE may surrender the LICENCE, by giving an advance notice, of at least 60 calendar days to the LICENSOR to this effect. The LICENSEE shall also notify all its subscribers of consequential withdrawal of SERVICE by sending a 30 calendar days' notice to them. The LICENSEE shall pay all dues payable by it till the date on which the surrender of the LICENCE becomes effective. The effective date of surrender of LICENCE will be 60 calendar days counted from the date of receipt of such notice by the LICENSOR.

13.4 During the period when a notice for termination or surrender of LICENCE is pending, the QUALITY OF SERVICE to the subscribers as per prescribed standards, shall have to be maintained by the LICENSEE, failing which, it shall be treated as material breach without prejudice to any other remedy available to the LICENSOR.

9. Resale of IPLC:

13.3 LICENSEE may surrender the LICENCE, by giving an advance notice, of at least 60 days to the LICENSOR to this effect. The LICENSEE shall also notify all its subscribers of consequential withdrawal of SERVICE by sending a 30 days notice to them. The LICENSEE shall pay all dues payable by it till the date on which the surrender of the LICENCE becomes effective. The EFFECTIVE DATE of surrender of LICENCE will be effctive on the 60th calendar day, counted from the date of receipt of such notice by the LICENSOR.

13.4 During the period when a notice for termination or surrender of LICENCE is pending, the QUALITY OF SERVICE to the subscribers as per prescribed standards, shall have to be maintained by the LICENSEE, failing which, it shall be treated as material breach without prejudice to any other remedy available to the LICENSOR.

10. PMRTS:

9.3 LICENSEE may surrender the LICENSE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to

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each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENSE becomes effective. The effective date of surrender of License will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

9.7 It shall be the responsibility of the LICENSEE to maintain the Quality of Service, even during the period when the notice for surrender/termination of LICENSE is pending and if the Quality of Service is not maintained, during the said notice period, the licensee shall be liable to pay damages. The quantum of damages and to whom payable shall be determined by the TRAI. The licensee shall also be liable to pay the License Fee till the end of the notice period and more specifically till the date on which the surrender/termination becomes effective.


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