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Shri Sudhir Gupta, Pr. Advisor (MS),  
Telecom Regulatory Authority of India  
Mahanagar Door Sanchar Bhawan,  
Jawahar Lal Nehru Marg, (Old Minto Road),  
New Delhi – 110 002

**Sub.:** Response to TRAI Consultation Paper No. 03/2012 dated 10<sup>th</sup> February 2012  
on **Draft Guidelines for Unified License/Class License and Migration of Existing Licenses**

Dear Sir,

This is with reference to the captioned Consultation Paper issued by the Hon'ble Authority on 10<sup>th</sup> February 2012.

At the outset, we would like to sincerely thank the Hon'ble Authority for kindly accepting the request made by us for including the matter of "**Migration of Existing Licenses**" into the scope of current consultation document.

ISPAI is a representative body of existing Internet Service Providers (ISPs). Accordingly, our comments / suggestions are from the said perspective which addresses both the important issue of 'Migration' and the 'New Guidelines'.

We are pleased to submit our comments / suggestions in seriatim on the consultation document as per 'Annexure – A' for the kind consideration as well as appropriate incorporation in the final recommendations.

We shall look forward to submit any clarifications or additional information thereof in support of our comments.

Thanking you,  
Yours Sincerely,

for **Internet Service Providers Association of India**

**S P Jerath**

**Secretary**

Encl : As above

## Annexure A

### Unified Licensing Framework

Any license in order to be successful for achieving the objectives of telecom policy will need to balance the needs of various stakeholders of the industry:

- It needs to ensure development of industry and the fulfillment of social obligations as envisaged in National Telecom Policies.
- It also needs to ensure that the players have requisite business and operational flexibility to extract efficiencies of scale and scope to generate a fair return on their investments.
- It needs to prevent abuse of market power and ensure healthy competition, which would lead to lower prices and better service to the consumer.

We believe that the Unified License can be structured in a manner, which will ensure the needs of all the stakeholders are addressed. It should ensure that no licensee is treated less favorably as compared to another licensee.

The press announcement made on 15th February 2012, has provided the future roadmap of telecom licenses as Unified License (UL). Even the draft National Telecom Policy, 2011 has also emphasized the future road map of telecom licensing i.e., Unified as below:

“3.2. To move towards Unified Licence regime in order to exploit the attendant benefits of convergence, for which there is already an in-principle acceptance. A migration path will also have to be provided for existing licensees to Unified Licence Regime.”

“3.7. The technology neutral Unified Licenses are envisaged to be in two separate categories:

3.7.1. Network Service Operator (NSO)/ Communication Network Service Operator (CNSO)

3.7.2. Service Delivery Operator (SDO)/ Communication Service Delivery Operator (CSDO)”

The primary issue when migrating to a unified licensing regime would be that of bringing about a level playing field amongst all players. Currently, there are heterogeneous terms and conditions of licenses for each category of service providers. It is imperative that when designing and drafting the license structure, license mapping from current categories to new categories takes into account all such differential terms and conditions thus, protecting the interests of all service providers and providing a level playing field.

**We observe a slight inconsistency in the way Unified License has been envisioned in the draft NTP 2011 as above and the framework defined in the current consultation.**

**We would request Hon'ble Authority that this fundamental point needs to be amicably reconciled before the guidelines for Unified License are determined.**

In our comments, we have covered the following main issues which are of utmost importance to existing internet service providers and needs to kindly considered and amicably addressed while finalizing guidelines.

- a. Conversion of nomenclature of Existing Licenses to a Unified License (Restricted) category
- b. Migration to Unified License
- c. Entry Fee post migration
- d. Definition of Adjusted Gross Revenue
- e. Uniform License Fee in the Unified License and related issues
- f. Scope of Service under Unified License - Convergence of Service / Technology / Networks
- g. Major and Minor Violations
- h. Infrastructure Sharing
- i. Calculation of FDI

**a. Conversion of nomenclature of Existing Licenses to Unified License (Restricted) category**

The current consultation document recommends conversion of existing licenses to a **Unified License (restricted)** category. This will be done without changing the terms and conditions of the existing licensees and at zero additional entry fee payment.

The need for changing the nomenclature by way of conversion of existing licenses is not clear. Even in November 2003, when the Unified as a concept was approved through an addendum to NTP – 1999, the nomenclature of existing categories of access licenses was not changed. According to us there seems to be no visible or perceived benefit of creating such a category, which just changes the nomenclature.

Therefore status quo of existing licenses should be maintained (without changing the nomenclature) who do not plan to migrate to a Unified License.

#### **b. Migration to Unified License**

- We fully support the draft guidelines which mandates Migration to Unified License “**optional**” and “**not compulsory**” for the existing Licensees.
- Existing Licensees should be free to provide the licensed services on the existing terms and conditions till the current validity of their respective licenses (without imposing any additional obligations) - if they choose not to migrate to the Unified License immediately.
- The licensees who choose to migrate to Unified License should be free to offer any combination of services proposed under Unified License and they should be allowed to pay for the service as they offer.
- Post migration if the existing licensee do not wish to expand their scope of service, they should be allowed to maintain status – quo.
- When the current validity of the licenses expires or if there is a plan to move beyond the existing scope of services / geographical area of operation, renewal of license should be in UL

#### **c. Entry Cost post Migration**

- TRAI recommendations on Unified Licensing has financial implications for existing internet service providers . The financial implications in particular relate to the prescribed entry fee of INR 20 crores. In case these Licensees choose to migrate to Unified License, then they should not be asked to pay the entry fee of INR 20 crores as proposed by TRAI upfront. The entry fee in such a scenario should be linked with the services they choose to offer over and above their present offerings.
- The previous recommendations of TRAI on Unified Licensing Regime, where the recommended entry fee was evolved based on detailed consultation and analysis. However, the reason for recommendation of INR 20 crores in the absence of a detailed analysis is not known. The table below indicates the cost of securing individual licenses when compared to the entry fee recommended by TRAI in the current consultation. The INR 6.6 crore entry fee is a fraction of the fee proposed by TRAI and needs to be reduced substantially.

- The migration for the existing set of licensees should be at zero cost. At best a very nominal processing charge to cover the administrative effort required to migrate can be taken. This can be similar to the processing charge currently taken to process application for a particular license. For e.g., INR 15,000.
- Entry fee deters non-serious entrants to a sector. Entry Fee is generally paid by entities who are entering the telecom licensing sector for the first time or those who plan to add additional services under the scope of current licenses.
- However it is imperative to ensure that the existing internet service providers (who plan to ensure status quo post migration) are not put in a worse off situation. They are existing licensees and not a new entrant. The entry fee should be paid by new telecom entrants.
- Existing migrated unified licensee wishes to enhance its current scope of service / geographical area of operation, the concept of “**pay as you eat**” should be considered for paying entry fee which should be as indicated in table below. For e.g., a existing internet service provider wishes to provide NLD services. In such a case a entry fee of INR 2.5 crores need to be paid up-front.

Sr. No.	Name of the License	Entry Fee
1.	Internet License	30 Lacs
2.	National Long Distance (NLD)	2.5 crores
3.	International Long Distance (ILD)	2.5 crores
4.	IP-1	-
5.	GMPCS	1 crore
6.	PMRTS	-
7.	Voice Mail / Audio Text / Unified Messaging	-
8.	VSAT	30 Lacs
9.	INSAT Mobile	-
	<b>Total</b>	<b>6.60 crore</b>

#### d. Definition of Adjusted Gross Revenue

- It is important that when a rules determining a new licensing regime are being written, it is important that corrective actions which were not part of earlier licensing regime be taken now. One of such instance is the definition of Adjusted Gross Revenue for payment of license fee. The present definition subjects all sources of revenue (telecom and non-telecom) accrued to the licensee company to license fee. Also the permissible deductions are

restricted only to voice based pass through charges, service and sales tax paid.

- The Unified License should consider revenues accrued only from telecom sources for license fee payment purposes. Interconnection cost should also consider payment made for bandwidth charges which forms and integral part of data services. This will eliminate the issue of multi stage assessment of license fee which is currently in vogue and severely impedes competition in the enterprise services and data sector.
- Therefore input cost (i.e. interconnection / IUC and bandwidth cost for voice and data respectively) should be allowed for deduction while calculating AGR. This will help in multiple assessment and imposition of license fee by existing licensees.

**e. Uniform License Fee**

We appreciate TRAI's recommendation with regard to license fee wherein it advised DOT to set a uniform license fee at 6% or lower of AGR. However we are concerned with the recent development which indicate that the license fee for ISP ( which is at present a nominal amount) and ISP-IT shall be brought to 8% from current 6 % of AGR. This proposed increase to 8% AGR would have a significant impact on our costs and returns on investment. The 6% fee in case of ISP-IT has already been integrated into the cost structure of our long-term contracts with our customers. Further, the increase in case of standalone ISP is out of line with global benchmarks, which indicate a trend towards lowering, rather than raising, fees in markets like India. The proposed increase along with the multiple stage assessment of license fee is excessive and not in line with regional or international practices. We therefore request that the Uniform license fee under the proposed Unified License should be capped at the rate 6 % or lower of AGR in case of ISP-IT. This is consistent with all the past recommendations of Hon'ble Authority.

The license fee should not be based any presumptive AGR or subject to minimum requirement as mentioned in the current consultation (10%). It should be based on the actual AGR as disclosed by licensees. Presumptive AGR would not be a appropriate mechanism for license fee payment.

We would request TRAI not to uniformly apply the concept of "presumptive AGR" to Unified License.

**f. Scope of Service under Unified License - Convergence of Service / Technology / Networks**

With the implementation of a single Unified License, there would be convergence of services & technologies which would further fuel the growth of telecom sector on a converged platform with best technological

innovations. A unified license should be technologically neutral and service agnostic. The present distinction of IP and PSTN networks should be merged in the Unified License.

We note that the service agnostic and technology neutral approach seems to have been covenanted with restrictions to segment of PSTN and VoIP/IP Telephony networks in general. This would impact the transition towards achieving the stated objectives of convergence goals of networks / services / devices as stated in the draft National Telecom Policy 2011 as below:

***“3.1. To orient, review and harmonise the legal, regulatory and licensing framework in a time bound manner to enable seamless delivery of converged services in technology neutral environment. Convergence would cover:***

***3.1.1. Convergence of services i.e. convergence of voice, data, video, Internet telephony (VoIP), value added services and broadcasting services***

***3.1.2. Convergence of networks i.e. convergence of access network, carriage network (NLD/ILD) and broadcast network***

***3.1.3. Convergence of devices i.e. telephone, Personal Computer, Television, Radio, inter-operable set top boxes and other connected devices” (Emphasis Supplied).***

In order to realize the true convergence of services, networks and devices, the present restrictions / barriers between different PSTN / IP / CUG~PSTN networks should be removed under the Unified License to ensure seamless interconnection including VOIP

#### **h. Sharing of Infrastructure**

Sharing of active and passive infrastructure too should be allowed to holders of UL for all the services. At present there are restrictions on the sharing of both active and passive infrastructure between various telecom operators and service providers. This has resulted in unnecessary duplication of infrastructure.

We request Hon'ble Authority for including Internet Service Providers within the ambit of licensees for infrastructure sharing purposes.

#### **i FDI Calculation**

The definition “**Indirect Foreign Investment**” contained in *Draft Guidelines for Unified License* in paragraph 2.2 (a), Page 2 is not the latest guidelines relevant for the Telecom Sector issued by the Government of India and is not consistent with the letter and spirit of guidelines consolidated under Press Note 2 (2009). Reference is made to Paragraphs 3 & 6 and also Paragraphs 2.1 & 10 of Press Note 2 of (2009), which are extracted hereunder for ready

reference. These Paragraphs read together clearly makes the definition made in Draft Guidelines inconsistent with Press Note 2, apart from lack of uniformity and ignoring the relevant methodology for computing the Indirect Foreign Investment in respect of FDI under Telecom Sector.

Therefore, it is humbly requested that the present methodology for computing Indirect Foreign Investment, suggested in Paragraph 2.1 (a) of the draft guidelines be substituted by reference to the latest Press Note 2 (2009).

*Extract of relevant paragraphs of the Press Notes.*

**Para 3 of Press Note 2 of (2009)**

*“3.0 Recognising the need to bring in clarity, uniformity, consistency and homogeneity into the exact methodology of calculation across sectors/activities for all direct and indirect foreign investment in Indian companies, Government of India now proposes to issue the following guidelines for calculation of direct and indirect foreign investment.”*

**Para 6 of Press Note 2 of (2009)**

*“6.0 The above mentioned policy and the methodology would be applicable for determining the total foreign investment in all sectors, excepting in sectors where it is governed specifically under any statutes or rules there-under. Thus, for the present purposes this methodology will not be applicable in the Insurance Sector where it will continue to be governed by the relevant Regulation.*

**Para 2.1 of Press Note 2 of (2009)**

*“2.1 Proportionate method is used in Telecom/ Broadcasting sectors through Press Note 5 of 2005 (modifying Press Note 2 of 2000), Press Note 1(2006) and Press Note 3(2007) “*

**Para 10 of Press Note 2 of (2009)**

*“10.0 The relevant entry pertaining to calculation of foreign equity of the applicant company under paragraph 2(c) of Press Note 1 of 2006 and paragraph 2.A.(ii) of Press Note 3 of 2007 stand deleted.”*

## Annexure A

ISPAI reply to the specific questions raised in the Consultation Paper is placed below:

### **1. Scope of Licence for Unified Licence (National level / Service area level / District level), Class Licence and Licence through Authorization.**

In our view, the scope of licenses under Unified License:

**National Level** – All types of telecom services, which currently are part of existing, license regimes / registration or which require additional licenses. Service area should be pan India. This should facilitate resale of all services, which presently is limited to IPLC only.

**Service Level** – All types of telecom services, which are currently permitted to a service area specific license. For e.g. UASLs (Metro or Category A, B or C), Internet Services, Voice Mail etc. The service area should be same as in UASL, ISP etc. Resale of services should be permitted.

**District Level** - All types of telecom services which are currently permitted to a service area / category C / Secondary switching area specific licenses. For e.g. Internet Services, etc. Resale of services should be permitted. Migration to service and national level should be permitted.

In general, since spectrum is delinked from Unified License and will be allotted based on market-determined rates through auction. So spectrum allocation should not be restricted to national or state level unified license.

#### **Class License**

No change than what is mentioned in the draft guidelines.

#### **License through Authorization**

Consistent with TRAI recommendations of 2005, the scope of License through Authorization will be as follows: "The category will cover the services for provision of passive infrastructure and bandwidth services to service provider(s), Radio Paging, PMRTS, Voice Mail, Audio-tex, Video Conference, Video-tex, E-Mail service, Unified Messages Services, Tele-banking, Tele-medicine, Tele-education, Tele-trading, E-commerce. Other Service Providers, as mentioned in NTP-99 and Internet Service Providers restricted Internet Telephony (Personal Computers (PC) to PC; within or outside India, PC in India to Telephony outside India, IP based H.323/SIP Terminals

connected directly to ISP nodes to similar Terminals; within or outside India), but not Internet Telephony in general.

### **Broadcasting Services**

No comments

#### **2. Actions which can be classified for minor violation and major violation for levy of penalty.**

In order to eliminate the subjectivity, it is important that a broad understanding of minor Vs major violation be determined. Minor violation should be those which do not affect security of the state or result in loss to the exchequer. These may relate to non-fulfillment of a license requirement relating to providing reports etc. In any event the gravity of a violation should be determined on a case-to-case basis.

#### **3. What factors should be taken into consideration while determining the amount of penalty for minor and major violations respectively.**

Determination of violation as major / minor can be best determined based on matters specific to each case. However we would recommend that the Hon'ble authority also consider risk mitigation strategy adopted by the licensee as well as intent to violate/ willful negligence as one of the key factors while determining the amount of penalty on the licensee for the violation

#### **4. What should be the terms and conditions of Licensing through Authorization.**

Authorization should be based on registration regime prevalent today. The entities within the purview of authorization may only notify DoT before commencing their services. Such entities should comply to the requirements on security / reports as prescribed by the DoT.

#### **5. Whether Voice mail / Audio-tex / UMS services and Radio paging should continue to be under licensing regime.**

Yes. Voice mail / Audio-tex / UMS services should be removed from the ambit of licensing regime. These services in a way serve and support the growing BPO / ITES sector of India. Therefore, these are best served if placed under the category Licensing through Authorization. TRAI has in its recommendations of 2005 on Unified Licensing has already recommended that such services be placed under an Authorization regime.

**6. Is there any other service(s), which needs to be brought under licensing regime.**

No.

**7. In the new licensing regime, spectrum has been delinked from the Unified Licence. In such a scenario, should TRAI be entrusted with the function of granting all types of Unified Licence as is prevalent in majority of the countries in the world?**

The function of issuance of license is presently entrusted with Department of Telecommunications. Unlike the international practice where there is a single body discharging the function of regulator and licensor (including policy making). Given the fact that the draft NTP 2011 has addressed the point, we would request that any consultation on this point be made post finalization of the Telecom Policy.

**8. Any other issues**

The unified license regime should clearly define the numbering plan especially for Un-restricted Internet Telephony. Interconnections/ termination charges for Un-restricted Internet Telephony should also be addressed appropriately beside rules for exit.

**Clause 5. Scope of the Licence**

**c. Unified licensee is permitted to provide leased circuit within its licence area. Public network is not to be connected with leased circuits/CUGs.**

This restriction is in contradiction with the spirit of unification of telecom services. Therefore, there should not be any restrictions for interconnectivity between public network/ PSTN and leased circuits /CUGs.

**e. The Licensee cannot provide any other service which otherwise require a separate licence.**

Further clarification is required about the services, which are not allowed. If it is decided by DOT, to issue some other license, such service should be automatically allowed to all existing and new Unified Licensees (ULs) without any incremental/additional fees. We presume that all types of access services by Unified Licensee are resellable /sharable by other Unified Licensee.

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