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Subject: TRAI Consultation Paper No.03/2012 on Draft Guidelines for Unified License / Class License and Migration of Existing Licenses dated 10th February, 2012

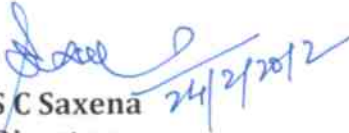
Dear Sir,

Association of Competitive Telecom Operators (ACTO) is pleased to submit its comments on TRAI Consultation Paper No.03/2012 on Draft Guidelines for Unified License / Class License and Migration of Existing Licenses dated 10th February, 2012.

We hope that our comments (enclosed as Annex) will merit consideration of the Hon'ble Authority.

Thanking you,
Respectfully submitted

Yours sincerely, *With Best regards*
for Association of Competitive Telecom Operators


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**ACTO Response to TRAI Consultation Paper No.03/2012 on Draft Guidelines for
Unified License / Class License and Migration of Existing Licenses dated
10th February, 2012**

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Executive Summary

The Association of Competitive Telecom Operators (ACTO) is pleased to submit its comments to the Telecom Regulatory Authority of India (TRAI) in response to the Consultation Paper No.03/2012 on ***Draft Guidelines for Unified License / Class License and Migration of Existing Licenses dated*** 10th February, 2012.

At the outset we thank the Hon'ble Authority for bringing out the draft guidelines which includes the guideline for Migration of Existing Licenses to Unified License.

We understand that Unified License would increase competition and affordability in the telecom sector which would benefit all stakeholders by way of convergence of services, networks and devices.

The proposed Unified License Regime (ULR) allows licensees to provide any telecom services using any infrastructure and / or technology, under the umbrella of a single license.

The Hon'ble Authority is requested to consider the following key suggestions of ACTO while framing the Unified Licensing Regime guidelines which would be conducive for the growth of the Telecom Sector:

- Suitable provisions should be made to allow both active and passive infrastructure sharing across various telecom services under the ambit of unified license.
- Redefining AGR to enable pass-through for telecom inputs for both voice and data services in order to ensure level playing field amongst the service providers.
- Encryption levels should be enhanced to globally acceptable levels. Asymmetric key length of up to 2048 bits and symmetric key length of up to 256 bits should be allowed.
- Security and monitoring conditions should be reviewed and notified suitably for service providers providing enterprise data services.
- Convergence of Services/ Technology / Networks and Devices.
- Review the current Limit of Foreign Direct Investment.

- Discourages artificial restrictions in terms of CUG-IP / PSTN networks for seamless interconnection.
- Proposed ULR to be consistent with the stated objectives of National Telecom Policies (NTP - 1999 and draft NTP 2011).
- 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 services to the consumers and businesses.

Chapter I – Draft Guideline for Unified License

A. Unified Licensing

Clause 1- Framework

The Unified License is expected to provide due recognition to the voice and data services including the related compliances. Given the emergence of Data Services in the times to come, it becomes imperative that the proposed license framework should provide the much needed impetus for its growth.

We urge the Hon'ble Authority that migration to Unified License should be made Optional till the validity of the tenure of the existing licenses. The proposed Licensing framework and guidelines should duly recognize the both the service providers who either currently are vertically non-integrated / standalone operators or those who wish to maintain status quo or enhance their scope of service / area post migration.

We believe that the Unified License can be structured in manner, which will ensure the needs of all the stakeholders are addressed. It should provide a simplified and voluntary migration path and should ensure that no existing licensee is placed in a worse off situation and treated less favorably as compared to another licensee.

Clause 2- Eligibility Conditions

FDI Policy

Presently in telecom sector the Government has allowed total foreign equity in the paid up capital of the applicant company up to 74% of the total equity. Foreign direct investment (FDI) in India has played an important role in the development of the Indian economy. It has enabled India to achieve a certain degree of financial stability, growth and development. The telecom sector is among the leading sectors attracting FDI. A number of reforms in telecom sector have led to an increase in FDI inflow.

We believe that in the current decade, data will transform the Indian telecom industry the way voice did in the previous decade. As the Enterprise Data Services has huge potential to double the current market size in terms of the revenue, we suggest that FDI policy permitting foreign investment should be further liberalized and it should be reviewed and suitably enhanced.

Relaxation of foreign ownership restrictions on license holders would also begin to bring India into a similar position with other economies in the APAC region (such as Australia, Japan, Hong Kong and Singapore) that have relaxed foreign ownership requirements for telecom operators¹.

Clause 5- Scope of License

Comments provided in chapter 5 – issue for consultations

Clause 10- Penalty

Comments provided in chapter 5- issue for consultations

Clause 11- Financial Condition

11.1 Entry FEE

Hon'ble Authority has proposed onetime non refundable Entry fee for Unified License as Rs. 20 (Twenty) crore for National level Unified License. In this regard, we wish to request for suitable basis on which this amount has been derived. The said entry fee presents major financial implications for our member companies in comparison to the existing stipulated entry fee for all telecom services granted under section 4 of Indian Telegraph Act.

Given that the spectrum will be delinked from unified license, the entry fee of INR Rs.20 crores needs to be reviewed a fresh. Given separate entry fee has been prescribed for Service Area / District level, we would need to understand the basis of prescribing the fee.

¹ Although there may be restrictions in regards to foreign investment into the incumbent fixed telco operator

In our view there should not be any entry fee for existing service providers who wish to migrate to unified license regime and would like to maintain status quo there on. There can be at best a very nominal charge to cover administrative charges for migration after due consideration to the entry fee already paid in the pre-migration era.

Entry fee is generally paid by new telecom entrants and the Unified License should also follow the same practice. Existing service providers upon migration should pay entry fee only if they wish to expand their current scope of service / area of operation. The philosophy of charging entry fee in such a case should be based on “pay as you eat” basis. For example a standalone ILDO who wishes to provide ISP services on a nation wide basis will need to pay only Rs. 30 lacs as per current requirements.

11.2 Uniform License Fee - 6% of AGR

The regulatory charges prevalent in the Indian Telecom Sector are among the highest in the world. We appreciate TRAI’s recommendation in this regard wherein it has already recommended DOT to set a uniform license fee at 6% AGR.

The unified license should also prescribe uniform license fee of 6%. To further substantiate our concern we have analyzed license fee of comparable economies in Asian region as well as outside the region.

Notably, annual license fees in six of the eight countries identified are set at 1% or less of an operator’s gross revenues, with adjustments to revenues such as exclusion of value-added tax (VAT). The regulators in Indonesia, Malaysia and Pakistan charge just 0.5% while Singapore charges 1% of revenues for the annual license fee. Hong Kong imposes a low, flat fee of HKD 1 million (USD 128,965) or less.

In analyzing the total annual fees, we found that, of the Asian countries, Singapore charges the lowest total fee of just 1% of revenues while Malaysia charges the highest total fee (annual fee plus USF fee) of 6.5% of revenues, with Macau following

at 5% of revenues. The total amount of fees charged in all other countries is 2% or less.

Further the license fee should be based on actual revenue of the service provider without any linkages to the concept of presumptive AGR.

Definition of Adjusted Gross Revenue under Unified License Regime

- The new licensing regime represents an opportunity for issues identified with the earlier licensing regime to be corrected. 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. Deduction of underlying cost should also consider payment made for bandwidth charges which forms an integral part for provision 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 in the calculation of AGR for licence fee computation purposes.
- This is in line with international best practices. For example, in Malaysia, the relevant revenue for licence fee and USO calculations exclude costs of telecoms inputs. This point is particularly important to enable the levelling of the competitive playing field between vertically integrated telecoms operators that essentially act as Access Suppliers and alternative operators that buy telecoms resources from them. **Without the removal of such so-called double payments, alternative, non-integrated operators like our members will systematically be at a cost-disadvantage relative to**

vertically integrated operators. This is not only inconsistent with the tenets postulated by the National Telecoms Policy but also, with the objectives of the new Unified Licensing framework.

Clause 22- Sharing of Infrastructure

Presently 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, which could lead to further issues to industry moving forward as operators consider moving into NGNs and new technologies, and where there are extremely heavy costs involved.

It is widely accepted as international best practice that the “next” level of competition for telecoms is at the services layer, rather than the infrastructure layer. We have seen regulatory authorities actively encourage in countries such as Singapore, Australia, UK and in the European Commission. It is widely accepted that it is service based competition that leads to the innovation and fast pace of development that ultimately drives down prices and benefits end users.

In order to achieve this outcome, however, thriving and well-regulated wholesale markets are absolutely critical, where essential inputs have to be provided on a fair and reasonable basis and at cost-based prices, and sharing of active and passive infrastructure should be positively encouraged and in fact, made mandatory.

ACTO, therefore requests the Hon’ble Authority that suitable measures need to be undertaken to allow sharing of both active and passive infrastructure between various telecom operators under the Unified Licensing regime. The requirement for infrastructure sharing should be built into the terms and conditions of the new Unified Licences.

Clauses 25 - Interconnection

The Unified license should facilitate seamless interconnection of PSTN and IP networks to derive true value of convergence. The present restrictions relating to CUG/VPN and PSTN interconnection should be phased out in the Unified License. This will be consistent with the state objectives of draft National Telecom Policy 2011.

Clause 27- Security

The applicable security monitoring conditions mainly caters to the requirement of PSTN voice offering and not for enterprise data services. Privacy issues regarding enterprise data should be specifically addressed. Security agencies who would request for access to customer data / could raise data privacy issues especially for Global Telecom service providers serving the enterprise users. In absence of clear specifications, there is lack of clarity regarding type of equipment and other facilities to be deployed by the enterprise data service providers to meet the requirement of security monitoring agencies.

Chapter II – Draft Guideline for Class License

No comments

Chapter III - Migration of Existing Licence to Unified Licence

We would request Hon'ble Authority that:

- a. The migration to Unified License should be optional till the expiry of the validity of the current licenses or if they wish to enhance the current scope of services / area of operation. The terms and conditions of existing licenses should not be changed and no additional obligation should be imposed for those licensees who do not wish to migrate at this time.
- b. There should not be any conversion to Unified License (Restricted) category. Instead status quo of the existing license / registration framework be maintained.
- c. Since there will not be any change in the scope or terms and conditions under the restricted category, there seems to be no need to change the nomenclature given the fact that Unified License as a policy has already been approved via an addenda to the NTP -1999.

Chapter IV – Migration of Existing License to Class License

No comments

Chapter V- Issue for Consultation

1. What are your views on the scope of Licence for Unified Licence (National level/Service area level/District level) and Class Licence? (Clause 5 of draft guidelines for Unified Licence and Clause 5 of draft guidelines for Class Licence)

The draft guidelines should create an enabling framework that amply supports convergence of services, networks and technologies. The way the licenses are currently drafted and even proposed under the new licensing regime, the current restrictions that create barriers between segments of the markets/services and networks still remain and ACTO is concerned as to how full convergence of services will be enabled under such a structure. More specifically we note that PSTN/CUG-VPN VOIP convergence is still restricted under the draft guidelines, which would hinder realization of full potential of a unified converged licensing regime.

Therefore, we wish to recommend that the draft guidelines suitably address the issue of PSTN /VoIP convergence in line with international best practices, *as is envisaged in clause 3 of Draft National Telecom Policy-2011 (NTP-11)*.

ACTO's view on the scope of licenses under Unified License:

- i) **National Level** – The scope of license for National Level Unified license should include the all telecommunication/ telegraph services covering various geographical areas using any technology including resale of services both at wholesale and retail level without having the need for any value addition. DOT's letter No. No.808-26/2003-VAS Dated the 11th Nov., 2003 also refers in this regard which was issued in pursuance of NTP 1999.

It has been noted that clause 5.1 c stipulates that Public network is not to be connected with leased circuits/CUGs. We believe that in the fast changing telecom scenario moving ahead for convergence of various services / networks, there does not appear any need for this artificial

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

- ii) **Service Level** -This Licensee will be allowed to offer access services, Internet Telephony, Internet services including IPTV and broadband services including triple play in the designated service area. Since the spectrum has been delinked from the Licence, the Licensee would initially not be able to provide wireless services until it applies separately for spectrum and get it in the due course of time. In such a scenario the concept of Service Area-wise licence is unattractive and the people's choice for wireline connection has already come down to a very low level. The continuous decline in the wireline subscriber base is a clear cut indication for this.
- iii) **District Level** - This licensee would be allowed to offer only Internet/Broadband services and wireline services. We have already discussed about the wireline service in para 2 above.

Class License

We don't propose any change in what is mentioned in the draft guidelines.

License through Authorisation- Consistent with TRAI recommendations of 2005, the scope of License through Authorisation 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, Audiotex, Video Conference, Videotex, 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. What, in your opinion, are the actions that should be classified as minor violations and major violations? (Clause 10 of draft guidelines for Unified Licence)

Given that such interpretation can be subject to a large degree of subjectivity, it is important that the industry be given clarity on the criteria that the Hon'ble Authority would use to assess and distinguish between a minor versus major violation.

ACTO's starting position on the matter is that a minor violation is one that does not significantly and adversely impact the security of the state or result in loss to the exchequer. Even for the latter, a specific quantum of losses should be defined. For example, non fulfilment 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.

The following indicative actions can be classified as minor and major violations subject to present legal frame work and applicable statutes

Minor violations	Major violations
Issues related to operational compliances	Issues related to security aspects and misrepresentation of facts before the Authority / government agencies. Action resulting in threat to the security of nation.
Delay in compliance of orders / directions of Government / Authority	Action of the service provider resulting in heavy revenue losses to the Government

Delay in fulfilling rollout obligations within stipulated timeframe of the Licence Agreement.	Illegal conduct of the Licensee outside the framework of terms and Conditions of the Licence.
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3. Even within minor and major violations respectively, what, in your opinion, should be the factors to be taken into consideration while determining the actual amount of penalty? (Clause 10 of draft guidelines for Unified Licence)

We would recommend that the Hon'ble authority also consider risk mitigation strategy, adopted by the licensee as well as intent to violate/ willfull negligence as key factors while determining the amount of penalty on the licensee for the violation.

4. These draft guidelines do not provide for Licensing through Authorisation. In your opinion, considering the services that are already covered under Unified Licence and Class Licence, is there any need for Licensing through Authorisation? If so, which are the services to be so covered? And, what should be the guidelines for such a licence?

We suggest that the terms and conditions of licensing through authorization should be drafted in such a simplified manner that it ensures seamless delivery of services to the end user and does not pose major entry level barrier to provide services. We would further like to add that licensing through authorization should not entail burdensome compliance obligations on the service provider and rather should be based on simplified licensing model wherein mere notification/intimation to the DoT /TRAI should be considered sufficient for the purpose of providing service under the particular class of service. This would boost the efficiency in the manner of providing service to the end user.

Hon'ble Authority has already recommended in November 2005 the services which can be classified under the Authorisation regime. The same should be considered under this category.

5. Whether Voice mail/Audiotex/UMS services and Radio paging should continue to be under licensing regime?

We wish to recommend that Voice mail / Audiotex / 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 Authorisation. TRAI has in its recommendations of 2005 on Unified Licensing has already recommended that such services be placed under an Authorisation regime.

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

No, we don't recommend that any additional services need to be brought under the ambit of Unified Licensing regime.

Only those services should be covered under the Proposed Licensing regime which require a license under sub section 1 of section 4 of the Indian Telegraph Act, 1885 for providing specified public telecommunications services.

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?

So far as TRAI is performing the function of a Regulator, the licensing work should remain with the Government. The existing TRAI Act does not vest the powers of Licensor with the Authority. In our opinion and as per the prevailing practice in our country, there should be two separate entities for making recommendations vis-a-vis taking policy decisions after examining and implementing the same.

8. Presently, in case of IP- I, there is no restriction on the level of foreign equity in the applicant company. However, in case of Unified Licence, the total foreign equity in the total equity of the Licensee is restricted to 74%. Please indicate the maximum time which should be given to the IP-I to comply with the FDI condition of 74% after grant of Unified Licence.

In this connection attention is invited to the statement given by Hon'ble Minister for Communications & Information Technology during his press conference held on 15th February, 2012 wherein he stated that a decision on the recommendation to bring IP-I Service Providers under licencing regime, who are currently unlicensed passive infrastructure providers, has been deferred for further examination.

9. Presently, the access service licences viz. BASIC/CMTS/UASL have restrictions regarding holding of substantial equity by a promoter in more than one access service licence in the same service area. However, apart from access service licence, this condition is not applicable for any other licence. Accordingly, the proposed guidelines remove the restriction on holding of substantial equity in a company having UAS / CMTS/ Basic Licence in the same service area on migration to Unified Licence and also from the eligibility conditions given in Para 2.3 of the draft guidelines for Unified Licence. Please comment on the pros and cons of this proposal.

ACTO has no comments to offer.

10. Please raise any other issues you feel are relevant and offer your detailed comments on the same.

- I) Entry Fee of Rs. 20 crores is too high for the standalone operators like our member companies. It should be levied on the principle of “pay for the bit you eat”. That is to say in case of non-integrated standalone operator who are providing data services under NLD and ILD Licenses, the entry fee should be Rs. 5 crores (Existing Entry fee is Rs. 2.5 crores each for NLD and ILD

license) + the amount equivalent to the existing entry fee for the service it wants to provide under the new regime.

In support of our suggestion for lowering the proposed entry fee, your attention is drawn to the Extracts taken from DLD Consultation Paper on Introduction of Competition in Domestic Long Distance Communications dated 15.7.1999 wherein the level and modality of the entry fee were discussed at length:

"6.2.1 Entry fees

377. The level and modality of entry fees are determined by the policy objectives and competition strategy. In case of limited competition, entry fee is the key evaluation criterion, due to the bidding approach. In such cases, licenses are awarded to the highest bidders, whose bid is considered as the entry fees. In contrast, in the competitive scenario, where licenses are available on demand, entry fees are nominal pre-fixed amounts, to be paid by all licensees. At times, under restricted competition, entry fee is also used as entry barrier, wherein it is fixed at a level so high that only serious entities enter the sector.

378. In the past, governments have considered grant of licenses, as conferring of an asset which requires to be compensated through a payment of fees. Telecom licenses, too, have been used towards contributing to the exchequer. In principle, any subsidies or contributions from a sector should be appropriated through taxes instead of less efficient means, such as license and entry fees. The latter tends to distort pricing structure in the sector, since service providers add these costs to their inputs.

381. Generally, entry fees are not fixed at high levels in free markets. In Australia, the application fee is only Au \$ 10,000, while the DLD market size is in the range of Au \$ 3 billion. The EU directive on licensing requires that "...any fees imposed on the undertakings as part of authorisation procedures seek to cover only the administrative costs incurred in the issue, management, control and enforcement of the applicable licenses".

382. Among the sub continent countries, Sri Lanka requires that the applicant deposits one percent of committed investments as fees. Every time the operators expand their networks, one percent of additional investment planned has to be deposited with the government.

In view of above, we would suggest that the entry fee may be kept at the existing level. The total entry fee after migration should be the sum total of existing entry fee service wise.

II) License Fee

Para 11.2 of the guidelines says that “An annual Licence Fee as a percentage of Annual Gross Revenue (AGR), as defined in the licence agreement shall be applicable. From the second year of the effective date of the Unified Licence, this Licence Fee shall be subject to minimum of 10% of the Entry fee paid.

Imposition of licence fee to a minimum of 10% of the Entry fee paid (whether operator generates any revenue or not) is against the spirit of NTP’99 which proposes revenue share for license fee. Since NTP 99 is still in vogue the entry fee based minimum licence fee will not be in sync with NTP 99.

In support of our view that entry fee based minimum licence fee is not justified, we would like to draw your attention to the Extracts from DLD Consultation Paper on Introduction of Competition in Domestic Long Distance Communications dated 15.7.1999 wherein the purpose of levying of Licence Fee was discussed at length:

“6.2.4 License Fees

386. Regulatory expenses are recovered through annual fee contributions from operators on the basis of their revenues. The principles of proportionality are applied whereby higher license fees are sought from entities entailing higher regulation, viz. dominant entities, mostly based on revenues. The license fees in case of facility based services may be higher since the regulatory issues pertaining to interconnection and network structure will be larger. Fees for mere service provision may be lower depending on the degree of

competition. In many countries, the resellers or mere service providers do not require licensing, and hence pay no license fees.

387. US regulators do not require any licensing for long distance telephony segment except for allocation of spectrum. However, operators are required to pay specified fees for filing tariffs, or applying for extension of networks . In addition, the FCC may levy additional fees every year to cover the cost of regulation for a particular year, which is not covered by the budgetary allocations.

6.2.5 Policy Implications

391. For levying fees or requiring contributions based on revenue which is also generally known as revenue sharing arrangement, operators are required to report their revenues. In the US for the purpose of USO levy, carriers are instructed to report the amounts actually billed to customers. This means that carriers should report revenue net of discounts, but without making any adjustments to reflect uncollectible revenue. In certain cases only end-user revenues are considered while in other cases even the revenues earned from other service providers through resale are included.

In view of the government policy announced through NTP 1999 the Licence Fee should be based on Revenue Share only. Thus the proposed fixed minimum licence fee as a percentage of Entry fee in the proposed Unified Licensing Regime is against the provisions and spirit of NTP 1999.
