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2nd JULY 2007

The Chairman
Telecom Regulatory Authority of India
MTNL Telephone Exchange Building
Jawaharlal Nehru Marg
Minto Road
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Dear Sir

Sub: Consultation Paper on Review of Key License Terms Conditions and Capping of Number of Access Providers (Consultation Paper No. 7/2007 Dated 12 June 2007)

We have carefully gone through the above mentioned consultation paper. The various issues raised therein will have very significant impact on the future growth and quality of Cellular Mobile Services in India, as well as the extent of competition and business viability. For attracting investments in capital intensive infrastructure project like telecom, and particularly attracting FDI, stability of licensing and regulatory policy is extremely important. Significant changes in the licensing regime were introduced in November 2003 by way of allowing all existing basic service providers to provide fully mobile telecom services and permitting unlimited new UAS licenses.

This was done in spite of knowing fully well that spectrum, which is an essential requirement for providing mobile services, is a limited

/finite resource. India is perhaps the only country in the world where unlimited numbers of mobile licenses are permissible. Presumably, it is against this backdrop that this consultation process is being initiated.

Even though the present licensing regime is technology neutral, the mobile technologies are spectrum specific and can be provided only in the allocated bands as per National Frequency Allocation Plan (NFAP) and ITU guidelines. Moreover, the spectrum available in each band (800 MHz/900MHz/1800MHz) is finite and can only support limited number of networks for the specified technology. As per NFAP 2002, maximum of 100 MHz of spectrum could become available over time for GSM systems (25 MHz in 900 MHz band and 75 MHz in 1800 MHz band) and 20 MHz for CDMA systems (800 MHz band).

At present only 35 MHz spectrum is available for GSM systems and 20 MHz for CDMA systems. Keeping these limitations in view the guidelines for UASL provided that the existing operators migrating to UASL will provide fully mobile service in the already contracted spectrum and the new UASL will upfront decide the technology (GSM or CDMA), which they want to adopt and accordingly minimum admissible quantity of spectrum will be allocated by WPC in the specified bands. The spectrum for the future growth will be allocated for the technology chosen in the beginning as per the prescribed subscriber linked criteria for each technology. There was no provision then and there is no provision now, for hoping from one technology to the other during the mid course of the license.

The present consultation paper raises two contradictory issues from the erstwhile policy of 2003:-

- Need for capping the number of access providers for mobility
- Permitting CDMA operators to provide GSM networks and Vice-à-versa

While the Govt. has felt the need of capping of Access Providers on account of limited availability of spectrum (a complete summersault from the position in 2003), allowing the existing licensees to use both the technologies for providing fully mobile services would tantamount to doubling the number of existing licenses in each service area, should all existing operators wish to provide service using both the technology platforms?

This will result in fragmentation of the limited amount of spectrum available for each technology into non-viable small chunks for each player resulting in inefficient utilisation of precious spectrum. We feel that there is a need to immediately determine the quantum of spectrum likely to become available separately for GSM and CDMA technologies over the next three years (by end of 2010) and the number of operators which can be supported by each technology, keeping in view the international norms for spectrum allocation. **The requirement of additional spectrum by the existing players for each technology to meet their anticipated growth during this period should be catered to before either issuing any new licenses or contemplating use of both technologies by a player.**

In the light of the above general observations we are giving below our inputs for various questions raised in the consultation paper.

Merger and Acquisition

Q1. How should the market in the access segment be defined?

Ans: The competition in the fixed segment is limited. Moreover, the demand for the fixed lines is more or less stagnant and the rate of growth is extremely small as compared to the mobile segment. The main action at present as well as in future is likely to be in the mobile segment only. Moreover, while fixed service functionality can be substituted by mobile phone, the reverse is not true. **In our opinion only the mobile subscriber base in a service area should be considered for determining the dominance of the merged entity.**

Q2. Whether subscriber base as the criteria for computing market share of a service provider in a service area be taken for determining the dominance adversely affecting competition. If yes, then should the subscriber base take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer?

Ans: Yes, the subscriber base should be considered as the criteria while computing market share of a service provider in a specific service area for determining the dominance or otherwise. **The present definition of subscriber base as prescribed by the DOT for reporting the number of subscribers every month by service providers should be applied for determining the dominance.**

Q3. As per the existing guidelines, any merger/acquisition that leads to a market share of 67% or more, of the merged entity, is not permitted. Keeping in mind, our objective and the present and

expected market conditions, what should be the permissible level of market share of the merged entity? Please provide justifications for your reply?

Ans: The existing guidelines for intra-circle mergers and acquisitions have withstood the test of time. There is an intense competition in the mobile market due to the existence of 6-8 service providers in each service area. We therefore, feel and believe that the present limit of 67% of market share for the merged entity should continue. The objective of permitting mergers and acquisitions is to facilitate consolidation of the market without compromising the need for adequate competition. **This objective may get defeated if more stringent conditions are prescribed for the merged entity.**

Q4. Should the maximum spectrum limit that could be held by a merged entity be specified?

a. If yes, what should be the limit? Should this limit be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA operators? If yes, please specify the respective limits?
b. If no, give reasons in view of effective utilisation of scarce spectrum resource?

Ans: Spectrum is a precious resource which has been acquired by the operators on payment of huge entry fee. Moreover it may not be always possible to completely integrate the networks of the merging entities, which have been planned and evolved separately over time. Therefore, in our opinion the merged entity should be allowed to retain the entire spectrum held by the two individual companies before merger; subject to the prescribed maximum limit.

The present upper limit of 15 MHz for GSM should be revised upwards to 20-25 MHz as per international norms. Merged entity should be permitted to sell spectrum in excess of upper limit to any licensed operator waiting for allotment of spectrum, within two years of merger. If the merged entity is required to surrender a part of the spectrum, it will be a disincentive for merger and defeat the objective of permitting intra-circle mergers between the companies.

Any further allotment of spectrum to the merged entity should be regulated as per the prescribed subscriber linked spectrum allotment criteria for the concerned technology.

Q5. Should there be a lower limit on the number of access service providers in a service area in the context of M&A activity? What should this be, and how should it be defined?

Ans: In view of the need for having adequate competition in each service area, the minimum number of access service providers in a service area should be laid down in the context of M&A. **The present limit of minimum 3 independent service providers in a service area should be retained.**

Q6. What are the qualitative or quantitative conditions, in terms of review of potential mergers or acquisitions and transfers of licenses, which should be in place to ensure healthy competition in the market?

Ans: It will be very difficult to precisely lay down and ensure compliance with any qualitative conditions for mergers and acquisitions and transfer of licenses. The quantitative conditions;

such as the maximum share of the market size of the merged entity and the existence of minimum number of independent service providers in the service area after merger is good enough measure to ensure that competition is not compromised.

Q7. As a regulatory philosophy, should the DOT and TRAI focus more on ex post or ex ante competition regulation, or a mix of two? How can such a balance be created?

Ans: In our opinion the ex ante competition regulation policy should be followed by DOT and TRAI. This will ensure that that all aspects of competition are kept in view before allowing a merger. However, the licensor (DOT) and TRAI may keep regular watch to ensure that anti-competitive policies are not adopted by any dominant player having significant market power irrespective of merger or otherwise.

Substantial Equity

Q8. Should the substantial equity clause (1.4 of UASL) continue to be part of the terms and conditions of the UAS/CMTS license in addition to the M&A guidelines? Justify.

Q9. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.

Q10. If no, should such acquisition in the same service area be treated under the M&A Guidelines (in the form of appropriate terms and conditions of license)? Suggest the limit of such acquisition above which, M&A guidelines will be applied.

Q11. Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

Ans : Substantial equity clause should continue to be part of the terms and conditions of the license. It is necessary to ensure that a promoter/any legal entity of a UASL/CMTS licence does not exercise undue influence on another service provider and adversely affects its independence as a competitor in the same service area. However, we do not see any justification in defining the substantial equity as 10% of the total share holding. As per company law, a legal entity holding up to 25% shares of a company can not bar any proposal/special resolution of the company. We, therefore, feel that the maximum limit of 10% holding can be safely increased to 24% without in any way compromising the objective of adequate competition in each service area.

Since M&A of the companies is permitted, there should be no bar for a company to hold equity in excess of 24% in another access service company in the same service area subject to the M&A guidelines being satisfied.

Q12. Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

Q13. Whether the legal person should be defined and if so the category of persons to be included therein and if not the reasons therefore?

Ans: Yes, in order to remove any ambiguity and avoid any litigation the terms promoter and “legal person” should be defined as per company law or any related law existent at present.

Q14. Whether the Central Government, State Governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?

Ans: No, for level playing field between the public undertakings like BSNL/MTNL and the private operators, same terms and conditions of the licence and other restrictions should apply otherwise more than one government company may provide access services in the same service area. This may significantly reduce the competition, if after merger of two licensees in the service area there are only three players left in the market out of which two or more may be the PSUs. This may result in monopoly of the government companies and severely restrict the competition.

Permitting Combination of Technology under Same License

Q15. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?

Ans: As mentioned in our general observations above, while the present licenses are technology neutral, the mobile technologies are spectrum specific and have to be provided adequate spectrum

in the specified bands as per NFAP. This is necessary to avoid interference between the networks using the two technologies in the same band.

The availability of spectrum for GSM and CDMA technologies is very much restricted. At present less than 25 MHz is available for GSM in 900 MHz band and 10 MHz in 1800 MHz band. Up to a maximum of 65 MHz of additional spectrum in 1800 MHz band may become available over the next few years subject to it being released by Ministry of Defence and other users. **The present limit of maximum of 15 MHz spectrum to be allotted to each GSM operator, as per the subscriber linked criteria, is significantly less than the international standards.**

It may not be possible to support more than 4-5 GSM operators in each service area. Already 4-5 GSM licensees exist in each service area and, therefore, allowing any additional operators (whether existing or new) for GSM technology would result in constraints for the existing operators to economically expand their networks to cater to the future demand during the next 2/3 years. Similarly only 20 MHz spectrum is available for CDMA networks in 800 MHz band with 2-3 CDMA operators already existing in different circles. Due to the maximum limit of 7.5 MHz spectrum, as at present, for CDMA operators, it is not possible to support any additional players for this technology as well in circles already having three players.

By permitting the present licensees to provide network using both the technologies will tantamount to doubling (assuming all operators using both the GSM & CDMA platforms) the number of existing licenses for access services vis-à-vis the spectrum requirement. It will not be possible to cater to the future requirement of spectrum of the licensees who have already set up

GSM or CDMA networks at huge investments resulting in stalling their future growth.

In view of the above, an existing licensee using one technology should not be assigned additional spectrum meant for the other technology under the same licence. Moreover, it is not permissible as per the terms and conditions of the existing UASL/CMTS licenses.

Q16. In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chosen alternate technology;

Q18. Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?

Q19. Lastly, as such service provider would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to him?

Ans: The questions do not arise in view of our submissions above for question no. 15.

Q17. What should be the priority in allocation of spectrum among the three categories of licensees given in 4.16 of the chapter?

Ans: The spectrum should be allocated to existing licensees on first come first served basis, based on the date of their application/entitlement.

Roll Out Obligations

Q20. Should present roll out obligations be continued in the present form and scale for the access service providers or should roll out obligations be removed completely and market forces be allowed to decide the extent of coverage? If yes, then in case it is not met, existing provision of license specifies LD charges up to certain period and then cancellation of license. Should it continue or after a period of LD is over, enhancement of LD charges till roll out obligations is met. Please specify, in case you may have any other suggestion.

Ans: There is already intense competition in the access segment. In such a scenario the new licensees have no option but to roll out networks in rural and remote areas where there is no coverage at present or inadequate competition. We feel that market forces should be allowed to decide the extent of coverage and the relative priorities for rolling out network in different parts of the service area. There is no need to specify any LD charges for non achievement of roll out obligation, as no roll out obligation itself need be specified. There was justification for such a provision in the license when there were only 2-3 players in a service area.

Q21. Is there a case for doing away with the performance bank guarantees as the telecom licenses are covered through the penalty provisions, which could be invoked in case of non-compliance of roll out obligations?

Ans: As per terms and conditions of the existing licence a separate PBG is to be provided by the licensee to ensure fulfilment of roll out obligations. Bank guarantee is to be released to the extent of 50% on achieving the roll out prescribed for the first year

of the license and 100% on achievement of the complete roll out. There will be no need for separate PBG in case the roll out obligation is removed from the license agreement. In any case PBG does not serve any specific purpose and results in locking of considerable financial resources of each licensee by way of deposits to be provided as security with the bank. Unlocking of these precious investible funds would enable the operators to provide more coverage. The compliance to the terms and conditions of the license can be ensured as there is adequate FBG available with the licensor for the license fee and WPC charges. Moreover, the compliance by the licensee of the terms and conditions of the licence could always be ensured by the licensor as it has the "**Brahamastra**" of license cancellation.

Q22. Should roll out obligations be again imposed on the existing NLD licensees? If yes, then what should be the roll out obligations and the penalty provisions in case of failure to meet the same?

Q23. What additional roll out obligations be levied on ILD operators?

Ans: There is no need to impose any additional roll out obligations on NLD and ILD operators. The tariffs for NLD and ILD services have already come down drastically and are among the lowest in the world. This is a clear indication of adequate competition in the country for these services. Stiff roll out obligations for NLD were earlier restraining the telecom operators to venture into this important segment, resulting in inadequate competition.

Q24. What should be the method of verification of compliance to rollout obligations?

Ans: Does not arise in view of our submissions above.

Q25. What indicators should be used to ensure quality of service?

Ans: The existing indicators of quality of service laid down by the TRAI are quite adequate. TRAI is already monitoring the quarterly performance of each operator as per the prescribed QOS parameters/norms. TRAI/Licensor should facilitate timely availability of scarce resources like spectrum so that QOS is not adversely affected.

Q26. As the licensees are contributing 5% of AGR towards the USOF, is it advisable to fix a minimum rural roll out obligation? If yes, what should be that? If no, whether the Universality objectives may be met through only USOF or any other suggestions?

Ans: The licensees are contributing 5% of AGR towards the USO Fund. USOF administrator has already awarded contracts, based on open bidding for providing subsidy for setting up passive infrastructure like land, building, tower etc. covering most of the rural and remote areas in the country where there is no infrastructure at present. There is also provision for giving subsidy to three operators for the active infrastructure like BTS. This will result in provision of adequate competition and coverage in most rural parts of the country.

Under these circumstances there is no need to prescribe any rural roll out obligation. Let the market forces decide the rural roll out by other operators who are not being provided subsidy by the USOF in the rural and remote areas. However, it must be ensured that there are no slippages by infrastructure

providers/operators who are being provided subsidy by USOF Administrator. Stiff penalties should be imposed for any non-compliance and time over runs by the companies who been awarded contracts by USO Fund Administrator.

Q27. In case of rural roll out obligation, whether number of BTS in a certain area is a viable criterion for verification of rollout obligation?

Ans: No, the number of BTS in an area may not be a viable criteria for verification of the rural roll out as the number of BTS required to provide adequate coverage in a given area would depend upon its topography and the frequency used for providing the cellular coverage. However, there should be no need for laying down any criteria for verification of the roll out obligation, in the light of our suggestion to abolish the roll out obligation itself.

Q28. What should be the incentives and the penalties w.r.t. rural roll out obligations?

Ans: There is no need to prescribe any incentives and penalties for the rural roll out obligations. The roll out obligation itself should be removed. USOF Administrator has already taken adequate steps to ensure geographical coverage of most of the rural areas during the next 1-2 years.

Determining a Cap on Number of Access Provider in each Service Area

Q29. Should there be a limit on number of access service providers in a service area? If yes, what should be the basis for

deciding the number of operators and how many operators should be permitted to operate in a service area?

Q30. Should the issue of deciding the number of operators in each service area be left to the market forces?

Ans: Yes, there should be a cap on the maximum number of access providers in a service area particularly the mobile services which essentially require availability of adequate spectrum. Spectrum is a limited resource. There are conflicting demands for spectrum from various organisations like Defence Services, Telecom Services, and Broadcasting Services etc. Moreover, various services can be provided only in the specified bands which are internationally coordinated for providing interference free networks/services.

For GSM networks in India theoretically maximum of 25 MHz spectrum is available in 900 MHz band (internationally it is 35 MHz) and 75 MHz in 1800 MHz band (total 100 MHz against 110 MHz internationally). As against this, at present only 35 MHz spectrum is available and another 40 MHz may be released by Ministry of Defence in the next 1-3 years. Internationally, GSM spectrum up to 20-25 MHz is being provided to each operator, depending upon the size of the network. In India though the upper limit at present for spectrum allotment as per the subscriber linked criteria is 15 MHz, the same needs to be revised upwards in line with the international norms for catering to the anticipated growth of subscribers over the next 3-4 years.

In case adequate spectrum availability is to be ensured for the existing operators who have made huge investments by way of entry fee and network Capex, it may not be possible to support

more than 5 GSM operators in each service area. Since already 4-6 GSM licenses exist in each service area (CMTS/UASL), there should be no new licence issued for GSM service. Similarly for CDMA technology where only 20 MHz is available at present and there is not much likely hood of additional spectrum getting available in other bands, there should be a cap of maximum three licenses for each service area. As per the present subscriber linked criteria spectrum up to 7.5 MHz per operator could be allotted. On account of these limitations on the availability of spectrum even for existing licenses, for their chosen technology, we are not in favour of permitting cross technology operations to existing licensees.

Besides the above mentioned limitation of spectrum, from the point of view of financial sustainability and viability of business, the optimum limit of competition in a service area must be decided, keeping in view the market size and the total business potential. The Authority has correctly noted in the consultation paper that Indian access market is already intensely competitive with 5-8 access providers in each service area. The existence of competition beyond the sustainable limit may have far reaching negative implications for the growth of telecom services in the country.

Thanking you,

Yours truly,

Brijendra K Syngal
Advisor
For BPL Mobile Communications Ltd