

Orange Business Services (FT Group) Response on Consultation Paper on “Mobile Virtual Network Operator” (MVNO) of TRAI dated 5th May 2008.

Issue 1 : Do you agree with the definition of MVNO given in section 2.1.6 ? If not please suggest alternate definition with justification.

“MVNO licensee is an entity that does not have assignment of spectrum for Access Services (2G/3G/BWA) but can provide wireless (mobile) Access Services to customers by sharing the spectrum of the Access Provider (UAS/ CMTS licensee)”.

Response : We are of the opinion that it is better to have a better clarification on the definition of MVNO so that the scope and ambit are clearly laid down. Thus, positioning the complexities of the regulatory environment in India, we are of the view that clarity on requirement of setting up of Infrastructure should be clearly laid down. In order to give better flexibility to the MVNO to operate it would be ideal to allow MVNO operators to set up their own infrastructure using the same bandwidth (spectrum) allotted to the MNO, so that optimum utilization of the already scarce spectrum resource. Deploying own Mobile IN infrastructure will also facilitate in offering value-added and advanced differentiated service by MVNO . MVNO should have complete control over their offerings with respect to branding, marketing, SIM card, customer care, tariff plans etc.

Issue 2: Do you think there is a need to introduce MVNO in the Indian Telecom Market. If yes, is it the right time to introduce MVNO as a distinct service provider with its own licensing and regulatory framework? Please elaborate the comments with appropriate reasoning.

Response : The Authority has very rightly submitted that MVNO is seen as a natural progression towards enhancing free market principles and contributing to the efficient use of existing telecommunication infrastructure. It’s a pro consumer view as MVNO will not only provide customer with wider bouquet of services and value added service, it will also serve to introduce greater competition which should in turn have the effect of bringing down the telecom prices further.

MVNO will bring with it a wide range of novel scheme and services into the Indian market, which will benefit the end customer. The recent introduction of scheme “Get Paid for Incoming” by Virgin Mobile (Tata Tele) is one such example of International Operator bringing new market dynamism into the market. Moreover, MVNO will bring-in global telecom operators wanting to enter India, many of whom are already having operated in the MVNO model successfully to share their expertise into India. Most regulatory bodies world over are in favor of MVNO's as a means of encouraging competition, which would ultimately lead to greater choice and lower prices to end customer.

Thus, India already being a matured market and keeping into consideration the telecom target of 500 Million connections by 2010 set by Government of India, we feel it's the right time for introduction of MVNO in India.

Issue 3: To what extent should the MVNO be permitted to set up their own infrastructure?

Issue 4 (i): What Regulatory Model should be followed for MVNO in the Indian context?

(ii): What kind of obligations may be imposed on MNOs so that Mobile Virtual Network Operations are implemented effectively in India benefiting the customers? Please elaborate the comments with appropriate reasoning

Response to 3 & 4 : As commented above the extent of infrastructure to be deployed should be left in the hands of MVNO based on business model and their expertise and give better flexibility to operate. Thus all these models i.e Full MVNO, Intermediate MVNO and Thin MVNO may be allowed. The MVNO should be able to choose the model based on his expertise and based on the terms he is able to negotiate with MNO.

There is a great need to regulate the MVNO operation to make it a success as this will help in boosting the telecom growth even further in India. At the same time there should not be high entry barriers, which will act as a deterrent for new players from being a part to the MVNO. One key point to be kept in mind is that good negotiation could be possible in short term (while MNOs want to enhance their networks base) but long term MNOs may raise price barrier to drive out the MVNOs from the market and take full end user revenues, thus clear guidelines and directives are also required to be in place for MNO's by Regulatory bodies so as to ensure success in long term of any of the models of MVNO. There have been some recent trend globally of MVNOs taking control over MNOs, which may be a concern area if the MVNOs shape up to be a Significant Market Power (SMP).

Moreover, the concern is that voluntary negotiation with MNO's may not be successful, because of the operator's wish to protect their brand name and not to sell to potential brand competitors.

We believe that there is a need for regulatory intervention. MVNO should have similar regulation imposed on them as there on MNO's from the customer interface side (retail side) and on the other side i.e interconnect side it should be regulated through MNO's. Thus things like tariff, CAF, customer verification requirements, Security deposit, Credit limit regulation etc. should be same as that imposed on MNO's.

It is very critical that not just regulate MVNO, but also MNO's who are entering into contracts for MVNO service to ensure sustainability of any business model under MVNO in long run.

Issue 5: What should be the eligibility criteria for MVNO?

Issue 6: Do you suggest different eligibility criteria for different MVNO models and regulatory frameworks? If Yes, Please suggest with justification thereof.

Response to point 5 & 6 : There is definitely a need to set a eligibility criteria in order to ensure that :- only serious player come into fray, end customer are benefited from superior service, safe guard of consumer interest, interoperability issues, ensure there is no restrictive trade practice etc. At the same time the criteria should not be too stringent that it becomes unreasonable to do business. As you would recollect that before the National Telecom Policy was amended in 1999, all operators were struggling in the weight of heavy license fees. Similarly the Paging Companies had to close down in view of difficult operational burden.

It would be pertinent to quote the recent comments of our Hon'ble Minister of Telecom & IT Shri. A Raja on the aspect of recent allocation of Unified Access Licenses at nominal entry fees *“There is a need to ensure that the license are awarded at a reasonable cost so that the operators can create a long term profitable business model out of it for the whole eco-system.”*¹

We are of the opinion that the following should be the basis of fixing eligibility criteria to ensure that the above mentioned concerned are addressed

- Net worth and paid up capital of the Company and Promoter.
- Prior experience in Telecom Service Provisioning either by self of by promoter holding majority stakes.
- Experience in handling strong customer base in any regulated Industry
- In addition to the above, there could be some requirement like Bank Guarantee, nominal registration charge could be levied, however we are against any entry fees being imposed on MVNO.

We are not of the opinion that there should be different eligibility criteria under different MVNO model, since the nature of business and activity remain the same, thus the criteria too should remain the same.

Issue 7: Should there be any restriction on the number of MVNOs attached to an MNO? Please elaborate the comments with appropriate reasoning.

Response : We are of the opinion that there should be no limit on number of MVNOs to be attached to an MNO be stipulated. It should be left free to market forces to decide.

Issue 8: What should be the commercial model/framework for spectrum sharing by MVNO; w.r.t. (i) Department of Telecom and (ii) MNO?

Response : The issue of Spectrum has already been reviewed by the Authority and DOT on many occasion in past. However no stand has been taken on this so far by the DOT. In

¹ Source *The Times of India* daily dt. 22nd May'08

view of the same we feel that whichever model is finally implement and applicable to the MNO, the same should be available and applicable to the MVNOs also. Thus, if a MVNO has a commercial agreement with an operator having 2G spectrum then he will have to give his offering under the same terms. However we feel while deciding the spectrum allocation to the MNO the combined subscriber of the MNO and all the MVNO's under him should be considered. Thereby spectrum should be based on total subscriber base and not just that of MNO.

Issue 9: What should be the service obligations of MVNO? Please list them with justification thereof.

Response: We are of the opinion that all obligation that are controlled by the MNO should continue to be the obligation of the MNO's as he is the one who has the principal agreement with the Licensor/Authority to comply them and is also in a better position to comply them. Some examples of them are National Security Requirement (Lawful interception), Quality of Service with respect to Network, Grade of Service, Inter operability, access to emergency Nos., DND etc.

The obligation of MVNO should be limited to those items which are under their domain and control. Some examples of these could be Tariff Filing, CAF mandatory requirement, billing related requirement, credit limit, security deposit and interest for delayed refund, TTO directives etc. Since these are controlled by the MVNO they should be responsible for their regulation and compliance as well.

Issue 10. What should be the method and consideration for determining the entry fee for MVNO?

Response : As conveyed in response to earlier query there is definitely a need to set a eligibility criteria in order to ensure that only serious player come into fray, however there should not be any entry fees. Only nominal registration fees may be imposed in order to have them regulated as per the obligation prescribed by the authority. Levying high entry fees on MVNO segment may make them a non starter as this business would e running on hairline margins. There is a need to ensure that MVNO can establish their business and not the kill the bird before its has hatched.

Thus, there should not be any entry fees burden on MVNOs, however they should be paying the license fee on the telcom revenue earned in India equivalent to that levied on MNOs.

Issue 11. What should be the definition of AGR for MVNOs?

Response : The definition of AGR should be same as that prescribed to MNOs. All payouts to the MNO's by MVNO should be allowed as pass through charge and only license fees be imposed on the value addition of the MVNOs.

Issue 12: What is the best way to protect the subscribers both in terms of continuity of service and applicability of tariff plan:

- i) in case of a dispute between MVNO and MNO?
- ii) in case MVNO wants to exit the business.

Response : As suggested in response to the Issue # 6, for the purpose of safeguard of interest of subscriber the Licensor can prescribe Bank Guarantee to be furnished by the MVNO, which would be released upon meeting certain criteria. Moreover any dispute between MNO and MVNO, the TDSAT should have the power to adjudicate the same for resolution of dispute.

In case of MVNO wanting to exit the business certain conditions can be imposed upon him to protect the subscriber.

- Prescribe lock in period before which MVNO can not exit.
- Prescribe that in case of MVNO exiting before that lock-in period then he shall refund any amount charged by him as Registration or entry fees. Thereby ensuring that the customer is not at loss by MVNO exiting in a very short duration from him subscribing to the services of the MVNO.
- Prescribe clause of MVNO to try and transfer the subscriber to any other MVNO of that MNO or to MNO itself without any extra cost on the subscriber in order to maintain continuity of service.

Issue 13: Should there be any roll out obligations specified for MVNO? If yes, what should be the penal provisions for failure/ delay in fulfilling the obligations.

Response: Since there is no rollout obligation on the MNO as per the current Unified Access License, there should not be any rollout obligation on the MVNO. Moreover the MVNO being a subset of the MNO can not have more restriction or more obligation than the Principal Licensee (i.e. MNO).

Issue 14: What shall be the specific guidelines on the Mergers and Acquisitions of MVNO? Please elaborate the comments with appropriate reasoning.

Response: We strongly advocate the views of the Authority that the present Indian market being very competitive with more than 10 operators per circle, there should not be any need to have any specific restriction on M&A on MVNOs keeping in view the service continuity requirements. Moreover with no spectrum being allocated to the MVNOs the merger would be more from commercial perspective rather than to add on spectrum by way of M&A.

Issue 15: Should there be any restriction on cross holdings between two MVNOs and between MVNO and an MNO in a service area? Please comment on the nature and scale of restructuring.

Response : We are of the opinion that the conditions stipulated on MNO's should be extended to MVNOs.

Issue 16: What should be the FDI limit for MVNO ?

Response : We are of the opinion that FDI restriction on MVNOs should not be any lesser than that allowed to the MNO's. In fact with the maturity in the market today there is a need to look at increasing the FDI limit presently prescribed on various telecom segments. We strongly feel that the FDI restriction should be further relaxed.

Issue 17: What should be the quantum of FBG and PBG for MVNO?

Response : As mentioned above that the MVNOs would be working on hair line margin in this business and burdening them with high Bank Guarantee would not be recommended. However a nominal Bank Guarantee may be imposed on them.

Financial Bank Guarantee (FBG) : Initial FBG may be at 1/10th of that prescribed for MNOs and subsequent FBG can be equal to License Fee payable on the additional revenue made by the MVNOs.

Performance Bank Guarantee (PBG): Since we are of the opinion that there should be no rollout obligation on MVNOs, therefore only a nominal PBG may be imposed on the MVNO for ensuring protection to the subscriber. However, this may be done away with for Companies having Net worth over Rs. 100 Crores and a letter of Comfort by the Company should be taken instead of PBG.

Issue 18: Any other relevant issue you would like to suggest/comment upon.

Response : We have already expressed our views above on all relevant issues pointed by the Authority and have no further comments to add.