



**Telecom Regulatory Authority of India**



**Draft Recommendations**  
**on**  
**Ease of Doing Telecom Business**  
**for comments of the**  
**stakeholders**

**.....September 2017**

**Mahanagar Doorsanchar Bhawan**  
**Jawahar Lal Nehru Marg,**  
**New Delhi- 110002**

**Written Comments on the Draft Recommendations are invited from the stakeholders by 3<sup>rd</sup> October 2017 and counter-comments by 10<sup>th</sup> October 2017. Comments and counter-comments will be posted on TRAI's website [www.trai.gov.in](http://www.trai.gov.in). The comments and counter-comments may be sent, preferably in electronic form, to Shri S.T. Abbas, Advisor (Networks, Spectrum and Licensing), TRAI on the email ID [advmn@traigov.in](mailto:advmn@traigov.in). For any clarification/ information he may be contacted at Telephone No. +91-11-23210481. No request for extension of time will be entertained.**

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## **CHAPTER I – BACKGROUND**

- 1.1 Promoting “ease of doing business” is essential for unhindered growth of the telecom sector and is amongst the priority items for the Government. A number of steps have already been taken for ease of doing telecom business by the Government, generally on the recommendations of TRAI. Steps like adoption of auction for the assignment of spectrum, permitting spectrum trading, spectrum sharing and liberalisation of administratively assigned spectrum, Unified Licensing regime, Merger and Acquisition guidelines, Virtual Network Operation etc. have been guided by the principles of “ease of doing business”.
- 1.2 With the change in the policies over a period of time or with the technological development, there could be some processes, which may have become redundant or may be executed in an efficient and transparent way. To support and actively encourage “ease of doing business in telecom sector”, the Authority is of the opinion that various processes that a telecom licensee is required to go through, should be reviewed and it should be explored whether these processes could be simplified and/or combined to the extent possible to economise on efforts on part of the Telecom Service Providers (TSPs) as well as the Government.
- 1.3 In this backdrop, the Authority suo motu issued a paper on 14<sup>th</sup> March 2017 and requested stakeholders to review the existing processes and identify the bottlenecks, obstacles or hindrances that are making it difficult to do telecom business in India and thus, require regulatory intervention. Stakeholders were also requested to suggest mechanisms to ease the various processes and make a better telecom business environment in the country. The last date for submission of the inputs was 25<sup>th</sup> April 2017. The Authority received inputs from 26 stakeholders.

- 1.4 Based on the inputs received from various stakeholders and internal analysis, the recommendations have been framed. Only issues related to the processes that TSPs are required to undertake for various telecom related activities have been dealt with. Some issues, raised by stakeholders, such as quantum of Spectrum Usage Charges, Licence Fee etc which relate to policy matters are out of the purview of the subject, hence are not included in these recommendations.

### **STRUCTURE OF THE RECOMMENDATIONS**

- 1.5 This Chapter provides background to the subject. Inputs received from the stakeholders have been analysed in detail and recommendations on identified issues have been given in Chapter-II. The list of recommendations has been summarized in Chapter-III.

## **CHAPTER-II: ISSUE WISE ANALYSIS**

The Authority *suo motu* issued a paper on 14<sup>th</sup> March 2017 and requested stakeholders to review the existing processes and identify the bottlenecks, obstacles or hindrances that are making it difficult to do telecom business in India and thus, require regulatory intervention. The comments/suggestions received from various stakeholders have been clubbed issue wise and examined as detailed below:

### **A. SACFA Site Clearance**

- 2.1 Responding to the paper issued by the Authority, some stakeholders have made submissions with regard to SACFA site clearance process. Some stakeholders suggested that the SACFA application and clearance processes should be made end-to-end paperless with a Portal similar to Tarang Sanchar and the clearance should be automated. A few stakeholders have submitted that the processing of the SACFA applications has been adversely affected on account of the payment verification related issues, which in turn significantly delays the timely issuance of the required SACFA clearances and also subsequently hampers the timely deployment of the required telecom network. One of them suggested that DoT should allow a consolidated payment mechanism for the respective SACFA applications on a monthly basis, considering the estimated amount of the SACFA applications processed/to be processed.

#### **Analysis**

- 2.2 WPC has put in place a portal for filing online applications for SACFA clearance. The facility of online receipts towards 'SACFA siting application registration fee' now exists using Bharatkosh portal ID at URL: <https://bharatkosh.gov.in>. However, the online application process is not completely paperless. After filing the online application through portal, TSPs have to submit a hard copy of the application to

WPC. As per WPC web-site, there are 35 types of network- licences<sup>1</sup> and 9 types of non-network licences issued by WPC<sup>2</sup>. The requirement of submitting hardcopy of application exists in respect of all these licences.

2.3 If the requirement of submission of application in hard copy could be completely done away with and the entire process could be made paperless end-to-end, it would make it more transparent, time-bound and effective. The online processing would also aid in easy future retrieval, report generation and analysis of the information. Therefore, the Authority is of the view that to have greater transparency, the entire process of SACFA clearance as well as grant of all licences/approvals, that are issued by WPC, should be made paperless and executed end-to-end through online platform.

2.4 In view of the above, **the Authority recommends that entire process of SACFA clearance as well as grant of all licences/approvals, that are issued by WPC, should be made paper-less and executed end-to-end through online platform.**

#### **B. Import Licence for Wireless Equipments**

2.5 As per the current regulatory requirements, an import licence from WPC is required to import any wireless equipment. Accordingly, telecom service providers are required to get the import licence from WPC every time they import RF equipment(s). Import licences are issued by Regional Licensing Offices (RLO) of WPC.

2.6 Some stakeholders submitted that the requirement of getting the import licences from WPC for RF equipment procured from outside India acts as a bottleneck for service providers as it generally takes

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<sup>1</sup> **Network Licence vis-a-vis Non-Network License:** The division is based on the procedure adopted for licensing. Frequency allocation is required for Network Licence. For Non-network license, Earmarked frequencies (pre-allocated frequencies) are available as per International and National Norms whereas in certain cases of Non-Network licenses, frequencies are not required to be assigned at all.

<sup>2</sup> <http://www.wpc.dot.gov.in/faq.asp#2>

1-2 months. The equipments are held up for custom clearances on account of pending issuance of import licenses. The present process causes significant delays in the deployment of various network elements as per the network expansion requirements.

- 2.7 Some stakeholders pointed out that licensees are allowed to procure circle-specific Import Licenses only. As the equipment procured under a particular import license are considered under the ownership of the respective Circle only, TSPs require additional permissions for deployment of the respective equipment in other Circles, which is a cumbersome process and takes a lot of time. This process acts as a hindrance for timely procurement/deployment of equipment if a TSP wants to import RF equipments centrally and deploy it in their different licensed areas as and when required, as per its business needs.

### **Analysis**

- 2.8 In the previous section, the Authority has expressed its opinion that it is essential that the entire process of SACFA clearance as well as all licences/approvals, which are issued by WPC, be made paper-less and executed through online platform. Further, the Authority is of the view that there should be a defined time-line within which an Import Licence should be granted and the same may be declared in the portal as well as in the Citizen's Charter.
- 2.9 As stated by some stakeholders, Import Licences are issued LSA-wise and the TSPs are also required to take prior permission regarding shifting/movement of RF equipment from one LSA to another. There can be genuine situation, when a licensee may have to reinstall its equipment in some other LSAs. There seems to be no valid reason why licensee should be disallowed to reinstall/deploy the equipment at other LSAs provided the licensee has the same frequency authorisation in other LSAs as well. Therefore, the Authority is of the view that there should be no requirement to take prior permission of

WPC and TSPs should be allowed to reinstall their wireless equipment in another LSA after giving prior intimation to WPC preferably through the online portal.

2.10 In view of the above, **the Authority recommends that:**

- **There should be a defined time-line within which an Import Licence should be granted and the same may be declared in the portal as well as in the Citizen's Charter.**
- **TSPs should be allowed to reinstall/deploy their wireless equipment into another LSA after giving prior intimation to WPC preferably through the online portal. There should not be any requirement of taking prior permission of WPC for this purpose.**

**C. WPC clearance for DEMO Licence and Experimental Licence**

2.11 Global companies import products and solutions for demo purposes during exhibitions, events and for customer trials. These companies are required to take Demonstration Licence from WPC. Some stakeholders submitted that the demo license process is complicated and requires an application to Regional Licencing Offices (RLOs) of WPC which then sends the physical applications for approval to WPC HQ. The overall time involved in obtaining a demo license generally runs into 5-6 weeks. They have submitted that the process of issuing demo licenses for non-commercial purposes / exhibitions / demos / events / trials be shortened and linked to time bound approvals. One stakeholder suggested that Demonstration License should be granted by the relevant RLO of the WPC.

2.12 Another category of licence is Experimental Licence which is required in respect of devices used in experiments and testing. Some stakeholders submitted that WPC approval process for providing Experimental Licence is one of the biggest bottlenecks in working on

new generation technologies viz. 5G, WiGig etc. According to these stakeholders, the challenge is that the current process is extremely cumbersome and it takes 6-9 months to get experimental licence for 3 months, which is extendable for another 3 months. Post that, one has to go through similar application process with long lead times. Further, R&D & Product development process typically takes 1-2 years and it's absolutely imperative to streamline the process that would allow R&D companies to use experimental license for longer duration. Some of the stakeholders submitted that significant amount of work on development of these new technologies is being moved to other countries because of uncertain and delayed approval processes in India.

### **Analysis**

2.13 A Demonstration Licence is required for the purpose of demonstration of operation of any wireless equipment. Demonstration Licences are issued by WPC for a maximum validity period of 3 months with no provision of extension<sup>3</sup>. Experimental Licence is another category of licence, which is meant for the purpose of experiment for Software Development and RF functionality test etc being carried out by Telecom Manufacturing Units, Software Companies and Telecom Service Providers. Experimental licence is granted under two categories, i.e. 'radiating' and 'non-radiating'. The experiment licences under non-radiating conditions and indoor environment remain valid for 2 years from the date of issue<sup>4</sup>. However, for Experimental (radiating) Licence, the validity period is 3 months, extendable by another 3 months<sup>5</sup>.

2.14 As discussed earlier, a portal has also been put in place by WPC for filing online applications for all licences/approvals including

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<sup>3</sup> Indian Wireless Telegraphy (Demonstration Licence)(Amendment) Rules 2009, Gazette Notification No.GSR.325(E) dated 14.05.2009

<sup>4</sup> WPC OM No. L-11014/12/2007 – NT (Pt) Dated 15<sup>th</sup> April 2010

<sup>5</sup> Indian Wireless Telegraphy (Experimental Service)(Amendment) Rules 2009, Gazette Notification No.GSR.324(E) dated 14.05.2009

Demonstration Licence and Experimental Licence. For obtaining Demonstration Licence and Experimental Licence, applicants are required to give a brief description/write-up of the activity to be undertaken, date and place of demonstration along with set up diagram and technical literature/specification of the equipment being used in the demonstration. As is the case with other licences issued by WPC, the process of obtaining Demonstration Licence and Experimental Licence is not online end-to-end. In addition to applying through an online portal, applicants are required to make a submission of application in hardcopy also. This can be avoided if the entire process is made end-to-end online, which has already been recommended by the Authority in the earlier section.

2.15 WPC has not prescribed any time-limits for the grant of Demonstration Licence and Experimental Licence. The Authority is of the view that there should be a definite and reasonable timeline for providing a Demonstration Licence and Experimental Licence. The different associated activities for grant of licence should be assigned a definite time period in such a manner that the applications for Demonstration Licence and Experimental Licence could be processed and the licence could be granted within a maximum period of 15 days and 30 days respectively. This time period should be declared at the portal as well as in Citizen's Charter.

2.16 In view of above, **the Authority recommends that the applications for Demonstration Licence and Experimental Licence should be processed and the licence should be granted within a maximum period of 15 days and 30 days respectively. This time period should be declared at the portal as well as in Citizen's Charter.**

2.17 The Authority also is in agreement with the stakeholders that the validity period of Experimental licence (radiating) is too short. Therefore, the Authority is of the view that the validity period of the

Experimental (radiating) Licence should initially be six months, extendable by another six months.

- 2.18 In view of the above, **the Authority recommends that the validity period of the Experimental (radiating) Licence should initially be six months, extendable by another six months.**

#### **D. Transfer/Merger of Licences**

- 2.19 Some stakeholders raised issues related to DoT's guidelines on 'Transfer/Merger of various categories of Telecommunication service licences/authorisation under Unified Licence (UL) on compromises, arrangements and amalgamation of the companies' dated 20<sup>th</sup> February 2014. These issues are discussed below:

##### **Delay in Approval of Merger proposals by Licensor**

- 2.20 Some stakeholders submitted that Merger and Acquisition (M&A) Guidelines dated 20<sup>th</sup> February 2014 should specifically prescribe the timelines for granting approval by DoT, pursuant to approval from High Courts/National Company Law Tribunal (NCLT) is granted to the applicants. One of them suggested that under any circumstances, it should not exceed 60 days. Another stakeholder submitted that timeline for DOT's consent for merger to be maximum 30 days post NCLT approval as the NCLT order is mandatorily required to be filed with Registrars of Companies (ROC) within 30 days from the date of NCLT order under the provisions of Companies Act, 2013. If such approval is not explicitly given, there should be provision for deemed approval by DoT on expiry of 30 days.

##### **Analysis**

- 2.21 The scheme of compromises, arrangements and amalgamation of companies is governed by the various provisions of the Companies Act

2013 as amended from time to time. Such schemes are to be approved by National Company Law Tribunal, constituted under the provisions of Companies Act 2013. Consequently, the various licences granted under section 4 of Indian Telegraph Act 1885 to such companies need to be transferred to the resultant entity (ies) subject to the condition that the resultant entity is eligible to acquire such licence/authorisation in terms of extant guidelines issued from time to time. However, transfer/merger of licences becomes effective only after the written approval of the Licensor (Refer Clause 6.4 of Unified Licence), for which there is no specified timeline.

**Clause 6.4 of Unified Licence (UL)**

*“Further, the Licensee may transfer or assign the License Agreement with prior written approval of the Licensor, in the following circumstances, and if otherwise, no compromise in competition occurs in the provisions of Telecom Services:-*

.....

*(i)(b) Whenever amalgamation or restructuring i.e. merger or demerger is sanctioned and approved by the High Court or Tribunal as per the law in force; in accordance with the provisions; more particularly Sections 391 to 394 of Companies Act, 1956; provided that scheme of amalgamation or restructuring is formulated in such a manner that it shall be effective only after the written approval of the Licensor for transfer/merger of Licenses...”*

2.22 In the past, it has been noticed that the written approval for merger of service licences from the Licensor sometimes takes a very long time. Such considerable delays could also hamper the benefits of synergies through merger. As per the clause 3 (a) of Merger and Acquisitions Guidelines 2014, the licensor is required to be notified for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal. Further, representation/objection, if any, by the Licensor on such scheme has to be made and informed to all concerned within 30 days of receipt of such notice.

**Clause 3 (a) of Merger and Acquisitions Guidelines 2014**

*“The licensor shall be notified for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge.*

*Further, representation/objection, if any, by the Licensor on such scheme has to be made and informed to all concerned within 30 days of receipt of such notice.”*

2.23 Having being notified about the merger proposal, the Licensor may use this window of 30 days to file objections, if any, for the merger of Licenses also. Once the scheme of merger is accepted by the NCLT, The Licensor should be in a position to grant its written approval to the merger/transfer of licences/authorisation within a short period of time. The Authority is of the view that there should be a definite and reasonable timeline, not exceeding 30 days post NCLT for providing written approval for transfer/merger of licences by the Licensor and it should be made a part of the M&A Guidelines.

#### **Market Share of Merged Entity**

2.24 As per the current M&A guidelines, to determine the subscriber market share cap of 50%, the Exchange Data Record (EDR) / Visitor Location Register (VLR) data as of 31<sup>st</sup> December or 30<sup>th</sup> June will be considered. Post-merger or acquisition or amalgamation, if the market share of resultant entity in any service area exceeds 50%, then the resultant entity should reduce its market share to the limit of 50% with-in one year from the date of approval. One stakeholder submitted that it should be made clear that if the subscriber market share for any of the month during the window of one year (in which the market share is to be reduced) falls to or below 50%, it should be deemed that the resultant entity has reduced its market share to the limit of 50% and has satisfied the condition of market share limit.

#### **Analysis**

2.25 TRAI, in its recommendations on ‘Spectrum Management and Licensing Framework’ dated 3<sup>rd</sup> November 2011 had, inter-alia, recommended that -

*“iii. Where the market share of the Resultant entity in the relevant market is not above 35% of the total subscriber base or the AGR in a licensed service area, the Government may grant permission at its level. However, where, in either of these criteria, it exceeds 35% but is below 60%, Government may decide the case after receipt of recommendations from the TRAI. Cases where the market share is above 60% shall not be considered.” (Para 36, Chapter IV: Consolidation of Spectrum)*

- 2.26 After considering TRAI’s recommendations, DoT issued its revised M&A guidelines in 2014. As per these prevailing Merger, in case the merger proposal results in market share in any service area(s) exceeding 50%, either in terms of subscriber base or adjusted gross revenue, the resultant entity should reduce its market share to the limit of 50% within a period of one year from the date of approval of merger by the competent authority, failing which, suitable action is to be initiated by the licensor.
- 2.27 The pertinent issue is how a company can ensure that it loses its market share. Should it stop rendering services to a section of subscribers? Reducing subscriber base is certainly not feasible as a subscriber cannot be forcefully moved out of the network; also not acquiring further subscribers could be detrimental for the merged entity. Similarly, reducing market share in terms of revenue would also be very difficult. Reducing market share may not be in the hands of the resultant entity as it is a function on other service providers’ actions/policies also. And what if, the entity fails to comply with the above provision after the prescribed period of one year. What actions DoT proposes to take are not mentioned in the guidelines.
- 2.28 The current provisions of M&A guidelines do not define a red-line for the market share of resultant entity in a service area. The Authority is of the view that permitting the merger of licences on the premise that the resultant entity will reduce its market share to the limit of 50% with-in one year from the date of approval is not a workable proposition and there needs to be define cap on the permissible market share of the merging entities taken together; beyond which merger proposal should not be accepted.

### **Date of effect of Merger and Acquisition**

2.29 As per the clause 3(i) of the Merger and Acquisition Guidelines 2014, if a transferor company holds a part of spectrum, which (4.4 MHz/2.5 MHz) has been assigned against the entry fee paid, the resultant company is required to pay the differential between the entry fee and the market determined price from the date of approval of such arrangement by NCLT/Company Judge. There were suggestions received from the stakeholders that the “date of NCLT / Company judge approval” in this provision should be modified as “date of DoT approval”, as the spectrum cannot be used as liberalized till DoT gives its approval.

### **Analysis**

2.30 As mentioned above, a merger is effective only after the written approval of the Licensor, for which there is no defined time-limit. The resultant entity will be able to derive benefits of merger (including spectrum holding of the transferor company), only after the merger gets written approval of DoT. Therefore, the Authority is of the view that the merged entity should be liable to pay the differential amount for the spectrum assigned against the entry fee paid of the transferor company from the date of approval by DoT.

2.31 In view of the above, **the Authority recommends that:**

- a) When any merger proposal of companies as filed before the Tribunal is notified, representation/ objection, if any, by the Licensor on such scheme has to be made within 30 days. The Licensor should use this window of 30 days to file objections, if any, for the merger of licences also. DoT**

**should spell out a definite timeline, not exceeding 30 days post NCLT approval, for providing written approval to transfer/merger of licences by the Licensor and it should be made a part of the M&A Guidelines.**

- b) The current provisions of M&A guidelines do not define a red-line for the market share of resultant entity in a service area. Therefore, DoT should define a cap on the permissible market share of the merging entities taken together; beyond which merger proposal should not be accepted.**
- c) If a transferor company holds a part of spectrum, which (4.4 MHz/2.5 MHz) has been assigned against the entry fee paid, the merged entity should be liable to pay the differential amount for the spectrum assigned against the entry fee paid by the transferor company from the date of written approval by DoT.**

**E. Rationalizing of prescribed fee for testing of roll-out obligations**

2.32 The spectrum assignment comes with minimum roll-out obligations and the TSPs are required to fulfil the same within the prescribed timelines and offer the sites to Telecom Enforcement, Resource and Monitoring (TERM) Cells for testing of the same.

2.33 DoT vide its circular dated 18<sup>th</sup> August 2016 has notified that TSP is required to submit self certificate of required number of DHQs/ BHQs/ SDCAs for the fulfilment of rollout obligation and the TERM Cells will carry out sample testing of 10% of such self certified DHQs/ BHQs/ SDCAs. Some TSPs appreciated the Government's effort to simplify verification processes by providing that the TERM Cells will carry out sample testing of 10% of the self-certified DHQs / BHQs. However, stakeholders have pointed out that the testing fees taking by TERM Cells are not confined to only 10% of the sites actually audited, but are taken for the entire base of 100%.

2.34 For testing of sites, the TSPs are also required to pay testing fee for each DHQ/BHQ/SDCA separately, as per the following calculation<sup>6</sup>:

**Calculation of Test Fee**

1. Service testing (for each MSC) = Rs. 1,05,000/-
2. Coverage Tests for network having BTS upto 4 = Rs. 35,000/-
3. Coverage Tests for each additional 2 BTS or part thereof  
= Rs. 17,500/- (Clubbing of BTS is allowed only at the same station)

2.35 Some TSPs have submitted that MSC test fee, which is a major portion of total testing fee, is being charged in each roll-out testing, although the same MSC caters to a number DHQs/BHQs/Towns.

**Analysis**

2.36 Through its office memorandum dated 18<sup>th</sup> August 2016, DoT issued revised procedure for testing of Rollout obligations by the TERM Cells. Accordingly, while registering with the TERM Cells, the Licensee has to submit a self-certification for fulfilment of roll out obligations in an LSA along with self-conducted test results as per prescribed Test Schedule test Procedure (TSTP) and prescribed fee. The TERM Cells would then carry out sample testing of 10% of such self-certified DHQs/BHQs/SDCAs. Since, as per the new procedure, TERM Cells does a sample test of 10% of the sites, the Authority is of the view that the testing fee should also be charged for only 10% of the sites instead of the whole.

2.37 Generally, one or a few MSC(s) caters several DHQs/BHQs/SDCAs. The roll-out obligation has been mandated on coverage in terms of number of DHQs/BHQs/SDCAs as a percentage of the total DHQs/BHQs/SDCAs. Since the TSPs are required to offer and pay testing fee for each DHQ/BHQ/SDCA separately, the fee for MSC testing is paid several times as same MSC is associated with several

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<sup>6</sup> As submitted by stakeholder.

DHQs/BHQs/SDCAs. The Authority is of the view that there is a need to rationalize the structure of testing fee to avoid double payment for testing the same MSC. MSC test fee should only be charged once for all the towns served by common MSC, which are being tested by TERM Cell under sample testing.

2.38 In view of the above, **the Authority recommends that the TSPs should be charged for roll-out obligations test fee only for the DHQs/ BHQs/ SDCAs which are actually tested by TERM Cells. The Authority also recommends that there is a need to rationalize the structure of testing fee to avoid double payment for testing the same MSC. MSC test fee should only be charged once for all the towns served by the common MSC, which are being tested by TERM Cells under sample testing.**

**F. Net-worth requirement for migration from UASL to UL**

2.39 As per the terms and conditions of the Unified Licence, an applicant company should have a net-worth as prescribed in the Unified Licence on the date of the application and a certificate to this effect has to be provided by the registered Company Secretary along with application. Any applicant seeking additional authorization, subsequent to grant of UL, has to meet the minimum cumulative net-worth required on the date of application for seeking such additional authorization.

2.40 One stakeholder submitted that there is no clarity on whether a UASL holder wanting to migrate to UL also has to fulfil the net-worth requirement. The stakeholder further submitted that an existing TSP may have built up accumulated losses over the period of 20 years of its operations; getting a licence to operate (upon expiry of its existing license), should not act as a barrier merely because it is net-worth negative. Therefore, according to the stakeholder, there should be a specific mention in the guidelines for migration from UASL to UL that the net-worth need not be positive. The stakeholder also submitted

that DoT has allowed migration from UASL to UL in cases of negative net-worth on a case-to-case basis.

### **Analysis**

- 2.41 The whole objective of putting eligibility conditions for the applicants seeking Unified Licence such as net-worth, paid-up capital etc is to ensure that only serious applicants enter into telecom business as telecom sector is a capital intensive sector and requires huge investments to provide services which have a long gestation period. If a TSP has been providing telecom services for a period as long as 20 years, it won't make any logic to debar it from providing the telecom services at the end of service licence period even if it has turned net-worth negative. Otherwise it may put its entire subscriber base into uncertainty and the investment made by it at risk. In any case, it would require acquiring access spectrum through auction at the market determined prices. Auction process has its own eligibility conditions.
- 2.42 In view of the above, it may not be fair to ask such TSP to close down its services on expiry of service licence merely because it is not meeting the minimum net-worth condition of UL. Therefore, the Authority is of the view that for an existing service provider, for renewal of licence or migration of its licence to UL, the condition of minimum net worth should not be applicable.
- 2.43 In view of the above, **the Authority recommends that for an existing service provider, for renewal of licence or migration of its licence to UL, the condition of minimum net worth should not be applicable.**

## **G. EMF compliance and certification**

- 2.44 In order to ensure that all Base Transceiver Stations (BTSs) are compliant to prescribed EMF reference limits, all the TSPs have been mandated to test each and every BTS and self certify them as meeting the radiation norm.
- 2.45 Department of Telecom (DoT), Ministry of Communications has launched Tarang Sanchar, a web portal for Information sharing on Mobile Towers and EMF Emission Compliances. The portal has the complete collated technical details of base stations (BTSs) spread across the country of all technologies (2G, 3G, 4G etc.) and of all Telecom Service Providers (TSPs).
- 2.46 A few stakeholders have pointed out that Tarang Sanchar is now being used for EMF compliance and submission of self-certification. Therefore, some of the current processes that are based on the legacy paper based system warrant a review. For example, the DoT had laid down a requirement for a biennial certification of all the existing sites of every TSP. Also, each upgrade by any TSP on a shared site requires a corresponding response upgrade certification by every sharing TSP for every technology/BTS. Given the launch of the Tarang Sanchar portal which has complete and current information on every site, both these requirement too may be done away with.

### **Analysis**

- 2.47 All new BTS sites start radiating commercially, only after self certification by TSPs which are subjected to the extensive audit by Telecom Enforcement Resource & Monitoring (TERM) field units of DoT. TSPs are required to submit the revised self-certification in case of BTS upgradation such as increase in the TRXs/channels, change in antenna, change in the electrical/mechanical tilt, change in azimuth and change in antenna height. In case of shared site, revised certificate is required to be submitted by all the TSPs sharing the site.

- 2.48 In each cycle of two years, the TSPs are required to submit the self-certificate in respect of all the BTSs, except the new BTSs commissioned during the cycle. In case of upgraded sites, these certificates are to be submitted in addition to revised certificates submitted at the time of site upgradation.
- 2.49 Prior to the development of online portal (Tarang Sanchar), the whole process was being carried out manually. However, after successful implementation of the online portal Tarang Sanchar, self certificates are being submitted by TSPs through portal only. The up-to-date information can be extracted by TERM Cell any time. Therefore, the Authority is of the view that DoT may review the need of calling biennial certification for all the existing sites of every TSP. The Authority is also of the view that TSPs should be asked to submit all requisite certifications only through Sanchar Tarang portal. TSPs should not be required to re-submit these certificates/reports separately in any other forms such as in hard copy or through email.
- 2.50 In view of the above, **the Authority recommends that in respect of EMF compliance, DoT may review the need of calling biennial certification for all the existing sites of every TSP. The Authority also recommends that TSPs should be asked to submit all requisite certifications only through Sanchar Tarang portal. TSPs should not be required to re-submit these certificates/reports separately in any other forms such as in hard copy or through email.**

#### **H. Bank guarantee**

- 2.51 Some stakeholders pointed out that the current processes related to the return of Bank Guarantees from the concerned Chief Controller of Accounts (CCA) office are very tedious and time-consuming. These stakeholders submitted that there should be clear and time-bound processes in place to facilitate the return of bank guarantees in a streamlined and efficient manner. A few stakeholders submitted that

PBG should be immediately returned on fulfilment of rollout obligations by a TSP. One stakeholder submitted that the present UL does not have a provision of release of PBGs upon completion of five (5) stages of rollout. In the absence of this, the initial PBG of Rs 35 crore (Rs 7 crore for each of the five stages) per service area remains with the licensor till the end of sixth year.

### **Analysis**

2.52 The successful bidders are required to submit Performance Bank Guarantee (PBG) of Rs. 35 crore for the spectrum 700 MHz, 800 MHz, 900 MHz and 1800 MHz band, wherein there are 5 phases of minimum roll-out obligations. Prescribed PBG is Rs. 21 crore for spectrum in 2100 MHz, 2300 MHz and 2500 MHz wherein there are 3 phases of minimum roll-out obligations. It comes out that PBG requirement has been prescribed @Rs 7 crore per phase of roll-out obligations. It is but natural that once a particular phase of roll-out obligations are fulfilled by the licensee, its PBG for corresponding phase is promptly released. There seems to be no justification for holding the entire sum of PBG till the end of sixth year. As the testing of compliance of roll-out obligations are to be carried out by TERM cell, there should be a time-limit for the testing to be completed. The Authority is of the view that the testing should be completed within 12 months time period.

2.53 In view of the above, **the Authority recommends that PBG for a particular phase of roll-out obligations should be released after successful certification by TERM Cell. If TERM Cell fails to submit its report within 12 months after the date of offer, PBG should not be held back on account of pendency of testing. Further, DoT should review the process adopted by CCA for the refund of bank guarantee and should ensure that CCA do not take more than 30 days for the release of bank guarantee.**

## **I. Publishing of OSP registration holders in website**

- 2.54 Indian company registered with DoT to provide application services like tele-banking, tele-medicine, tele-education, tele-trading, e-commerce, Call center, network operation centre and other IT enabled services are categories as 'Other Service Provider (OSP)'. OSPs are permitted to use the telecom resources from Telecom Licensees.
- 2.55 Some stakeholders pointed out that as per the Licence provisions, a licensee is mandated to satisfy itself that the OSP is eligible to obtain that resource. However, there is absolutely no tool / website where TSPs can cross check whether the potential customer is an OSP. These stakeholders submitted that if a list of OSP registration holders across all India is published on DoT's website with their validity of registration & place of OSP centre, it can be used for reference purpose before assigning telecom resources to OSPs.

### **Analysis**

- 2.56 The Licence mandates that while providing a resource, a TSP is required to ensure that the OSP is eligible to obtain that resource. The relevant clause under 'Operating Conditions' of UL is quoted below:

*"30.8 The Licensee's contractual obligations to various Licensees and Other Service Providers (OSPs) not requiring License under Section 4 of Indian Telegraph Act, 1885 will include terms and conditions under which the Service may be obtained, utilized and terminated. However, the Licensee while providing the resources to other Licensees / OSPs shall satisfy itself that such Licensee/OSP is eligible to obtain that resource."*

- 2.57 As suggested by some stakeholders, if an updated list of OSP registration holders across all India with their validity of registration and place of OSP centre is placed at DoT's web-site, it will facilitate the compliance of above requirement of Licence. Therefore, the Authority is of the view that DoT should place an updated list of OSP registration holders with their validity of registration and place of OSP centre at its web-site.

2.58 In view of the above, **the Authority recommends that DoT should place an updated list of OSP registration holders with their validity of registration and place of OSP centre at its web-site.**

**J. Revision of existing financial penalty structure**

2.59 As per the Unified License, the Licensor may impose a financial penalty not exceeding the amount shown in Table below for each service as per applicable service area per occasion for violation of terms and conditions of licence agreement.

**Table 2.2**

**Maximum amount of Penalty under each Service Authorization**

<b>Sl No.</b>	<b>Service Authorization</b>	<b>Maximum Amount of Penalty per violation for each occasion in Service Area</b>
1	Access	50 Crore
2	NLD	50 Crore
3	ILD	50 Crore
4	Resale of IPLC	1 Crore
5	ISP Cat A	1 Crore
6	ISP Cat B	20 Lakh
7	ISP Cat C	10 Lakh
8	INSAT MSS-R	10 Lakh
9	GMPCS	50 Crore
10	PMRTS	10 Lakh
11	VSAT CUG	1 Crore

2.60 Some stakeholders have pointed out that though the prescribed amount are the ceilings, but in the absence of any laid down guidelines, the service providers are often imposed with the maximum penalty even if violations are of a minor nature. Each violation does not warrant a Rs. 50 crores penalty and thus a suitable matrix, linking the deviation to the severity of the incident, needs to be applied. One stakeholder submitted that before any penalty is imposed on a TSP, there needs to be an assessment of the severity of the incident, its impact on the business environment / government

revenues / other TSPs / safety and security, etc. Only when the incident's severity is established and that there has been a wilful disregard from the Licensee's end, should there be a penalty. The stakeholder also submitted that not all instances of non-compliance need to be slapped with a penalty. There ought to be a sense of moderation while reviewing all deviations.

### **Analysis**

2.61 Presently, many of the licences/authorisations provide for imposition of penalty upto a maximum of Rs. 50 crore. In the absence of any laid down guidelines, the service providers are often imposed the maximum penalty for minor violations. In order to streamline the process and to ensure that the service providers are not unduly penalised, it is necessary to frame guidelines on deciding the quantum of penalty. Earlier also, the Authority had examined this issue in its Recommendations on 'Guidelines for Unified Licence/Class Licence and Migration of Existing Licences' dated 16<sup>th</sup> April 2012. These were again examined by the Authority in its recommendations on "Terms and Conditions of Unified License (Access Services)" dated 2<sup>nd</sup> January 2013. The Authority came to the conclusion that it is not the type of licence but the nature of violation that should determine the level of penalty. The Authority also arrived at a judgment that the quantum of penalty should also depend upon the number of time a service provider has violated the licence conditions. Accordingly, the Authority recommended for imposition of penalties based on the type/nature of violation – minor and major and the number of occurrences of the violation. The quantum of penalty recommended was as given in Table below:

**Table 2.3**

**Quantum of Penalty recommended by the Authority in its recommendations dated 2<sup>nd</sup> January 2013**

<b>Number of Violation</b>	<b>Minor Violation Penalty</b>	<b>Major Violation Penalty</b>
1 <sup>st</sup>	1 Lakh	50 Lakh
2 <sup>nd</sup>	5 Lakh	2.5 Crore
3 <sup>rd</sup>	25 Lakh	5 Crore
4 <sup>th</sup>	25 Lakh	10 Crore
Subsequent violations	25 Lakh	Liable for cancellation of Licence

2.62 The Authority had recommended that before deciding the imposition of any penalty, proper opportunity should be given to Licensee to present its case. The Authority also recommended the guiding principles for categorising a violation as minor or major in its recommendations dated 16<sup>th</sup> April 2012.

2.63 Further, in its back reference dated 2<sup>nd</sup> May 2012, the DoT mentioned that it was also separately looking into setting up criteria for imposition of penalty and that penalty imposition principles given by TRAI would be kept in mind while finalising the criteria. But, DoT has not, so far, forwarded any report in this regard. The Authority is of the view that DoT should device a suitable matrix, linking the penalty to the severity of the incident and the number of occurrence of the violation for imposition of financial penalties.

2.64 In view of the above, **the Authority recommends that DoT should device a suitable matrix, linking the penalty to the severity of the incident and the number of occurrence of the violation for imposition of financial penalties.**

### **CHAPTER-III: LIST OF RECOMMENDATIONS**

- 1. The Authority recommends that entire process of SACFA clearance as well as grant of all licences/approvals, that are issued by WPC, should be made paper-less and executed end-to-end through online platform. (Para 2.4)**
  
- 2. The Authority recommends that:**
  - There should be a defined time-line within which an Import Licence should be granted and the same may be declared in the portal as well as in the Citizen's Charter.**
  
  - TSPs should be allowed to reinstall/deploy their wireless equipment into another LSA after giving prior intimation to WPC preferably through the online portal. There should not be any requirement of taking prior permission of WPC for this purpose.**

**(Para 2.10)**
  
- 3. The Authority recommends that the applications for Demonstration Licence and Experimental Licence should be processed and the licence should be granted within a maximum period of 15 days and 30 days respectively. This time period should be declared at the portal as well as in Citizen's Charter. (Para 2.16)**
  
- 4. The Authority recommends that the validity period of the Experimental (radiating) Licence should initially be six months, extendable by another six months. (Para 2.18)**
  
- 5. The Authority recommends that:**
  - a) When any merger proposal of companies as filed before the Tribunal is notified, representation/ objection, if any, by the Licensor on such scheme has to be made within 30**

days. The Licensor should use this window of 30 days to file objections, if any, for the merger of licences also. DoT should spell out a definite timeline, not exceeding 30 days post NCLT approval, for providing written approval to transfer/merger of licences by the Licensor and it should be made a part of the M&A Guidelines.

- b) The current provisions of M&A guidelines do not define a red-line for the market share of resultant entity in a service area. Therefore, DoT should define a cap on the permissible market share of the merging entities taken together; beyond which merger proposal should not be accepted.
- c) If a transferor company holds a part of spectrum, which (4.4 MHz/2.5 MHz) has been assigned against the entry fee paid, the merged entity should be liable to pay the differential amount for the spectrum assigned against the entry fee paid by the transferor company from the date of written approval by DoT.

(Para 2.31)

- 6. The Authority recommends that the TSPs should be charged for roll-out obligations test fee only for the DHQs/ BHQs/ SDCAs which are actually tested by TERM Cells. The Authority also recommends that there is a need to rationalize the structure of testing fee to avoid double payment for testing the same MSC. MSC test fee should only be charged once for all the towns served by the common MSC, which are being tested by TERM Cells under sample testing. (Para 2.38)
- 7. The Authority recommends that for an existing service provider, for renewal of licence or migration of its licence to UL, the condition of minimum net worth should not be applicable. (Para 2.43)

- 8. The Authority recommends that in respect of EMF compliance, DoT may review the need of calling biennial certification for all the existing sites of every TSP. The Authority also recommends that TSPs should be asked to submit all requisite certifications only through Sanchar Tarang portal. TSPs should not be required to re-submit these certificates/reports separately in any other forms such as in hard copy or through email. (Para 2.50)**
- 9. The Authority recommends that PBG for a particular phase of roll-out obligations should be released after successful certification by TERM Cell. If TERM Cell fails to submit its report within 12 months after the date of offer, PBG should not be held back on account of pendency of testing. Further, DoT should review the process adopted by CCA for the refund of bank guarantee and should ensure that CCA do not take more than 30 days for the release of bank guarantee. (Para 2.53)**
- 10. The Authority recommends that DoT should place an updated list of OSP registration holders with their validity of registration and place of OSP centre at its web-site. (Para 2.58)**
- 11. The Authority recommends that DoT should device a suitable matrix, linking the penalty to the severity of the incident and the number of occurrence of the violation for imposition of financial penalties. (Para 2.64)**