



Telecom Regulatory Authority of India



**Recommendations
on
Ease of Doing Telecom Business**

30th November, 2017

**Mahanagar Doorsanchar Bhawan
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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 priorities of 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 Against this backdrop, the Authority *suo motu* issued a paper on 14th 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 25th April 2017. The Authority received inputs from twenty-six (26) stakeholders.

- 1.4 Based on the inputs received from various stakeholders and internal analysis, draft recommendations were framed and uploaded on TRAI website on 19th September 2017 seeking comments of the stakeholders. Last date for submission of comments and counter-comments were 3rd October 2017 and 10th October 2017 respectively. Comments from eleven (11) stakeholders and counter-comment from one stakeholder were received. The same were posted on TRAI's website.
- 1.5 After analysing the comments received from the stakeholders and internal analysis, these recommendations have been finalised. 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

- 1.6 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 14th 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. Based on the inputs received from the stakeholders, draft recommendations were placed on TRAI website seeking comments of the stakeholders. 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 Standing Advisory Committee for Frequency Allocation (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. Some stakeholders have submitted that the TSPs are required to pay a processing fee of Rs. 1000/- per SACFA application. As they are deploying approx. 20,000 sites per month. SACFA application fee amounts to a huge expenditure for them and, therefore, it requires to be rationalized. One of them suggested that the Department of Telecommunications (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 The Wireless Planning & Coordination (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- licences¹ and 9 types of non-network licences issued by WPC². 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 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 paper-less and executed end-to-end through online portal. This system would help in saving the effort, time and cost in the entire process. Upon successful implementation of online portal, DoT may also review the SACFA fee being levied upon the TSPs.
- 2.4 In view of the above, **the Authority recommends that the 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 an online portal. Upon successful implementation of online portal, DoT may also review the SACFA fee being levied upon the TSPs.**

¹ **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 licence, earmarked frequencies (pre-allocated frequencies) are available as per international and national norms whereas in certain cases of Non-network licences, frequencies are not required to be assigned at all.

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

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 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 and thus hampers the network expansion.
- 2.7 Some stakeholders pointed out that licensees are allowed to procure Licensed Service Area (LSA) specific Import Licences only. As the equipment procured under a particular Import Licence are considered under the ownership of the respective LSA only, TSPs require additional permissions for deployment of the respective equipment in other LSAs, 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 LSAs, 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, not exceeding 30 days, 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. However, there could be cases where the application submitted by the TSPs is incomplete or the relevant documents are not attached. The Authority is of the view that to ensure that the application is complete and all the required documents are attached, the online portal should accept the application and generate the acknowledgement only when all the mandatory field(s) in the online application form have been filled by the TSP and all the documents as per the WPC's check-list are uploaded by the TSP.

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 a genuine situation, when a licensee may have to reinstall its equipment in some other LSA. There seems to be no valid reason why licensee should be disallowed to reinstall/deploy the equipment at other LSAs. 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, not exceeding 30 days, within which an Import Licence should be granted. The time-line should be declared on the portal as well as in the Citizen's Charter.**
- **To ensure that application is complete and all the required documents are attached, the online portal should accept the application and generate the acknowledgement only when all the mandatory field(s) in the online application form have been filled by the TSP and all the documents as per the WPC's check-list are uploaded by the TSP.**

- **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 Demonstration 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 Demonstration Licence 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 Demonstration licence 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. One 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 extension³. Experimental Licence 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 issue⁴. However, for Experimental (radiating) Licence, the validity period is 3 months, extendable by another 3 months⁵.
- 2.14 As discussed earlier, a portal has also been put in place by WPC for filing online applications for all licences/approvals including 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/experimentation along with set up diagram and technical literature/specification of the equipment being used in the demonstration/ experimentation. As is the case with other licences issued by WPC, the process of obtaining Demonstration Licence and Experimental Licence is not online end-to-

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

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

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

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 on 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 on the portal as well as in Citizen's Charter.**

2.17 The Authority is in agreement with the stakeholders that the validity period of Experimental licence (radiating) is too short. One of the stakeholders has pointed out that significant amount of work on development of new technologies such as 5G, is being moved to other countries because of uncertain and delayed approval processes. It has been further pointed out that with deployment of 5G happening, there is a significant amount of new devices & ecosystem that would come up and we are missing global opportunities to support key programs viz. Make in India & Design in India. The validity period for experimental license of 3 months, extendable for another three months only, appears to be too short for conducting technology trials and such a short validity period also increase uncertainty. 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 some 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 20th February 2014. These issues are discussed below:

a) Delay in Approval of Merger proposals by Licensor

- 2.20 Some stakeholders submitted that DoT's Merger and Acquisition (M&A) Guidelines dated 20th February 2014 should specifically prescribe the timelines for granting approval by DoT, pursuant to approval from High Courts/National Company Law Tribunal (NCLT). 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 M&A 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 M&A 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 Licences 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.

b) Surrender of Excess Spectrum

2.24 As per the existing M&A guidelines issued by DoT on 20th February 2014, if, as a result of merger, the total spectrum held by the relevant entity is beyond the limits prescribed, the excess spectrum must be surrendered within one year of the permission being granted. There is no provision of reducing spectrum holding via spectrum trading. One stakeholder pointed out that the trading rights should be uniformly applicable to all the licensees with option to trade given in all situations.

Analysis

2.25 At the time of issuance of M&A guidelines dated 20th February 2014, spectrum trading was not permitted in the country. Therefore, only provision to get rid of excess spectrum holding was its surrender to the Licensor with no provision of refund or set-off of money paid and/or payable for excess spectrum.

2.26 On 12th October 2015, DoT permitted spectrum trading through issue of 'Guidelines for Trading of Access Spectrum by Access Service Providers'. Spectrum trading guidelines permits an access service provider to trade its spectrum acquired through auction or spectrum trading. Administratively assigned spectrum can also be converted into tradable spectrum by paying the market determined price.

2.27 Since a mechanism is now in place, through which a TSP can shed off its extra spectrum holding beyond permissible spectrum cap, resultant entity after merger should be given the rights to use this option also, if the merger results in excess spectrum, within the stipulated period of one year.

2.28 In view of the above, the Authority is of the view that resultant entity after merger should be given an option to either surrender or trade its spectrum holding through which a TSP can shed off its extra spectrum holding beyond permissible spectrum cap, if the merger results in excess spectrum, within the stipulated period of one year. Clause 3(L) of M&A guidelines should be amended accordingly.

c) Date of effect of M&A

2.29 As per the clause 3(i) of the M&A Guidelines dated 20th February 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 transferee company/ 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 transferee company/ resultant 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 of transfer/merger of licences by DoT.

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

- a) **When the Licensor is notified about the merger proposal of companies as filed before the Tribunal, it should file objections, if any, for the merger of licences also during the stipulated window of 30 days. 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 DoT's M&A Guidelines.**
- b) **If the merger results in excess spectrum holding beyond permissible spectrum cap, the resultant entity should be given an option to either surrender or trade its spectrum holding, within the stipulated period of one year. The Authority is of the view that Clause 3(L) of DoT's M&A guidelines should be amended accordingly.**
- 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 transferee company/ resultant 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 of transfer/merger of licences by DoT.**

E. Guidelines on Trading of Access Spectrum

2.32 The guidelines on 'Trading of Access Spectrum by Access Service Providers' issued by DoT on 12th October, 2015, specifies the block sizes in which the spectrum in various spectrum band can be traded. Some of the stakeholders have pointed out that in the last spectrum

auction, which was held in the year 2016, block size for auction of spectrum in 2300 MHz and 2500 MHz bands were reduced from 20 MHz to 10 MHz, which has created an anomaly with the spectrum trading guidelines.

Analysis

2.33 The existing guidelines on trading of access spectrum hard-codes the spectrum bands as well as the block size in which the spectrum trading is permitted, as given below in Table 2.1.

Table 2.1

Spectrum band	Block Size
800 MHz	2x1.25 MHz
900 MHz	2x200 KHz
1800 MHz	2x200 KHz
2100 MHz	2x5 MHz
2300 MHz	20 MHz in TDD
2500 MHz	20 MHz in TDD and 2x10 in FDD

2.34 The permitted block size for trading of spectrum should not be any different from the block size in which spectrum can be acquired through auction. Till the auctions held in 2015, this was actually the case; and the permissible block sizes in different spectrum bands for trading of spectrum (**Table 2.1**) were exactly the same as prescribed in the NIA to acquire the spectrum through auction. However, in the auctions held in 2016, the block size in 2300 and 2500 MHz bands were reduced from 20 MHz (unpaired) to 10 MHz (unpaired). Possibility of further change in block size cannot be ruled out. Moreover, new spectrum bands are likely to be introduced in the future auction. Therefore, the Authority is of the view that it would be appropriate if the guidelines on trading of access spectrum do not hard-code the spectrum bands and applicable block sizes. Instead, it should be linked with the last auction held in a given band.

2.35 In view of the above, **the Authority recommends that spectrum trading should be permitted in all the access spectrum bands which have been put to auction. The permissible block size for trading in a band should be same as specified in the NIA for the latest auction held. Spectrum trading guidelines should be amended accordingly.**

F. Rationalizing of prescribed fee for testing of roll-out obligations

2.36 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.

2.37 DoT, vide its circular dated 18th August 2016, notified that a TSP is required to submit self certificate of required number of District Head Quarters (DHQs)/ Block Head Quarters (BHQs)/ Short Distance Charging Areas (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 self-certified sites which are actually audited, but are taken for the entire base of 100%.

2.38 For testing of sites, the TSPs are also required to pay testing fee for each DHQ/BHQ/SDCA separately, as per the following calculation⁶:

⁶ As submitted by stakeholder.

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)

2.39 Some TSPs have submitted that Mobile Switching Center (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

2.40 Through its office memorandum dated 18th 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 self-certified sites, the Authority is of the view that the testing fee should also be charged for only 10% of the sites which are actually test by TERM cell instead of the whole.

2.41 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 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.

2.42 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.**

G. Net worth requirement for migration from UASL to UL

2.43 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.

2.44 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 in the past allowed migration from UASL to UL in cases of negative net worth on a case-to-case basis.

Analysis

2.45 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.

2.46 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.

2.47 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.**

H. EMF compliance and certification

2.48 In order to ensure that all Base Transceiver Stations (BTSs) are compliant to prescribed Electro Magnetic Frequency (EMF) Radiations reference limits, all the TSPs have been mandated to test each and every BTS and self certify them as meeting the radiation norm.

2.49 DoT 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 BTSs spread across the country of all technologies (2G/3G/4G) and of all Telecom Service Providers (TSPs).

2.50 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

2.51 All new BTS sites start radiating commercially, only after self certification by TSPs which are, then, subjected to the extensive audit by TERM field units of DoT. TSPs are required to submit 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.

2.52 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.

2.53 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 revised certification by all the TSPs for every BTS upon upgrade by any TSP

on a shared site and 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.

2.54 In view of the above, **the Authority recommends that consequent to the implementation of the online portal Tarang Sanchar, DoT may review (a) the need of revised certification by all the TSPs for every BTS upon upgrade by any TSP on a shared site and (b) 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.**

I. Bank guarantee

2.55 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 Performance Bank Guarantee (PBG) should be immediately returned on fulfilment of roll-out 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

2.56 The successful bidders are required to submit PBG of Rs. 35 crore for the spectrum 700 MHz, 800 MHz, 900 MHz and 1800 MHz band, having 5 phases of minimum roll-out obligations. Prescribed PBG is Rs. 21 crore for spectrum in 2100 MHz, 2300 MHz and 2500 MHz having 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. The Authority is also of the view that DoT should review the process adopted by CCA for the refund of bank guarantee and should ensure that CCA does not take more than 30 days for the release of bank guarantee.

2.57 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 does not take more than 30 days for the release of bank guarantee.**

J. Publishing of OSP registration holders in website

2.58 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.

- 2.59 Some stakeholders pointed out that, as per the Licence provisions, a licensee is mandated to satisfy itself that the OSP is eligible to obtain its telecom 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 and place of OSP centre, it can be used for reference purpose before assigning telecom resources to OSPs.

Analysis

- 2.60 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."

- 2.61 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 on its web-site.

- 2.62 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 on its web-site.**

K. Revision of existing financial penalty structure

2.63 As per the Unified Licence, 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

Sl No.	Service Authorization	Maximum Amount of Penalty per violation for each occasion in Service Area
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

2.64 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 Rs. 50 crore 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

2.65 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. 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 16th April 2012. These were again examined by the Authority in its recommendations on "*Terms and Conditions of Unified License (Access Services)*" dated 2nd 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 2.3.

2.66 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 16th April 2012.

Table 2.3

Quantum of Penalty recommended by the Authority in its recommendations dated 2nd January 2013

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

2.67 Further, in its back reference dated 2nd May 2012, 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, so far, DoT has not 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 recurrence of the violation for imposition of financial penalties.

2.68 In view of the above, **the Authority recommends that DoT should devise a suitable matrix, linking the penalty to the severity of the incident and recurrence of the violation for imposition of financial penalties.**

CHAPTER-III: LIST OF RECOMMENDATIONS

- 1. The Authority recommends that the 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 an online portal. Upon successful implementation of online portal, DoT may also review the SACFA fee being levied upon the TSPs. (Para 2.4)**

- 2. The Authority recommends that:**
 - There should be a defined time-line, not exceeding 30 days, within which an Import Licence should be granted. The time-line should be declared on the portal as well as in the Citizen's Charter.**

 - To ensure that application is complete and all the required documents are attached, the online portal should accept the application and generate the acknowledgement only when all the mandatory field(s) in the online application form have been filled by the TSP and all the documents as per the WPC's check-list are uploaded by the TSP.**

 - 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 on 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 the Licensor is notified about the merger proposal of companies as filed before the Tribunal, it should file objections, if any, for the merger of licences also during the stipulated window of 30 days. 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 DoT's M&A Guidelines.**

 - b) If the merger results in excess spectrum holding beyond permissible spectrum cap, the resultant entity should be given an option to either surrender or trade its spectrum holding, within the stipulated period of one year. The Authority is of the view that Clause 3(L) of DoT's M&A guidelines should be amended accordingly.**

 - 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 transferee company/ resultant 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 of transfer/merger of licences by DoT.**

(Para 2.31)

6. **The Authority recommends that spectrum trading should be permitted in all the access spectrum bands which have been put to auction. The permissible block size for trading in a band should be same as specified in the NIA for the latest auction held. Spectrum trading guidelines should be amended accordingly. (Para 2.35)**
7. **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. (Para 2.42)**
8. **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 2.47)**
9. **The Authority recommends that consequent to the implementation of the online portal Tarang Sanchar, DoT may review (a) the need of revised certification by all the TSPs for every BTS upon upgrade by any TSP on a shared site and (b) 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 2.54)**
10. **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 does not take more than 30 days for the release of bank guarantee. (Para 2.57)

- 11. The Authority recommends that DoT should place an updated list of OSP registration holders with their validity of registration and place of OSP centre on its web-site. (Para 2.62)**
- 12. The Authority recommends that DoT should devise a suitable matrix, linking the penalty to the severity of the incident and recurrence of the violation for imposition of financial penalties. (Para 2.68)**