

DO No. 410-7/98-COMM

Dated 23rd June, 2000

Dear Shri Ghosh,

Reference is invited to DOT letter No. 840-7/2000-VAS (Vol.II) dated 06.06.2000 wherein certain issues relating to TRAI's recommendations on license fee and terms and conditions of license Agreement for GMPCS Service have been raised and TRAI's views sought thereon in terms of TRAI Amendment Act, 2000, {Section 9(d)}.

2. The Authority has considered each of the issues raised carefully and its views thereon are given in the following paragraphs. At the outset, however, it needs to be clarified that the TRAI's intention in providing a draft for the License is only to set the general framework of the license for a Telecom Service. It is indeed for the licensor to work out the detailed terms and conditions on which the license will be issued. In providing the general framework for the License, TRAI's concerns are, ensuring acceptable quality of service by the service provider, compliance with the existing and future regulatory provisions, maintenance of a level playing field for all players in the same class and guarding against adoption of any practice by the service providers which can go against the interests of the consumer. As regards other issues which are normally addressed in a license, such as the commercial terms relating to payment of fee, the manner of its payment, default management, penalties etc. and other *inter-se* issues between the licensor and the licensees, our recommendation is that these are clearly issues which should be decided directly between the two parties concerned. These do not call for any regulatory input. This is however, with the caveat that barring the specifics relating to the individual case, by intent and by construction, the terms must be the same in all licenses for the same service. While suitable modifications may be required for different kind of services and some additional clauses may have to be introduced, if the two licenses are for the same service, in the interest of a level playing field, there must not be any difference between the two.

3. Such licenses in future may, therefore, be drafted at your end in the light of the general framework provided by the TRAI. The draft of license, which was sent earlier with our recommendations has been drawn in agreement with the framework TRAI has in mind. We are also writing to you about a general framework for licenses separately.

4. We would also recommend that once a license is drawn up for a particular kind of service, it may be sent to us to enable us to satisfy that the draft meets with the extant regulatory provisions and other expectations of the TRAI.

5. In so far as the draft of the license for GMPCS services is concerned, as it was drafted at this end, we are, as desired furnishing you with our views on the issues raised. These have been addressed seriatim as raised in your letter under reply and the responses follow in the same order.

6.1 Preamble/ Condition 2: Scope of license/ Definition of GMPCS Service:

TRAI had recommended the licensee to install, operate and maintain GMPCS Network and to provide GMPCS Service in India.

DOT's view:

The GMPCS Licensee is only to operate the Service in India. Setting up of Network/ Satellite Constellation is a separate matter beyond the Scope of this license. The relevant clauses to be suitably modified.

TRAI's Response

Definition of GMPCS Service Provider is proposed to be modified as:

“ GMPCS Service Provider means an Indian registered Company that has been licensed under the license to set up and operate Gateways, network operations and other terrestrial facilities to provide the GMPCS service (as defined by ITU) to the public within the boundaries of Indian Union.”

6.2 Condition 1.2:

TRAI had recommended that “The Licensee shall disclose complete details of terms and conditions, and obligations under all contracts/ licenses entered into with its parent/ associate company and/ or space-segment/ satellite-system owner/ operator prior to commencement of operations in India.”

DOT's view:

This should be prior to grant of license preferably before security clearance and the information should be regularly updated during the validity of license. The clause to be suitably modified.

TRAI's RESPONSE

Words ‘prior to commencement of operations in India’ may be replaced by ‘prior to grant of license and before security clearance for the service in India’.

6.3 Condition 3: Delivery of Service:

TRAI had recommended an Implementation Time of One year.

DOT's view:

Being highly capital intensive infrastructure project, implementation time may be given as three years. Further time be granted if found justified by the Telecom Authority.

TRAI's RESPONSE

In the opinion of the TRAI there should not be a very big time gap between the grant of license and the commencement of the relative service. A period of 1 year is considered quite adequate.

6.4. Penalty for delay in commissioning of service: (Condition 8.2)

Instead of Liquidated Damage Charges, TRAI had recommended levy of additional entry fee of Rs. Five lakhs for one year, ten lakhs for two years and fifteen lakhs for delays of more than two years.

DOT's view:

Beyond the implementation time of three years, additional entry fee may be Rs. 50 lakhs for delay upto one year, one crore for delays upto two years and for delays more than two years in addition to Rs. One crore as additional entry fee, license may be terminated after giving required notice. Condition 8.2 to be modified accordingly. Termination for failure to deliver service even in the extended period is covered in the recommendations under Condition 11.1.

TRAI's RESPONSE

DOT's remarks already indicate that license is for providing GMPCS Service and not for setting and operation of Satellite Network. As such no change in the earlier recommendation is felt necessary. However, delay with additional Entry Fees is already permitted.

6.5. Condition 6.1: Extension of License:

TRAI had, inter-alia recommended that "In case any change is proposed in the terms and conditions of the license for the extended period, TRAI's recommendations will be taken".

DOT's view:

The terms and conditions for extended period may be suitably modified as mutually agreed. The decision of the licensor shall be final in regard to grant of extension. As regards, recommendation to be obtained from TRAI, it need not be reflected in the License Agreement, as any action would have to be taken as per the TRAI Act.

TRAI's RESPONSE

The sentence,

"In case of any change in the proposed terms and conditions of License for the extended period, TRAI's recommendation will be taken", may be deleted.

6.7 Condition 20 (a): Amount of FBG.

DOT's view:

Since it may not be possible to estimate the annual license fee prior to signing of license agreement, FBG of an ad-hoc amount say Rs. One crore may be taken initially prior to signing of the license agreement. This will remain valid for at least one year beyond the expected date of commissioning of service and shall be required to be revalidated if the

commissioning of service is delayed. The amount of FBG may be further raised or adjusted as equivalent to one year's estimated license fee as revenue share after payment of two quarters of the license fee subsequent to commencement of service. The amount of FBG shall be subject to review from time to time.

TRAI's RESPONSE

This is a commercial issue and therefore should be settled between the licensor and the licensee. As it does not have any regulatory angle, the licensor may word it as it wants.

6.7 Definition of adjusted Gross Revenue, method of verification of revenue of Licensee Company:

Following may only be excluded from the Gross Revenue to arrive at the adjusted gross revenue:

- (i) Call (Access) charges actually paid to other service providers within India.*
- (ii) Roaming revenues collected on behalf of, and actually passed on to, other service providers, and*
- (iii) Service Tax on provision of service.*

A reference was earlier made to TRAI with regard to definition of revenue, etc., for the purpose of License fee vide letter dated 13.1.2000 (copy at Annexure-II), recommendations of TRAI on the same may also be expedited.

TRAI's RESPONSE

Framework of the definition of Revenue will be the same as has been laid down in the CMTS Recommendations, which are being released by TRAI in parallel.

6.8 Condition 10.1: Modifications in the terms and conditions of license.

TRAI had recommended that the modifications should be in consultation with the TRAI and after affording an opportunity to the licensee.

DOT's view:

The licensor should reserve its right to modify at any time the terms and conditions of the license, if in the opinion of the licensor, it is necessary or expedient to do so in the interest of the general public or for the proper conduct of telegraphs or on security consideration or for extension of license.

The licensor should have absolute right to modify the terms of the license in the matters of Public interest & National Security and sometimes without any loss of time.

TRAI's RESPONSE

In the case of extension of the period of the license, the licensor may take its own decision about changes in the terms of the license. In the other two situations however, viz. when it is considered expedient to do so in public interest or for the proper conduct of telegraphs, a reference to TRAI should be necessary to guard

against any uncalled for disruption in the services as a result of an unilateral action on the part of the licensor.

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6.9 Condition 11.1: Termination of license and Condition 20.4.

TRAI has recommended that the recommendations of TRAI should be taken before revoking the license.

DOT's view:

This is not in consonance with TRAI (Amendment) Act, 2000.

TRAI's RESPONSE

In all cases of revocation of license, TRAI's recommendation is not mandatory. The clause can therefore be suitably modified.

6.10 Condition 12.1: Action pursuant to termination of license

TRAI has recommended that in the event of termination of license, the licensor may procure the infrastructure to enable /ensure continuity of service.

DOT's view:

GMPCS is not an essential telecom service. As such it is proposed to modify the condition suitably to the effect that the licensor will take no action to ensure continuity of the service. However, the licensor does reserve its right in this regard. This proposal is also in view that the GMPCS License is available on non-exclusive basis to any number of operators as an on-going process.

TRAI's RESPONSE

TRAI is of the view that the licensor should either undertake to ensure continuity of the service or give up the intention of reserving its right to procure resources upon such terms and in such manner as it deems fit. If therefore, the licensor does not intend to ensure continuity, this clause should be dropped.

6.11 Condition 13.4: WPC License:

TRAI had recommended that the grant of WPC license shall be automatic once the DOT has issued the license.

DOT's view:

It is proposed to modify the condition with a generic clause as in the provisional license. The WPC license is a separate legal contract. It is a different matter that the WPC license has to run concurrently with the license for provision of service and should be terminated and ceases to exist, once the GMPCS service license is revoked.

However, it is felt that a total view should be taken about grant of WPC license associated with the telecom service licenses in general, separately, and the same practice

may be followed in the case of GMPCS service also.

TRAI's RESPONSE

We are broadly in agreement with DOT's view that it calls for a coordinated approach on the part of the licensing authority. It would certainly not be desirable to make the operator run for different licenses/ approvals from different authorities.

6.13 Condition 14 (a): Network Connectivity

TRAI had not indicated inter-connectivity with PSTN network. Direct interconnectivity with CMSPs has been recommended for roaming purposes.

DOT's view:

The GMPCS service is compared to a virtual country. Moreover, there are much stringent security concerns in the case of this service. Inter-connectivity of this service can be permitted only to a very limited number of national gateways.

It is proposed that interconnectivity clause may be suitably modified to the effect that only two direct interconnectivity i.e. one with Govt. owned Basic Service Operators (MTNL/DTS) and the other with VSNL may be allowed. Providing multiple connectivity will create a lot of problems with regard to monitoring by security agencies; being a global system, security concern is more stringent in this case. Conditions for Cellular-GMPCS roaming and vice-versa may be suitably built-in in the License Agreement.

TRAI's RESPONSE

Details of interconnection may be mutually negotiated and finalized between service providers. It should also take into account security considerations, if any. The interconnection agreement should conform to regulations issued on the subject by the TRAI from time to time.

6.14 Condition 11: Termination of License.

TRAI had given its recommendations in Condition 11.1 of the suggested format for License Agreement.

DOT's view:

Different scenarios in which revocation /termination of a license may take place has not been clearly defined by TRAI. It is accordingly proposed to suitably redraft this condition under different heads such as termination for default, termination for convenience, termination for transfer of license and termination for security reasons etc.

TRAI's RESPONSE

The conditions may be suitably redrafted as required.

6.15 Condition 19: Security Conditions:

The recommendations of TRAI on security conditions are largely same, as in earlier Provisional License.

DOT's view:

In regard to network connectivity, suitable security conditions as in provisional license agreement may be retained in the final License Agreement. Other security conditions will have to be suitably incorporated keeping in view the requirements and recommendations received from security agencies.

TRAI'S RESPONSE

The conditions may be suitably redrafted as required.

6.16 Condition 26: Dispute Settlement.

The recommendations provide that “ If a dispute arises, in respect of any matter referred to in the License Agreement between Service Providers or between the Licensor and the Licensee, such disputes shall be decided in accordance with the provisions of the TRAI Act, 1997”.

DOT's view:

The TRAI (Amendment) Act, 2000 provides establishment of TDSAT (Telecom Dispute Settlement and Appellate Tribunal). The Condition including Arbitration clause is proposed to be incorporated suitably.

TRAI'S RESPONSE

DOT's proposal is in order in view of TRAI (Amendment) Act.

6.17. Recommendation on the license fee philosophy (Recommendation No.4.C):

The TRAI have, inter-alia, stated that the license fee may be reviewed after every five years (subject to the ceiling of 5%) to bring it in line with the actual costs incurred in administering the licenses and for R&D purposes. In case it is felt that review should not be constrained by the requirement not to raise the percentage share, it should take place only after 10 years based on public consultations. TRAI is of the view that the Government taking in view the overall national requirement may consider levy of a differential service tax for GMPCS service in addition to annual license fee.

DOT's view:

In general, the license fee should contribute to the revenue generation of the Government. As regards, differential service tax for GMPCS Service, this may not be practical, as service tax not only covers telecom service industry but also several other service sectors.

TRAI's RESPONSE

The license fee is not so much as a source of revenue for the Government as it represents a payment for the opportunity of using scarce national resources i.e. frequency spectrum. As such, we agree that a reasonable percentage of revenue needs to be shared by the operator in order to acknowledge the opportunity given and to bear its share of USO obligations. TRAI recommends that a revenue sharing of

10 % of Adjusted

Gross Revenue (AGR) inclusive of USO, R&D, Administration and Regulation costs should be adequate.

I hope the clarifications given meet your requirements.

With regards,

Yours sincerely,

(M.S.Verma)

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