

**AUSPI'S RESPONSE TO TRAI ON THE CONSULTATION PAPER
NO.03/2012 ON DRAFT GUIDELINES FOR UNIFIED LICENCE/CLASS
LICENCE AND MIGRATION OF EXISTING LICENCES.**

General

The draft guidelines for Unified Licensing, Class license and Migration of Existing Licenses as framed by TRAI are a welcome move. There is a global trend to delink spectrum from license due to administrative convenience in the management of spectrum.

Q1. Kindly give your response to each clause of Chapters I to IV above.

AUSPI Response to each clause in track mode of Chapter I to IV

A. Unified Licence

1. Framework

AUSPI Comment: We favor only two levels of unified license at the national and service area level. There will be many complexities involved in the District Level Licensing such as interconnection, security monitoring, numbering etc. The Unified Licence should cover UASL/CMTS, NLD, ILD, Internet, GMPCS, PMRTS and VSAT services. There should not be any separate Class license for VSAT and PMRTS services. The Service area for all services under the UL should effectively be all India and the service provider may decide the geographies of operation. However, spectrum should be made available on a telecom circle basis through auction.

However, National Level License will be subject to the following conditions:

- a) NLD and ILD revenue should not be included in AGR for payment of spectrum usage charges.
- b) ISP revenue should not be included in AGR for payment of spectrum usage charges.
- c) If a company has spectrum in few service areas and then revenue accrued from those circles only should be taken into account for payment of spectrum usage charges.
- d) Spectrum usage charges will be paid on circle basis as spectrum holding in circles may vary.
- e) National Level Licensee will continue to have accounting practices on services and service area basis.

- f) Thus, National level licensee has to continue to operate on service specific and service area basis.

In view of the above, clause 1 should be read as follows:

- 1.1 There shall be ~~three~~ two levels of Unified Licence: National level, Service area level ~~and District level~~. The applicant company can apply either for National level Unified Licence or Service area level Unified Licence ~~or District level Unified Licence. District level Unified Licence will not be given for Metro areas of Delhi, Mumbai and Kolkata.~~
- 1.2 For the purpose of the Unified Licence, the service areas shall be as listed in Annexure -I. For metros, there must be clearly defined area as per geographic boundaries not as per boundaries of telephone exchanges
- 1.3 A company can apply for Unified Licence in more than one service area, ~~or district. However, if a company desires to apply for Unified Licence in more than four districts in a service area, it has to apply for Service area level Unified Licence.~~
- 1.4 Subject to fulfilment of relevant eligibility conditions, Licence shall be issued on non exclusive basis, without any restriction on the number of licences.

AUSPI comment: Clause 1.5 is out of the purview of guidelines of Unified License (UL), hence it should be deleted.

- ~~1.5 In addition to a Unified Licence, the Licensor reserves the right to award/allocate Licences to offer specific services like Mobile Number Portability (MNP) services and such other services as may be recommended by TRAI from time to time~~

AUSPI comment: The existing licensee migrating to UL should be allowed to retain the contracted spectrum till the expiry of their existing license and should be allowed to have priority to continue with 6.2/5 MHz spectrum at the time of renewal.

- ~~1.6~~ 1.5 Unified Licence will not, per se, carry with it any spectrum. A holder of Unified Licence, ~~other than District level Unified Licence~~, may separately obtain spectrum as per the prevailing policy.

2. Eligibility Conditions

- 2.1. The applicant must be an Indian company, registered under the Indian Companies Act 1956.
- 2.2. The total foreign equity in the paid up capital of the applicant company should not exceed 74% of the total equity subject to following FDI norms :
 - a. Both direct and indirect foreign investment in the applicant company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment shall mean foreign investment in the company/companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the applicant company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.
 - b. FDI up to 49 percent will continue to be on the automatic route. FDI in the applicant company/Indian promoters/investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.
 - c. FDI shall be subject to laws of India and not the laws of the foreign country/countries.
- 2.3 The combined net-worth requirement will be Rs. 25 crore for National level Unified Licence, Rs 2.5 crore for each Service area level Unified Licence and Rs. 25 lakh for each District level Unified Licence. In case of acquiring Unified Licence in any other licence area, the Licensee shall maintain additional net-worth as prescribed for that service area/district also. The net worth requirement for Unified Licence is summarised below –

Table – Minimum Net-worth requirement for various Unified Licences

Type of Licence	Net-worth requirement	Total Minimum Net-worth required for more than one Licence areas
National level Unified Licence	Rs 25 Crore	
Services area level Unified Licence	Rs 2.5 crore for each service area.	(Rs. in crore) 2.5 x Number of service areas for which either LOI/ Licence have been issued and applied for in the name of applicant.
District level Unified Licence	Rs. 25 lakh for each district.	(Rs. in lakh) 25 x Number of districts for which either LOI/ Licence have been issued and applied for in the name of applicant.

The net-worth of only those promoters shall be counted, who have at least 10% equity stake or more in the total equity of the company. Here net worth shall mean the sum total, in Indian Rupee, of paid up equity capital and free reserves. While counting Net-worth, foreign currency shall be converted into Indian Rupee at the prevalent rate indicated by the Reserve Bank of India as on the date the application is received.

2.4 The applicant company shall have a minimum paid up equity capital equal to one-tenth of net-worth prescribed in Para above and shall submit a certificate to this effect (provided by the applicant's Company Secretary) along with the application.

2.5 The majority Directors on the Board of the Licensee Company shall be Indian citizens.

2.6 The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.

3. Application Procedure

- 3.1 The applicant company shall pay a non refundable processing fee of Rs. 100,000 (Rs. One Lakh) for National level Unified Licence, Rs. 50,000 (Rs. Fifty Thousand) for Service area level Unified Licence ~~and Rs 15,000 (Rs. Fifteen Thousand) for District level Unified Licence.~~
- 3.2 The applicant company shall submit the application in the prescribed Application form for each licence area separately.
- 3.3 Incomplete application shall be rejected and the processing fee will not be refunded. An opportunity shall be given to the applicant for rectification of the gaps.
- 3.4 The complete application shall be decided, within 60 days of the submission of the application and the applicant company shall be informed accordingly.
- 3.5 Licensor reserves the right to accept or reject any application without assigning any reasons. Licensor should give reasons for rejection of application.
- 3.6 In case the applicant is found to be eligible for grant of Unified Licence, a Letter of Intent (LOI) will be issued. The applicant shall be required to deposit Entry Fee and submit Bank Guarantee / other documents and sign the licence agreement within a period as mentioned in the letter(LOI) from the date of issue of the letter (LOI) failing which the offer of grant of licence shall stand withdrawn at the expiry of permitted period.
- 3.7 The applicant company will be required to pay one time non-refundable Entry Fee before signing the license agreement, based on Letter of Intent (LoI).

AUSPI Comment: Such a requirement is not required and has not been prescribed for in any sector. It was in fact, incorporated in UASL on 6th February 2006 by DoT and after protests from industry it was not implemented and was removed from UASL in 2007.

We believe that such matters are best left to be decided between the shareholders and companies and the Government should not interfere with shareholders' rights in this regard. This is because the Memorandum and Articles bind the company and its shareholders and not the company with the Government of India (GoI).

In view of the above, this provision be deleted.

~~3.8 The Company shall acknowledge compliance with the licence agreement as a part of Memorandum of Association of the Company. Any violation of the~~

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~~licence agreement shall automatically lead to the company being unable to carry on its business in this regard. The duty to comply with the licence agreement shall also be made a part of Articles of Association.~~

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4. Entry Fee

AUSPI Comment: One time entry fee for new entrants in Unified License (UL) should be charged to cover the cost of administering and monitoring the Licenses granted from time to time and also to deter non-serious players from taking the Unified License. However, the existing UASL should not be required to pay any additional charge / fee for migration to UL.

4.1 One time **non refundable** Entry fee for Unified Licence shall be:

- a. Rs. 20 (Twenty) crore for National level Unified Licence;
- b. Rs. 2 (Two) crore for Metro and 'A' Category Service area;
- c. Rs. 1 (One) crore for B category Service area;
- d. Rs. 50 (Fifty) lakh for C category Service area; and
- e. ~~Rs. 15 (Fifteen) lakh for District level Unified Licence~~

AUSPI Comment: The para 4.2 below requires more clarity especially in respect of existing Licensees who have taken license of pan-Indian nature like NLD & ILD licenses. In case of NLD & ILD licenses, the entry fee was reduced in the year 2006. It may be clarified that for existing Licensees who were granted Licenses during the period 2001- 2005 when entry fee was Rs 100 Crores /Rs 25 Crores for NLD/ILD license respectively, the pro- rata adjustment would be based on higher entry fee prevalent at that time so that these existing Licensees will get the due credit for the earlier stipulated higher entry fee. For the ILD license granted during the period 2001-2005, the pro-rata adjustment would work out as Rs 1.25 Crores per year for remaining period of the validity of the License whereas for for NLD License granted during the said period, the pro-rata amount would be Rs 5 Crores per year for remaining period of the validity of the License. The credit should be granted to business group as a whole and should be available to the group to discharge future obligations.

4.2 While granting a National level or Service area level Unified Licence, Entry fee already paid for the service area level licences ~~or district level licences~~ will be adjusted on pro rata basis for the balance validity period of such Licences at hand against the Entry fee for the National level or Service area level Unified Licence. However, where the sum of entry fee already paid exceeds the entry fee to be paid, there will be no refund of the Entry fee.

5. Scope of the Licence

5.1 Unified Licence will be service and technology neutral and the Unified licensee shall be permitted to provide any telecom service, as defined below on a non-exclusive basis, anytime, anywhere, using any technology within its licence area as prescribed below:

- a. Collection, carriage, transmission and delivery of voice and/or non-voice MESSAGES over LICENSEE's network in the designated LICENCE AREA and includes provision of all types of access services. Unified licensee can also provide Internet Telephony, Internet Services including IPTV and Broadband Services including triple play i.e. voice, video and data. The Licensee shall be free to enter an agreement with other service provider in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised / directed by Licensor otherwise.

Further, TRAI can also prescribe tariffs/charges for such facilities within the provisions of TRAI Act, 1997 as amended from time to time.

AUSPI comment: Telecom infrastructure creation activity like establishing towers, shelters and laying of fiber is not covered under Section 4 of the Indian Telegraph Act, 1885, for Licensing. Creation of passive infrastructure like towers and dark fibres is a civil construction activity and not a telecom network activity; hence it should not be brought under scope of License. In view of that, clause 5.1 b must be read as follows:

- b. ~~Unified licensee can provide dark fibres, Right of Way, duct space, towers on lease / rent / sale basis to the licensees of telecom services on mutually agreed terms and conditions.~~ The Licensee will also be allowed to ~~install and share active network limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission systems and to seek SACFA siting clearance for erecting towers with or without agreement with licensed Service Providers.~~ infrastructure as per DoT guidelines from time to time
- c. Unified licensee is permitted to provide leased circuit within its licence area. Public network is not to be connected with leased circuits/CUGs.

AUSPI Comment: We are not in favor of having Class Licence for VSAT and PMRTS service. These services should be included as part of Unified Licence.

- d. ~~A Unified licensee shall be permitted to offer any/all services covered under 'Class licence' and 'Licensing through Authorization' but not vice-versa.~~

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- e. The Licensee cannot provide any other service which otherwise require a separate licence.

AUSPI Comment: Nothing that is permitted under UAS license should be removed from the scope of UL. Level Playing Field issues need to be taken care of while amending scope of Service.

- f. The Licensee cannot provide broadcasting services, for which a separate licence / registration is required as per Cable TV Act 1995 and guidelines for DTH Licence issued by Ministry of Information and Broadcasting.

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5.2 The services which a Unified Licensee can offer will be as below:

- a. National level Unified Licence shall permit the Licensee to offer any or all of the telecom services mentioned in Para 5.1 in any/all service areas.
- b. National level Unified licensee can also provide GMPCS, NLD and ILD services, Resale of IPLC.
- c. Service area level Unified Licence shall permit the Licensee to offer any or all of the telecom services mentioned in Para 5.1 except National Long Distance (NLD), International Long Distance (ILD), Global Mobile Personal Communication by Satellite (GMPCS) services, Very Small Aperture Terminal (VSAT) services, Resale of IPLC and INSAT Mobile Satellite System (INSAT-MSS) Reporting Service, in the specified service area for which licence is given. Service area level Unified licensee will be allowed to apply for National level Unified Licence.

AUSPI comment: Para numbered as 1.7 below is not required in view of not having district level unified license.

~~1.7 District level Unified Licence shall permit the licensee to offer any or all of the telecom services mentioned in Para 5.1 in the district for which licence is given. However, a District level Unified licensee shall not be permitted to offer NLD, ILD, GMPCS, VSAT & Resale of IPLC, INSAT MSS and wireless access service. Also, these licensees would not be entitled for assignment of spectrum resources for access services. District level Unified Licence will not be given for Metro areas of Delhi, Mumbai and Kolkata~~

(Note – The definition of various services mentioned above are as defined in the Annexure II)

6. Ownership of licensee company

- 6.1 The LICENSEE shall ensure that all the conditions mentioned in Clause 2 (eligibility conditions) are maintained during the currency of the Unified Licence.
- 6.2 The LICENSEE shall declare the Indian & Foreign equity holdings (both direct and in-direct) in the LICENSEE company and submit a compliance report regarding compliance of FDI norms and security conditions on 1st day of January and 1st day of July on six monthly basis to the LICENSOR. This is to be certified by the LICENSEE Company's Company Secretary or Statutory Auditor.

7. Duration of Licence

- 7.1. The validity period of a Unified Licence will be for a period of 20 years.

8. Renewal of Licence

8.1. Renewal – The licensor may renew, if deemed expedient, the period of Unified Licence by a period of 10 years at one time upon the request of the Licensee on terms mutually agreed. The decision of the Licensor shall be final in this regard.

8.2. On renewal, Unified licensee will be required to pay a renewal fee which will be as notified by the licensor on the recommendation of TRAI.

9. **Suspension/revocation/termination/Surrender of Licence**

- 9.1. There shall be a non-obstante clause in the licence which confers powers upon the Licensor to suspend, revoke or terminate the license, in whole or in part only to meet national emergency.

AUSPI Comment: In this context, surrendering license would imply complete exit of the operator from providing services either nationally or in a particular service area and would entail surrender of all type of spectrum or any other approval for operations held by the licensee. The new regime should allow for surrender of any infructuous License.

- 9.2. Licensee may surrender the Licence, by giving notice of at least 60 Calendar days in advance. Unless the surrender notice is rejected by the Licensor within 30 days of the date of receipt of the notice, the effective date of surrender of Licence will be 61st Calendar day counted from the date of receipt of such notice by the licensor.

10. Penalty

AUSPI comment: Concept of imposing financial penalty is a retrograde step and if any imposition of penalty is thought of, service providers should be consulted

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before any final action is taken. Any aberration/violation should carry cure period of 3 months extendable to 6 months. Service providers should be given chance to correct if any mistake is done by them and the penalty should be the last and least option and should not have huge burden on service providers. Due to multifarious taxes, levies, low ARPU coupled with various charges, the telecom industry is already heavily burdened. In view of that, it should be read as follows:

- 10.1. The Licensor may impose financial penalty ~~(as detailed below)~~ based on interaction with Service provider and ~~either its own findings or~~ on the recommendations of TRAI, for each violation of the terms and conditions of licence agreement.

Type of License	Minor violation	Major violation
National Level	Not exceeding Rs 5 Crore <u>Lakh</u>	Not exceeding Rs 50 <u>1</u> Crore
Service Area Level	Not exceeding Rs 2 Crore <u>Lakh</u>	Not exceeding Rs 20 <u>50</u> Crore <u>Lakh</u>
District Level	Not exceeding Rs 10 Lakh	Not exceeding Rs 1 Crore

Financial Conditions

11. Fees payable

- 11.1. **Entry Fee** – One time non refundable Entry fee as detailed in Para-4.

AUSPI Comment: AGR should be prepared service area wise as access spectrum and backbone spectrum is allocated circle wise. License Fee as a percentage of Adjusted Gross Revenue should be applicable only from the revenues accruing to the Unified Service Licensee from the provision of licensed telecom services as listed in the license. Pass through revenues should comprise of all revenues paid out to the other licensed telecom service providers and deduction should be allowed for payments made to other telecom licensees to avoid double incidence of license fee. The level of License fee for different services under the UL should continue to be based on a percentage of Annual Gross Revenue (AGR) and the percentage should be same for all categories of Licenses / service area. There is no need to have different License fee on the basis of metro, category A, B and C circles. Further, the level of License fee should be uniform across services and should consist of Universal Service Obligation of 5% plus administrative cost, with the total License fee being a maximum of 6% of Adjusted Gross Revenue (AGR).

Table - I

AGR Definition

S. No	Item	AUSPI Suggestions
1	INCOME FROM DIVIDEND	Please exclude from the AGR definition being a non licensed activity
2.	Interest Income : a) Interest Income Interest earned on investment of savings made by a licensee after meeting liabilities including liability on account of share of the Govt. in the gross revenue. b) Interest earned on investment of funds received by way of deposits received by licensees on account of securities against charges, particularly, from customers using international long distance calls service whose bills are heavy. c) Interest earned on deposits received by way of deposits from customers on account of concessions given in the charges payable for sing the telecom services.	Please exclude fully (or include only notional interest on customer deposits OR charge only on net position after deducting finance costs.
3.	Capital Gains	Please exclude from the AGR definition being a non licensed activity
4.	Gains from foreign exchange rate fluctuations	Please exclude from the AGR definition being a non licensed activity
5.	Reversals of provisions and Vendors' credit	Please exclude from the AGR definition being a non licensed activity
6.	Income from property rent	Exclude only if the property is let out for purposes other than telecom activity.
7.	Income from sale /lease of Passive Infrastructure like Towers, Dark Fibres etc	Exclude sale or IRU but Include other rentals.
8.	Other including Misc Income TRAIA recommended :	a) Exclude b) Exclude

	<p>a) Revenue streams like sale of tenders, directories, forms, forfeiture of deposits/earnest money, management fees, consultancy fees, and training charges from the telecom service should form part of AGR</p> <p>b) Revenue from sale of fixed assets which is in nature of capital receipts and insurance claims should not be part of AGR.</p> <p>c) Payments received on behalf of third party</p> <p>d) Other items falling under the categories of miscellaneous/other income will have to be decided for taking a view regarding its inclusion or exclusion on a case to case basis</p>	<p>c) Exclude</p> <p>d) Include/Excluded on case to case basis.</p>
9.	Any other miscellaneous receipt from investments	Please exclude from the AGR definition being a non licensed activity
10.	Inclusion of revenue form one Licensed activity in the revenue of other licensed activity	Please exclude from the AGR definition being a non licensed activity
11.	Revenue from sale of equipment including handset	Exclude (provided the sale is discernable and on stand-alone basis. In case of bundled sales include only if equipment is priced higher than costs plus say 10% profit and against such higher price telecom services are provided free or on subsidized basis.
12	Deduction of Leased Line charges, Port Charges, Interconnection Set Up costs, Signalling charges.	Allow deduction as these are akin to PSTN charges (on bulk basis).
13.	Bad Debts, Waivers, Discounts from AGR	Exclude as these are not realized.
14.	Inclusion of items of revenue on	Inclusion/ exclusion of an item

	accrual basis but exclusion of items of cost on actual payment basis.	shall be on accrual basis
15.	No Spectrum fee on Wire line business revenue	any other infrastructure income) which does not require/ Consume any Spectrum should not be included in AGR for computation of Spectrum fee.
16.	Notional income	Any income, which is not going to accrue telecom operators directly or indirectly, should not be included in AGR.
17.	Third party Contract	Any income which is accruable to a third party for providing services to subscribers, which does not require any telecom license, should not be included in AGR of telecom operator, viz, Charging Installation charges by third party to subscribers for installing customer premises Equipment (CPEs).

Definition of AGR for wireless revenue, following revenues should be excluded from AGR :

- 1) Wireline/Bandwidth/Leased Lines
- 2) ILD
- 3) NLD
- 4) VSAT
- 5) PMRTS
- 6) ISP
- 7) Port charges
- 8) Collocation Charges
- 9) Any other infrastructure income which does not require/ Consume any Spectrum should not be included in AGR for computation of Spectrum fee.

11.2. **License Fee** – An annual Licence Fee as a percentage of Annual Gross Revenue (AGR), as defined in the licence agreement shall be applicable. From the second year of the effective date of the Unified Licence, this Licence Fee shall be subject to minimum of ~~10~~ 5% of the Entry fee paid.

AUSPI Comment: There should be separate AGR based on only wireless revenues for the purpose of payment of spectrum usage charges. AGR should be prepared service area wise as access spectrum and backbone spectrum is allocated service area wise. Besides non telecom revenues mentioned above in the Table – I following revenues should also be excluded from AGR :

- 1) Wireline/Bandwidth/Leased Lines
- 2) ILD
- 3) NLD
- 4) VSAT
- 5) PMRTS
- 6) ISP
- 7) Port charges
- 8) Collocation Charges
- 9) Any other infrastructure income which does not require/ Consume any Spectrum should not be included in AGR for computation of Spectrum fee.

11.3. **The Fee/royalty payable towards Wireless Planning and Coordination Wing (WPC):** WPC Charges shall be payable at such time and in such manner as the WPC Wing of the DoT may prescribe from time to time.

12. Bank Guarantee

AUSPI comment: Bank Guarantee should be replaced with Corporate Guarantee as huge funds are being blocked for BGs which could otherwise have been used for network expansion and in this regard this clause should be read as follows:

12.1. The ~~Financial bank~~ Corporate Guarantee (~~FBG~~ CG) shall be equivalent to the Licence Fee payable for two quarters. The minimum annual Licence Fee is 10% of the entry fee. Therefore, for new entrants, initially ~~FB~~ CG shall be for an amount of Rs. 1 (One) crore for National level Unified Licence, Rs. 10 (Ten) lakh, 5 (Five) lakh and 2.5 lakh for metro/category A, B and C Service area level Unified Licence respectively ~~and Rs. 75,000 (Seventy Five thousand) for District level Unified Licence~~. The amount of ~~FB~~ CG shall be reviewed on six monthly basis by licensor and subsequently, the amount of ~~FB~~ CG shall be equivalent to the estimated sum payable equivalent to Licence Fee for two quarters and other dues not otherwise securitized and any additional amount as deemed fit by the Licensor.

13. Merger of Unified Licences

13.1 Merger of Unified Licences may be permitted as per guidelines issued by DoT from time to time.

General Conditions

14. Change in the name of the Licensee Company shall be permitted in accordance with the provisions under the Indian Companies Act, 1956 [as modified from time to time.](#)
15. The Licence shall be governed by the provision of Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997 as modified or replaced from time to time.
16. The Licensee shall comply with any order issued by the Licensor OR any order, direction, determination or regulation as may be issued by TRAI from time to time. [An order should be issued by DoT after following the principle of natural justice. No unilateral amendment shall be made to Unified Licensee and Unified Licensee \(restricted\).](#)
17. The LICENSEE shall be responsible for, and is authorized to own, install, test and commission all the applicable systems for providing the services.
18. [Unified License shall have the infrastructure status bestowed on them.](#) The ~~Licensee licensor~~ shall [facilitate the licensee to make available its own arrangements for](#) Right of Way (ROW). [Licensor should clarify that the local authority's power in terms of exercising the provisions of the Indian Telegraph Act, 1885 is limited only to those properties that are vested in or under the control or management of local authority.](#)

[Licensor should set Dispute Resolution Authority for dealing with the cases of refusal of permission or imposition of conditions by local authority for granting permission.](#)
19. Licensee shall make its own arrangements for all infrastructure involved in providing the service and shall be solely responsible for installation, networking, operation and commissioning of necessary equipment and systems, treatment of subscriber complaints, issue of bills to its subscribers, collection of its component of revenue, attending to claims and damages arising out of his operations.
20. The Licensee shall provide the details of the technology proposed to be deployed for operation of the service. The technology should be based on standards issued by ITU/TEC or any other International Standards Organization/bodies/Industry. Unified licensee is permitted to provide, service by utilizing any type of network equipment, including circuit and/or packet switches that meet the relevant International Telecommunication Union (ITU) /Telecommunication Engineering Center (TEC) / International standardization bodies such as 3GPP/3GPP-2/ ETSI/ IETF/ ANSI/ EIA/ TIA/IS.

AUSPI Comment: The licensee should be allowed to introduce/exit any technology as per its business plan. We suggest that the Unified License guideline should include all licensing conditions relating to exit. The long term

commitments are made on the basis of information available at the time of making decisions. However, there can be number of circumstances like law and order, change in technology, wrong projections on available market etc which may make long term commitments and investments unviable. In such conditions it is not always viable for a commercial organization to remain invested and therefore, for such cases also the Authority should propose and make recommendation for an appropriate exit policy. There are large number of areas in the country which are infested with terrorist and naxal activities and it is not possible for service provider to maintain continuity of service due to security reasons. The exit options would encourage operators to take more risks resulting in higher investments especially in relatively less viable areas or areas with law and order problems.

21. In case of provision of bandwidth by the Licensee through the satellite media, the Licensee shall abide by the prevalent Government orders, directions or regulations on the subject like satellite communication policy, V-SAT policy etc.

AUSPI comment: Both Active and passive infrastructure should be allowed to be shared. In order to have optimum utilization of national services, sharing of infrastructure, including switches / MSCs, between operators should be encouraged by the Government. The sharing of infrastructure should be permitted to only those operators who come under the purview of Unified Licensing. This will act as an incentive for other operators to opt for Unified Licensing regime.

22. Sharing of active/passive infrastructure shall be as per the guidelines issued by the Licensor from time to time.

AUSPI comment: Fundamental Plans must be made available in public domain.

23. The LICENSEE shall ensure adherence to the National FUNDAMENTAL PLAN which includes National Numbering, routing and Transmission plan issued by Department of Telecommunications and technical standards as prescribed by LICENSOR or TRAI, from time to time.

AUSPI Comment: Licensor should facilitate access to BSNL/MTNL network for this purpose at normal charges/costs.

24. The licensee providing access service, shall provide independently or through mutually agreed commercial arrangements with other Service Providers, all public utility services including TOLL FREE services namely police, fire, ambulance or any other emergency number as may be specified by the Licensor from time to time. While providing emergency services such as police, fire, ambulance etc. it shall be ensured that such calls shall be delivered to the control

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room of the concerned authority for the area from where call is originated.

25. Interconnection

- 25.1. It shall be mandatory for the Unified licensee to provide interconnection to all eligible Telecom Service Providers (eligibility shall be determined as per the service provider's Licence agreement and TRAI's determination/orders/regulations issued from time to time) to ensure that the calls are completed to all destinations. Principle of non-discrimination shall be followed in the matter of interconnection and TRAI shall take corrective measures for facilitating interconnection on reasonable terms and conditions and make it mandatory on all operators.
- 25.2. The interconnection shall have to be withdrawn in case of termination of the respective licensed networks of other Telecom service providers within one hour or within such time as directed by the Licensor/TRAI in writing, after receiving intimation from the Licensor/TRAI in this regard.
- 25.3. Interconnection between the networks of different SERVICE PROVIDERs shall be as per National Standards issued from time to time by Telecom Engineering Centre (TEC) and also subject to technical feasibility and technical integrity of the Networks and shall be within the overall framework of interconnection regulations issued by the TRAI from time to time.

AUSPI Comment: Lot of work is required on the part of Regulator to make interconnection agreements between BSNL/MTNL and Private operators reciprocal and reasonable

- 25.4. The terms and conditions of interconnection including interalia standard interfaces, points of interconnection and technical aspects will be subject to compliance of prevailing regulations, directions and determinations issued by TRAI from time to time.

AUSPI Comment: Interconnection charges should be cost-based. Interconnection should be based on equality, non-discrimination and level playing field. The agreements should be transparent. LDCA based interconnection regime should be adopted under the Unified License Regime. However, the choice of Network architecture should be left to the service provider. The service provider should be free to decide and opt for network architecture of its choice. There should be no regulation to define the level of POI as long as POI meets the TEC specifications. The service specific interconnection regime should be continued with. The choice of Network Architecture should be left to the service provider. The Service Provider should therefore be allowed to share its switch (s) for different services and the interconnection for different services should be allowed through the same switch POI should be at the LDCA level or at a level higher than that

depending on the mutual agreement between the service providers. POIs should be made available on demand without any delay.

- 25.5. The charges for accessing other networks for inter-network calls shall be based on mutual agreements between the service providers conforming to the Orders/Regulations/Guidelines issued by the TRAI from time to time.

26. Quality of service

- 26.1. The LICENSEE shall operate and maintain the licensed Network conforming to Quality of Service standards to be mutually agreed in respect of Network-Network Interface subject to such other directions as LICENSOR or TRAI may give from time to time. Failure on part of LICENSEE or his franchisee to adhere to the QUALITY OF SERVICE stipulations by TRAI and network to network interface standards of TEC may be treated as breach of Licence terms.

27. Security Conditions

- 27.1 The Licensee shall comply with the security conditions interalia relating to inspection of the installation/establishments, audit of networks, security of the network, restriction on employment of foreign nationals, transfer of information outside the country, remote access, monitoring of networks, confidentiality of information relating to subscriber data and any other condition imposed by the Licensor from time to time. [The licensor will assist the unified licensees to balance out the cost of setting up of the security related facilities which are specifically required for security purposes as it is the collective responsibility for the security ecosystem with the Government and service providers and the vendors. Licensee should be allowed to set off the cost incurred for setting up security requirements against its revenue based license fee.](#)

B. Additional Guidelines for Spectrum assignment associated with Unified licence

28. The net worth requirement for those Unified licensees who may apply for assignment of spectrum will be in addition to what is mentioned in Clause 2.3 above. The promoters of the applicant company shall have a combined net-worth of Rs. 100 crore/ Rs. 50 crore/ Rs. 30 crore for Category A, B and C Service areas respectively. The applicant company shall have a minimum paid up equity capital equal to one-tenth of net-worth prescribed above and shall submit a certificate to this effect (provided by the applicant's Company Secretary) while applying for the spectrum.
29. At the time of applying/bidding for spectrum, no single company/ legal person having substantial equity in the applicant company, either directly or through its associates, shall have substantial equity holding in any other company having

Unified /UAS/CMTS/Basic Licence in the same service area. `Substantial equity' herein will mean 'an equity of 10% or more'.

A promoter company/ Legal person having stake in the applicant company shall not have stakes in a company having Unified/UAS/CMTS/Basic licence in the same licence area.

AUSPI Comment: Performance Bank Guarantee is against rollout obligations and Financial Bank Guarantee is against License. Now as spectrum will be obtained through auction and Financial Bank Guarantee is already covered under clause 12.1, hence PBC and FBC are not required and hence clause 30 and 31 should be deleted.

~~30. Performance Bank Guarantee (PBG) in prescribed proforma given in licence agreement shall be submitted for amount equal to Rs. 20 crore/Rs. 10 crore/Rs. 2 crore for Category A, B and C Service areas respectively before signing the Licence Agreement. Further, on completion of one year from the effective date of assignment of spectrum and after meeting the coverage criteria stipulated for first year, the PBG shall be reduced to Rs. 10 crore/Rs. 5 crore/Rs.1 crore for Category A, B and C Service areas respectively on self-certification provided by the Licensee.~~

~~31. The applicant company shall submit a Financial Bank Guarantee (FBG) of an amount of Rs. 50 crore/Rs. 25 crore/ Rs. 5 crore for Category A, B and C Service areas respectively, which shall be submitted before the date of signing the Licence agreement in the prescribed proforma given in licence agreement. Initially, FBG shall be valid for one year. Subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to license fee for two quarters and other dues not otherwise securitised and any additional amount as deemed fit by the Licensor. The amount of FBG shall be subject to periodic review by the Licensor and shall be renewed from time to time till final clearance of all dues.~~

AUSPI Comment: There is already an entry fee and if spectrum will be allocated through auction, then license fee and royalty are not required and clauses 32 may be deleted.

~~32. The Fees, charges and royalties for the use of spectrum and also for possession of Wireless Telegraphy equipment shall be separately securitised by furnishing FBG of an amount equivalent to the estimated sum payable annually in the proforma given in licence agreement, to WPC, valid for a period of one year, renewable from time to time till final clearance of all such dues.~~

33. The Renewal fee discussed in Clause 8 above does not cover the value of spectrum, which shall be paid for separately.

AUSPI comment: Concept of imposing financial penalty is a retrograde step.

34. Unified Licensees, who will be assigned spectrum, will be required to comply with

roll out obligations as applicable, with attendant incentives ~~and penalty as linked to allotment of that particular spectrum block as may be specified at the time of allotment of spectrum or as may be specified from time to time.~~

35. The Licensee shall pay spectrum usage charges in addition to the Licence Fees on revenue share basis as notified separately from time to time by the WPC Wing. However, while calculating 'AGR' for limited purpose of levying spectrum charges based on revenue share, revenue from wireline wireless -subscribers shall ~~not~~ only be taken into account.
36. For use of space segment and setting up of the Earth Station etc., the Licensee shall directly coordinate with and obtain clearance from Network Operations and Control Centre (NOCC), apart from obtaining SACFA clearance. The clearance from other authorities as specified from time to time shall also be obtained by the Licensee.

II. Draft Guidelines for Class Licence

AUSPI Comment: We are of the view that there should not be Class licence covering VSAT and PMRTS services. This service should be included as part of Unified Licence. Hence, complete chapter II should be deleted.

III. Migration of Existing Licence to Unified Licence

AUSPI Comment: Migration to Unified License should be optional and not compulsory. However, the Unified License should be attractive enough so as to attract a Service Provider to opt for a Unified License and offer the entire range of services proposed to be included in the Unified License.

1. On coming into force of the Unified Licence, all the existing licences issued under Section 4 of the Indian Telegraph Act 1885 shall stand automatically converted to the Unified Licence. This will be the Unified Licence (restricted). Necessary amendments shall be made by the Licensor under intimation to the Licensee.
2. On conversion, the validity of the Unified Licence (restricted) shall be same as the validity of existing licence.
3. The conditions of Unified Licence (restricted) shall be the same as existing licence.
4. The services under such a licence will be restricted to the service(s) that the licensee could offer and to the service area(s) permitted under the existing licence. In case an existing licensee after conversion to Unified Licence (restricted) wishes to provide services permitted within the scope of service under Unified Licence but which are not covered under its old licence, then it will have to apply for Unified Licence.
5. For conversion to the Unified Licence (restricted), there shall be no additional entry fee to be paid by the licensee.
6. A holder of Unified Licence (restricted) shall have the option to apply for and migrate to a Unified Licence.
7. In the event a holder of Unified Licence (restricted) desires to expand/alter the service(s) offered or service area(s) of operations, it shall be required to migrate to Unified Licence and pay the prescribed entry fee.

Illustration: A company 'A' has All-India licence for NLD and ILD, ISP (Category B) and CMTS/UAS Licences for service areas 2 & 3 as given in the Table below. After coming into force of Unified Licence framework, these licences shall get

converted to Unified Licences (restricted) i.e. the scope of service of each new Unified Licence will continue to be the same as the existing licence. However, if the Company wishes to provide any other service permitted under Unified Licence, say ISP on all India basis or access services in LSAs other than service areas 2&3, then it will have to apply for migration to National level Unified Licence and will also have to pay the prescribed entry fee and fulfil all eligibility conditions as given in the Guidelines for Unified Licence.

Unified Licences (restricted) – 6 licenses

Licence	All India	LSA-1	LSA-2	LSA-3	LSA-21	LSA-22
CMTS/UASL			✓	✓			
NLD	✓						
ILD	✓						
ISP			✓	✓			

After migration to Unified Licence – 1 Unified Licence

Licence	All India
CMTS/UASL	
NLD	
ILD	
ISP	
All other Services defined in the scope of Unified Licence.	

8. In respect of 6 and 7 above, the Entry Fee already paid, in case of NLD/ILD/UASL/CMTS licence only, will be adjusted on pro rata basis for the balance validity period of the existing Licence as per formula given in the table below. However, in cases where the Entry Fee already paid exceeds the Entry Fee to be paid now for migrating to Unified Licence, there will be no refund of the Entry fee.

Type of Existing Licence	Migration to	Rebate
ILD/NLD	National level	Rs 12.5 lakh x No of years remaining for existing (granted after 01/01/2006) NLD/ILD Licence validity. For NLD licenses granted before 01/01/2006 , it should be Rs 5 Crores x No of years remaining for

		existing NLD/ILD Licence validity.
UASL/ CMTS	Service area level	Rs 10 lakh, 5 lakh and 2.5 lakh for Metro/Cat A, Cat B and Cat C service areas respectively x No of years remaining for existing UASL/CMTS Licence validity.
UASL /CMTS in various service area	National level	Rs 10 lakh, 5 lakh and 2.5 lakh for Metro/Cat A, Cat B and Cat C service areas respectively x No of years remaining for existing UASL/CMTS Licence validity subject to maximum limit of Rs. 20 crore.

9. On expiry of the validity of the Unified Licence(restricted), the licensee shall be required to take a Unified Licence.

AUSPI Comment:

Telecom infrastructure creation activity like establishing towers, shelters and laying of fiber is not covered under Section 4 of the Indian Telegraph Act, 1885, for Licensing. Creation of passive infrastructure like towers and dark fibres is a civil construction activity and not a telecom network activity; hence it should not be brought under scope of Unified Licence, hence IP1 should not be licensed. In view of this, clause 10 be deleted.

- ~~10. IP-I shall be covered under Unified Licence. The existing IP-I providers would be required to take the Unified Licence as soon as the same comes into being and the conditions in the Unified Licence will apply to IP-I provider too. IP-I shall have to pay the prescribed entry fee to take the Unified Licensee.~~

- ~~10.~~ In the event a holder of Unified Licence (restricted), having spectrum, obtains a Unified Licence, it will continue to retain the spectrum assigned for the remaining validity period of the existing Licence. In case of 3G /BWA spectrum holders, the spectrum assigned will be retained for the period for which the spectrum blocks have been assigned. The licensee holding access spectrum shall be required to maintain the net-worth and paid up equity as per existing licence, in case these are higher than the amount prescribed in the Unified Licensing Regime.

- ~~11.~~ Roll out obligations, if any, linked with the existing service providers shall remain applicable even after migration to Unified Licence regime and shall be subject to changes/modifications from time to time.

IV. Migration of Existing Licence to Class Licence

AUSPI Comment : We are of the view that there should not be Class licence covering VSAT and PMRTS services. This service should be included as part of Unified Licence. Hence complete Chapter IV should be deleted.

V. Issues for Consultation

Q2. What are your views on the scope of Licence for Unified Licence (National level/Service area level/District level) and Class Licence? (Clause 5 of draft guidelines for Unified Licence and Clause 5 of draft guidelines for Class Licence)

(i) For Unified Licence, we consider that the scope of license should be extended either for National level or Service area level only. District level licence would not be required at all.

However, National Level License will be subject to the following conditions:

- a) NLD and ILD revenue should not be included in AGR for payment of spectrum usage charges.
- b) ISP revenue should not be included in AGR for payment of spectrum usage charges.
- c) If a company has spectrum in few service areas and then revenue accrued from those circles only should be taken into account for payment of spectrum usage charges.
- d) Spectrum usage charges will be paid on circle basis as spectrum holding in circles may vary.
- e) National Level Licensee will continue to have accounting practices on services and service area basis.

Thus, National level licensee has to continue to operate on service specific and service area basis

(ii) Telecom infrastructure creation activity like establishing towers, shelters and laying of fiber is not covered under Section 4 of the Indian Telegraph Act, 1885, for Licensing. Creation of passive infrastructure like towers and dark fibres is a civil construction activity and not a telecom network activity; hence it should not be brought under scope of Unified License, hence IP1 should not be licensed.

(iii) Basically Class License as indicated in draft guidelines is not necessary. The Unified Licensing Regime should cover the Class License services i.e. provision of VSAT service, PMRTS and INSAT-MSS reporting services. Licensee's right to include any other service in the Class License is not required as the scope will become confusing.

Q3. What, in your opinion, are the actions that should be classified as minor violations and major violations? (Clause 10 of draft guidelines for Unified Licence)

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Q4. Even within minor and major violations respectively, what, in your opinion, should be the factors to be taken into consideration while determining the actual amount of penalty? (Clause 10 of draft guidelines for Unified Licence)

Concept of imposing financial penalty is a retrograde step and if any imposition of penalty is thought of, service providers should be consulted before any final action is taken. Any aberration/violation should carry cure period of 3 months extendable to 6 months.

The factors which should be taken into account for determining the quantum of penalty are the severity of the violation, intention of the licensee, amount of loss caused to the Government, the resultant harm to users and service provision, the amount of benefit that the Licensee derived from the violation, prior violations, repetition of violations, early admission of the violation, cooperation or refusal to cooperate with the investigation, and the economic and financial situation of the licensee.

Q5. These draft guidelines do not provide for Licensing through Authorisation. In your opinion, considering the services that are already covered under Unified Licence and Class Licence, is there any need for Licensing through Authorisation? If so, which are the services to be so covered? And, what should be the guidelines for such a licence?

Licensing through authorization is not required in view of the Unified Licensing regime.

Q6. Whether Voice mail/Audiotex/UMS services and Radio paging should continue to be under licensing regime?

Service like Voice mail/Audiotex/UMS service and Radio Paging should be continued under Licensing Regime.

Q7. Is there any other service(s), which needs to be brought under licensing regime?

Draft Guidelines is quite broad and service neutral and there is no necessity of bringing any specific service under licensing regime.

Q8. In the new licensing regime, spectrum has been delinked from the Unified Licence. In such a scenario, should TRAI be entrusted with the function of granting all types of Unified Licence as is prevalent in majority of the countries in the world?

Spectrum is presently managed and administered by the Department of Telecommunications and the Wireless Planning and Coordination Wing on behalf of the Government is carrying out all activities related to spectrum. Recently, the Hon'ble Minister of Communications & Information Technology in the policy decision announcement stated that for efficient management of available spectrum, TRAI may take regular spectrum audit and carry out review on the usage of spectrum available and in both the cases; TRAI will make recommendations to the Government.

As per Section 4 of Indian Telegraph Act 1885, the Central Government exclusively has the right of granting licenses. Also, the TRAI Act 1997 does not have the provision of granting license. Licensing should continue with DoT.

Q9. Presently, in case of IP- I, there is no restriction on the level of foreign equity in the applicant company. However, in case of Unified Licence, the total foreign equity in the total equity of the Licensee is restricted to 74%. Please indicate the maximum time which should be given to the IP-I to comply with the FDI condition of 74% after grant of Unified Licence.

IP-I should not be brought under the Uniform licensing framework along with access services and the foreign equity need not be restricted.

Further, no license fee should be levied, as creation of passive infrastructure like towers and dark fibers is a civil construction activity and not a telecom network activity. Therefore the telecom infrastructure creation activity like establishing towers, shelters with extension of power to such telecom facilities and laying of fiber is not covered under Section 4 of the Indian Telegraph Act, 1885 for licensing.

Q10. Presently, the access service licences viz. BASIC/CMTS/UASL have restrictions regarding holding of substantial equity by a promoter in more than one access service licence in the same service area. However, apart from access service licence, this condition is not

applicable for any other licence. Accordingly, the proposed guidelines remove the restriction on holding of substantial equity in a company having UAS / CMTS/ Basic Licence in the same service area on migration to Unified Licence and also from the eligibility conditions given in Para 2.3 of the draft guidelines for Unified Licence. Please comment on the pros and cons of this proposal.

Restriction regarding holding of substantial equity by promoter as existing for the access service license need to be maintained for Unified Licensing also.

In view of the above, there is no need of having separate requirement regarding holding of substantial equity by the promoter.

Q11. Please raise any other issues you feel are relevant and offer your detailed comments on the same.

The Unified licensing Regime should be in sync with the categorization in draft National Telecom Policy 2011 especially with respect to Network Service Operator (NSO)/ Communication Network Service Operator (CNSO) and Service Delivery Operator (SDO) / Communication Service Delivery operator (CSDO).