

IBSL's Comments on Consultation Paper on Amendment in the ISP Licence Agreement for incorporating the terms and conditions mentioned in Notice Inviting Applications (NIA) dated 25.02.2010 for use of Broadband Wireless Access (BWA) Spectrum.

We welcome the step taken by the Authority to address the matter of necessary amendments in the ISP Licence Agreement for incorporating the terms and conditions mentioned in Notice Inviting Applications (NIA) for use of Broadband Wireless Access (BWA) Spectrum, which is pending for long.

While incorporating these amendments, we request the Authority to address following matters:

1. NIA clause 3.5 mentions "Applicable AGR shall be computed in accordance with the provisions of the relevant service licence" and accordingly we are proposing Format of Statement of Revenue and Licence Fee as detailed in **Annexure-A** of our response.
2. It should be noted that in case of Category-A ISP licensee, the proposed format of statement of revenue and licence fee will be at all India level and the same format will also capture applicable revenue of BWA services from respective service areas having BWA spectrum assignment. Similarly we also request Authority to make reference to DOT for advising CCA units to accept the Statement in this Format along with due Spectrum Usage Charges at the same location where the ISP Licence Fee is being paid as per present guidelines.
3. We have also noted the reference from DOT to TRAI dated 27th December 2011 as part of the present consultation paper wherein point 3 states as "It is also to mention that the provisions of NIA dated 25.02.2010 regarding spectrum usage charges are same for ISP and UAS licensees. However the definition of Adjusted Gross Revenue (AGR) is different in both the licences". In this regard we respectfully submit that 'same spectrum usage charges' refers to percentage charge as mentioned in NIA clause 3.5 as "Licensees using BWA Spectrum need to pay 1% of AGR from services using this spectrum as annual spectrum charge irrespective of the licence held by them" and should not mean AGR computation also should be carried out in the same manner, which also has been clarified in the same NIA clause 3.5 as "Applicable AGR shall be computed in accordance with the provisions of the relevant service licence".
4. In case of Category A ISP licensees with All India Service area, the amendment with respect to use of BWA spectrum needs to be incorporated for respective Service Areas which may be incorporated in the proposed amendment as proposed in **Annexure-B** of this document. These service areas are as per Annexure IX of Notice Inviting Applications (NIA) dated 25.02.2010.
5. In the proposed licence amendment given below in para no. 7, the Effective date has been defined as the later of the date when the right to use awarded spectrum commercially commences and the date when the UAS licence or the ISP category 'A' licence, if and as applicable, is granted to the operator. It is therefore requested that the Authority may kindly ensure that Effective Dates for all operators are in compliance with NIA provisions.
6. The proposed amendments should be carried out uniformly for all ISP operators having BWA spectrum assignment.

7. Keeping the above in view and in line with the inclusion of the terms and conditions of NIA in the licence agreements of those UAS licensees who have obtained BWA spectrum during auction process by DOT, the Clause-wise Amendments of the ISP license Agreement are suggested as below. (The said amendments (insertion/deletion) suggested are marked in red)

In LICENSE AGREEMENT FOR INTERNET SERVICES, Clause 6

6. Unless otherwise stated or appearing from context, all the schedules annexed hereto including the certificates given along with application form and Guide lines for grant of licence for operating Internet Service No.820-1/06-LR dated 24.08.2007 and **Notice Inviting Applications vide File No.: P-11014/13/2008-PP dated 25th February 2010 for Auction of 3G and BWA Spectrum by Government of India, Ministry of Communications & Information Technology. Department of Telecommunications and subsequent clarifications will form part and parcel of this agreement. Provided, however, in case of conflict or variance on an issue relating to this agreement, the terms set out in the main body of this agreement read with all the Schedules annexed hereto shall prevail.**

In SCHEDULE -TERMS AND CONDITIONS-Part-I GENERAL CONDITIONS

Condition 2. Scope of the Licence:

Clause 2.2(iii) The Internet Telephony described in condition (ii) above, is only permitted. **The services mentioned above in para 2.2 (i) and (ii) can be provided using “Broadband Wireless Access” spectrum in last mile. The “BWA Spectrum” means Allotment of the rights to use certain specified radio spectrum frequencies in the 2.3GHz band (unpaired) in various telecom service areas, as per details given in Annexure VIII, by the Government of India (the “Government”), through the Department of Telecommunications (“DoT”) by the means of auction.**

Condition 8. Delivery of Service:

8.1 A Roll-out obligations for BWA Spectrum

- (i) Metro service area**
The licensee to whom the spectrum is assigned shall be required to provide required street level coverage using the BWA Spectrum in at least 90% of the service area within five years of the Effective Date as defined in para 8.1 A (iii).
- (ii) Category A, B and C service areas**
The licensee to whom the spectrum is assigned shall ensure that at least 50% of the rural SDCAs are covered within five years of the Effective Date as defined in para 8.1 A (iii) using the BWA Spectrum. Coverage of a rural SDCA would mean that at least 90% of the area bounded by the municipal/ local body limits should get the required street level coverage.
- (iii) The Effective Date for BWA spectrum shall be the later of the date when the right to use awarded spectrum commercially commences and the date when the UAS licence or the ISP category ‘A’ licence, if and as applicable, is granted to the operator.**
- (iv) If the licensee does not achieve its roll out obligations, its spectrum assignment shall be withdrawn.**

Part II COMMERCIAL CONDITIONS

Condition 17. FEES PAYABLE:

Clause 17.3 Radio Spectrum Charges:

(i)(a) The LICENSEE shall pay spectrum 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 subscribers shall not be taken into account.

(i)(b) The Licensee had paid Rs..... as auction amount for allotment of 20 MHz spectrum, as detailed in Annexure VIII, vide letter no. dated A spectrum usage charge (over and above the spectrum auction price and the applicable licence fees) as a percentage of the Adjusted Gross Revenue ("AGR") shall be payable by Successful Bidders as per rules notified by the Government from time to time. Licensees using BWA Spectrum need to pay 1% of AGR from the services using this spectrum as annual spectrum charge.

(iii) Revenues from services using the BWA Spectrum shall not be included in the AGR of the licensee, for the limited purpose of determining spectrum charges on spectrum other than BWA Spectrum;

(iv) Annual spectrum charges shall be applicable from the date of award of right to use allotted spectrum commercially. For BWA Spectrum, no annual spectrum charge shall be payable in the first year from the date of award of right to use allotted spectrum commercially.

PART VII FREQUENCY AUTHORIZATION

36. Frequency Authorization

36.1 Consequent to payment of Rs..... as auction amount for allotment of 20 MHz BWA spectrum the Licensee is allocated and assigned 20 MHz, as detailed in Annexure VIII, vide letter no. dated.....

36.2 Backhaul

As per Notice Inviting Applications for auction of 3G and BWA spectrum, Authorisation for the use of spectrum for individual point-to-point fixed links would be the subject of separate applications. Subject to the usual processes, terms and conditions, and applicable charges, the Government shall make available spectrum for these purposes under the prevailing terms and conditions (specified by the WPC), subject to availability. However, it must be noted that these frequencies are not part of the Auctions, are not bundled with the 3G Spectrum or the BWA Spectrum and payment of the Successful Bid Amount does not grant usage rights to such backhaul spectrum. Separate charges, as applicable, are payable for backhaul spectrum.

36.3 The right to use the above mentioned BWA Spectrum shall be valid for 20 years from the Effective Date unless revoked or surrendered earlier, subject to the operator continuing to have a UAS/ CMTS ISP-category 'A' licence. In case the UAS/ CMTS/ ISP-category 'A' licence it holds is cancelled/ terminated for any reason, the spectrum usage rights shall stand withdrawn forthwith.

36.3.1 If the period of an existing UASL/ CMTS/ ISP-category 'A' licence of an operator expires before the expiry of the right to use the BWA Spectrum awarded by means of the current Auction, then the validity of the UAS/ CMTS licence with respect to the BWA Spectrum, if applicable, shall be extended to 20 years from the Effective Date on existing terms without any commercial charges. This extension shall be done on the application of the licensee made in the 19th year of the UAS/ CMTS licence for extension of the period to make it co-terminus with the validity of the right to use the BWA Spectrum period.

36.3.2 The ISP licence, if applicable, shall be extended for 5 years at a time for a period extending up to 20 years, from the Effective Date on existing terms. However, extension, if any, of the right to use any spectrum other than BWA Spectrum associated with the licence and the terms thereof, shall be specified in due course.

36.4 Breach, revocation and surrender of BWA Spectrum

36.4.1. The spectrum assignment may be revoked, withdrawn, varied or surrendered in accordance with applicable licence conditions or any other applicable laws, rules, regulations or other statutory provisions.

36.4.2. The spectrum assignment may also be revoked if the Government determines the user of the spectrum to be in serious breach of any of the conditions of the award of the spectrum (including adherence to the Auction Rules) and the consequent obligations. In case of less serious breaches, the Government may impose penalties at its discretion. Seriousness of the breach shall be determined by the Government at its sole discretion.

36.4.3. The operator may surrender the spectrum, by giving notice of at least 60 calendar days in advance. In that case, it shall also notify all its customers of consequential withdrawal of service by giving 30 calendar days notice to each of them. The operator shall pay all fees payable by it until the date on which the surrender of the **Auctioned of 3G and BWA Spectrum** becomes effective. The effective date of surrender of the spectrum shall be the later of the dates of expiry of the two notices mentioned in this clause.

36.4.4. If at any stage, the spectrum allocation is revoked, withdrawn, varied or surrendered, no refund will be made.

36.5 Unless otherwise notified by DoT in due course, if two or more licensees holding BWA Spectrum blocks in a service area merge, then they shall be allowed to retain only one BWA Spectrum block and surrender the remaining BWA Spectrum blocks in that service area.

The clauses 36.1, 36.2, 36.3, 36.4, 36.5, 36.6, 36.7 may be read as 36.6, 36.7, 36.8, 36.9, 36.10, 36.11, 36.12, respectively.

Annexure-I Definition of Terms and expressions

After the definition no.2 of BSNL insert the definitions

3. BSO means Basic Service Operators

4. The "BWA Spectrum" means Allotment of the rights to use certain specified radio spectrum frequencies in the 2.3GHz band (unpaired) by means of auction in various telecom service areas in India by the Government of India (the "Government"), through the Department of Telecommunications ("DoT").

After the definition of TRAI, insert the definition

40.42. UASL- means Unified Access Service Licence granted by Government of India through Department of Telecommunications

The other definition no.s shall be adjusted accordingly

Appendix-II to Annexure-II of the ISP License agreement shall be replaced with Annexure A to this document.

Annexure-VIII of the ISP license agreement shall be replaced with Annexure B to this document.

ANNEXURE A

Revised Appendix II to Annexure-II of the ISP License Agreement

Proposed Format of Statement of Revenue and Licence Fee (Sub-headings are not included only for simplicity purpose)

S.N.	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.
1.A	Revenue from services using wireline / Non-BWA spectrum			
A	Revenue from Pure Internet Service (Internet Access and Content Service):			
B	Revenue from Internet Telephony Service:			
C	Revenue from any other value added service			
D	Income from trading activity (all including of sales tax)			
E	Non-refundable deposits from subscribers			
F	Revenue from franchisees /resellers including all commissions and discounts etc. excluding the revenues already included in IA&IB			
G	Revenue from Roaming			
H	Revenue from IPTV Services			
I	Revenue from other Operators on account of provisioning of interconnection			
1.B	Revenue from services using BWA Spectrum			
A	Revenue from Pure Internet Service (Internet Access and Content Service):			
B	Revenue from Internet Telephony Service:			
C	Revenue from any other value added service			
D	Income from trading activity (all			

	including of sales tax)			
E	Non-refundable deposits from subscribers			
F	Revenue from franchisees /resellers including all commissions and discounts etc. excluding the revenues already included in IA&IB			
G	Revenue from Roaming			
H	Revenue from IPTV Services			
I	Revenue from other Operators on account of provisioning of interconnection			
2	Income from investments			
3	Revenue from sharing/ leasing of infrastructure			
4	Revenue from sale/ lease renting of bandwidth, links, R&G cases, turnkey projects etc.			
5	Miscellaneous Revenue			
AA	GROSS REVENUE OF THE LICENSEE COMPANY :(Add 1-5)			
	.			
B	DEDUCT:			
B.1	Revenue from services using wireline / Non-BWA spectrum			
1	Revenue from Pure Internet Service			
2	Service Tax paid to the Government			
3	Sales Tax paid to the Government			
4.	Roaming revenue actually passed on to other eligible/entitled telecom service provider.			
B.2	Revenue from services using			

	BWA Spectrum			
1	Revenue from Pure Internet Service			
2	Service Tax paid to the Government			
3	Sales Tax paid to the Government			
4.	Roaming revenue actually passed on to other eligible/entitled telecom service provider.			
BB	TOTAL DEDUCTIBLE REVENUE (B.1 + B.2)			
CC	ADJUSTED GROSS REVENUE (AA-BB)			
	REVENUE SHARE @ ----- ---- OF ADJUSTED GROSS REVENUE i.e. CC			
DD	ADJUSTED GROSS REVENUE FOR SPECTRUM USAGE CHARGE (1B-B2)			
	SPECTRUM USAGE SHARE @ ----- OF ADJUSTED GROSS REVENUE FOR SPECTRUM USAGE CHARGE i.e. DD			

Revised Annexure VIII of the ISP license Agreement

Detailed definition of service areas and allotment of BWA Spectrum

Sl. No.	Name of Telecom Circle/ Metro Service Area	Areas covered	BWA Spectrum Earmarked in MHz
01.	West Bengal	Entire area falling within the Union Territory of Andaman & Nicobar Islands and area falling within the State of West Bengal and the State of Sikkim excluding the areas covered by Kolkata Metro Service Area.	
02.	Andhra Pradesh	Entire area falling within the State of Andhra Pradesh.	
03.	Assam	Entire area falling within the State of Assam.	
04.	Bihar	Entire area falling within the re-organised State of Bihar and newly created State of Jharkhand pursuant to the Bihar Reorganisation Act, 2000 (No.30 of 2000) dated 25th August, 2000.	
05.	Gujarat	Entire area falling within the State of Gujarat and Union Territory of Daman and Diu, Silvassa (Dadra & Nagar Haveli).	
06.	Haryana	Entire area falling within the State of Haryana except the local areas served by Faridabad and Gurgaon Telephone exchanges.	
07.	Himachal Pradesh	Entire area falling within the State of Himachal Pradesh	
08.	Jammu & Kashmir	Entire area falling within the State of Jammu & Kashmir including the autonomous council of Ladakh.	
09.	Karnataka	Entire area falling within the State of Karnataka	
10.	Kerala	Entire area falling within the State of Kerala and Union Territory of Lakshadweep and Minicoy.	
11.	Madhya Pradesh	Entire area falling within the re-organised State of Madhya Pradesh as well as the newly created State of Chattisgarh pursuant to the Madhya Pradesh Reorganisation Act, 2000 (No:28 of	

		2000) dated 25th August, 2000.	
12.	Maharashtra	Entire area falling within the States of Maharashtra and Goa, excluding areas covered by Mumbai Metro Service Area.	
13.	North East	Entire area falling within the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura.	
14.	Orissa	Entire area falling within the State of Orissa.	
15.	Punjab	Entire area falling within the State of Punjab and Union territory of Chandigarh.	
16.	Rajasthan	Entire area falling within the State of Rajasthan.	
17.	Tamilnadu	Entire area falling within the State of Tamilnadu and Union Territory of Pondichery including Local Areas served by Chennai Telephones, Maraimalai Nagar Export Promotion Zone (MPEZ), Minzur and Mahabalipuram Exchanges.	
18.	Uttar Pradesh- West	Entire area covered by Western Uttar Pradesh with the following as its boundary districts towards Eastern Uttar Pradesh : Pilibhit, Bareilly, Badaun, Etah, Mainpuri and Etawah. It will exclude the local telephone area of Ghaziabad and Noida. However, it will also include the newly created State of Uttaranchal pursuant to the Uttar Pradesh Re-organisation Act, 2000 (No.29 of 2000) dated 25th August, 2000.	
19.	Uttar Pradesh _ East	Entire area covered by Eastern Uttar Pradesh with the following as its boundary districts towards Western Uttar Pradesh: Shahjahanpur, Farrukhabad, Kanpur and Jalaun.	
20.	Delhi	Local Areas served by Delhi, Ghaziabad, Faridabad, Noida, and Gurgaon Telephone Exchanges	
21.	Kolkata	Local Areas served by Calcutta Telephones.	
22.	Mumbai	Local Areas served by Mumbai, New Mumbai and Kalyan Telephone Exchanges	

NOTE:

1. Yenum, an area of Union Territory of Pondicherry is served under Andhra Pradesh Telecom Circle in East Godavari LDCA.
2. The above service areas refer to Telecom Services Area Units (Telecom Service Areas or Metro City Service Areas) and not the State geographical areas.