

Draft Response on Exit Policy for various telecom licenses

- 1.** The Department of Telecommunications (DoT), vide its letter dated 10th October 2011, had requested TRAI to recommend an exit policy for the licensees who desire to exit from the provisioning of telecom services covered under a licence.
- 2.** TRAI vide its letter dated 03rd November, 2011 intimated DoT that being a new reference, the Authority would need to carry out a consultation with the stake holders and that the recommendations on this subject will be sent in due course to the Government.
- 3.** In order to initiate the consultation process, TRAI, vide its letter dated 16th Dec, 2011, requested DoT to intimate the categories of the license holders for whom the exit policy is required to be formulated.
- 4.** In response, the DoT, vide its letter dated 23rd December 2011 requested TRAI to formulate the exit policy for all types of licences **(Annexure I)**.
- 5.** Accordingly, TRAI issued a pre-consultation paper on 'Exit-Policy for various telecom licences' on 6th January 2012. Comments/views from all the stakeholders were solicited on issues like implications, advantages & disadvantages, to the individual licensees, to the Government revenues and to the telecom sector as a whole. The last date of receipt of comments was 16th January, 2012 which was later extended to 24th January, 2012.
- 6.** On the issue whether partial exit (surrender of spectrum only in part or complete) from business should be allowed, most stakeholders favoured that partial exit may be permitted, that operator should be provided with a choice to exit from circle of its choice and that option should be given to the operator to surrender of spectrum either in full or in part. Some of the stakeholders mentioned that partial exit may be allowed beyond the contracted limit of spectrum. One stakeholder suggested that since contracted spectrum (6.2 MHz(GSM) and 5 MHz of

CDMA) comes bundled with license, partial exit may be allowed beyond these limits. However, if the Government wants to charge beyond initial spectrum of 4.4 MHz (GSM) and 2.5 MHz CDMA), partial exit beyond these limits should also be allowed. One stakeholder suggested that there may be a situation where a telecom service provider wishes to surrender the entire allocated wireless spectrum but wishes to retain the Unified Access Service License for the desired service area. In such a case the licensee should be charged in line with NLD and ILD licenses keeping minimum amount of entry fee @ Rs. 2.5 crore for pan India. The balance amount of entry fee should be refunded back to the licensee on pro-rata basis. Regarding the issue of refund of entry fee, majority of the stakeholders favoured refund of entry fee on pro-rata basis.

7. On the issue of refund of entry fee, several stakeholders favoured refund of entry fee on pro-rata basis subject to fulfillment of license condition. It was mentioned that an operator may be allowed to exit from telecom business after giving adequate notice to subscribers to ensure non-disruption of service and Clearing of all outstanding dues of the Government with regard to licence fee, spectrum charge and penalties in case of non-fulfillment of roll-out obligation and dues of other telecom operators with regard to interconnection.

8. Some of the stakeholders suggested that the amount of refund of entry fee may vary depending on the status of spectrum allocation to the licensee.

9. On the issue of release of bank guarantee, majority of the stakeholders suggested that the bank guarantee may be released once the departing operator clears all outstanding dues and pays all penalties and in case the operator has not fulfilled the required rollout obligations, a certain percentage of PBG may be deducted. However, one stakeholder suggested that as the spectrum came bundled with license, there should be no refund of both entry fee and any of the bank guarantees.

10. Regarding the issue of time frame for exit from the business, the stakeholders suggested a time frame between 2-12 months from the date when the licensor allows the Exit from the business. It is also suggested that there should not be a bar for re-entry in the business for such licensees.

11. All the licenses carry clauses for non-refundable entry fee. The relevant portion from the various license is given at **Annexure-II**. Further, various telecom licenses already have provision for surrender of licenses. Summary of relevant license conditions in different licenses in this regard is kept at **Annexure-III**. The relevant condition taken from UAS Licence, as an illustration, is as follows:-

LICENSEE may surrender the LICENSE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENSE becomes effective. The effective date of surrender of License will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

It shall be the responsibility of the LICENSEE to maintain the Quality of Service even during the period when notice for surrender of LICENCE is pending and if the Quality of Service is not maintained during the said notice period, it shall be treated as material breach liable for termination at risk and consequent of the licensee.

However, in case of ISP license the surrender of license condition states that:

10.9 TERMINATION FOR CONVENIENCE: If the LICENSEE desires to surrender the licence, it shall give an advance notice of 30 days to the Licensor to this effect. If the service is in operation, the licensee shall also intimate its subscribers of consequential withdrawal of service by serving a 15 days notice to them. The financial liability of the licensee company for termination of the licence for convenience shall be as below:-

1. *After start of service:- No surrender charge is payable. However, if during the notice period, acceptable level of service is not delivered to the customer, the licensee shall forfeit all claims on the*

Performance Bank Guarantee which shall be encashed and the amount shall be adjusted towards damages.

2. *Before start of service:- The licensee who have completed the allocated period to roll out Internet services counted from the date of issue of the ISP license and have not yet rolled out their services have option to surrender the license paying 5% of PBG as surrender charge within six months of such notification. Further the licensee who has not completed the allocated period to roll out Internet services counted from the date of issue of the ISP license and want to surrender ISP licenses may be permitted to do so within six months form date of such notification by paying 2.5% of PBG as surrender charges.*

12. In view of the foregoing discussion, it can be said that as per licence terms and conditions of the various telecom services, there is already a provision for the licensee to surrender the licence by giving a prior notice. The notice period is 60 days in most of the licences. However, the entry fee paid by the operator is non-refundable and there is no provision in any of the licence agreements, for any refunds. Therefore, framing of exit policy for various telecom licences essentially involves the issue of full or partial refund of the entry fee and bank guarantees.

13. On 2nd February 2012, the Hon'ble Supreme Court in a judgment on petition no. 423/2010 (CPIL Vs. Union of India and Ors.) and petition no. 10 of 2011 (Dr. Subramanian Swamy Vs. and Ors.) has *inter-alia* ordered:

“(i) The licenses granted to the private respondents on or after 10.1.2008 pursuant to two press releases issued on 10.1.2008 and subsequent allocation of spectrum to the licensees are declared illegal and are quashed.

(ii) The above direction shall become operative after four months.”

14. In the current context, therefore, there are four different categories of licences, for which the Exit Policy was proposed to be formulated. These are as below:

- a) 122 UAS licenses given on or after 10.01.2008
- b) Basic/CMTS/UASL given prior to 10.01.2008
- c) All other licenses like NLD, ILD, ISP etc.
- d) Future licenses.

15. With reference to various category of licenses mentioned in para 14 above, it may be noted that regarding the licenses listed under Category (a), as per the judgment of the Hon'ble Supreme Court, they stand cancelled after four months of the date of judgement. Therefore there is no need for any Exit Policy in respect of these UAS Licensees.

16. In so far as licenses falling under category (b) are concerned, in view of the fact that these Licensees are operational for a number of years and have substantial network and subscribers, there seems to be no requirement for an exit policy for them.

17. Regarding licenses like NLD, ILD, ISP etc. falling under category (c), most of these licenses carry low entry fee and the licensee has an option to surrender its licence at any time subject to certain license conditions. Therefore, there seems to be no need for separate exit policy for such licenses.

18. Regarding future licenses under category (d), TRAI had already recommended that all future licenses will be unified licenses and as per the draft guidelines for unified licenses placed on TRAI website on 16th January 2012 and 10th February 2012, the entry fee for Pan-India licence is only Rs.20 crore and for service area based licence, it is only Rs.2 Cr, 1 Cr and 50 lakh for 'Metro' & 'A' category, 'B' category and 'C' category service areas respectively. The provision for surrender of license is already prescribed in the draft guidelines. As such, the Authority does not find any justification for a separate exit policy in case of Unified Licensing Regime.

Therefore, it is proposed to recommend that:-

- a) There is no need for a separate Exit Policy and that the entry fee paid will continue to be non-refundable.
- b) Present conditions in various licences with regard to surrender of licences, whereby licensee can surrender its licence by giving a notice of at least 60 calendar days in advance shall continue to be applicable.

19. Stakeholders are requested to provide their comments/view on this paper by 5th April, 2012. Comments may be sent, preferably in electronic form, to Shri Sanjeev Banzal, Advisor (MN), TRAI, to email advmn@traigov.in or at Fax No. +91-11-23212014.

(Rajeev Agrawal)
Secretary

Annexure-I

No.20-281/2010-AS-I (Vol-II) (Pt.)
Government of India
Ministry of Communications & IT
Department of Telecommunications
(AS-I Division)

1203, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110 001

Dated: 23rd December, 2011

To,
The Secretary
Telecom Regulatory Authority of India
New Delhi.

Subject: TRAI's recommendations on "Spectrum Management and Licensing Framework" – request to TRAI to recommend an exit policy for the licensees – regarding.

TRAI may kindly refer to their letter no. 901-11/2011-MS dated 16.12.2010 on the subject mentioned above, requesting DoT to intimate the categories of the license holders, for whom the exit policy is required to be formulated. In this regard, the undersigned is directed to convey that **the exit policy is required for all types of licences.**



(R.K. Gupta)
Director (AS-I)
Ph: 2303 6284

Entry fee:

1. UASL:

One Time non-refundable **Entry Fee** of Rs. _____ Crore has been paid by the LICENSEE prior to signing of this Licence agreement.

2. NLD:

5.1 The LICENSEE shall pay one time non-refundable Entry Fee of Rs 25 crores, before signing of the LICENCE.

3. ILD:

5.1 LICENSEE shall pay one time Entry Fee of Rs 25.00 crores (Rupees twenty five crores only), which shall be non-refundable and shall be payable before signing of LICENCE.

4. VSAT:

5. LICENSEE shall pay one time Entry Fee of Rs.30 lakhs (Rupees Thirty lakhs only) which shall be non-refundable and shall be payable before signing of LICENCE.

5. CMTS:

19.1 One -Time **Entry Fee** of Rs. _____ Crore has been paid by the LICENSEE based on the bidding process prior to signing of this license agreement.

6. GMPCS:

19.1 One -Time **Entry Fee** of Rs. **One Crore is payable by the LICENSEE at the time of signing of the Licence Agreement.**

35.1 The time period of delivery of the Service stipulated in this Licence shall be deemed as the essence of the contract and the service must be brought into commission not later than such specified time period. No extension in delivery date will be granted. If the Service is brought into commission after the expiry of the due date of commissioning, without prior written concurrence of the licensor and is accepted, such commissioning will entail recovery of **additional entry fee** under this Condition. Provided further that if the commissioning of service is effected within 15 calendar days of the expiry of the due commissioning date then the Licensor shall accept the services without levy of **additional entry fee**.

35.2 In case the Licensee fails to bring the Service or any part thereof into commission (i.e., fails to deliver the service or to meet the required coverage criteria) within the period prescribed for the commissioning, the Licensor shall be entitled to recover **additional entry fee as below:**

(a) Delay up to 1 year : Rs. 5 Lakh shall be payable on the first day of the second year.

(b) Delay of more than one year : Rs.5 Lakhs as at (a) above plus and upto than two years Rs. 5 lakhs payable on the first day of the third year.

(c) Delay of more than 2 years : Rs. 10 Lakhs as of (b) above plus Rs. 5 lakhs payable on first day of the fourth year and also the licence is liable to termination in accordance with Condition No.10, Part-I.

7. Resale of IPLC:

8. "ENTRY FEE" The prescribed non-refundable amount of fee to be paid before signing of LICENCE AGREEMENT to provide IPLC.

8. ISP:

17.1 Entry Fee: One Time non-refundable Entry Fee of Rs. _____ Lakh has been paid by the LICENSEE prior to signing of this Licence agreement.

9. VOICE MAIL/AUDIOTEX/ UNIFIED MESSAGING SERVICE:

17.1 There will be no **Entry Fee** as well as **Licence Fee**.

Surrender of license:

1. CMTS:

10.3 LICENSEE may surrender the LICENCE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENCE becomes effective. The effective date of surrender of Licence will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

10.4 It shall be the responsibility of the LICENSEE to maintain the Quality of Service even during the period when notice for surrender of LICENCE is pending and if the Quality of Service is not maintained during the said notice period, it shall be treated as material breach liable for termination at risk and consequent of the licensee.

2. GMPCS:

10.3 LICENSEE may surrender the LICENCE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENCE becomes effective. The effective date of surrender of Licence will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

10.7 It shall be the responsibility of the LICENSEE to maintain the Quality of Service, even during the period when the notice for surrender/termination of LICENSE is pending and if the Quality of Service is not maintained, during the said notice period, it shall be liable to pay damages. The quantum of damages and to whom payable shall be determined by the TRAI. The licensee shall also be liable to pay the Licence Fee till the end of the notice period and more specifically till the date on which the surrender/termination becomes effective.

3. NLD:

13.3 The LICENCEE may surrender the LICENCE by giving notice of at least 60 days in advance. In that case the LICENCEE shall also notify all its subscribers of consequential withdrawal of SERVICE by sending a 30 days notice to each of them. The LICENCEE shall pay all fees payable by it till the date on which the surrender of the LICENCE remains effective.

13.4 It shall be the responsibility of the LICENCEE to maintain the Quality Of Service even during the period when notice for surrender of LICENCE is pending and if the Quality of Service is not maintained during the notice period, it shall be treated as material breach of liable for termination.

4. UASL:

10.3 LICENSEE may surrender the LICENSE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENCE becomes effective. The effective date of surrender of Licence will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

10.4 It shall be the responsibility of the LICENSEE to maintain the Quality of Service even during the period when notice for surrender of LICENCE is pending and if the Quality of Service is not maintained during the said notice period, it shall be treated as material breach liable for termination at risk and consequent of the LICENSEE.

5. VOICE MAIL/AUDIOTEX/ UNIFIED MESSAGING SERVICE:

10.3 LICENSEE may surrender the LICENCE, by giving notice of at least 60 calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30-calendar days notice to each of them. The effective date of surrender of LICENCE will be 60 Calendar days counted from the date of receipt of such notice by the LICENCOR.

10.4 It shall be the responsibility of the LICENSEE to maintain the Quality of Service, even during the period when the notice for surrender/termination of LICENSE is pending and if the Quality of Service is not maintained, during the said notice period, it shall be treated as material breach liable for termination at risk and consequent of the LICENSEE and Performance Bank Guarantee of Rs.3 lakhs shall be forfeited

6. ILD License:

13.3 LICENSEE may surrender the LICENCE, by giving an advance notice, of at least 60 days to the LICENSOR to this effect. The LICENSEE shall also notify all its subscribers of consequential withdrawal of SERVICE by sending a 30 days notice to them. The LICENSEE shall pay all dues payable by it till the date on which the surrender of the LICENCE becomes effective. The EFFECTIVE DATE of surrender of LICENCE will be effective on the 60th calendar day, counted from the date of receipt of such notice by the LICENSOR.

13.4 During the period when a notice for termination or surrender of LICENCE is pending, the QUALITY OF SERVICE to the subscribers as per prescribed standards, shall have to be maintained by the LICENSEE, failing which, it shall be treated as material breach without prejudice to any other remedy available to the LICENSOR.

7. ISP:

10.9 TERMINATION FOR CONVENIENCE: If the LICENSEE desires to surrender the licence, it shall give an advance notice of 30 days to the Licensor to this effect. If the service is in operation, the licensee shall also intimate its subscribers of consequential withdrawal of service by serving a 15 days notice to them. The financial liability of the licensee company for termination of the licence for convenience shall be as below:-

(i) After start of service:- No surrender charge is payable. However, if during the notice period, acceptable level of service is not delivered to the customer, the licensee shall forfeit all claims on the Performance Bank Guarantee which shall be encashed and the amount shall be adjusted towards damages.

(ii) Before start of service:- The licensee who have completed the allocated period to roll out Internet services counted from the date of issue of the ISP license and have not yet rolled out their services have option to surrender the license paying 5% of PBG as surrender charge

within six months of such notification. Further the licensee who has not completed the allocated period to roll out Internet services counted from the date of issue of the ISP license and want to surrender ISP licenses may be permitted to do so within six months form date of such notification by paying 2.5% of PBG as surrender charges.

10.7 It shall be the responsibility of the LICENSEE to maintain the Quality of Service, even during the period when the notice for surrender/termination of LICENSE is pending and if the Quality of Service is not maintained, during the said notice period, it shall be liable to pay damages. The LICENSEE shall also be liable to pay the Licence Fee till the end of the notice period and more specifically till the date on which the surrender/termination becomes effective.

8. VSAT:

13.3 LICENSEE may surrender the LICENCE, by giving an advance notice, of at least 60 calendar days to the LICENSOR to this effect. The LICENSEE shall also notify all its subscribers of consequential withdrawal of SERVICE by sending a 30 calendar days' notice to them. The LICENSEE shall pay all dues payable by it till the date on which the surrender of the LICENCE becomes effective. The effective date of surrender of LICENCE will be 60 calendar days counted from the date of receipt of such notice by the LICENSOR.

13.4 During the period when a notice for termination or surrender of LICENCE is pending, the QUALITY OF SERVICE to the subscribers as per prescribed standards, shall have to be maintained by the LICENSEE, failing which, it shall be treated as material breach without prejudice to any other remedy available to the LICENSOR.

9. Resale of IPLC:

13.3 LICENSEE may surrender the LICENCE, by giving an advance notice, of at least 60 days to the LICENSOR to this effect. The LICENSEE shall also notify all its subscribers of consequential withdrawal of SERVICE by sending a 30 days notice to them. The LICENSEE shall pay all dues payable by it till the date on which the surrender of the LICENCE becomes effective. The EFFECTIVE DATE of surrender of LICENCE will be effitive on the 60th calendar day, counted from the date of receipt of such notice by the LICENSOR.

13.4 During the period when a notice for termination or surrender of LICENCE is pending, the QUALITY OF SERVICE to the subscribers as per prescribed standards, shall have to be maintained by the LICENSEE, failing which, it shall be treated as material breach without prejudice to any other remedy available to the LICENSOR.

10. PMRTS:

9.3 LICENSEE may surrender the LICENSE, by giving notice of at least 60 Calendar days in advance. In that case it shall also notify all its customer of consequential withdrawal of SERVICE by sending a 30 Calendar days notice to each of them. The LICENSEE shall pay all fees payable by it till the date on which the surrender of the LICENSE becomes effective. The effective date of surrender of License will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

9.7 It shall be the responsibility of the LICENSEE to maintain the Quality of Service, even during the period when the notice for surrender/termination of LICENSE is pending and if the Quality of Service is not maintained, during the said notice period, the licensee shall be liable to pay damages. The quantum of damages and to whom payable shall be determined by the TRAI. The licensee shall also be liable to pay the License Fee till the end of the notice period and more specifically till the date on which the surrender/termination becomes effective.