

**RCOM's Comments on Issues raised in TRAI's Consultation Paper on Mobile
Virtual Network Operator**

General Comments

The MVNOs generally enhance and stimulate the competition and provide innovation in the delivery of mobile services and therefore there is a strong case to allow MVNOs. However, the Indian mobile market is unique in the world because of presence of a large number of facility based operators. In each service area, there are 11 to 13 mobile operators. In this background, the Authority may carryout detailed analysis of likely impact on facility based competition between MNOs. Many regulators have concluded that MVNOs are disincentives for MNOs to make new investments in infrastructure. In this regard it is worth noting the OFTEL's conclusions which are reproduced below:

“OFTEL accepts that depending on the form of MVNO, the incentives to invest may decline, diluting the benefits of infrastructure competition”

“Investment in network coverage may decline as a result of MVNO entry; existing network operators will not face the same incentives to build out network.”

2. Regulators in most competitive markets such as USA, UK, Australia, New Zealand etc have adopted hands-off or light touch regulatory approach to MVNOs. This is also consistent with the Authority's approach of non-intervention when there is no evidence of market failure. Issue of regulatory intervention for entry of MVNO was also examined by OFTEL in context of 2G MVNOs. OFTEL took the following approach.

“2.41 OfTel is reluctant to take action that might dictate a particular form of MVNO when some of the benefits might also result from different arrangements that can be achieved by commercial negotiation. OfTel believes that the best way to identify the exact form of MVNO operation that minimises the costs associated with MVNOs and adds maximum value to the mobile industry and consumers is by commercial negotiation between network operators and potential MVNOs.”

3. We support a regulatory approach for MVNOs in 2G and prospective 3G and BWA services which is based on following sound regulatory principles:

- (i) the development of MVNO is left to the unfettered operation of competitive market forces; and
- (ii) Regulatory intervention only if there is a market failure necessitating remedy for the market failure.

4. The Authority has discussed the issue of mandating wholesale access and regulating other aspects of MNO-MVNO relationship. Such intervention is to be considered only when markets have failed and there is not enough competition in the market. In case, markets are competitive, then there is no need of any significant regulatory step requiring mandatory access provisioning to MVNO.
5. The Indian Mobile market is highly competitive and it is expected that the competition levels will enhance once new 2G operators launch services. The Government has also finalized guidelines for 3G services and it is expected that new 3G operators would also enter the mobile market very soon which shall further enhance the competition. Besides presence of large number of operators, the falling trend of tariffs and ARPU are indicative of competitive markets.
6. In case there is no evidence of mobile market failure, any regulatory intervention may itself distort the market. Unnecessary regulatory intervention to support MVNOs runs the risk of acting as disincentive for mobile facility based operators to deploy network, invest for quality improvement or to develop new innovative product and services.
7. One of the major international MVNOs has successfully negotiated deal with Indian MNO and already entered the Indian market through branding/franchising arrangement. It clearly shows that commercial negotiations are possible and regulatory intervention is not needed to facilitate MVNOs. Even in the absence of mandatory access regulation in European and other developed telecom markets, MVNOs have successfully negotiated commercial arrangements with MNOs and entered the mobile market. It is therefore contended that the regulatory framework which allows commercial relationships to be created between Mobile Operators and MVNOs is sufficient. The lasting relationship between MVNOs and MNOs is possible only if based on mutually agreed commercial terms. In the competitive market, there is no need of regulatory intervention even if commercial negotiations fail between MVNOs and MNOs.
8. The Authority has rightly concluded in paragraph 2.3.12 that conditions under which MNOs provide wholesale services to MVNOs are far from those that raise specter of price squeeze and therefore does not require special attention of the Authority.
9. In the light of above, we strongly believe that in Indian Telecom market, there is no need of any regulatory intervention in form of mandating access or deciding the wholesale access to facilitate entry of MVNOs in 2G or in 3G or BWA markets. We also see no justification of any regulatory action or policy whereby the Authority may have to intervene in case commercial negotiations breakdown between MNOs and MVNOs as such a policy would be disincentive for the negotiating party to reach an agreement on commercially agreed terms.

Comments of specific Issues raised in the Consultation Paper

Issue 1. Do you agree with the definition of MVNO given in section 2.1.6? If not please suggest alternate definition with justification.

No, we do not agree with the definition given in the section 2.1.6. The proposed definition goes beyond the scope of MVNO business and widens the horizon of MVNO. In this regard we would like to offer the following comments:

Spectrum Sharing

The spectrum sharing with MVNO proposed in the definition is not appropriate. The MVNO with spectrum will not be a 'virtual network operator' but will become a 'facility based' MNO'. The facility based MVNO is indistinguishable from Unified Access service provider and as such cannot be covered under a separate regulatory framework or licensing regime. **The suggested definition will bring in an element of Spectrum Trading.**

The Authority earlier had considered the issue of spectrum sharing while formulating its recommendations on infrastructure sharing. While the Authority had allowed infrastructure sharing but sharing of spectrum was not permitted. We believe that the present issue is covered under the earlier recommendation of the Authority and MVNO as such cannot be allowed to share spectrum with MNO. The Authority's relevant recommendation in infrastructure sharing is given below:

The Authority recommends

- (i) *The licence conditions of UASL/CMSP should be suitably amended to allow active infrastructure sharing limited to antenna, feeder cable, Node B, Radio Access network (RAN) and transmission system only. Sharing of the allocated spectrum is not permitted*

Numbering Plan

Further, the MVNO should have a separate mobile network code so that its subscribers could be distinguished from MNO's subscribers. This shall also facilitate direct interconnection agreement between MVNOs, MNOs & PSTN BSOs etc. In case separate numbering is not extended to the MVNO, then it shall have to depend on MNO to facilitate interconnect agreements with all other operators.

In view of the above, we propose the following definition:

'MVNO is an entity that does not have assignment of spectrum but has its own mobile network code and can provide wireless access service to end users by accessing radio network of licensed Unified Access Service Provider or Cellular Mobile Service Provider'.

Issue 2: Do you think there is a need to introduce MVNO in the Indian Telecom Market. If yes, is it the right time to introduce MVNO as a distinct service provider with its own licensing and regulatory framework? Please elaborate the comments with appropriate reasoning.

Timing of Introduction of MVNO

Yes, there is a need for the introduction of MVNOs in the Indian Telecom Market as the MVNOs generally enhance and stimulate competition. Looking at the vast territory of each licence area, it becomes difficult for a MNO to serve niche and far away customers in a satisfying manner. Further, to arrest the falling ARPUs, it is necessary to have a larger share of Value Added Services contribution in the total revenue. This is only possible if specialized entities like MVNOs are introduced in the market. However, Indian mobile market has a unique feature of having 11 to 13 facility based MNOs in each of the geographical area. The Authorities have always favoured facility based competition to the service based competition through MVNOs, resellers etc. The introduction of MVNOs which do not make significant investments but virtually provide similar services may turn out to be a disincentive for operators to make further investment in infrastructure. Therefore before allowing MVNOs, the Authority is requested to carefully study the impact of MVNO on dilution of facility based competition.

Regulatory Framework

The regulatory environment should allow commercial agreements to take place between MNOs and MVNOs but as we have indicated above, there is no need of any regulatory intervention with respect to introduction of MVNO. The DoT should specify the licensing guidelines and TRAI the tariff, quality of service and other guidelines pertaining to the consumer interest.

Licensing Framework

The MNVO may take varied shapes, depending on the commercial and technical arrangement with the MNO. Some of the arrangements which shall have to be agreed between MNO and MVNO may include:

- (i) Network Coverage
- (ii) Activation and deactivation of customers
- (iii) Interconnection between MNO and MVNO
- (iv) Network integrity and security
- (v) Fault handling
- (vi) Customer billing
- (vii) Inter-operator billing
- (viii) Commercials- access charges.

These are some of the issues that would be decided in commercial negotiations. The final shape of MVNO would depend on the arrangement between MNO and MVNO. Therefore the technical conditions in the licensing should be broad and allow negotiation on extent of cooperation between MNO and MVNO.

Issue 3: To what extent should the MVNO be permitted to set up their own infrastructure?

MVNOs being virtual operators can not be allowed to own or share spectrum with MNO. Since MVNOs will not be holding spectrum, they should not be permitted to install Radio Access Networks. The MVNOs at most can be allowed to have their own core and value added platforms like voicemail, IN, SMS, billing etc. They should be allowed to brand and bundle the product along with the distribution of their own SIM.

Issue 4: (i): What Regulatory Model should be followed for MVNO in the Indian context?

(ii): What kind of obligations may be imposed on MNOs so that Mobile Virtual Network Operations are implemented effectively in India benefiting the customers?

Please elaborate the comments with appropriate reasoning.

The Authority has proposed two models, (i) regulatory intervention by deciding whole sale rates for access service and (ii) hands-off approach and allows market led growth for MVNO.

We do not support regulatory intervention for MVNO on 2G , 3G or BWA networks. We strongly support that a MVNOs may be allowed on commercially negotiated terms. The regulatory intervention is considered only when markets have failed and there is not enough competition. Since Indian mobile market is highly competitive, there is no need of any significant regulatory step requiring mandatory access to MVNO. It is expected that the HH Index which is already the lowest in the world will significantly fall further once new 2G operators start services. In the competitive market, there should not be any need of regulatory intervention even if commercial negotiations fail between MVNO and MNO. We should follow the example of European Union, where there is no directive that obliges MNOs to grant access to MVNOs.

- Issue 5: What should be the eligibility criteria for MVNO?**
&
Issue 6: Do you suggest different eligibility criteria for different MVNO models and regulatory frameworks? If Yes, Please suggest with justification thereof.

As mentioned in the Consultation paper, the entry barriers should not be such that the genuine MVNOs are not able to make it. At the same time, there should be provisions so as to encourage serious players only.

The following broad eligibility criteria is suggested

- (i) The applicant must be an Indian company, registered under the Indian Companies Act' 1956
- (ii) Networth
Rs 50 Crores for Metro and Circle A
Rs 25 Crores for Circle B
Rs 15 Crore for Circle C

The total networth will be Rs 50X+Rs25Y+Rs15Z, where X, Y and Z are number of A, B and C category circles
- (iii) FDI 74% and all the other allied guidelines on FDI should be applicable on MVNOs.
- (iv) Cross holding No single company/ legal person, either directly or through its associates, shall have substantial equity 10% holding in more than one LICENSEE Company (MVNO or MNO) in the same circle

The proposed networth eligibility condition is 50% of the networth requirement for UASL. It is because MVNO is not required to make heavy investments in the radio access network. It only needs limited investments for core, voice mail, SMS, pre-paid, billing systems etc.

- Issue 7: Should there be any restriction on the number of MVNOs attached to an MNO? Please elaborate the comments with appropriate reasoning.**

There should not be any restriction on number of MVNOs attached to a MNO; however, it should be ensured that a MNO does not oversell its capacity by compromising on the quality of service.

The MNOs and MVNOs should be subject to same QoS standards. MVNO should also be subject to the billing and metering audits, quality of service surveys etc.

Issue 8: What should be the commercial model/framework for spectrum sharing by MVNO; w.r.t. (i) Department of Telecom and (ii) MNO?

We strongly disagree with the proposal to allow sharing of spectrum by MVNO. In case MVNO owns or shares spectrum then it will not be a virtual operator but a facility based MNO. The MVNOs will be indistinguishable from Unified Access service provider as both would be setting up their own access network. In case MVNO owns its own radio spectrum and radio access network then it should be governed and covered under the existing UASL regime and not under the proposed MVNO guidelines.

Since MVNOs can't own Spectrum, there is no need of any commercial model / framework for spectrum sharing with either the Govt. or MNO.

Issue 9: What should be the service obligations of MVNO? Please list them with justification thereof.

Once customer is acquired by MVNO then all service obligations and management becomes the responsibility of MVNO. These obligations shall include but not limited to:

- (i) Subscriber verification;
- (ii) Tariffs as per TRAI's Regulations, Directions and Orders;
- (iii) Informing DoT before launch of new services
- (iv) Implement Unsolicited Commercial Calls Regulation;
- (v) Mobile Number Portability;
- (vi) Implement Telecom Consumers and Grievances Redressal Regulation, 2007
- (vii) Comply with all QoS Regulations
- (viii) Submit all statutory and other reports and information sought by DoT or TRAI
- (ix) Carryout detailed accounting separation as mandated under the Accounting Separation regulation
- (x) Maintain all books of account as mandated by DoT and TRAI.

The MVNO will have the same obligation to port numbers as imposed on MNOs. However, we would draw a distinction between a customer request for porting of number and the porting of entire subscriber base of MVNO from one MNO to another MNO. The porting of entire subscriber base is a commercial term and should not be covered under the MNP guidelines. The option cannot be given to MVNO alone to port numbers to another MNO.

Further, we would stress that in case there is violation of QoS parameters or TRAI's other Regulations/Directions/Orders, then MNO should not be held responsible merely because MVNO has entered into an agreement for using its access service.

Issue 10: What should be the method and consideration for determining the entry fee for MVNO?

Since no spectrum is being allotted to the MVNOs, the entry fee could be nominal equivalent to Rs. 10 Crores for Category A and Metro Circles, Rs. 5 Crores for Category B Circles and Rs. 3 Crores for Category C Circles.

Issue 11: What should be the definition of AGR for MVNOs?

MNO and MVNO should have same definition of AGR for the purpose of payment of license fee. The license fees for MVNOs should be the same as for MNOs. The wholesale revenue paid by the MVNO to the MNO should not be included in the AGR for the MNO.

**Issue 12: What is the best way to protect the subscribers both in terms of Continuity of service and applicability of tariff plan:
i) In case of a dispute between MVNO and MNO?
ii) In case MVNO wants to exit the business.**

The disputes between MVNO and MNO are to be treated as disputes between any other service providers. TDSAT has powers to adjudicate disputes between service providers and disputes between MNO and MVNO fall under TDSAT's jurisdiction. With respect to the tariffs, the MVNOs should file their own tariff plans with the TRAI and all regulations of TRAI with respect to tariffs also should be applicable to MVNOs.

As per the licensing condition, it is the duty of the licensee to ensure continuity of services to its customers unless License is Terminated or Suspended by the Licensor for any reason whatsoever. In this case, MVNOs would be fully responsible for the services to their customers. It does not sound reasonable to ask the MNOs to inherit the subscribers under the same tariff plan as they were enjoying under the MVNO, if it decides to wind up. This should be left to the market forces. If an MVNO exists the business then the customers are free to move to any other network and since MNP is coming up, this would not cause disruptions. And the market forces will determine as to what kind of options the other operators including the host MNO will offer to the customers. Further, the licensor has right to take over the network to run it itself or through a selectee.

Issue 13: Should there be any roll out obligations specified for MVNO? If yes, what should be the penal provisions for failure/ delay in fulfilling the obligations.

Since MVNO is not a facility based operator, there should not be a rollout obligation.

Issue 14: What shall be the specific guidelines on the Mergers and Acquisitions of MVNO? Please elaborate the comments with appropriate reasoning.

Merger of MVNO with other MVNO or MNO should be allowed as per the existing merger and acquisition guidelines.

Issue 15: Should there be any restriction on cross holdings between two MVNOs and between MVNO and an MNO in a service area? Please comment on the nature and scale of restructuring.

With respect to cross holding restrictions, as a general statement, we do not support imposition of such restrictions, especially when market is competitive. Notwithstanding this, cross holding restrictions are already in place for MNO; MVNO should also be subject to similar restriction.

Issue 16: What should be the FDI limit for MVNO?

Since both MVNOs and MNOs will be providing similar services in a given area, the FDI limit should be same as UASL i.e 74%.

Issue 17: What should be the quantum of FBG and PBG for MVNO?

Since MVNO will not have rollout obligations, PBG may not be insisted upon. However, the FBG should be Rs. 10 Crores for Metro and Category A Circles, Rs. 5 Crores for Category B Circles and Rs. 3 Crores for Category C Circles.

Issue 18: Any other relevant issue you would like to suggest/comment upon.

Roaming Issue

MVNO if enters into an agreement with an operator like BSNL for a particular circle which does not have roaming arrangements with any other operators then it is likely that MVNO subscribers would not be able to avail roaming services. **It is therefore proposed that roaming amongst all MNOs may be mandated.**

Numbering

The MVNO should have separate mobile network code so that its subscribers could be distinguished from MNO' subscribers. This shall also facilitate direct interconnection agreement between MVNOs and MNOs. In case separate numbering is not extended to the MVNO, then it shall not be able to negotiate commercial interconnection arrangements with other operators.

Interconnection Issues

MVNO has right over termination charge. Therefore, MVNO should be allowed to enter into commercial arrangements and negotiate termination charges and other relevant charges with all other MVNOs, MNOs and BSOs.

Number Portability

The MVNO will have the same obligation to port numbers as imposed on MNOs. However, there should be a distinction between a customer request for porting of number and the porting of entire subscriber base of MVNO from one MNO to another MNO. The porting of entire subscriber base is a commercial term and should not be covered under the MNP guidelines. The MVNO cannot unilaterally decide to port numbers to another MNO.

Quality of Service

We would like to stress that in case there is violation of QoS parameters or TRAI's other Regulations/Directions/Orders, then MNO should not be held responsible merely because MVNO has entered into an agreement for using its access service. MVNOs will be separate licensees and separate entity and shall be required to comply with all rules, regulations, order, licensing conditions etc.