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Shri Sudhir Gupta
Pr. Advisor (MS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi – 110 002

Sub.: Draft Guidelines for Unified License / Class License and Migration of Existing Licences

Ref.: Consultation Paper No. 03/2012 dated 10th February 2012

Dear Sir,

This is with reference to the captioned consultation paper No. 03/2012 dated 10th February 2012 released by Hon'ble Authority. We would like to sincerely thank the Hon'ble Authority for considering request made by our industry association (ACTO) for including the issue of "Migration of Existing Licenses" within the scope of current consultation.

AT&T Global Network Services India Private Limited (AGNSI) is pleased to submit our comments and suggestions on the consultation paper (enclosed as Annexure – I) for the kind consideration of Hon'ble Authority.

AGNSI is an existing licensee and provides services under the International Long Distance, National Long Distance and Internet Services License granted by Department of Telecommunications. Our comments are from the perspective of an existing vertically non-integrated telecom operator which addresses both the important issue of Migration and new guidelines.

We hope that our comments / suggestions will merit the consideration of the Hon'ble Authority.

Thanking you,

Respectfully submitted,


Naveen Tandon
Authorised Signatory

Encl.: As above

Background

Before proceeding to provide comments / suggestions on the draft guidelines including Migration, we would like to highlight that amongst others, it is important to view the Stakeholder's perspective on any licensing regime:

Government's Perspective

- Ushers in lower cost for consumers
- Future proof from technology and service point of view
- Enhanced competition in the market
- Make Regulations and Compliance Simpler and Certain
- Increase Access and Tele-density
- Removes Arbitrage
- Enhances Transparency in Decision Making

Industry's Perspective

- Make Entry and Exit simpler.
- Lower cost of service
- Enhanced regulatory predictability
- Allow access to New Lines /Avenues of Business
- Enhance Infrastructure Sharing
- Avoid Duplication of Infrastructure
- Make compliance easier and reduced discretionary powers

Consumer's Perspective

- Enhances Affordability and Access
- Access to state of the art services
- Drive competitiveness through telecom and technology
- Remove licensing silos as service barriers
- Ease of service, contracting and billing

In order to achieve the stated objectives of draft NTP 2011, the unified license per se will need to consider the above broad stakeholder's perspectives. The guidelines will need to be framed keeping the above as a yardstick to measure the success.

The press announcement made on 15th February 2012, has defined all future telecom licenses to be Unified License (UL). The Unified License for Telecommunications services have already been in-principally approved by an Addendum to the New Telecom Policy -1999 vide letter dated 11th November 2003. It has received the same recognition in the draft NTP 2011 to further exploit the benefits of convergence of technology, service, networks and devices. While we note the press announcement and the future direction, we would like to highlight some of the key points for Hon'ble Authority's kind consideration which needs to be addressed while finalising the draft guidelines.

a. There is a somewhat seeming variation between the draft Unified License in the way it is set out in the draft National Telecom Policy 2011 and the current consultation released by Hon'ble Authority. We would humbly request if this matter may kindly be addressed in terms of how this is planned to be reconciled in the final guidelines.

b. There were certain key driving factors which led to the Unified License been recommended in October 2003, November 2005 and May 2010. We understand that key among those were delinking license with spectrum. Given the new license proposed, post the Judgement of Hon'ble Supreme Court do the original reasons of "delinking license with spectrum" still needs to be addressed.

c. What kind of demand has been estimated for Unified License from potential New Entrants and existing players. Would a standalone UASL circle wise license be better equipped to deal with the spectrum license delinking process independent of the obligations posed under NLD, ILD and ISP licenses.

We humbly submit that the above points also need to be considered while arriving at the final recommended guidelines.

It is with the above background, we would like to submit our comments / suggestions on important aspects which need to be considered while arriving at a Unified License and Migration of Existing Licenses.

As an existing licensee, we have provided our comments on following broad issues which are critical while finalizing guidelines for Unified License as it relates to existing licenses and future license framework.

- I. Conversion of Existing Licenses to Unified License (Restricted) category
- II. Migration of Existing Licenses to Unified License Category
- III. Entry Fee
- IV. Minimum Network Requirement
- V. Scope of Unified License
- VI. Convergence of Service / Technology / Networks
- VII. Impetus to Resale in the Unified License
- VIII. Review of Definition of Adjusted Gross Revenue
- IX. Uniform License Fee
- X. Major and Minor Violations
- XI. Review of Current Foreign Direct Investment Limit
- XII. Infrastructure Sharing
- XIII. Security

Comments on Migration of Existing Licence to Unified Licence

I. Conversion of Existing Licenses to Unified License (Restricted) category

We note the consultation paper suggests automatic conversion of all existing licenses to a **Unified License (restricted)** category. There will not be any change in the terms and conditions including scope of existing licenses post conversion. There will be no additional entry fee paid by the existing licensees for conversion and no change in the current validity of the licenses.

In view of the above, the need for carving a separate category for converting existing licenses is somewhat unclear. In 2003, when the Unified as a concept was approved by an addendum to NTP – 1999, the nomenclature of existing categories of access licenses remains un-changed., there seems to be no visible advantage of introducing a category only for conversion.

We request Hon'ble Authority to kindly retain the current nomenclature of existing licenses that do not plan to migrate to a Unified License i.e., status quo of existing licenses should be maintained. There seems to be no visible advantage for introducing a category only for conversion when Unified License as a concept has already been approved in 2003 and there is no change to the existing licenses who currently do not plan to migrate

II. Migration of Existing Licenses to Unified License Category

Migration

We support the draft guidelines suggesting migration to Unified License to be optional and not compulsory. The migration should only happen when the current validity of the existing license expires or if there is a need to enhance the current scope of services / service area. We duly note the recent policy announcement (vide Press Release dated 15th February 2012), defining all future telecom licenses to be Unified License. **However, the existing service providers should be allowed to maintain status quo and the migration should continue to remain optional.** There should not be any change or imposition of new provisions / requirements that may be detrimental to the rights and obligations and / or impose additional financial obligations of the existing licensees.

III. Entry Fee

We note that the Unified License prescribes the following one-time non refundable entry fee of INR 20 crores for different categories of Unified License:

- I. Rs. 20 crore for National Level Unified License
- II. Rs. 2 crore for Metro and 'A' category Service Area
- III. Rs. 1 crore for 'B' category Service Area
- IV. Rs. 50 Lakh for 'C' category Service Area
- V. Rs. 15 Lakh for District level Unified License

This will pose major financial implications for existing standalone vertically non-integrated operators like us who have already paid stipulated entry fee when securing licenses.

While it is important to have an entry fee to deter non-serious players, however it is equally important to ensure that the existing service providers (who plan to ensure status quo) are not placed in a worse off situation.

The concept of Entry Fee is generally applicable for new entrants who plan to secure a particular license for the first time or those who plan to add additional services under the scope of current licenses.

There will also be licensees who will post migration would like to maintain status quo. Upon migration the stipulated entry fee for such licensees should not be imposed. There should be at best a very nominal processing charge to cover the administrative effort required to migrate after fully considering the entry fee already paid for existing licensees. The entry fee should be paid by new telecom entrants.

In case an existing migrated unified licensee wishes to enhance its current scope of service / geographical area of operation, the concept of "pay as you use" should be considered while imposing a entry fee which could be the one currently established as below. For e.g., a existing internet service provider wishes to provide ILD services. In such a case a entry fee of INR 2.5 crores need to be paid up-front.

Sr. No.	Name of the License	Stipulated Entry Fee
1.	International Long Distance (ILD)	2.5 crores
2.	National Long Distance (NLD)	2.5 crores
3.	Pan India Internet Service License (ISP)	30 Lacs
4.	GMPCS	1 crore
5.	IPLC Resale	1 crore
6.	VSAT	30 Lacs
7.	IP-1	-
8.	UASL (without spectrum - wireline)	-
9.	PMRTS	-
10.	Voice Mail / Audio Text / Unified Messaging	-
11.	INSAT Mobile	-
	Total	7.60 crore

The entry fee under the previous recommendations in 2003 and 2005 on Unified Licensing was evolved based on detailed consultation and analysis with the stakeholders. However, the justification for recommendation of INR 20 crores in the absence of a detailed analysis and consultation is somewhat unclear.

As can be inferred from the table above, the entry fee for the collective services which are within the current suggested scope of a National Unified License is far less than INR 20 crores..

Therefore, the stipulated entry fee of INR 20 crores needs to be reviewed a fresh. In our view either the entry fee should be based on current levels as mentioned in the table above as no scare national resource (e.g., spectrum) is bundled with the Unified License.

IV. Minimum Network Requirement

The draft guideline stipulates the minimum network requirement of INR 25 crores for National Level Unified License. This is considerably higher as compared to the existing requirements under ILD/NLD and ISP licenses. We request Hon'ble Authority to rationalize the net worth requirement to a reasonable level.

V. Scope of Unified License

The draft National Telecom Policy, 2011 envisages two separate categories for technology neutral Unified Licenses as below:

"3.7. The technology neutral Unified Licenses are envisaged to be in two separate categories:

3.7.1. Network Service Operator (NSO)/ Communication Network Service Operator (CNSO)

3.7.2. Service Delivery Operator (SDO)/ Communication Service Delivery Operator (CSDO)

3.8. Network Service Operator (NSO) would be licensed to set up and maintain converged networks capable of delivering various types of services e.g. Voice, Data, Video, broadcast, IPTV, VAS etc. in a non-exclusive and non-discriminatory manner.

3.9. The Service Delivery Operator (SDO) would be licensed to deliver any/ all services e.g. tele-services (voice, data, video), internet/broadband, broadcast services, IPTV, Value Added Service and content delivery services etc." (Emphasis Supplied)

However, the current draft guidelines, suggests and seeks inputs on the following framework of Unified License:

- Unified License
- Class License
- Licensing through Authorization
- Broadcasting Services

The framework is somewhat at seeming variance in the way it is set out in the draft National Telecom Policy 2011. It remains somewhat unclear as to which framework will eventually prevail in order to achieve the stated objectives in the draft NTP 2011 including the one to create One Nation – One License across services and service areas.

We would like to humbly submit Hon'ble Authority that it is important for the above to be reconciled and considered before finalizing the guidelines and also from a futuristic perspective.



Scope of Licence for Unified Licence (National level / Service area level / District level), Class Licence and Licence through Authorisation.

In our view, the scope of licenses under Unified License:

National Level

All types of telecom services which currently are part of various existing / current license regimes / registration or which require additional licenses. Service area should be pan India. This should facilitate resale of all services at all levels (wholesale and retail in particular) which presently is limited to IPLC only.

Service Level

All types of telecom services which are currently permitted to a service area specific license. For e.g. UASLs (Metro or Category A, B or C), Internet Services, Voice Mail etc. The service area should be same as in UASL, ISP etc. Resale of all services at all levels (wholesale and retail in particular) should be permitted.

District Level

All types of telecom services which are currently permitted to a service area / category C / Secondary switching area specific licenses. For e.g. Internet Services, etc. Resale of services should be permitted.

Class License

We have no comments.

License thru Authorisation

Consistent with Hon'ble Authority's recommendations of 2005, the scope of License thru Authorisation will be as follows: "The category will cover the services for provision of passive infrastructure and bandwidth services to service provider(s), Radio Paging, PMRTS, Voice Mail, Audiotex, Video Conference, Videotex, E-Mail service, Unified Messages Services, Tele-banking, Tele-medicine, Tele-education, Tele-trading, E-commerce. Other Service Providers, as mentioned in NTP-99 and Internet Service Providers restricted internet Telephony (Personal Computers (PC) to PC; within or outside India, PC in India to Telephony outside India, IP based H.323/SIP Terminals connected directly to ISP nodes to similar Terminals; within or outside India), but not Internet Telephony in general. The category should also cover Voice mail / audiotex / UMs services and Radio paging.

Broadcasting Services

We have no comments.

VI. Convergence of Service / Technology / Networks

We support that the Unified License will be service agnostic and technology neutral, allowing the provision of any telecom service on non-exclusive basis, anytime, anywhere, using any technology within the licence area. It should recognize and provide flexibility to embrace future evolving technologies like cloud computing, M2M which should include (remotely operated irrigation pumps, smart grids, vehicles etc). M2M should also recognize and facilitate seamless M2M roaming without in-country restrictions. These represent tremendous opportunities, especially as their roll-out becomes more widespread. On critical issues such as security requirements relating to lawful intercept and monitoring, Remote Access, Encryption, there is a need to evolve specific guidelines keeping in mind the unique requirements of the Enterprise Services and Data sector customers, their global networks and need for internationally consistent demands from telecom service providers across the world

The draft National Telecom Policy 2011 aptly supports the same as below:

“10.2. To undertake a comprehensive review of critical issues such as encryption, security, privacy, interconnection, etc. keeping in view emerging technologies and unique needs of the sector.

10.3. To recognize the role of new technologies in furthering public welfare and enhanced customer choices through affordable access and efficient service delivery. The emergence of new service formats such as Machine-to-Machine (M2M) communications (e.g. remotely operated irrigation pumps, smart grid etc.) represent tremendous opportunities, especially as their roll-out becomes more widespread.” (Emphasis Supplied)

10.4. To adopt best practices to address the issues related to cloud services and M2M for example privacy, network security, law enforcement assistance, inter-operability, preservation of cross- border data flows to promote a global market for India.” (Emphasis Supplied)

However, we note that the proposed service agnosticity and technology neutral approach seems to be subsequently qualified with specific restrictions to segment of PSTN and VoIP/IP Telephony networks in general and more specifically extending to the Closed User Group (CUG) environment. This would impact the transition towards achieving the stated objectives of convergence goals of networks / services / devices as stated in the draft National Telecom Policy 2011 as below:

“3.1. To orient, review and harmonise the legal, regulatory and licensing framework in a time bound manner to enable seamless delivery of converged services in technology neutral environment. Convergence would cover:

3.1.1. Convergence of services i.e. convergence of voice, data, video, Internet telephony (VoIP), value added services and broadcasting services

3.1.2. Convergence of networks i.e. convergence of access network, carriage network (NLD/ILD) and broadcast network

3.1.3. Convergence of devices i.e. telephone, Personal Computer, Television, Radio, inter-operable set top boxes and other connected devices" (Emphasis Supplied).

In order to realize the true convergence of services, networks and devices, the present restrictions / barriers between different PSTN / IP / CUG~PSTN networks should be removed under the Unified License to ensure seamless interconnection.

VII. Impetus to Resale in the Unified License

The draft National Telecom Policy aptly states:

"3.10. To facilitate resale at service level – both wholesale and retail – especially keeping in mind the need for robust competition at the consumer end while ensuring due compliance with security and other license related obligations." (Emphasis Supplied)

In view of the above, we request Hon'ble Authority to consider allowing resale of any telecom service both at the wholesale and retail level. The international best practices in most of the countries allow resale of any 3rd party telecom services, some with specific reseller licence whilst a full fledge telecom licensee would normally be allowed to resell any 3rd party telecoms services including without the need for any value addition.

In view of the recent judgment by Hon'ble Supreme Court, the sector will witness reduction of number of operators. This may affect the competition and may also result in higher tariffs and consolidation in the sector. Therefore it is important that resale of telecom services be allowed at both the wholesale and retail level. This will provide further impetus will ensure availability of telecom services in rural areas which will help increase the rural tele-density.

VIII. Review of Definition of Adjusted Gross Revenue (AGR)

It is important that when rules determining a new license are being written, it is important that the previous aberration need to be reviewed. Accordingly the definition of Adjusted Gross Revenue (AGR) for payment of license fee needs to be reviewed. The present definition subjects all avenues of revenue (telecom and non-telecom) accrued to the licensee company to license fee. Also the permissible deductions are restricted only to voice based pass through charges (interconnection), service and sales tax paid.

The Unified License should consider revenues accrued only from telecom sources for license fee payment purposes. Interconnection cost should also consider payment made for bandwidth charges which forms and integral part of data services. This will eliminate the issue of multi stage assessment of license fee which is currently in vogue and severely impedes competition in the enterprise services and data sector. Therefore input cost (i.e. interconnection / IUC and bandwidth cost for voice and data respectively) should be allowed for deduction while calculating AGR.

IX. Uniform License Fee

Uniform license fee under the proposed Unified License should be capped at the rate 6 % or lower of AGR. The ILD/NLD/ISP sector continues to operate under a uniform license fee of 6% which should be maintained under the Unified License.

The aberration noted in certain services sector due to multiple license fee structures perhaps also needs to be corrected by introducing a uniform license fee of 6%. The telecom sector should not be viewed as tool for revenue generation which should be secondary objective.

The draft National Telecom Policy 2011 states as below:

"In achieving the goals of National Telecom Policy 2011 revenue generation will play a secondary role".

"Direct revenue generation would continue to remain a secondary objective". (Emphasis Supplied).

The regulatory charges imposed on the Indian Telecom Sector are possible highest in the world. Efforts should be made to achieve the stated objective of draft National Telecom Policy 2011 as below:

"11.3. To rationalize taxes and levies affecting the sector and work towards providing a stable fiscal regime to stimulate investments and making services more affordable." (Emphasis Supplied)

We appreciate TRAI's recommendation in this regard for a uniform license fee at 6% of AGR which should be implemented in the Unified License. This will be consistent with Hon'ble Authority's recommendation dated May 11,2010 and subsequent reference to DoT dated 3rd November 2011.

Further the license fee should not be subject to any presumptive AGR or subject to minimum entry fee requirement. The same should be based on the actual AGR. Presumptive AGR would not be a correct criterion for license fee payment as it will in some manner be equivalent to the fixed license fee regime prevalent prior to 1999 which was not linked to revenue of the licensee. The context of presumptive AGR is applicable for those licensees who after securing licenses / scare resource do not put it to intended use leading to possible loss to the exchequer.

We would request Hon'ble Authority for not uniformly applying the concept of "presumptive AGR" to Unified License.

X. Major and Minor Violation

Determination of actions which would be categorized as Major and Minor are too subjective to in nature for the purpose of levy of penalty. Generally, minor violation may perhaps be attributed / related to administrative compliance issues whilst major violation may perhaps related to the security breach / financial loss to the ex-chequer / classified as criminal offence. It is requested that determination of violation and the penalty amount should be determined on a case to case basis given the multiplicity of legal framework for appeal present today.

XI. Review of current Foreign Direct Investment Limits

Presently in telecom sector the Government has allowed total foreign equity in the paid up capital of the applicant company up to 74% of the total equity. Foreign direct investment (FDI) in India has played an important role in the development of the Indian economy.

It has enabled India to achieve a certain degree of financial stability, growth and development. The telecom sector is among the leading sectors attracting FDI. A number of reforms in telecom sector have led to an increase in FDI inflow.

We believe that both in the current and future time frame, data will transform the Indian telecom industry the way voice did in the previous decade. This will entail and require additional capital for R&D, innovation, technological up-gradation etc. As the Enterprise Data Services has huge potential to double the current market size in terms of the revenue, we suggest that FDI policy permitting foreign investment should be further liberalized and it should be reviewed and suitably enhanced.

XII. Infrastructure Sharing

Presently there are restrictions on the sharing of both active and passive infrastructure between various telecom operators and service providers. This has resulted in unnecessary duplication of infrastructure, which could lead to further issues to industry moving forward as operators consider moving into NGNs and new technologies, and where there are extremely heavy costs involved. We request Hon'ble Authority for inclusion of suitable guidelines which allows of infrastructure (active and passive) across various services within the ambit of Unified License. All services should be allowed to be provided through a common infrastructure. Especially sharing of active infrastructure which help promotes MVNOs should be encouraged. The recommendations of Hon'ble Authority have already been approved by Department of Telecommunications. The Unified License should also permit MVNOs by issuing suitable guidelines.

XIII. Security

The Telecom sector has witnessed phenomenal growth ever since it was opened up for private sector participation post the liberalization reforms introduced in 1991. Telecom is a security sensitive and technology cum innovation savvy sector. Every second a innovation (in the form of service / solution) is developed. This brings the legitimate need to address national security, network security at the same time the needs of the customers to bring solutions / technology to their door step.

Specific to operators who provide CUG/VPN and other data services as permitted under the ILD,NLD and ISP licenses, one of the important concerns has been for a need for separate security rules for data services. Almost all the security related conditions are pre-dominantly voice centric. There is certainly a need for a fresh look on this front. Even though the licenses are technology neutral but the services which the emerging technologies are able to deliver and its related security compliances do not find any mention in the existing framework. The Unified License should certainly recognize and address the legitimate security related requirements of the emerging Enterprise Data Services Sector.

There is a need for clarity on the guidelines and specifics including technical details for the security systems that need to be deployed which is especially true with the service providers who are focused on data and IP. Specifically on the LIM/LIS requirements there is need to have the Centralised Monitoring System (CMS) in place.