BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)
Regulation Branch, Corporate Office
611, Statesman House, B-148, Barakhamba Road New Delhi-110 001

No: 1-12/2007-Regln. **Dated 6th July, 2007.**

To,

The Secretary,
Telecom Regulatory Authority of India
MTNL Telephone Exchange Building,
Jawahar Lal Nehru Marg, Minto Road,
New Delhi-110 029.

{ Kind attention Shri Sudhir Gupta, Advisor (MN), TRAI, New Delhi }

Subject : Consultation Paper on Review of license terms and conditions and capping of number of access providers.

Kindly refer to your Consultation Paper No. 7/2007 dated 12th June 2007 on the subject.

Merger and acquisitions are the need of a growing economy and the telecom sector. However, the issue has to be dealt with such a caution that while permitting it, it is ensured that the competition in the market is not diluted and the monopolistic aspiration of the dominant operators are effectively dissipated. Accordingly, it is felt that the present limit of 10% holding must be allowed to continue. Also in sector like telecom the merger and acquisitions are likely to lead very complicated situations vis-a-vis technology, spectrum and roll out obligations. These have to be dealt with abundant caution that the requirements / expectation of the existing operators are not adversely affected. Accordingly, availability of the spectrum to the existing operators must be effectively addressed.

By the rule of custom practice, an operator has the choice of technology and once technologies is selected an operator must continue with it. However, the same operator may be permitted to operate in other LSAs with the change of technology under a new license. This principle is well thought and it also takes care of the limited resource of spectrum. As it is, it is too early to fiddle with such a established norm of the telecom sector in view of the current level of competition and availability of spectrum. However, if unavoidable then the spectrum requirements of the existing operators and the competitiveness of the sector must not be lost sight of.

In the growing telecom sector where the number of subscribers are likely to be doubled in the next three years, the networks are in their formative stage. The roll out obligations have very far reaching consequences. Good roll out obligations shall lead to networks expansions covering left out geographical areas and population. Some of the roll out obligations which where diluted in the recent past, need to be restored in the interest of network expansions and thereby availability of services to the remote locations of the nation, specially with regard to access services, thus, bolstering the national economic activity.

There is also a need to bring out a wide paper on the policy and availability of spectrum to various existing operators on a long term basis before any action is taken for introduction of new operators either in CDMA or in GSM Band.

It appears that through this Consultation Paper it is being evaluated as to what is required to be done if one / some operators ask for spectrum allotment for the other technology. Before deciding on individual cases, it must be evaluated on a wider and more complete scale as to what shall be the scenario if all the operators ask for allotment of spectrum in the other technology.

This will help bring out clarity to the stake holders so as to enable them to make proper business plans. This in turn will help the nation in achieving the targets of tele-density. Also this is going to bring about a clear and credible picture of the telecom sector nationally as well as Internationally which will go a long way in attracting FDI and various other inputs which may be essential to keep up the present growth pattern of the sector.

The para-wise comments on your Consultation Paper are as given below: -

Issues for Consultation	**Comments**
Q1. How should the market in the access segment be defined (see ¶2.22)?	The access market should be defined based on the licence and service area.
Q2. Whether subscriber base as the criteria for computing market share of a service provider in a service area be taken for determining the dominance adversely affecting competition, If yes, then should the subscribers take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer.	It appears that the orientation of the service providers is towards cellular services or MSC based WLL services. It is, therefore, suggested that the VLR based subscriber count may continue to be the basis as it is logical. This will help in checking the tendency of overstating the subscriber base.

Q3. As per the existing guidelines, any merger/acquisition that leads to a market share of 67% or more, of the merged entity, is not permitted. Keeping in mind, our objective and the present and expected market conditions, what should be the permissible level of market share of the merged entity? Please provide justifications for your reply?	It is felt that the existing provision of 67% market share will create non-competitive / monopolistic situation. it is, therefore, suggested that this limit should be brought down to about 40%.
Q4. Should the maximum spectrum limit that could be held by a merged entity be specified? a. If yes, what should be the limit? Should this limit be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA operators? If yes, please specify the respective limits? b. If no, give reasons in view of effective utilization of scarce spectrum resource?	Yes, there should be a criteria specified for working out the spectrum limit. a & b. There is no issue as far as merger of entities having same technology networks is concerned. The merged entities shall have to merge their networks. The spectrum of the merged entity should be worked out based on the total subscriber base on the date of merger. Extra spectrum available with the entity should be withdrawn within a period of six months from the actual date of merger. In the case of CDMA/ GSM merger, it may be noted that the two networks cannot be merged accordingly it shall be a case of non plausible merger. Therefore, it is proposed that this kind of heterogeneous merger should not be permitted. However, if decided to permit such a merger then it is suggested that total spectrum requirement in CDMA and GSM bands should be calculated separately assuming that the combined subscriber base is to be served by either CDMA or GSM. The lower of the two bandwidths should only be permitted to the merged entity. The choice of distribution of the bandwidth

	between GSM and CDMA should be left to the merged entity.
Q5. Should there be a lower limit on the number of access service providers in a service area in the context of M&A activity? What should this be, and how should it be defined?	The existing policy of at least 3 players operating in each LSA post M&A should continue.
Q6. What are the qualitative or quantitative conditions, in terms of review of potential mergers and acquisition and transfers of licenses, which should be in place to ensure healthy competition in the market?	No specific comments other than given in this paper like equity, market share etc.
Q7. As a regulatory philosophy, should the DoT and TRAI focus more on ex post or ex ante competition regulation, or a mix of two? How can such a balance be created?	Focus should be on the situation which shall prevail after the M&A. However, situation before M&A shall have to be given due consideration.
Substantial Equity	
Q8. Should the substantial equity clause (1.4 of UASL) continue to be part of the terms and conditions of the UAS/CMTS license in addition to the M&A guidelines? Justify.	Yes, it may continue as per existing license condition. This limit has worked well so far and appears relevant even today. Higher the stake, higher will be the control in the management of acquired company. Therefore, the condition should be that the acquiring company should not gain management control over the acquired company even with 10% or less equity. Rest of the anti-competition issues shall be taken care of in accordance with the provisions contained in Competition Laws.
Q9. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.	Please see reply for Q. 8 above.
Q10. If no, should such acquisition in the same service area be treated under the M&A Guidelines (in the form of appropriate	Not applicable in view of answer to Q.9 above.

terms and conditions of license)? Suggest the limit of such acquisition above which, M&A guidelines will be applied.	
Q11. Whether a promoter company/legal person should be permitted to have stakes directly or indirectly in more than one access License Company in the same service area?	The criteria of 10% limit on equity as elaborated in reply to Q.8 above should be applicable for direct or indirect equity holding / stake for same type of licence.
Q12. Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?	Existing Corporate laws have sufficient provisions and safeguards towards definition of promotion etc. it may not be worthwhile to redefine the same.
Q13. Whether the legal person should be defined and if so the category of persons to be included therein and if not the reasons therefor.	Existing Corporate Laws as well as various judicial pronouncements have amply defined the concept of legal entity.
Q14. Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?	Yes, Central Govt., State government and PSUs may be taken out for the purpose of calculating substantial shareholding. The Central and State PSUs being 'State' within the meaning of article 12 of the Constitution of India and are also amenable to writ jurisdiction of the Courts and are not only engaged in the business of service provisioning but are also discharging the functions of the State.
Permitting combination of technology under same license	
Q15. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned	No, Please also see answer to Q.4.

additional spectrum meant for the other technology under the same license?	
Q16. In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chosen alternate technology;	At the time of entry in the new technology, the minimum specified spectrum should be allotted at a sufficiently high premium price. Spectrum so allotted should be reviewed say on yearly basis in combination with the already available spectrum for the other technology and should be dealt as specified in answer to Q. 4 above.
Q17. What should be the priority in allocation of spectrum among the three categories of licensees given in ¶4.16 of the chapter?	The spectrum should be reserved for the existing operators as per their expansion plans. The road map of allocation of additional spectrum should be clearly drawn for the existing operators. At least 20 + 20 MHz spectrum should be reserved for each existing operators. Any spectrum spare, over and above, this should only be utilized for giving to category 2 and 3 i.e. new licensees and dual technology licensees.
Q18. Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?	The roll out obligation specifically linked to alternate technology should be more stringent then the ones existing for the single technology licensees so that only serious players venture into such dual technology arrangements. Otherwise, it may lead to hoarding of scares resource of spectrum.
Q19. Lastly, as such service provider would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to him?	Kindly see the reply to Q.16.
Roll out obligations	
Q20. Should present roll out obligations be	Roll out obligations must continue

continued in the present form and scale for the Access service providers or should roll out obligations be removed completely and market forces be allowed to decide the extent of coverage? If yes, then in case it is not met, existing provision of license specifies LD charges upto certain period and then cancellation of license. Should it continue or after a period of LD is over, enhancement of LD charges till roll out obligation is met. Please specify, in case you may have any other suggestion.	in the present form in order to ensure most optimum use of resources. In fact, there is a case to make the roll out obligations more stringent to enable higher geographical spread. Therefore, roll out obligations should be specified as the number of SDCAs covered as a percentage of the total SDCAs in the service area. Enhancement of LD charges before termination of licence should be specified in the new policy.
Q21. Is there a case for doing away with the performance bank guarantees as the telecom licensees are covered through the penalty provisions, which could be invoked in case of non-compliance of roll out obligations?	Performance Bank Guarantee cannot be a substitute for imposition of penalty. However, it should continue as a deterrent.
Q22. Should roll out obligations be again imposed on the existing NLD licensees? If yes, then what should be the roll out obligations and the penalty provisions in case of failure to meet the same.	In spite of removal of obligations, for roll out for the NLDOs, it is noted that NLDOs are gradually rolling out. Therefore, no purpose would probably be served by reintroducing the roll out obligations.
Q23. What additional roll out obligations be levied on ILD operators?	Original roll out obligations as prescribed in original ILD licence should be restored as India is a big country and having a single gateway switch for delivery and pick up of traffic is inadequate. Multiple switches also ensure geographical diversity of service and thus the higher reliability.
Q24. What should be the method of verification of compliance to rollout obligations?	The work of verification should be entrusted to the VTM Cells created by the DoT.
Q25. What indicators should be used to	There should be an effort to

ensure quality of service?	minimize the number of parameters keeping the focus on the end service. A detailed consultation process may be of help.
Q26. As the licensees are contributing 5 per cent of AGR towards the USOF, is it advisable to fix a minimum rural roll out obligation? If yes, what should be that? If no, whether the Universality objectives may be met through only USOF or any other suggestions.	Yes. Rural roll out obligation should be introduced as it was available in the basic service licence. However, it is to point out that because of the current policy on USOF and ADC, BSNL is suffering heavy losses. On one side, ADC is being phased out without any equivalent compensation. On the other side, BSNL is net payer in USO fund as the subsidy received by it is much lower than its contribution to the fund. It is a paradox that BSNL being the practically only rural service provider to meet the social commitments of the State, it is asked to contribute to the USO fund instead of receiving in net grant from the fund. It is felt that BSNL should be allowed to deduct rural revenue from the AGR for the purpose of calculating USO contribution. Additional steps will also be needed for adequate compensation for losses. Furthermore, the taxes and levies in the telecom sector are on the higher side and should be rationalized in the best interest of the consumers and the industry.
Q27. In case of rural roll out obligation, BTS in a certain area a viable criterion for verification of rollout obligation?	Only putting BTS in rural area is not a final solution. Roll out obligations in terms of good signal availability at least to the 90% of the population should be ensured.

	This conditions shall become extremely stringent under the poor paying capacity of rural subscribers. Accordingly, a balancing mechanism in terms of subsidy for the rural subscribers.
Q28. What should be the incentives and the penalties w.r.t. rural roll out obligations?	The operators fulfilling roll out obligation of the rural area should be incentivised by way of lower taxes, levis, spectrum charges, licence fees etc. The penalties on those operators who are not fulfilling the roll out obligation should be by way of enhancement of the above charges till the roll out obligations are completed.
Determining a cap on number of Access provider in each service area.	
Q29. Should there be a limit on number of access service providers in a service area? If yes, what should be the basis for deciding the number of operators and how many operators should be permitted to operate in a service area?	The minimum three operators should be operating in licence area so as to ensure healthy competition. The upper limit on the number of operators should be based on the availability of the spectrum to the tune of 12 + 12 MHz for each existing operator.
Q30. Should the issue of deciding the number of operators in each service area be left to the market forces?	No. The number of operators should be governed by the availability of spectrum to the existing operators as indicated above.

(Arvind Pandey)
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