



COAI's Response to TRAI Consultation Paper on draft Guidelines for Unified License/Class License and Migration of existing licenses

Preamble:

As has been envisaged in Draft NTP-2012, convergence of both markets and technologies is a reality. The licensing regime adopted by the Government too must reflect these developments.

In order to develop a licensing regime which enables the growth of services in the years to come, industry proposes the following suggestions:

1. COAI favors framework of Unified License & Class License, for moving to a holistic licensing regime.
2. Principles of level playing field and No worse-off must be adopted while deciding on the policy of migration and grant of new Unified Licence.
3. Existing licensees must have the option to continue under the existing licensing regime or migrate to new Unified Regime under a migration package.
4. Suitable mechanism may be proposed for surrender of in-fructuous licenses resulting from introduction of unified licensing. Entry fee paid by service provider be refunded / adjusted on a pro-rata basis for un-expired duration of the license.
5. Once the allocation of spectrum is not linked to license, the licensee cannot have any wireless/mobile rollout obligations; these should be left to market forces.
6. Rollout should not be stipulated in the license, but left to market forces. Accordingly there would be no requirement for Performance Bank Guarantees.
7. Financial Bank Guarantees (FBGs) should be done away with as they only add to costs.
8. The license under the unified Licensing regime should be de-linked from spectrum.
9. Annual License fee be prescribed at 6% of AGR (5% USO + 1% administrative cost) subject to a minimum fixed levy to deter non-serious players. This should be uniformly applicable to all licensees.
10. The USOF levy should be de-linked from licence fee and should be gradually reduced with time.
11. Existing numbering plan for each service may be continued under the new regime. All competing operators must have comparable numbering plans
12. A unified licensee should be permitted to directly interconnect across adjacent and non-contiguous areas (anywhere to anywhere), as right to offer long distance services is part of a unified license.



13. Scope of service should remain the same as in existing licenses, for example ICR provisions are present in existing UASL/CMTS but not mentioned in Draft Guidelines.
14. **Licensing of Infrastructure Provider – I (IP-I)**: We would also like to submit that infrastructure companies like telecom tower companies, which operate only under a “Registration” should not be brought into the purview of the licensing regime as this would tantamount to taxing land and building. A license is granted by the Government under Section 4 of the Indian Telegraph Act 1885 for parting with the privilege of “establishing, maintaining and working telegraphs.” Infrastructure Providers who provide passive infrastructure such as dark fibers, Right of Way, duct space and towers do not have the privilege of establishing, maintaining and working telegraphs and rightly operate under a Registration. Such a step would also be counter-productive as it will only lead to increase in costs and have a nullifying impact on the benefit given to service providers. **Thus infrastructure providers should continue to operate under a Registration and be exempted from license fee payments.** However, in the event that such a step was still to be considered by the Government, then it must, at the very least, provide for a set off to the service providers so as to avoid an incidence of double taxation. **Our detailed submission on the issue is enclosed as Annexure – 3.**
15. **Further, to the above we would like seek clarification from the TRAI on the issues highlighted in the Draft NTP-2012 vis-à-vis draft guidelines being proposed by TRAI:**
 - a. The draft Guidelines on the Unified License is silent on the categorization of the technology neutral Unified Licenses as highlighted in the Draft NTP i.e. into Network Service Operator (NSO)/ Communication Network Service Operator (CNSO) and Service Delivery Operator (SDO)/ Communication Service Delivery Operator (CSDO).

We request TRAI to clarify that how this aspect i.e. categorization of NDO & SDO will work in the suggested framework of National level/ Service area level/ District level licensing.

Issue Wise Submission:

1. **Kindly give your response to each clause of Chapters I to IV above.**
 - a. **COAI’s clause-wise response to the draft Guidelines for Unified License and Class license is enclosed as Annexure – 2.**
2. **What are your views on the scope of Licence for Unified Licence (National level/Service area level/District level) and Class Licence? (Clause 5 of draft guidelines for Unified Licence and Clause 5 of draft guidelines for Class Licence)**

COAI Response:



a. **Scope of Services:**

a.1) Scope of service should be same as in the existing licenses.

a.2) **District Level Unified License:** We reiterate that 'District Level Unified License' will lead to too much fragmentation and is not required. If at all allowed, the scope of the District Level Unified license should be restricted only to wireline services. They should not be allowed to offer any wireless service using free spectrum. It will lead to following issues;

- i. Spectrum allocation at district level will be very inefficient.
- ii. The issue related to geographical coverage would be very high and unmanageable.
- iii. Restricting the mobility within and outside the district will not be possible

b. **NLD/ ILD services:** The NLD/ ILD services are proposed to be included under the ambit of a unified license. It may also be noted that NLD and ILD services are essential wholesale services and competition is necessary for these services. **Therefore it is important that the national numbering plan, including the existing service area wise allocation of number series for mobile connections be left un-disturbed.**

c. **Term of License:** The term of license should be 20 years from the date of migration for new as well as migrated licensees.

d. **Arbitrage in spectrum charging:** The present allocation of spectrum and charging thereof is Circle based. Due to differences in quantum of spectrum allocated, there is different percentage of revenue share for spectrum usage charge. Also, in National license, the revenue segregation on the basis of circles may not be possible therefore different rate for different circle cannot be applied. Thus, the clarity is needed on

- f.1) Allocation of spectrum, whether circle wise or nation wise?
- f.2) How the spectrum charges will be determined under the national license?

e. **Interconnection:**

g.1) At present the Inter circle calls i.e. STD calls are routed through NLD operators. After migration to pan India Unified license, NLD license would get covered under a pan India unified licensee.

g.2) As the circle/district based unified license cannot build a network outside their geographical territory/ service area, therefore the pan India unified licensee shall be allowed to carry their calls to and from their service area.

g.3) Since, the spectrum and numbering resources are allocated on a circle basis as well as the networks are deployed on a circle basis, we would suggest the interconnection to continue at the circle level.



- g.4) The point of interconnection shall be left for mutual negotiation between the operators. However, every Point of Interconnection (PoI) shall always be in the common area of geographical jurisdiction of both the interconnecting licensees. A single level of interconnection should be identified and handover and to all types of network should be mandated at that level.
- g.5) For a national level unified licensee, it should be mandatory to have point of presence in each circle for the purpose of interconnection.
- g.6) In case any operator is unable to have a direct connectivity with other terminating operator then it can use the carriage services of any other operator. However, it should be the exclusive choice of the originating operator to choose its carrier network and terminating operator should not deny termination of the calls from any carrier network.
- g.7) It should be mandatory for each operator to provide the interconnection for termination of the calls on its network
- g.8) Any operator including BSNL/MTNL should not have any favorable interconnections rules than other operators.
- g.9) Hence, we suggest that, keeping in mind the changing dynamic of the telecom sector, TRAI should publish a new/ revised RIO.

Since, the introduction of Unified Licencing and subsequent migration of the existing licensees to Unified Licencing may lead to a comprehensive change in the interconnection scenarios; we would request the Authority to have a detailed consultation on review of the interconnection regime as well the Interconnection Usage charges simultaneously

3. What, in your opinion, are the actions that should be classified as minor violations and major violations? (Clause 10 of draft guidelines for Unified Licence)

AND

4. Even within minor and major violations respectively, what, in your opinion, should be the factors to be taken into consideration while determining the actual amount of penalty? (Clause 10 of draft guidelines for Unified Licence)

COAI Response:

- a. With regard to penalty major/ minor violations can not be defined in advance.



- b. The penalties should be minimum and should be applicable only in extreme situations where there is threat to national security.
- c. Further, we would suggest that the following to be implemented, by suitable provisions in Unified License, for imposing any kind of penalty on service providers;
 - i. A Standing Committee with representatives from DoT, TRAI and Industry be formed to look into the matters of violation. The committee should go into the merits of a particular case and should ensure that the principles of natural justice are adhered to while deliberating/ deciding on violation and the quantum of penalty to be levied.
 - ii. A reasoned show cause notice should also be served upon the telecom service provider enabling the operator to be aware of the concerns and violations being observed by the Licensor.
 - iii. The service provider should be provided an opportunity with reasonable time frame to explain their case.
 - iv. Any penalties should only be imposed while disposing off reply to show cause notice and personal hearings. Any penalty notice should be a speaking order. The order should clearly indicate as to why they did not agree with telecom operators' views.

5. These draft guidelines do not provide for Licensing through Authorisation. In your opinion, considering the services that are already covered under Unified Licence and Class Licence, is there any need for Licensing through Authorization? If so, which are the services to be so covered? And, what should be the guidelines for such a licence?

COAI's Response:

- a. The terms and conditions of Licensing through Authorization should be same as for the national Unified License. However, to incentivize the smaller operators to opting for the limited version of this license, the applicable Entry Fees, Financial Bank Guarantee and Performance Bank Guarantee may be kept at a lower level than the pan India Unified License.
- b. All services envisaged under Licensing through Authorization, should be allowed under the Unified Licensing framework as well
- c. Any kind of difference in license fee for the services provided by the Unified Licensees and the Licensee through Authorization would lead to a competitive distortion. Any license fee arbitrage may encourage a Unified Licensee to also obtain the "License through Authorisation" to provide those services. Therefore the License Fee for the 'Licensing through Authorization' should be same as applicable for similar services provided by the Unified licensee to ensure parity and level playing field.



6. Whether Voice mail/ Audiotex/ UMS services and Radio paging should continue to be under licensing regime?

COAI's Response:

- a. Yes, Voice mail/ Audiotex/ UMS services and Radio paging should continue to be under licensing regime as the services provided are essentially telegraph services as governed by the provisions of Indian Telegraph Act, 1885.

7. Is there any other service(s), which needs to be brought under licensing regime?

COAI's Response:

NA

8. In the new licensing regime, spectrum has been delinked from the Unified Licence. In such a scenario, should TRAI be entrusted with the function of granting all types of Unified Licence as is prevalent in majority of the countries in the world?

COAI's Response:

- a. We believe that the current system should continue even in the new licensing regime.

9. Presently, in case of IP- I, there is no restriction on the level of foreign equity in the applicant company. However, in case of Unified Licence, the total foreign equity in the total equity of the Licensee is restricted to 74%. Please indicate the maximum time which should be given to the IP-I to comply with the FDI condition of 74% after grant of Unified Licence.

COAI's Response:

As per the present provisions 100% FDI is permitted for the IP-1 companies. Bringing them under unified license and reducing the FDI limit to 74% will create a problem in migration of such IP-1 companies.

10. Presently, the access service licences viz. BASIC/CMTS/UASL have restrictions regarding holding of substantial equity by a promoter in more than one access service licence in the same service area. However, apart from access service licence, this condition is not applicable for any other licence. Accordingly, the proposed guidelines remove the restriction on holding of substantial equity in a company having UAS / CMTS/ Basic Licence in the same service area on migration to Unified Licence and also from the eligibility conditions given in Para 2.3 of the draft guidelines for Unified Licence. Please comment on the pros and cons of this proposal.



COAI's Response:

- a. We reiterate that IP-1 should not come under the purview of a unified license but should continue to operate under a registration
- b. Existing licensees must have the option to continue under the existing licensing regime or migrate to new Unified Regime.
- c. There may be cases where a group company holds a NLD, ILD and ISP License along with UAS License for few service areas, while its other group companies are holding UAS Licenses for different service areas. On migration to Unified Licensing regime, such a situation will arise that the Group Company will have All India Unified License that will overlap with the Service Area Unified Licenses of its other Group Entities for the respective Service Areas. This overlap of licenses which is occurring due to legacy issues should not create any inadvertent conflict /violation of existing laws/provisions. Thus clarity on this issue is required
- d. We submit that in order to ensure the no worse off principle, the substantial equity restrictions should instead be applied ONLY to spectrum holdings so that it is clearly stipulated that no entity can bid/apply for spectrum in a service area where a group company has already been allocated/assigned spectrum, i.e. the spectrum assignment is restricted to only one company in a service area.
- e. With regard to various approvals such as FIPB approvals etc., it is suggested that migration to Unified License should not affect any existing approvals. All existing approvals should automatically be extended upon migration and the same should be stated in the guidelines and licenses.
- f. There is also the issue of different effective dates for different licenses. We suggest that migration to unified license may look at re-setting the clock afresh and propose that all licenses, those acquired at an earlier date and those acquired at a later date, be made co-terminus.
- g. Upon migration the Unified License should be extended qua the 3G spectrum to 20 years from the Effective Date on existing terms without any charges.

11. Please raise any other issues you feel are relevant and offer your detailed comments on the same

COAI's Response:

Transfer of License conditions should be defined.





I. Draft Guidelines for Unified Licence

1. Framework

- 1.1 There shall be three levels of Unified Licence: National level, Service area level and District level. The applicant company can apply either for National level Unified Licence or Service area level Unified Licence ~~or District level Unified Licence. District level Unified Licence will not be given for Metro areas of Delhi, Mumbai and Kolkata.~~
- 1.2 For the purpose of the Unified Licence, the service areas shall be as listed in Annexure I.
- 1.3 A company can apply for Unified Licence in more than one service area or district. However, if a company desires to apply for Unified Licence in more than four districts in a service area, it has to apply for Service area level Unified Licence.
- 1.4 Subject to fulfilment of relevant eligibility conditions, Licence shall be issued on non-exclusive basis, without any restriction on the number of Licences.

~~1.5 In addition to a Unified Licence, the Licensor reserves the right to award/allocate Licences to offer specific services like Mobile Number Portability (MNP) services and such other services as may be recommended by TRAI from time to time.~~

~~1.6~~ 1.5 Unified Licence will not, *per se*, carry with it any spectrum. A holder of Unified Licence, other than District level Unified Licence, may separately obtain spectrum as per the prevailing policy.

COAI Submission:

- a. There should not be any District Level Unified License as this would lead to excessive fragmentation, as well as problems in monitoring and enforcement.
- b. IP-1 should be kept out of the purview of the licensing regime as it would not only be against the provisions of the Indian Telegraph Act but would also inhibit the growth and rollout of the sector. We note that the DoT decision announced on 15 February 2012 has deferred its decision to bring IP-1 under the licensing regime.

2. Eligibility Conditions

- 2.1 The applicant must be an Indian company, registered under the Indian Companies Act 1956.
- 2.2 The total foreign equity in the paid up capital of the applicant company should not exceed 74% of the total equity subject to the following FDI norms:
 - a. ~~Both direct and indirect foreign investment in the applicant company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment shall mean foreign investment~~



~~in the company/companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the applicant company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.~~

~~a. The foreign investment policy should in line with consolidated FDI policy as prescribed by Department of Industrial Policy Promotion in 2011 and any future changes/modifications to the policy.~~

b. FDI up to 49 percent will continue to be on the automatic route. FDI in the applicant company/Indian promoters /investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.

c. FDI shall be subject to laws of India and not the laws of the foreign country/countries.

2.3 At the time of applying for a Unified Licence, no single company/legal person having substantial equity in the applicant company, either directly or through its associates, shall have substantial equity holding in any other company having Unified/UAS/CMTS/Basic Licence in the same service area. 'Substantial equity' herein will mean 'an equity of 10% or more' A promoter company/**Legal person** having stake in the applicant company shall not have stakes in a company having Unified/UAS/CMTS/Basic licence in the same licence area.

2.4 The combined net-worth requirement of the licensee and its promoters which hold more than 10% will equity will be Rs. 25 crore for National level Unified Licence, Rs 2.5 crore for each Service area level Unified Licence and Rs. 25 lac for each District level Unified Licence. In case of acquiring Unified Licence in any other licence area, the Licensee shall maintain additional net-worth as prescribed for that service area/district also. The net worth requirement for various types of Unified Licences has been summarised in table below –

Table - Minimum Net-worth requirement for various Unified Licences

Type of Licence	Net-worth requirement	Total Minimum Net-worth required for more than one Licence areas
National Level Unified Licence	Rs 25 Crore	
Services area level Unified area	Rs 2.5 crore for each service area	(Rs. in crore) 2.5 x Number of Services areas for which either LOI/Licence have been issued and applied for in the name of applicant.
District level	Rs. 25 lac for each 'district.	(Rs. in lac) 2.5 x Number of



Unified Licence		Districts for which either LOI/Licence have been issued and applied for in the name of applicant.
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The net-worth of only those promoters shall be counted, who have at least 10% equity stake or more in the total equity of the company. Here net worth shall mean the sum total, in Indian Rupees, of paid up equity capital and free reserves. While counting Net-worth, foreign currency shall be converted into Indian Rupees at the prevalent rate indicated by the Reserve Bank of India as on the date the application is received.

2.5 The applicant company shall have a minimum paid up equity capital equal to one-tenth of **the minimum** net-worth prescribed in Para above and shall submit a certificate to this effect (provided by the applicant's Company Secretary) along with the application.

2.6 The majority Directors on the Board of the Licensee Company shall be Indian citizens.

2.7 The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.

COAI Submission:

- a) We note that the proposed guidelines put the FDI cap at 74% with FDI upto 49% being allowed through the automatic route. This limit proposed is lower than the existing limit of 100% FDI allowed for IP-1, which could place the IP-1s in a worse-off position in the proposed regime. In any event, it is our firm view that the IP-1 should be kept out of the purview of the licensing regime as it would not only be against the provisions of the Indian Telegraph Act but would also inhibit the growth and rollout of the sector.
- b) Further, based on the principle of no-worse off, we request that for Unified License and for spectrum assignment, the net worth requirements proposed under Unified License should take into account the net worth of both the applicant company as well as the net worth of the promoters who have an equity stake of 10% or more in the total equity of the company.

3. Application Procedure

3.1 The applicant company shall pay a processing fee of Rs. 100,000 (Rs. One Lac) for National level Unified Licence, Rs. 50,000 (Rs. Fifty Thousand) for Service area level Unified Licence and Rs 15, 000 (Rs. Fifteen Thousand) for District level Unified Licence.

3.2 The applicant company shall submit the application in duplicate in the prescribed Application form for each licence area separately.

3.3 Incomplete application shall be rejected and the processing fee will not be refunded.



- 3.4 The complete application shall be decided, within 60 days of submission of the application and the applicant company shall be informed accordingly.
- 3.5 ~~Licensor reserves the right to accept or reject any application without assigning any reasons. In the interest of transparency and fair play the licensor should explain/ justify the reasons for rejecting any application.~~
- 3.6 In case the applicant is found to be eligible for grant of Unified Licence, a Letter of Intent (LOI) will be issued. The applicant shall be required to deposit Entry Fee and submit Bank Guarantees / other documents and sign the licence agreement within a period as mentioned in the letter(LOI) from the date of issue of the letter (LOI) failing which the offer of grant of licence shall stand withdrawn at the expiry of permitted period.
- 3.7 The applicant company will be required to pay one time non-refundable Entry Fee before signing the license agreement, based on Letter of Intent (LoI).
- 3.8 The Company shall acknowledge compliance with the licence agreement as a part of **Memorandum Articles** of Association of the Company. ~~Any violation of the licence agreement shall automatically lead to the company being unable to carry on its business in this regard. The duty to comply with the licence agreement shall also be made a part of Articles of Association.~~

COAI Submission:

- a. We reiterate that there should be no district level licenses.
- b. We suggest that compliance with license conditions should be a part of the Articles of Association that lay down the rules and not a part of the Memorandum of Association which lays down the objects of the company.

4. Entry Fee

- 4.1 One time nonrefundable Entry fee for Unified Licence shall be:
- a. Rs. 20 (Twenty) crore for National level Unified Licence;
 - b. Rs. 2 (Two) crore for Metro and 'A' Category Service area;
 - c. Rs. 1 (One) crore for B category Service area;
 - d. Rs. 50 (Fifty) lakh for C category Service area; and
 - e. Rs. 15 (Fifteen) lakh for District level Unified Licence.
- 4.2 While granting a National level or Service area level Unified Licence, Entry fee already paid for the service area level licences or district level licences will be adjusted on pro rata basis for the balance validity period of such Licences at hand against the Entry fee for the National level or Service area level Unified Licence. However, where the sum of entry fee already paid exceeds the entry fee to be paid, there will be no refund of the Entry fee.

5. Scope of the Licence



5.1 Unified Licence will be service and technology neutral and the Unified licensee shall be permitted to provide any telecom service, as defined below on a non-exclusive basis, anytime, anywhere, using any technology within its licence area as prescribed below:

- a. The scope of the license cannot be lower than the scope of the existing access, NLD, ILD, ISP, VSAT, re-sale of IPLC, GMPCS, INSAT-MSS, PMRTS and Radio Paging licenses combined. These may include but are not limited to collection, carriage, transmission and delivery of voice and/or non-voice MESSAGES over LICENSEE's network in the designated LICENCE AREA and includes provision of all types of access services. Unified licensee can also provide Internet Telephony, Internet Services including IPTV and Broadband Services including triple play i.e. voice, video and data. The Licensee shall be free to enter an agreement with other service provider in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised/directed by Licensor otherwise.

Further, TRAI can also prescribe tariffs/charges for such facilities/services within the provisions of TRAI Act, 1997 as amended from time to time.

- b. Unified licensee is permitted to provide leased circuit within its licence area. Public network is not to be connected with leased circuits/CUGs.
- c. A unified licensee shall be permitted to offer any/all services covered under 'Class licence' and 'Licensing through Authorization' but not vice-versa.
- d. The Licensee cannot provide any other services which otherwise require a separate licence.

5.2 The services which a Unified Licensee can offer will be as below:

- a. National level Unified Licence shall permit the Licensee to offer any or all of the telecom services mentioned in Para 5.1 in any / all service areas.
- b. National level Unified licensee can also provide GMPCS, NLD and ILD services, Resale of IPLC.
- c. Service area level Unified Licence shall permit the Licensee to offer any or all of the telecom services mentioned in Para 5.1 except National Long Distance (NLD), International Long Distance (ILD), Global Mobile Personal communication by Satellite (GMPCS) services, Very Small Aperture Terminal (VSAT) services, Resale of IPLC and INSAT Mobile Satellite System (INSAT-MSS) Reporting Service, in specified service area for which licence is given. Service area level Unified licensee will be allowed to apply for National level Unified Licence.
- d. District level Unified Licence shall permit the licensee to offer any or all of the telecom services mentioned in Para 5.2 in the district for which licence is given. However, a District level Unified licensee shall not be permitted to offer NLD, ILD, GMPCS, VSAT & Resale of IPLC, INSAT-MSS and wireless access service. Also, these licensees would not be entitled for assignment of spectrum resources for access services. District level Unified Licence will not be given for Metro districts.

(Note - The definition of various services mentioned above are as defined in the Annexure)



COAI Submission:

- a) Operator should be allowed to provide any of the services listed above using any technology using allocated spectrum, either by creating their own network or using roaming facility
- b) We reiterate that 'District Level Unified License' will lead to too much fragmentation and is not required. If at all allowed, the scope of the District Level Unified license should be restricted only to wireline services. They should not be allowed to offer any wireless service using free spectrum. it will lead to following issues;
 - Spectrum allocation at district level will be very inefficient.
 - The issue related to geographical coverage would be very high and unmanageable.
 - Restricting the mobility within and outside the district will not be possible

6. Ownership of licensee company

6.1 The LICENSEE shall ensure that all the conditions mentioned in Clause 2 (eligibility conditions) are maintained during the currency of the Unified Licence.

6.2 The LICENSEE shall declare the Indian & Foreign equity holdings (both direct and in-direct) in the LICENSEE company and submit a compliance report regarding compliance of FDI norms and security conditions on 1st day of January and 1st day of July on six monthly basis to the LICENSOR. This is to be certified by the LICENSEE Company's Company Secretary or Statutory Auditor.

7. Duration of Licence

7.1. The validity period of a Unified Licence will be for a period of 20 years.

COAI Submission:

- a) Once the Spectrum is delinked from the License, the license becomes a permission to do the business whereas Spectrum is a scarce resource which is required by the licensee for provision of wireless services.
- b) The period of limitation should therefore not apply to both as keeping License and Spectrum restricted for a period creates a business uncertainty and is against the principal of Going Concern.
- c) Therefore the license tenure should be made co-terminus with the access spectrum with the longest remaining validity.

8. Renewal of Licence

8.1 Renewal - The licensor may renew, if deemed expedient, the period of Unified Licence by a period of 10 years at one time upon the request of the Licensee on-terms mutually agreed. The decision of the Licensor shall be final in this regard.



8.2 On renewal, Unified licensee will be required to pay a renewal fee which will be as notified by the licensor on the recommendations from TRAI.

COAI Submission:

- a. It is first submitted that the term renewal may be replaced with extension as the term used in the present license is “extension.” This has also been pointed out to the Authority by DoT in the context of its recommendations on Spectrum Management and Licensing framework.
- b. It is also suggested that the extension may be given for 20 years at a time, instead of the 10 years as provided under the current licenses. This is because DoT has been auctioning spectrum rights for 20 years and it would be logical that the underlying operating license has similar tenure/duration.
- c. It will also be rational that if spectrum is allocated for 20 years to an entity under an auction then its corresponding Unified License be extended simultaneously up to that period.
- d. Issues pertaining to transfer of license, assignment of license, amalgamation of license, refund of license fee need to be addressed.

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9. Suspension/revocation/termination/Surrender of Licence

9.1 ~~There shall be a non-obstante clause in the licence which confers powers upon the Licensor to suspend, revoke or terminate the licence, in whole or in part. The licence is a commercial contract between the licensor and the operator and hence the non-obstante clause is not acceptable as it gives unfettered power to the licensor to terminate the licence.~~

9.2 LICENSEE may surrender the LICENCE, by giving notice of at least 60 Calendar days in advance. The effective date of surrender of Licence will be 60 Calendar days counted from the date of receipt of such notice by the licensor.

COAI Submission:

- a) We submit that the under the existing regime, the non-obstante clause in the licence confers powers upon the licensor to cancel the licence under certain defined circumstances; these circumstances are clearly laid down in the licenses. Further there is also a provision for notice of 60 days to be given by the licensor, which is in consonance with the principles of natural justice.
- b) We suggest that the existing provision be maintained in the proposed regime.

10. Penalty

13.1 The Licensor may impose financial penalty (as detailed below) based on either its own findings or on the recommendations of TRAI, for violation of terms and conditions of licence agreement:



Type of License	Minor violation	Major violation
National Level	Not exceeding Rs 5 Crore	Not exceeding Rs 50 Crore
Service Area Level	Not exceeding Rs 2 Crore	Not exceeding Rs 20 Crore
District Level	Not exceeding Rs 10 Lac	Not exceeding Rs 1 Crore

COAI Submission:

- a) With regard to penalty major/ minor violations can not be defined in advance.
- b) The penalties should be minimum and should be applicable only in extreme situations where there is threat to national security.
- c) A Standing Committee with representatives from DoT, TRAI and Industry be formed to look into the matters of violation. The committee should go into the merits of a particular case and should ensure that the principles of natural justice are adhered to while deliberating/ deciding on violation and the quantum of penalty to be levied.
- d) A reasoned show cause notice should also be served upon the telecom service provider enabling the operator to be aware of the concerns and violations being observed by the Licensor
- e) The service provider should be given an opportunity with a reasonable time frame to explain their case.
- f) Any penalties should only be imposed while disposing off reply to show cause notice and personal hearings. Any penalty notice should be a speaking order. The order should clearly indicate as to why they did not agree with telecom operators' views.

Financial Conditions

11. Fees payable

11.1 **Entry Fee** - One time non refundable Entry Fee as detailed in Para-4.

~~11.2 License Fee~~ - An annual Licence Fee as a percentage of Annual- Annual Adjusted Gross Revenue (AGR), as defined in the licence agreement shall be applicable. ~~From the second year of the effective date of the Unified Licence, this Licence Fee shall be subject to minimum of 10% of the Entry fee paid.~~

~~11.3 The Fee/royalty payable towards Wireless Planning and Coordination Wing (WPC): WPC Charges shall be payable at such time and in such manner as the WPC Wing of the DoT may~~

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~~prescribe from time to time.~~

COAI Submission:

- a) We recommend a uniform license fee of 6% of AGR on all the services provided under the unified license. However, it should be ensured that the services provided under a class license & license through Authorization be subjected to license fees at the same rate to avoid any regulatory arbitrage.
- b) We would like to suggest that the license fee be de-linked from the USO contribution. At present, the annual license fee levy includes a 5% contribution towards USO. The objectives of these two levies are different – the license fee is an annual levy for operating the license whilst the USO levy is a contribution to a subsidy for facilitating universal availability of telecom services.
- c) Hence, the USOF levy should be de-linked from licence fee and should be gradually reduced with time. It is important to note that even with lowering of the USOF levy; there will be no loss of revenues to the exchequer as revenues of the mobile segment are growing at a robust pace.
- d) Further, since, the unified licensee will be providing a bouquet of services which may or may not require spectrum for provision of services, it should be ensured that WPC Charges are only levied on the revenue from services using the Spectrum. The revenue from services which do not utilize the spectrum should not be subjected for payment of any WPC Charges. The same is also required to ensure due parity in the regulatory costs for the services provided under class license and the unified license.
- e) Further, it is also recommended to bring in more clarity and justice to the items to be included in the definition of Gross Revenue and Adjusted Gross Revenue. The following should merit the consideration of regulator as a way forward:
 - Gross Revenue should include only revenue from telecom services i.e. only from licensed activity.
 - Deduction shall be allowed on Accrual Basis as revenue on accrual and expense on paid basis creates a mismatch which is against the principal of Matching Concept.
 - In case the IP-I service providers are being brought under licensing, there should be no license fees on the revenues earned by the licensee for the provision of IP-1 Services or alternatively, allow the costs incurred (revenue passed to IP-1 Service Providers) by the Telecom Service provider be allowed as deduction while calculating AGR. This would avoid imposition of double license fees.
 - Deduction should also be allowed towards amount paid / payable to content service providers and channel broadcasters.

12. Bank Guarantee

- 12.1. The Financial bank Guarantee (FBG) shall be equivalent to the Licence Fee payable for two quarters. The minimum annual Licence Fee is 10% of the entry fee, therefore, for new entrants, initially FBG shall be for an amount of Rs. 1 (One) crore for National level Unified Licence, Rs. 10 (Ten) lac, 5 (Five) lac and 2.5 lac for metro/category A, B and C Service area level Unified Licence respectively.



For District level Unified Licence the FBG shall be Rs. 75,000 (Seventy Five thousand). The amount of FBG shall be reviewed on six monthly basis by licensor and subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to Licence Fee for two quarters. ~~and other dues not otherwise securitized and any additional amount as deemed fit by the Licensor.~~

COAI Submission:

- a) The concept of Bank Guarantee is more of an administrative hassle for the operators considering the fact that the licensee companies are required to make huge investments in capex.
- b) The aggressive growth in the mobile sector is being driven by the market and the intense competition in the sector. In today's scenario, Bank Guarantees from service providers have lost their relevance as operators are vying with each other to reach out to newer markets.
- c) It is also submitted that Bank Guarantees benefit neither the end-customer nor the industry nor the Government. These only benefit the banks. In fact, Bank Guarantees represent a huge cost in the operations which is ultimately reflected in the end user tariff.
- d) The amount paid towards bank charges for Bank Guarantees could be used by the service providers for further roll out of service.
- e) Keeping the importance of the telecom sector for national growth, the requirement of BG should be done away with as it leads to blockage of fund and thus increasing the cost of operation.

13. Merger of Unified Licences

13.1 Merger of Unified Licences may be permitted as per guidelines issued by DoT from time to time.

General Conditions

14. Change in the name of the Licensee Company shall be permitted in accordance with the provisions under the Indian Companies Act, 1956.
15. The Licence shall be governed by the provision of Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997 as modified or replaced from time to time. ~~Modification in the License should not be unilateral; instead it should go through a consultation process. Also the modification should be carried out only in case of serious concerns ex. that of national security.~~
16. The Licensee shall comply with any order issued by the Licensor OR any order, direction, determination or regulation as may be issued by TRAI from time to time.

COAI Submission:



- a. It is submitted that the right of the Licensor to unilaterally amend the License should only be confined to specific circumstances of national security. Exercise by the Licensor of this unilateral right must be demonstrably and explicitly justified.
- b. In all other instances, license being an agreement /contract between parties, can be amended if bilaterally agreed in writing. The written consent by the licensee is a pre-requisite. The guidelines must explicitly clarify the same.

Technical Conditions

17. The LICENSEE shall be responsible for, and is authorized to own, install, test and commission all the Applicable system for providing the Services under this Licence agreement.

~~18. The licensee shall make its own arrangements for Right of Way (ROW).~~

~~19-18.~~ Licensee shall make its own arrangements for all infrastructures involved in providing the service and shall be solely responsible for installation, networking, operation and commissioning of necessary equipment and systems, treatment of subscriber complaints, issue of bills to its subscribers, collection of its component of revenue, attending to claims and damages arising out of his operations.

~~20-19.~~ The Licensee shall provide the details of the technology proposed to be deployed for operation of the service. The technology should be based on standards issued by ITU/TEC or any other International Standards Organization/bodies/Industry. Unified licensee is permitted to provide, service by utilizing any type of network equipment, including circuit and/or packet switches that meet the relevant International Telecommunication Union (ITU) /Telecommunication Engineering Center (TEC) / International standardization bodies such as 3GPP / 3GPP-2 / ETSI/ IETF / ANSI/ EIA /TIA /IS.

~~24-20.~~ In case of provision of bandwidth by the Licensee through the satellite media, the Licensee shall abide by the prevalent Government orders, directions or regulations on the subject like satellite communication policy, V-SAT policy etc.

~~22-21.~~ Sharing of active/passive infrastructure shall be as per the guidelines issued by the Licensor from time to time.

~~23-22.~~ The LICENSEE shall ensure adherence to the National FUNDAMENTAL PLAN which includes National Numbering, routing and Transmission plan issued by Department of Telecommunications and technical standards as prescribed by LICENSOR or TRAI, from time to time. The only plans relevant to the operators are the National numbering plan & NFAP (national frequency allocation plan), and adherence to only these should be prescribed.

Operating Conditions

24. The licensee providing access service, shall provide independently or through mutually agreed commercial arrangements with other Service Providers, all public utility services including TOLL FREE services namely police, fire, ambulance or any other emergency number as may be specified by the Licensor from time to



time. While providing emergency services such as police, fire, ambulance etc. it shall be ensured that such calls shall be delivered to the control room of the concerned authority for the area from where call is originated.

25. **Interconnection**

25.1 It shall be mandatory for the Unified licensee to provide interconnection to all eligible Telecom Service Providers including BSNL and MTNL (eligibility shall be determined as per the service provider's Licence agreement and TRAI's determination/orders/regulations issued from time to time) to ensure that the calls are completed to all destinations. Principle of non-discrimination shall be followed in the matter of interconnection.

25.2 The interconnection shall have to be withdrawn in case of termination of the respective licensed networks of other Telecom service providers within one hour or within such time as directed by the Licensor/TRAI in writing, after receiving intimation from the Licensor /TRAI in this regard.

25.3 Interconnection between the networks of different SERVICE PROVIDERS including BSNL and MTNL shall be as per National Standards issued from time to time by Telecom Engineering Centre (TEC) and also subject to technical feasibility and technical integrity of the Networks and shall be within the overall framework of interconnection regulations issued by the TRAI from time to time.

25.4 The terms and conditions of interconnection including interalia standard interfaces, points of interconnection and technical aspects will be subject to compliance of prevailing regulations, directions and determinations issued by TRAI from time to time.

25.5 The charges for accessing other networks for inter-network calls shall be based on mutual agreements between the service providers conforming to the Orders/Regulations/Guidelines issued by the TRAI from time to time.

26. **Quality of service**

26.1 The LICENSEE shall operate and maintain the licensed Network conforming to Quality of Service standards to be mutually agreed in respect of Network- Network Interface subject to such other directions as LICENSOR or TRAI may give from time to time. Failure on part of LICENSEE or his franchisee to adhere to the QUALITY OF SERVICE stipulations by TRAI and network to network interface standards of TEC may be treated as breach of Licence terms.

27. **Security Conditions**

27.1 The Licensee shall comply with the security conditions interalia relating to inspection of the installation/ establishments, audit of networks, security of the network, restriction on employment of foreign nationals, transfer of information outside the country, remote access, monitoring of networks, confidentiality of information relating to subscriber data and any other condition imposed by the



Licensors from time to time.

COAI Submission:

- a) National Security is of paramount importance to us and we fully agree and support the focus on Security conditions.
- b) The following submissions should be considered to enable Operators to comply with the existing requirements on network security:
 - Security controls, audit mechanism and inspections should be mandated only for high risk systems.
 - Since IT related elements in the telecom networks are already Common criteria certified, the same should be accepted as certified
 - Vendors capable of performing testing conforming to the relevant standards should be able to certify the equipment.
 - Labs of reputed international vendors having establishments in India should be allowed to perform testing from April 1, 2013.
 - Operation and Maintenance logs should be mandated only for critical systems identified as high risk systems and these should be kept for a period of 3 months.
- c) The Operators are already providing requisite support to the LEAs through various measures including Lawful Interception, location details, CDRs, etc. It is submitted that technical feasibility and trials are conducted prior to mandating any requirement on a pan India Basis.
- d) The information to be provided to the security agencies should be as per the format available with the service provider.
- e) A rational criterion may be developed for sharing of costs between Government and the service providers in implementing security measures rather than mandating it via the licensing conditions.

B. Additional Guidelines for Spectrum assignment associated with Unified licence

28. The net worth requirement for those Unified licensees who may apply for assignment of spectrum will be in addition to what is mentioned in Clause 2.3 above. The promoters of the applicant company shall have a combined net-worth of Rs. 100 crore/ Rs. 50 crore/ Rs. 30 crore for Category A, B and C Service areas respectively. The applicant company shall have a minimum paid up equity capital equal to one-tenth of net worth prescribed above and shall submit a certificate to this effect (provided by the applicant's Company Secretary) while applying for the spectrum.
29. At the time of applying/bidding for spectrum, no single company/ legal person having substantial equity in the applicant company, either directly or through its associates, shall have substantial equity holding in any other company having Unified UAS/CMTS/Basic Licence with spectrum in the same service area. 'Substantial equity' herein will mean 'an equity of 10% or more'.

A promoter company/ Legal person having stake in the applicant company shall not have stakes in a company having Unified/UAS/CMTS/Basic licence in the same licence area.



~~30. Performance Bank Guarantee (PBG) in prescribed proforma given in licence agreement shall be submitted for amount equal to Rs. 20 crore/Rs. 10 crore/Rs. 2 crore for Category A, B and C Service areas respectively before signing the Licence Agreement. Further, on completion of one year from the effective date of assignment of spectrum and after meeting the coverage criteria stipulated for first year, the PBG shall be reduced to Rs. 10 crore/Rs. 5 crore/Rs.1 crore for Category A, B and C Service areas respectively on self-certification provided by the Licensee.~~

~~31. The applicant company shall submit a Financial Bank Guarantee (FBG) of an amount of Rs. 50 crore/Rs. 25 crore/ Rs. 5 crore for Category A, B and C Service areas respectively, which shall be submitted before the date of signing the Licence agreement in the prescribed proforma given in licence agreement. Initially, FBG shall be valid for one year. Subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to license fee for two quarters and other dues not otherwise securitised and any additional amount as deemed fit by the Licensor. The amount of FBG shall be subject to periodic review by the Licensor and shall be renewed from time to time till final clearance of all dues.~~

~~32. The Fees, charges and royalties for the use of spectrum and also for possession of Wireless Telegraphy equipment shall be separately securitized by furnishing FBG of an amount equivalent to the estimated sum payable annually in the proforma given in licence agreement, to WPC, valid for a period of one year, renewable from time to time till final clearance of all such dues.~~

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~~33.30.~~ The Renewal fee discussed in Clause 8 above does not cover the value of spectrum, which shall be paid for separately.

~~34.31.~~ Unified Licensees who will be assigned spectrum, will be required to comply with roll out obligations as applicable, with attendant incentives and penalty as linked to allotment of that particular spectrum block as may be specified at the time of allotment of spectrum ~~or as may be specified from time to time.~~

~~35.32.~~ The Licensee shall pay spectrum usage 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.

~~36.33.~~ For use of space segment and setting up of the Earth Station etc., the Licensee shall directly coordinate with and obtain clearance from Network Operations and Control Centre (NOCC), apart from obtaining SACFA clearance. The clearance from other authorities as specified from time to time shall also be obtained by the Licensee.

COAI Submission:

- a) We are in agreement with additional guidelines for spectrum assignment associated with Unified license that are being proposed by the Authority.
- b) In addition to the guidelines proposed by the Authority, we would like to suggest that in view of the explicit service and technology neutral nature of the unified license, the current technology specific approach being adopted in the existing licenses (where there



is an artificial segregation of GSM and CDMA spectrum both for allocation as well as charging) be dispensed with under the proposed regime.

- c) We would also submit that since the spectrum is acquired through a market mechanism there should not be any spectrum usage charge.
- d) Since we are not in favour of having any rollout obligations PBGs should be done away with.

II. Draft Guidelines for Class Licence

1. Framework

1.1 Licences shall be issued on non exclusive basis, without any restriction on the number of entrants in a licence area. Licences will be given on the basis of date of application subject to fulfillment of relevant eligibility conditions.



1.2 Class Licence will be issued on National level basis.

1.3 Licensor reserves the right to award/allocate specific Licences to offer telecom / telecom related services and such other services as may be recommended by TRAI.

1.4 Class Licence will be given without any spectrum. Licensee has to separately apply/bid for obtaining spectrum as per the prevailing policy.

COAI Submission:

- a) We agree with the class license framework as proposed by TRAI.
- b) There should be a uniform license fees across Unified License and Class License so as to ensure that there is no opportunity of arbitrage.
- c) We reiterate that IP-1 should not come under the purview of a unified license but should continue to operate under a registration.

2. Eligibility Conditions

2.1 The applicant must be an Indian company, registered under the Indian Companies Act 1956.

2.2 The total foreign equity in the paid up capital of the applicant company should not exceed 74% of the total equity subject to the following FDI norms:

- a. Both direct and indirect foreign investment in the applicant company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment shall mean foreign investment in the company / companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the applicant company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.
- b. FDI up to 49 percent will continue to be on the automatic route. FDI in the applicant company/Indian promoters/investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.
- c. FDI shall be subject to laws of India and not the laws of the foreign country /countries.

2.3 (a) the details of the equity holdings in the applicant company should be disclosed by the company as follows:



Sl. No	Name of Promoter/Partner	Indian/Foreign	Equity %	Net Worth
1.				
2.				
3.				

(b) Details of equity holding of the Promoter / Partner Indian Companies of the applicant company should be disclosed by the applicant company, as follows:

Sl. No	Name of Promoter/Partner	Indian/Foreign	Equity %	Net Worth
1.				
2.				
3.				

2.4 The majority Directors on the Board of the Licensee Company shall be Indian citizens.

2.5 The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.

3. Application Procedure

3.1 The applicant company shall pay a processing fee of Rs. 25,000 (Rs. Twenty Five Thousand) for Class Licence.

3.2 The applicant company shall submit the application in duplicate in the prescribed Application form.

3.3 Incomplete application shall be rejected and the processing fee will not be refunded.

3.4 The application shall be decided, as far as practicable, within 60 days of the submission of the application and the applicant company shall be informed accordingly.



3.5 Licensor reserves the right to accept or reject any application without assigning any reasons.

3.6 In case the applicant is found to be eligible for grant of Class Licence, a Letter of Intent (L01) will be issued. The applicant shall be required to deposit Entry Fee and submit Bank Guarantees / other documents and sign the licence agreement within a period as mentioned in the letter(L01) from the date of issue of the letter (L01) failing which the offer of grant of licence shall stand withdrawn at the expiry of permitted period.

3.7 The applicant company will be required to pay one time non- refundable Entry Fee before signing the license agreement, based on Letter of Intent (LoI).

3.8 The Company shall acknowledge compliance with the licence agreement as a part of Memorandum of Association of the Company. Any violation of the licence agreement shall automatically lead to the company being unable to carry on its business in this regard. The duty to comply with the licence agreement shall also be made a-part of Articles of Association.

4. **Entry Fee**

4.1 The Entry Fee for each category of Class Licence shall be Rs.30 (Thirty) lac.

5. **Scope of the Licence**

5.1 Class Licence will be technology neutral and is granted to provide designated service in a non-exclusive basis.

5.2 VSAT service and INSAT-MSS Reporting Service will be covered under Class Licence. However, Licensor reserves the right to include any other service under Class Licence on recommendations of TRAI.

6. **Ownership of licensee company**

6.1 The LICENSEE shall ensure that all the conditions mentioned in Clause 2 (eligibility conditions) are maintained during the currency of the Unified Licence.

6.2 The LICENSEE shall declare the Indian & Foreign equity holdings (both direct and in-direct) in the LICENSEE company and submit a compliance report regarding compliance of **FDI** norms and security conditions on 1st day of January and 1st day of July on six monthly basis to the LICENSOR. This is to be certified by the LICENSEE Company's Company Secretary or Statutory Auditor.

7. **Duration of Licence**

7.1 The validity period of a Class Licence will be for a period of 20 years.

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8. **Renewal of Licence**

8.1 Renewal - The licensor may renew, if deemed expedient, the period of Class Licence by a period of 10 years at one time upon the request of the Licensee on terms mutually agreed. The decision of the Licensor shall be final in regard to renewal of licence.

8.2 On renewal, Class licensee will be required to pay a renewal fee which will be as notified by the licensor in consultation with TRAI from time to time.

9. **Suspension/revocation/termination/Surrender of Licence**

9.1 There shall be a non-obstante clause in the licence which confers powers upon the Licensor to suspend, revoke or terminate the license, in whole or in part.

9.2 LICENSEE may surrender the LICENCE, by giving notice of at least 60 Calendar days in advance. 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. **Penalty**

10.1 The Licensor may impose financial penalty based on either its own findings or on the recommendations of TRAI, for violation of terms and conditions of licence agreement. For minor violation of licence agreement, the financial penalty will not exceed Rs. 5 crore and for major violation, the financial penalty will not exceed Rs. 20 crore.

Financial Conditions

11. **Fees payable**

11.1 **Entry Fee** - One time non refundable entry fee as detailed in Para 4.

11.2 **License Fee** - An annual Licence Fee as a percentage of Annual Gross Revenue (AGR) , as defined in the licence agreement shall be applicable. From the second year of the effective date of the Unified Licence, this Licence Fee shall be subject to minimum of 10% of the Entry fee paid.

11.3 **The Fee/royalty payable towards Wireless Planning and Coordination Wing (WPC):** WPC Charges shall be payable at such time and in such manner as the WPC Wing of the DoT may prescribe from time to time.

COAI Submission:

a) **We recommend a license fee of 6% of AGR as is the case suggested for UL so as to ensure that there are no arbitrage opportunities.**

12. **Bank Guarantee**



- 12.1 The Financial bank Guarantee (FBG) shall be equivalent to the licence fee payable for two quarters. The minimum annual licence fee is 10% of the entry fee, therefore, for new entrants; initially FBG shall be for an amount of Rs. 1.5 lac. The amount of FBG shall be reviewed on six monthly basis by licensor and subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to licence fee for two quarters and other dues not otherwise securitized and any additional amount as deemed fit by the Licensor.

COAI Submission:

The terms and conditions with regard to Bank Guarantees should be in line with those suggested, above by COAI, for Draft Guidelines for Unified License.

13. Merger of Class Licences

- 13.1 Merger of Class Licences may be permitted as per guidelines issued by DoT from time to time.

General Conditions

14. Change in the name of the Licensee Company shall be permitted in accordance with the provisions under the Indian Companies Act, 1956.
15. The Licence shall be governed by the provision of Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997 as modified or replaced from time to time.
16. The Licensee shall comply with any order issued by the Licensor OR any order, direction, determination or regulation as may be issued by TRAI from time to time.

Technical Conditions

17. The LICENSEE shall be responsible for, and is authorized to own, install, test and commission all the Applicable system for providing the Services under this Licence agreement.
18. The licensee shall make its own arrangements for Right of Way (ROW).
19. The Licensee shall make its own arrangements for all infrastructures involved in providing the service and shall be solely responsible for installation, networking, operation and commissioning of necessary equipment and systems, treatment of subscriber complaints, issue of bills to its subscribers, collection of its component of revenue, attending to claims and damages arising out of his operations.
20. The Licensee shall provide the details of the technology proposed to be deployed for operation of the service. The technology should be based on standards issued by ITU /TEC or any other International Standards Organization/ bodies/Industry. Class licensee is permitted to provide, service by utilizing any type of network equipment, including circuit and/ or packet switches that meet the relevant International Telecommunication Union (ITU) /Telecommunication Engineering Center (TEC) / International standardization bodies such as 3GPP / 3GPP-2 /ETSI/IETF / ANSI/EIA/TIA/IS.



21. In case of provision of bandwidth by the Licensee through the satellite media, the Licensee shall abide by the prevalent Government orders, directions or regulations on the subject like satellite communication policy, V-SAT policy etc.
22. Sharing of active/passive infrastructure shall be as per the guidelines issued by the Licensor from time to time.
23. The LICENSEE shall ensure adherence to the National FUNDAMENTAL PLAN which interalia includes Routing and Transmission plan issued by Department of Telecommunications and technical standards as prescribed by LICENSOR or TRAI, from time to time.

Operating Conditions

24. Interconnection

- 23.1 Eligibility for interconnection shall be determined as per the service provider's Licence agreement and TRAI's determination / orders / regulations issued from time to time. Principle of non-discrimination shall be followed in the matter of interconnection.
- 23.2 The interconnection shall have to be withdrawn in case of termination of the respective licensed networks of other Telecom service providers within one hour or within such time as directed by the Licensor in writing, after receiving intimation from the licensor in this regard.
- 23.3 The terms and conditions of interconnection including interalia standard interfaces, points of interconnection and technical aspects will be as mutually agreed between the service providers, subject to compliance prevailing regulations, directions and determinations issued by TRAI from time to time.
- 23.4 Interconnections restrictions applicable for VSAT network with other networks:-
 - a. Interconnection with PSTN - Not permitted
 - b. Network of other VSATs - Interconnection shall be permitted through the Hub on case to case basis, wherever the CUG nature of the network is not violated.
 - c. Terrestrial data lines leased by customers of VSATs - Interconnection shall be permitted on case to case basis, wherever the CUG nature of the network is not violated.
 - d. Terrestrial data lines of a public nature: - Interconnection shall be permitted through the Hub, provided it is connected to a public data network such as Internet/ INET.
 - e. Overseas office of the CUG for data transfer purposes:- Interconnection shall be permitted on a case to case basis subject to the condition that the connection should be between the hub and the server of the overseas office through a leased line passing through an international gateway which can be monitored for security purposes.



- f. WAN Operators: - Interconnection shall be permitted on case to case basis, wherever the CUG nature of the network is not violated.
- g. Internet/INET: - The hub of VSAT licensee shall be allowed to be connected to an internet node of his choice through a lease line taken from Telecom service provider who is authorised to sell bandwidth/ leased line. Similar inter- connection of the Hub with INET is also permitted.
- h. Other media to provide for redundancy:- Switch over between a terrestrial CUG network and a VSAT based CUG network belonging to the same licensee shall be permitted for redundancy purpose.
- i. Interconnection of CUGs: - Inter-connection between CUGs, where the CUG nature of the network is not violated, will be permitted on a case to case basis.

25. Quality of service

- 25.1 The LICENSEE shall operate and maintain the licensed Network conforming to Quality of Service standards to be mutually agreed in respect of Network- Network Interface subject to such other directions as LICENSOR or TRAI may give from time to time. Failure on part of LICENSEE or his franchisee to adhere to the QUALITY OF SERVICE stipulations by TRAI and network to network interface standards of TEC may be treated as breach of Licence terms.

Security Conditions

- 26.1 The Licensee shall comply with the security conditions interalia relating to inspection of the installation/ establishments, audit of networks, security of the network, restriction on employment of foreign nationals, transfer of information outside the country, remote access, monitoring of networks, confidentiality of information relating to subscriber data and any other condition imposed by the Licensor from time to time.

COAI Submission:

The terms with regard to Security Conditions should be in line with those suggested, above by COAI, for Draft Guidelines for Unified Licence.

III. Migration of Existing Licence to Unified Licence

1. On coming into force of the Unified Licence, all the existing licences issued under Section 4 of the Indian Telegraph Act 1885 shall stand automatically converted to the Unified Licence. This will be the Unified Licence (restricted). Necessary amendments shall be made by the Licensor under intimation to the Licensee.
2. On conversion, the validity of the Unified Licence (restricted) shall be same as the validity of existing licence.
3. The conditions of Unified Licence (restricted) shall be the same as existing licence.



4. The services under such a licence will be restricted to the service(s) that the licensee could offer and to the service area(s) permitted under the existing licence. In case an existing licensee after conversion to Unified Licence (restricted) wishes to provide services permitted within the scope of service under Unified Licence but which are not covered under its old licence, then it will have to apply for Unified Licence.
5. For conversion to the Unified Licence (restricted), there shall be no additional entry fee to be paid by the licensee.
6. A holder of Unified Licence (restricted) shall have the option to apply for and migrate to a Unified Licence.
7. In the event a holder of Unified Licence (restricted) desires to expand/alter the service(s) offered or service area(s) of operations, it shall be required to migrate to Unified Licence and pay the prescribed entry fee.

Illustration: A company 'A' has All-India licence for NLD and ILD, ISP (Category B) and CMTS/UAS Licences for service areas 2 & 3 as given in the Table below. After coming into force of Unified Licence framework, these licences shall get converted to Unified Licences (restricted) i.e. the scope of service of each new Unified Licence will continue to be the same as the existing licence. However, if the Company wishes to provide any other service permitted under Unified Licence, say ISP on all India basis or access services in LSAs other than service areas 2&3, then it will have to apply for migration to National level Unified Licence and will also have to pay the prescribed entry fee and fulfil all eligibility conditions as given in the Guidelines for Unified Licence.



Unified Licences (restricted) – 6 licences

Licence	All India	LSA-1	LSA-2	LSA-3	LSA-21	LSA-22
CMTS/UASL			✓	✓			
NLD	✓						
ILD	✓						
ISP			✓	✓			

After migration to Unified Licence – 1 Unified Licence

Licence	All India
CMTS/UASL	✓
NLD	✓
ILD	✓
ISP	✓
All other Services defined in the scope of Unified Licence.	✓

8. In respect of 6 and 7 above, the Entry Fee already paid, in case of NLD/ILD/UAS /CMTS licence only, will be adjusted on *pro rata* basis for the balance validity period of the existing Licence as per formula given in the table below. However, in cases where the Entry Fee already paid exceeds the Entry Fee to be paid now for migrating to Unified Licence, there will be no refund of the Entry fee.

Type of Existing Licence	Migration to	Rebate
ILD/NLD	National level	Rs 12.5 lakh x No of years remaining for existing NLD/ILD Licence validity
UASL/ CMTS	Service area level	Rs 10 lakh, 5 lakh and 2.5 lakh for Metro/Cat A, Cat B and Cat C service areas respectively x No of years remaining for existing UASL/CMTS Licence validity.
UASL /CMTS in various service area	National level	Rs 10 lakh, 5 lakh and 2.5 lakh for Metro/Cat A, Cat B and Cat C service areas respectively x No of years remaining for existing UASL/CMTS Licence validity subject to maximum limit of Rs. 20 crore.



9. On expiry of the validity of the Unified Licence (restricted), the licensee shall be required to take a Unified Licence.
10. IP-I shall be covered under Unified Licence. The existing IP-I providers would be required to take the Unified Licence as soon as the same comes into being and the conditions in the Unified Licence will apply to IP-I provider too. IP-I shall have to pay the prescribed entry fee to take the Unified Licence.
11. In the event a holder of Unified Licence (restricted), having spectrum, obtains a Unified Licence, it will continue to retain the spectrum assigned for the remaining validity period of the existing Licence. In case of 3G /BWA spectrum holders, the spectrum assigned will be retained for the period for which the spectrum blocks have been assigned. The licensee holding access spectrum shall be required to maintain the network and paid up equity as per existing licence, in case these are higher than the amount prescribed in the Unified Licensing Regime.
12. Roll out obligations, if any, linked with the existing service providers shall remain applicable even after migration to Unified Licence ~~regime regime and shall be subject to changes/modifications from time to time.~~

COAI Submission:

- a. We reiterate that IP-1 should not come under the purview of a unified license but should continue to operate under a registration
- b. Existing licensees must have the option to continue under the existing licensing regime or migrate to new Unified Regime.
- c. The NLD/ ILD services are proposed to be included under the ambit of a unified license. It may also be noted that NLD and ILD services are essential wholesale services and competition is necessary for these services. Therefore it is important that the national numbering plan, including the existing service area wise allocation of number series for mobile connections be left un-disturbed.
- d. There may be cases where a group company holds a NLD, ILD and ISP License along with UAS License for few service areas, while its other group companies are holding UAS Licenses for different service areas. On migration to Unified Licensing regime, such a situation will arise that the Group Company will have All India Unified License that will overlap with the Service Area Unified Licenses of its other Group Entities for the respective Service Areas. This overlap of licenses which is occurring due to legacy issues should not create any inadvertent conflict /violation of existing laws/provisions. Thus clarity on this issue is required
- e. The cross holding restrictions have been basically included to avoid hoarding of spectrum and are only provided for the licenses having either bundled spectrum such as UASL/CMTS or are imposed on other kind of licensees such as ISP when they have been allocated BWA spectrum.
- f. In view of the above, we would like to submit that the substantial equity restrictions should instead be applied ONLY to spectrum holdings so that it is clearly stipulated that no entity can



bid/apply for spectrum in a service area where a group company has already been allocated/assigned spectrum, i.e. the spectrum assignment is restricted to only one company in a service area.

- g. With regard to various approvals such as FIPB approvals etc., it is suggested that migration to Unified License should not affect any existing approvals. All existing approvals should automatically be extended upon migration and the same should be stated in the guidelines and licenses.
- h. There is also the issue of different effective dates for different licenses. We suggest that migration to unified license may look at re-setting the clock afresh and propose that all licenses, those acquired at an earlier date and those acquired at a later date, be made co-terminus.
- i. Upon migration the Unified License should be extended qua the 3G spectrum to 20 years from the Effective Date on existing terms without any charges.

IV. Migration of Existing Licence to Class Licence

1. On coming into force of the Class Licence, all the existing licences issued, under Section 4 of the Indian Telegraph Act 1885, issued for VSAT and INSAT-MSS shall stand automatically converted to the Class Licence. This will be the Class Licence (restricted). Necessary amendments shall be made by the Licensor under intimation to the Licensee.
2. An existing licensee, on migration to a Class Licence (restricted), will continue to be governed by the same conditions and the validity period as per the existing licence. It shall also be entitled to retain the spectrum assigned, if any, for the validity period of the existing Licence.
3. The holder of a Class Licence (restricted) shall be entitled to migrate to a Class Licence or a Unified Licence.
4. On migration, the existing licensee will be required to pay Entry Fee as prescribed for the Class Licence or Unified Licence. Entry Fee paid earlier will be adjusted on *pro rata* basis for the balance validity period of



the existing Licences as per formula given in table below. However, in cases where the Entry Fee already paid exceeds the Entry Fee to be paid now for migrating to Class Licence or Unified Licence, there will be no refund of the Entry fee.

Type of Existing Licence	Rebate
VSAT	Rs 1.5 lakh x No of years remaining for existing Licence validity

5. Roll out obligations, if any, linked with the existing service providers shall remain applicable even after migration to Class Licence and shall be subject to changes/modifications from time to time.

Licensing of Infrastructure Provider – I (IP-I)

1. At the outset we would like to state that the unified license being proposed shall only include the activities for which license is required as per section 4 of Indian Telegraph act. Since the activities performed by IP-1 does not require a license under the provision of section 4 of ITA-1885 therefore Unified License should not include Infrastructure Provider -1 (IP-1).
2. IP-I registered companies are engaged primarily in the Towers and building space for housing the BTS equipments. The provision of 'Towers' by the IP-I registered companies cannot be termed as 'Telegraphs' as it does not fall within the definition of 'Telegraph' provided under the Indian Telegraph Act, 1885. IP-I registered companies are allowed only to provide the infrastructure, or in other words, to house the telegraph equipment namely the transmitter and receiver on behalf of the telecom licensee.
3. 'Tower' is purely an arrangement to raise the height of transmitting and receiving device(s), which can alternatively be done by installation of the antenna on the roof top/walls of the high-rise buildings.
4. In case when the antennas are mounted on the building instead of any structure like tower then can Government force the owners of those building to have license of telecom service providers? Therefore, it is improper to include installation and provisioning of towers within the ambit of the Indian Telegraph Act.
5. A Telecom license is granted by the Government under Section 4 of the Indian Telegraph Act 1885 for allowing a licensee the privilege of "*establishing, maintaining and working telegraphs.*" While the Infrastructure Providers provide the passive infrastructure such as Dark Fiber, Duct space, Tower, building etc., they do not have the privilege of establishing, maintaining and working telegraphs and hence, rightly operate under a registration instead of a license.
6. The government's proposal to levy license fees on the IP-1 players will hurt the economics of our members business and also raise the price that customers pay for mobile services provided by our members.
7. We believe that the motivation to bring IP-I within the purview of Licensing regime is the perception that the revenue is being diverted from license paying operators to entities that are not subject to license fee. We believe that this argument is completely false and erroneous as all the revenue of IP-I comes from service providers who already pay license fee on the revenues they receive from their subscribers, which is then passed on to the IP-I providers. Therefore, the government cannot claim that there is any loss of revenue to it.
8. We would further like to highlight that TRAI in its recommendation on the "Telecommunication Infrastructure Policy" Vide Para 1.08 & 1.10 has recommended following:

1.08: "Section 19B of the Indian Telegraph Act, 1885 authorizes the Central Government to confer licences, by way of a notification, the powers of the Telegraph Authority under part III of the Act. The Government issued a notification on 24th May, 1999 (Annexure-I), permitting the licencees under Section 4 of the Act to seek way-leave from any person including public authority, public corporation, autonomous body, State Government or Central Government in the respective licensed service areas for the purpose listed

therein. The dictionary meaning of the term 'way-leave' is right of use over the property of another. Traditionally the permitted kinds of uses were limited, most important being right of way."

1.10: "In the Recommendations on "Spectrum Management and Licensing Framework" issued in May, 2010, this Authority had recommended that Infrastructure Providers (IP-I) should be brought under Unified Licence. In the context of the need for facilitating the infrastructure providers, by empowerment under Section 19B, the need for IP-I being brought under this is all the more urgent."

9. TRAI therefore recommended that DoT should bring IP-1 under license so that the IP- 1 providers could take benefits to seek way-leave from public authority, Public Corporation State Government or Central Government in the respective service area. In this regard, we would like to submit that it is not clear why the proposed benefits as highlighted by TRAI in recommendations cannot be extended to Infrastructure Companies without bringing them under a licensing regime. COAI recommends the same approach taken by the MHA and DoT regarding Equipment Security, where no attempt was made to bring network service/equipment providers under a licensing regime, but benefits/requirements were extended to them by virtue of the cascading effects of their commercial arrangements with the licensed service provider be followed.
10. DoT in its reply to the Authority dated 29th Oct, 2008 wherein DoT has put on record that as per the statutory provisions the activity pertaining to installation of towers does not qualify for grant of license and had rejected the Authority suggestion to bring the IP-1 under the licensing regime stating the following:

" The revenues and profits from such activities attract necessary statutory charges as applicable e.g. income tax, corporate tax etc. Higher valuation cannot be a reason to bring IP-I under licensing regime."
11. We also believe that bringing IP-1 registrants under licensing framework will be completely contrary to the governments stated objective of "reducing the license and inspection raj".
12. In light of the fact that the industry is operating at rock bottom tariffs/ ARPU, levy of license fee on IP-1 companies will work against the objective of spread of affordable telecom services in India.
13. Moreover, the DoT proposal to bring IP-1 companies under the Unified Licensing will amount to levy of double tax on the same revenue stream in the hands of IP-1 companies and the service providers. This will only increase pressure on operators to pass these costs on to the consumers.
14. Further, bringing IP-1 registrants under Unified Licensing Regime will amount to imposition of License fee on IP-1 companies thereby leading to an increase in their cost structure. It is pertinent to note that this increase in cost will be passed on to the service providers and then to subscribers.
15. In view of the above, we would like to submit that **while the Central and the State Government should facilitate Tower installations, Right-of-Way (RoW) for IP-1 companies, these service providers should NOT be brought under the purview of Unified Licensing.**

16. If at all Government decides to bring the IP-1 under licensing regime then the same should be under Licensing through Authorization and not a Unified License. Also, there should be no license fees on the revenues earned by the licensee for the provision of IP-1 Services or alternatively, allow the costs incurred (revenue passed to IP-1 Service Providers) by the Telecom Service provider be allowed as deduction while calculating AGR. This would avoid imposition of double license fees.
17. Even, TRAI in its recommendations dated January 13, 2005 on Unified Licensing had placed IP-1 operators under “Licensing through Authorization” with nil entry fee/ license fee, Bank Guarantee etc. Thus, the Authority should not deviate from its stated position and migrate IP-1 to only “License through Migration” with nil entry fee, license fee, BG etc.