

Date: July 6, 2007

The Chairman  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawahar Lal Nehru Marg  
New Delhi-110 002

**Kind attn: Mr Nripendra Misra**

**Subject: Response to Trai's consultation paper titled, "Review of license terms & conditions and capping of number of access providers"**

Sir,

Please refer to your above referred consultation paper. In this regard, we wish to submit that capping of number of operator is not in the best interest of the consumers and also the nation. It is submitted that at most of the places in a service area, the capacity and coverage can be enhanced by increasing number of BTS sites probably barring a few locations in Delhi and Mumbai Service Areas. However, for such places technical solutions should be deployed instead of following subscriber-linked Spectrum allocation policy. Also, Trai and DoT should immediately built-up shareable active infrastructure using common spectrum at such congested places using USO Fund. If Trai takes these steps, then there will be enough spectrum for all the technologies for proper growth. If Trai follows the current approach, it will only help wrongful enrichment of all the existing licensees by enhancing their market valuation. Recently, DoT has granted a number of new licensees to Hutch/Vodafone, Idea and Aircel.

We are pleased to submit our para wise response to the issues raised in this consultation as follows: -

## **MERGER AND ACQUISITION**

### **Q1. How should the market in the access segment be defined (see 2.22)?**

A1. For the purpose of M&A, intra circle access market may continue to be classified as 'Fixed' and 'Mobile' due to its obvious advantages as listed out in para 2.22 of the consultation paper.

### **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 subscriber base take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer?**

A2. A proper combination of 'subscriber base' and 'Revenue' should be used for computing the market share. For determining subscriber base, VLR figures (plus 5%) should be used. VLR data gives the details of active customers at a given point of time but excludes switched-off and out-of-coverage customers. On the other hand,

HLR data includes churned out and pre-provisioned customers. If you add about 5 per cent to VLR data, then you can get almost accurate figures.

**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?**

A3. The existing limit of 67 per cent can be brought down to 45 per cent in view of the general international practice Trai has referred to in its Consultation Paper, “*The market share of 40 per cent to 50 per cent is indicative of dominance*”. A limit of 45 per cent would still allow consolidation to take place but will keep a check on dominance. There are natural advantages of consolidation especially in a situation when we have to often deal with a situation where we say that ‘Spectrum’ is scarce. In fact, non-performers must be encouraged and/or asked to quit the business or their licenses should not be renewed. Some examples of the non-performers, who have been holding licenses for more than ten years and yet not been able to keep pace with the market share, are given in the table given below: -

<b>Operator/Circle</b>	<b>Shyam/Rajasthan</b>	<b>HFCL/Punjab</b>
Wireline	166,313	155,134
WLL-F	77,267	62,342
WLL-LM	73,547	34,125
<b>Total subscribers</b>	<b>317,127</b>	<b>251,601</b>

**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 utilisation of scarce spectrum resource?**

A4. The existing level (15 MHz for Metros and Circle-A, and 12.4 MHz for Circle-B & C) of spectrum cap for a merged entity should be continued. However, in a transparent manner this cap should be temporarily relaxed for certain period, allowing the merged entity to adjust/relocate/discard its equipment to the extent technically feasible depending on individual cases, in the following manner: -

**GSM/GSM and CDMA/CDMA**

In cases where the allocated spot frequencies are located in different bands, then the merged entity should undertake to phase out the oldest equipment of its network in a time bound manner, till “mortality” of the equipment, to vacate Spectrum and comply with the cap. This principle can easily be followed for GSM/GSM and CDMA/CDMA merger.

**GSM/CDMA**

In cases of cross-technologies mergers (GSM/CDMA), the merged entity should be asked to follow growth path only in one particular technology (either GSM or

CDMA) in a given services area. In any case it does not make a business sense for an operator to follow two different technologies. The merged entity should be allowed to retain the spectrum of the discarded technology till the “mortality” of the equipment.

**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?**

A5. The existing limit of three can be continued.

**Q6. What are the qualitative or quantitative conditions, in terms of review of potential mergers or acquisitions and transfers of licenses, which should be in place to ensure healthy competition in the market?**

A6. There is no need to impose any new restriction. Even the existing restrictions should be lifted especially as long as BSNL and MTNL remain government owned companies, and in view of the fact that arch rivals in the private sector like Tata, Reliance, Vodafone and Airtel are fiercely competing against each other.

**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?**

A7. DoT and Trai should focus on ex-post competition regulation. Ex-ante competition regulation is not necessary under the prevailing fierce competition which is likely to remain for a considerable period now – four arch rivals in private sector plus the government operators are competing against each other.

## **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.**

*1.4 The LICENSEE shall also ensure that:*

*(i) Any changes in share holding will be subject to all applicable statutory permissions.*

*(ii) No single company/ legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. ‘Substantial equity’ herein will mean ‘an equity of 10% or more’. A promoter company/ Legal person cannot have stakes in more than one LICENSEE Company for the same service area.*

*Note: Clause 1.4(ii) shall not be applicable to Basic and Cellular Licensees existing as on 11.11.2003, and in case one of them migrates to UASL it shall not be necessary to surrender the other Licence. Further, Basic and Cellular Licensees existing as on 11.11.2003, shall not be eligible for a new UASL in the same service area either directly or through it’s associates. Further, any legal entity having substantial equity in existing Basic / Cellular licensees shall not be eligible for new UASL.*

A8. There should not be any cap for genuine investing community.

**Q9. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.**

A9. The existing level of cap (10 per cent) is sufficient. This has proved to very effective so far. There should not be any cap for genuine investing community.

**Q10. If no, should such acquisition in the same service area be treated under the M&A guidelines (in the form of appropriate terms and conditions of license)? Suggest the limit of such acquisition above which M&A guidelines will be applied.**

A10. Not applicable in view of A9.

**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?**

A11. Yes, if such a promoter company/legal person or his group companies/affiliates, etc., are purely investors and not operators. They must not be holding equity in a benami manner for any other operator as has been observed in Hutchison Essar deal.

**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?**

A12. Please read A11. All the companies or legal persons or their group companies or affiliates, etc., who do not provide telecom services in any part of the world, should be considered as investors. They must not be holding equity in a benami manner for any other operator as has been observed in Hutchison Essar deal.

**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.**

A13. Please read A11. Continued but genuine in-flow of investment is good for the economy of the country. They must not be holding equity in a benami manner for any other operator as has been observed in Hutchison Essar deal.

**Q14. Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?**

A14. Yes.

#### **PERMITTING COMBINATION OF TECHNOLOGY UNDER THE 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 additional spectrum meant for the other technology under the same license?**

A15. In principle, the government should not frame any rules/policy that prohibits a licensee from opting out of the existing technology for another technology. Otherwise, the Licensee will always be at the mercy of the technology provider and will not be able to offer new services to its customers. In any case, continuation with two different technologies, especially in the same service area by the same operator, is not a good business case. Only PSUs can afford that.

MTNL, the pioneer in introducing CDMA technology in India, is offering 'mobile' services on both CDMA as well as GSM platforms. *(Please note that "Garuda" is no more a "Limited Mobile" service. It is being offered by MTNL as a fully mobile service. Trai has wrongly described Garuda as "Limited Mobile" service in this Consultation Paper.)*

We understand the government's difficulty in managing spectrum requirement for a mix of technologies by one licensee in the same service area. The government should ensure that in such circumstances, both the spectrum is utilized efficiently.

Alternatively, if it is impossible to allocate spectrum for both the technologies to one operator in a service area, in this case, the government needs to give an operator a reasonable switchover time. The Licensee should be asked to follow growth path only in one technology - either GSM or CDMA in a particular service area. The merged entity should be allowed to retain spectrum of the discarded technology till the "mortality" of the equipment. This is the same concept as explained in "A4" when two operators using different technologies are permitted to merge.

**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?**

A16. The existing methodology of pricing can be followed. The government policy should act as enabling factor thereby allowing switchover from one technology to another. The government policy should not discourage operators to choose an alternate technology.

**Q17. What should be the priority in allocation of spectrum among the three categories of licensees given in 4.16 of the chapter?**

**4.16** *Another linked issue is that in case spectrum is available in phases at different points of time then what should be the priority of spectrum allocation among the following three categories:*

- *The existing licensees are eligible for additional spectrum allocation as per the WPC criterion;*
- *The new licensees are waiting for initial spectrum allocation for starting the mobile service;*
- *The existing licensees want spectrum for deploying alternate technology also.*

A17. A number of operators, as tabulated below, have been allocated more than what the government had contracted with them as shown in the table given below: -

Service area	Operator	Type of License	Actual spectrum allocation against contracted 6.2 MHz (in MHz)
<b>Andhra Pradesh</b>	Idea Cellular Ltd	CMSP	8
	Bharti Airtel Ltd	UACMSP	8.8
	BSNL	CMSP	8
	Hutchison	CMSP	8
<b>Bihar &amp; Jharkhand</b>	Bharti Airtel Ltd	UASL	8
<b>Chennai</b>	Aircel Cellular Ltd	CMSP	8.6
	Bharti Airtel Ltd	UACMSP	8.6
	BSNL	CMSP	8
	Hutchison	CMSP	8
<b>Delhi</b>	Bharti Airtel Ltd	UACMSP	10
	Hutch	CMSP	10
	MTNL	CMSP	8
	Idea Cellular Ltd	CMSP	8
<b>Gujarat</b>	Fascel (Hutch)	CMSP	11.8
	BSNL	CMSP	7.4
<b>Jammu &amp; Kashmir</b>	BSNL	CMSP	8
<b>Karnataka</b>	Bharti Airtel Ltd	UACMSP	10
	BSNL	CMSP	8
	Hutch	CMSP	8
<b>Kerala</b>	Communications Ltd	CMSP	8
	BSNL	CMSP	8
<b>Kolkata</b>	Bharti Airtel Ltd	UACMSP	8
	Hutchison East	CMSP	9.8
<b>MP &amp; Chattisgarh</b>	BTA Cellcom Ltd	CMSP	8
<b>Maharashtra</b>	Idea Cellular Ltd	CMSP	10
	BSNL	CMSP	8
<b>Mumbai</b>	BPL	CMSP	10
	Hutch	CMSP	10
	MTNL	CMSP	8
	Bharti Airtel Ltd	UACMSP	9.2
	Bharti Airtel Ltd	UASL	8
<b>Punjab</b>	Communications	UACMSP	8
	Bharti Airtel Ltd	UACMSP	8
	BSNL	CMSP	8
<b>Tamil Nadu</b>	Aircel Ltd	CMSP	10
	BSNL	CMSP	8
<b>Uttar Pradesh (E)</b>	Aircel Diglink(Hutch)	CMSP	8
	BSNL	CMSP	9.6
<b>Uttar Pradesh (W)</b>	Idea	CMSP	8
	BSNL	CMSP	8
<b>UACMSP = UASL migrated from CMSP; UABSO = UASL migrated from BSO</b>			

Now since more number of operators are seeking spectrum, the policy of allocating spectrum beyond the contracted quantum of spectrum should be reviewed downward.

The requirement of spectrum is more in congested areas like Connaught Place, Nehru Place, Rajinder Place, Gurgaon in Delhi Service Area. However, in most of the other parts of Delhi, the spectrum is not efficiently used. Therefore, the existing Licensees should be asked to use the spectrum efficiently instead of demanding additional spectrum. This is possible if they invest a little more in technology and increase number of BTS sites in congested areas instead of demanding additional spectrum. In fact putting additional BTS sites will not at all put any additional financial burden on the operators. They can save on payment of spectrum charges which is higher for higher quantum of spectrum as shown in the following table: -

Annual charges (in %)	Spectrum (in MHz)	
	GSM	CDMA
2	2 x 4.4	2 x 5
3	2 x 6.2	2 x 6.25
4	2 x 10	2 x 10
5	2 x 12.5	2 x 12.5
6	2 x 15	2 x 15

However, coming back to the point of priority for spectrum allocation, it should be done in the following manner: -

- (a) Existing licensees who want spectrum for switchover from one technology to another.
- (b) New licensees who are waiting for additional spectrum for launch of services.
- (c) Existing licensees who want spectrum on alternate technology and has no intention to discard the existing technology in use.

However, we are of the view that no spectrum should be allocated beyond the contracted quantum and technological solution should be deployed for solving spectrum problem in the congested areas which is few in number.

**Q18. Whether there should be any additional rollout obligations specifically linked to the alternate technology, which the service provider has also decided to use?**

A18. Yes, failing which heavy penalties should be imposed and the allocated additional spectrum should be taken back.

**Q19. Lastly, as such service providers would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to them?**

A19. There should be an overall cap per operator per service area irrespective of technology being used. Alternatively, the existing criteria of subscriber linked spectrum, if continued, can be used to determine the quantum of spectrum for each technology. However, in our opinion, if Trai emphasizes on sharing of active infrastructure at all those congested places in urban areas, then there will not be much of pressure on spectrum availability and the DoT can assign them to more operators.

## **ROLL OUT OBLIGATIONS**

**Q20. Should present rollout obligations be continued in the present form and scale for the Access service providers or should rollout 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 rollout obligation is met. Please specify, in case you may have any other suggestion.**

A20. The rollout obligation should be removed completely. The previous experiences have proved that Rollout Obligations are nothing but a paper work. No operator is threatened by application of LD charges and cancellation of license. Rather, these clauses have helped the cause of those in the government who look for every opportunity to make illegitimate money. The government should focus more on proper and timely utilization of USO Fund to fulfill social obligations. Therefore, the stress should be on timely implementation of Rural Tower project and strict monitoring of RDEL project initiated by USO Fund Administrator. Apart from this, the policy intervention through implementation of mandatory MVNO (Mobile Virtual network Operator) will help in multiplying teledensity in much shorter time.

**Q21. Is there a case for doing away with the performance bank guarantees (PBG) as the telecom licensees are covered through the penalty provisions, which could be invoked in case of non-compliance of rollout obligations?**

A21. For “established” players, PBG should not be insisted upon. The government should focus on reducing unnecessary paper work and cost for the operators. Every operator has to pay Bank Charges and deposit margin money with the Bank for getting PBG, which is recovered from the consumers in the form of tariff. Therefore, adequate alternate protection should be in-built in the agreements to protect government’s interest to deal with situations like Data Access, an ILD Licensee, who had defaulted in license fee payment to the government.

**Q22. Should rollout obligations be again imposed on the existing NLD licensees? If yes, then what should be the rollout obligations and the penalty provisions in case of failure to meet the same?**

A22. Please see A20. The government should not insist for imposing rollout obligations on NLD licensees. There is no point in attempting something which will yield no result. Rather, Trai can take a positive step by implementing Carrier Access Code (CAC). It is not ethical to force NLD licensees to provide POP in every place unless CAC is put in place first.

**Q23. What additional rollout obligations be levied on ILD operators?**

A22. Please see A20 and A22. The government should not insist for imposing rollout obligations on ILD licensees. There is no point in attempting something which will yield no result. Rather, Trai can take a positive step by implementing Carrier Access Code (CAC). It is not ethical to force ILD licensees to provide POP in every place unless CAC is put in place.



**Q24. What should be the method of verification of compliance to rollout obligations?**

A25. Rollout obligation is not required, the reasons for which have been elaborated in response to earlier questions.

**Q25. What indicators should be used to ensure quality of service (QoS)?**

A25. The QoS is a serious matter which must be addressed. Trai's report has revealed that major QoS problem is due to shortage of Interconnecting Ports. Therefore, the concept of "inter-connection seeker" prevalent in licenses of mobile services, should be done away. The other important aspects such as auditing of correctness of billing should be handled by independent watchdogs, not by simple Chartered Accounting firms or research agencies "IMRB", who have been engaged by Trai. Most of the time, new mobile codes are not accessible from every exchange leading to artificial congestion. For example, "99" code was not accessible for months from many of the places in Delhi. Some arrangements need to be in place when new codes are opened.

**Q26. As the licensees are contributing 5 per cent of AGR towards the USOF, is it advisable to fix a minimum rural rollout obligation? If yes, what should be that? If no, whether the Universality objectives may be met through only USOF or any other suggestions?**

A26. The rollout obligation is not practical as elaborated in response to earlier questions. If the government has to succeed in providing affordable telecom in rural areas, it has to focus on core issues of implementations through USO Fund Administrator, who should be given special powers to award contracts on negotiation basis without following bidding process for ensuring quick execution. It is the government's responsibility to expedite access to rural masses and plough back to operators' the benefit of what (revenue) it has collected from them till now.

**Q27. In case of rural rollout obligation, whether number of BTS in a certain area a viable criterion for verification of rollout obligation?**

A27. Rollout obligation is not required, the reasons for which have been elaborated in response to earlier questions.

**Q28. What should be the incentives and the penalties w.r.t. rural rollout obligations?**

A28. Rollout obligation is not required the reasons for which have been elaborated in response to earlier questions. The matter should be best handled by the USO Fund Administrator.

## **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?**

A29. There should not be any cap of access service providers in a service area. Most of the operators are in profit. The benefit of competition should not be denied to the general public. After "free life time schemes", by careful reviewing of IUC

regime, there is now a possibility that the operators start paying the subscribers for receiving incoming calls. We have to review the spectrum policy and insist the operators to use it efficiently by deploying additional BTS sites instead of demanding additional spectrum.

**Q30. Should the issue of deciding the number of operators in each service area be left to the market forces?**

A30. Yes. As a regulator or licensor, Trai and DoT should keep themselves above board. Some of the existing licensees (Hutchison/Vodafone (Essar Spacotel), Aircel (Dishnet), and Idea) have recently been granted licenses in other part of the country. Immediately thereafter, the DoT and Trai cannot take any decision of putting a cap on number of operators and increase their chip value. This is also not in the overall interest of the nation and consumers. The government should desist from evolving such operator centric policies.

We do hope that Trai will consider the above points while firming up its recommendations to the DoT.

Thanking you

Yours sincerely  
For Telecom Watchdog

Anil Kumar  
Secretary