

Subject: Consultation Paper dated 15 March 2012 on Amendment in the ISP License Agreement for incorporating the terms and conditions mentioned in the NIA dated 25.02.2010 for use of BWA spectrum

TVR/VIL/031

2 April 2012

The Telecom Regulatory Authority of India

Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi-110002

Dear Sirs/Madam,

Re: Consultation Paper dated 15 March 2012 on Amendment in the ISP License Agreement for incorporating the terms and conditions mentioned in the NIA dated 25.02.2010 for use of BWA spectrum

Vodafone India thanks the Authority for extending time for response to this consultation paper.

The Authority has informed that it received letter dated 27 December 2011 from DoT seeking TRAI's recommendations for amendment in the ISP License Agreement to incorporate the terms and conditions mentioned in NIA dated 25 February 2010 for use of BWA spectrum and accordingly this consultation process has been initiated. The Authority has further proposed that all the terms and conditions mentioned in the NIA dated 25 February 2010 may be incorporated in the license agreements of the ISPs, who have obtained BWA spectrum through auction process.

It is submitted that NIA prescribed that upon receipt of the Successful Bid Amount, the DoT (WPC) shall issue a Letter of Intent allocating the frequencies to the Successful Bidder ("allocation of frequency") and necessary amendments to enable use of frequency allocated by WPC for provision of services under applicable license (including migration to ISP category 'A' licence, if applicable) shall be made to the existing UAS/CMTS/ ISP licence ("assignment of frequency") of the Successful Bidder or its nominated entity (as applicable), within 15 days of DoT receiving an application for such amendments.

Further, the UAS Licenses were amended in September 2010 itself for successful bidders for BWA spectrum. We further submit that no recommendations were sought by DoT for amendments in the UAS License or ISP License due to 3G/BWA spectrum allocations by auction either before or post auctions.

It is further submitted that the only aspect mentioned by DoT in its letter dated 27 December 2011 is that the definition of AGR differs in the case of ISP licenses and UAS licences. We respectfully submit that this is neither a new fact nor a new reason to trigger the consultation

because the provisions of respective service license were known to all stakeholders before the bids.

In this regard, it may be noted that the DoT itself had specifically responded to this issue in the Q&A of the 3G & BWA NIA dated 25.02.2010 in Q no. 227, which is reproduced below:

No.	Query	DoT Response
227	As per prevailing ISP licence, pure Internet revenue is exempted from Gross revenue for determining the AGR & payment of licence fee and spectrum fee. Will the DoT allow pure UAS licence to also avail similar exemption in case it wins BWA spectrum, so as to maintain parity?	Licence fee is governed by the licence conditions. The services allowed under a UAS licence are much wider in scope than those allowed under an ISP licence.

Thus, DoT had already decided and given a confirmation to all the stakeholders on this subject and there was no need to raise the said issue in December 2011.

We respectfully submit that we are rather surprised to have such a consultation and, that too, 21 months after the auction completion. Nevertheless, **we believe that such consultation and subsequent amendment in the ISP license will not result in effective date for the purpose of duration and roll out obligation for BWA spectrum being extended.** If the said effective date gets extended and is different from effective date of other successful bidders of 3G/BWA spectrum then **it will result in discrimination against other bidders and will not be in line with the terms of NIA.** Further, such ISP licensees have already availed 21 months from auction results to do techno-economic evaluation and planning and any extension will, therefore, result in an undue advantage and largesse at the cost of public good being extended to such successful bidders having ISP license.

We respectfully reiterate, in conclusion, **that there should be no special advantage accruing to the BWA spectrum auction winners vis-à-vis the 3G spectrum auction winners by virtue of such a special consultation,- that too 21 months after the auction.**

Kind regards,

Sincerely yours,

T. V. Ramachandran
Resident Director
Regulatory Affairs & Government Relations