Consultation Paper No. 1/2009

Telecom Regulatory Authority of India

Consultation paper

on

Lock-in period for Promoter's Equity and other related issues for Unified Access Service Licensees (UASL)

New Delhi, India
January 9, 2009

Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi-110002

PREFACE

The Telecom Sector in the country is witnessing a phenomenal growth today. It has already exceeded the tele-density targets set in the Telecom Policy of 1999. The Sector is likely to grow further with the introduction of new technologies and services like 3G, Next Generation Network (NGN), Mobile Virtual Network Operator (MVNO), Mobile Number Portability (MNP), Voice Over Internet Protocol (VOIP) etc.

A large number of new operators have also entered in the market to tap its immense and ever increasing potential. Under the current licensing regime, there are provisions relating to substantial equity, transfer/assignment of license under certain conditions and intra service area merger of licenses. However, presently there are no provisions on lock-in of equity shareholding and addition of equity. There are growing expressions of concerns on making windfall gains through financial restructuring of Licensee Companies immediately after grant of licenses. Such windfall gains could distort the market economics and also affect the sustained growth of the industry. As spectrum is a limited national resource, any exploitation of the spectrum allocated under a telecom license for undue gains may not be conducive as it would defeat its very purpose i.e. provision of affordable and efficient service to the consumers and would also be counter productive for the industry as a whole.

A reference dated November 24, 2008 has been received from the Department of Telecommunications (DoT) informing that the Telecom Commission had deliberated upon the matter of prohibition of sale of promoter's equity for Unified Access Service (UAS) License holders and that the Commission was of the considered view to put certain restrictions in the license agreements. DoT has sought recommendations of TRAI on the issues of lock-in period for promoter's equity for Unified Access Service Licenses (UASL), restriction on declaration of special dividend in case of fresh equity etc. Recognizing the concerns involved and that the issue of Merger and

acquisition and Substantial Equity had been extensively deliberated during the Consultation process on 'Review of license terms and conditions and capping of number of access providers', it has been decided to initiate a short consultation process before the recommendations of TRAI are sent to the Government. This consultation paper outlines the historical background and extant policies and regulations in this regard and discusses the issues to be addressed. The consultation paper has been placed on TRAI's website www.trai.gov.in.

All stakeholders are requested to offer their views/comments on the issues raised in the consultation paper. The views/comments may be furnished by 20th January, 2009 preferably in the electronic form (E-mail: manoj4619@yahoo.co.in). In case of any clarification/information, please contact Smt. Sadhana Dikshit, Pr. Advisor (FA & IFA), Tel. No. +91-11-23221856, Fax: +91-11-23235249. Email: pradvfa@trai.gov.in; srofa3@trai.gov.in.

(Nripendra Misra)
Chairman, TRAI

CONTENTS

TABLES

ANNEXURES

CHAPTER 1

INTRODUCTION

Background

1.1 Department of Telecommunications (DoT) has sought recommendations of Telecom Regulatory Authority of India (TRAI) on the considered view of the Full Telecom Commission to introduce the following conditions in the UAS license agreements in order to prevent fly-by-night operators making a windfall gain. A copy of their letter dated November 24, 2008 is at Annexure A.

i) The promoters who have 10% or more stakes in the company and whose networth has been taken into consideration for determining the eligibility for grant of UAS license should not sell their equity in the UAS Licensee Company for a period of 3 years from the effective date of license (s). However, issue of additional equity share capital by the licensee companies/their holding companies by way of private placement/public issues shall be permitted. Further, the lock-in provisions shall not be applicable in case the shares are transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers with the condition that such shares should have been pledged for investment only in the particular licensed project.

ii) In cases, where money is brought into the company by issue of fresh equity, there shall be a restriction on declaration of special dividend by the company for a period of 3 years.

iii) The above conditions (i) and (ii) would not be applicable to the licensees holding UAS/CMTS licenses for a period of 3 years if they acquire any new UAS licenses in some service areas in order to enlarge their area of operations.

1.2 The DoT has sought recommendations of TRAI in terms of clause 11 (1)(a) (iv) of the TRAI Act, 1997, as amended by TRAI (Amendment) Act, 2000 which deals with measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services. However, since the issues raised in the reference have a direct bearing on the terms and conditions of license of service providers and would call for appropriate changes therein to address various concerns raised, TRAI is examining the DoT reference under clause 11 (1)(a) (ii), "terms and conditions of license to a service provider" in addition to clause 11(1)(a)(iv) as suggested by DoT. The DoT has been informed of the same by letter dated December 31, 2008. The DoT has also been requested in the said letter to furnish various information/ documents relating to any transaction involving sale of/change in equity of a UAS Licensee that has taken place after the grant of new licenses. A copy of the letter is at Annexure B.

1.3 The issue of Merger and acquisition and Substantial Equity had been extensively deliberated during the Consultation process on 'Review of license terms and conditions and capping of number of access providers'. Therefore, it has been decided to conduct a short consultation before the recommendations of TRAI are sent to the Government. This consultation paper is being issued by TRAI in keeping with its commitment to transparency and to have the benefit of the views of the stakeholders on the issues involved, before it gives its recommendations to the Government.

Indian Telecom Sector- An overview

1.4 The Indian Telecom Sector is one of the fastest growing sectors in the world today. With a mobile addition of more than 9 million lines per month and about 10 to 12 Access providers per service area, the Indian market is one of the most competitive markets as well. This is largely due to the proactive regulatory environment and various

reforms measures of the Government. Some of the salient features of the sector are as follows:

- Second largest in the world after China.
- Approximately 364 million telephone connections at the end of October, 2008, which includes 326 million wireless and 38 million wireline connections.
- An average addition of more than 9 million subscribers per month during the first seven months of the current financial year (i.e. up to October, 2008).
- An overall tele-density of 31.50 % at the end of October, 2008.
- Highly competitive with more than 10 Access Service Licenses in every service area (not all are operational at the moment) except Chennai, which has been merged with Tamil Nadu w.e.f. 15.09.2005.
- Between December, 2007 and January, 2008, 121 new UAS Licenses were issued[1].
- As on 31.10.08, 281 Access Service Licenses have been issued in the country. Out of this, 226 are UASL Licenses, 53 are CMTS licenses and 2 are Basic Licenses (granted to BSNL for all India except Delhi & Mumbai and to MTNL for Delhi & Mumbai). Details of these licenses, Service Area wise are provided in Table 1[2] at page 45.

1.5 Table 2 at pages 46-48 gives the mobile market share of various service providers in different service areas based on subscriber base, revenue and outgoing MOUs. In wireline services, as on 30.09.2008, public sector operators have a market share of 87.87 (BSNL – 78.55%

[1] Source: www.dot.gov.in
[2] -do-

& MTNL – 9.32%) and private operators have a market share of 12.13%.

1.6 The Gross Revenue of the Indian telecom service sector for the previous financial year (2007-08) was Rs. 1,30,000 crore, contributing nearly 3% to the national GDP. The total FDI from April 2000 to August 2008 reached Rs. 3,074,929.49 million, out of which the FDI inflow in the telecom sector was Rs. 182,042.72 million. The share of the sector in total FDI declined to 5.92% for the period April 2000 to August 2008 as compared to 6.06% for the period April 2000 to July 2008. The net addition of FDI during August '08 was Rs. 99,948.35 million, out of which the addition of FDI in telecom was Rs. 1,616.04 million and the share of telecom in the total addition of FDI was 1.62%.

Relevant Issues and Structure of the Consultation Paper

1.7 A telecom license is issued to a company to participate in and contribute to the growth of the sector**.** Acquiring of license with the intention of trading of license, premature capitalization of equity and early exit, are not the intent of grant of licenses, especially when the licenses come bundled with spectrum. It is a desirable endeavor to strike a balance between consumer having access to a competitive market and telecom companies to improve their economic efficiency. To this end the FDI norms had been relaxed to enable FDI up to 74% in the sector. The licenses also allow assignment to the Financial Institutions in case of failure of the licensee to meet its debt obligations.

1.8 In the present licensing regime, guidelines for intra-service area merger of Cellular Mobile Telephone Service/Unified Access Service Licenses have been issued. Transfer/assignment of license is permitted subject to certain conditions and there are provisions relating to substantial equity and cross-holding of licenses in the same service area. On a reference dated April 13, 2007 from the DoT,

the Authority undertook last year an exhaustive review of license terms and conditions that included conditions relating to Mergers and Acquisitions, Substantial Equity and other aspects and gave its recommendations thereon (released on August 28, 2007). Summary of the said recommendations is at Annexure C.

1.9 Chapter 2: Extant Policies and Regulations, enumerates the extant policies and regulations and their evolution over time. It also includes the recent recommendations of the Authority mentioned in the previous paragraph (1.8) and subsequent developments thereto.

1.10 Chapter 3: Issues under consideration, provides details on the relevant issues in the light of these policies, recommendations, other statutory provisions and historical background.

1.11 Chapter 4: Summary of Issues for Consultation captures the issues for consultation on which views/comments of stakeholders are sought.

CHAPTER 2

EXTANT POLICIES AND REGULATIONS

2.1 The Telecom Sector was opened to private participation in services with the implementation of the National Telecom Policy 1994. Since then there has been no looking back and the sector has responded very well to the market requirements from time to time. Liberalized Government policies and positive regulatory intervention have ensured that the pace of reforms never slackened and remained on course for greater public interest and telecom growth. In the succeeding paragraphs, the evolution of ownership and equity related clauses in the license agreements relating to CMTS/UASL since 1994 are brought out.

National Telecom Policy 1994

2.2 The focus of the policy was on telecommunications for all and telecommunication within the reach of all with emphasis on the quality of telecom services to be of world standard. The policy recognized that the required resources for achieving the policy targets would not be available only out of Government sources and concluded that private investment and involvement of the private sector was required to bridge the resource gap. In order to implement the policy, suitable arrangements were proposed to be made to protect and promote the interests of the consumers and to ensure fair competition. The Govt. invited private sector participation in a phased manner from the early nineties. After a competitive bidding process, licenses were awarded to 8 CMTS operators in the four metros, 14 CMTS operators in 18 telecom Circles and 6 Basic telephone service operators in 6 Circles.

2.3 Selection for grant of licenses was through a system of tendering. The criteria applied for selection included track record of the company and attractiveness of the commercial terms to the Department of

Telecommunications among others. Companies registered in India were allowed to participate in the expansion of the telecommunication network in the area of basic telephone services also. In accordance with the policy, the license agreement for CMTS agreement in 1994 contained the following clauses for transfer/assignment of license:

2.4 "The Licensee will not assign or transfer its rights in any manner whatsoever under the licence to a third party or enter into any agreement for sub-licence and/or partnership relating to any subject matter of the licence to any third party either in whole or in part i.e. no sub-leasing/partnership/third party interest shall be created." (Clause 9 of the agreement)

2.5 "Termination for transfer of Licence: The Licensee shall (clandestinely or otherwise) not transfer the licensing rights granted to him, to any other party. Any violation will be construed as a breach of licensing rights and the licence will be terminated in accordance with 15.1 (a) above." (Condition 15.7 of Terms and Conditions)

New Telecom Policy (NTP) 1999

2.6 The NTP 1999 noted that the private sector entry had been slower than what was envisaged in the NTP 1994 and that the result of privatization had so far not been entirely satisfactory as a result of which, some of the targets envisaged in the objectives of the NTP 1994 remained unfulfilled. Realizing the need for a new telecom policy in this light and also in view of the developments in the telecom, IT, consumer electronics and media industries world-wide, the objectives of the NTP 1999 included transformation of the telecommunications sector to a greater competitive environment providing equal opportunities and level playing field for all players in a time bound manner and to enable Indian Telecom Companies to become truly global players.

2.7 The New Policy framework focused on creating an environment, which would enable continued attraction of investment in the sector and allow creation of communication infrastructure by leveraging on technological development. While propagating various steps towards this end like opening of National long distance service to private operators for competition with effect from 01.01.2000, grant of license for an initial period of 20 years (from 10 years earlier) to Cellular Mobile and Fixed Service Providers, payment of license fee based on a revenue share, the policy also underlined the intention of the Government to satisfactorily resolve the problems being faced by existing operators in a manner which was consistent with their contractual obligations and was legally tenable. The role of TRAI was also emphasized as to provide an effective regulatory framework and adequate safeguards to ensure fair competition and protection of consumer interests.

2.8 By an offer of Migration Package made in July, 1999, the Basic and Cellular Mobile Licensees existing at that time were migrated from a fixed license fee regime to the revenue sharing arrangement under the NTP 1999. Under this migration, the Licensees surrendered their right to operate in a duopoly regime (of only two private operators per service area) and the license period was extended from 10 to 20 years (15 to 20 Years in the case of Basic Services) and instead of the fixed license fee as committed at the time of grant of licenses the license fee as percentage of revenue was introduced.

2.9 The migration to revenue share arrangement further carried with it a lock-in of the present share holding for a period of five years from the effective date of the license. During that period, any transfer of share holding directly or indirectly through subsidiary or holding companies was not permitted. However, issue of additional equity share capital by the licensee company/its holding company by way of private placement/public issue was permitted. Further, the aforesaid lock-in provisions were not applicable in case the shares were transferred

pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers with the condition that such shares should have been pledged for investment only in the concerned licensed project. Prior to this amendment, the License stipulated that equity of foreign promoters whose networth or experience had been taken into consideration shall not fall below 10% of the total for an aggregate period of three years.

License Agreement for CMTS in September, 2001

2.10 The 4th Cellular Operator in each service area was introduced in 2001, through a multi stage ascending bid process. The salient conditions on ownership of Licensee Company under this license were as follows:

2.11 "The licensee shall ensure that the total foreign equity in the LICENSEE Company does not, at any time during the entire Licence period, exceed 49% of the total equity." (Clause 1.1)

2.12 "There shall be no change in the Indian and Foreign promoter(s) or their equity participation unless permitted by the LICENSOR in writing." (Clause 1.2)

2.13 "The licensee company may, with prior written consent of the Licensor replace a promoter(s) by another promoter(s) of equal or higher standing as stipulated below:

(a) an existing foreign promoter may be substituted by another foreign promoter of similar standing;

(b) the existing Indian Promoter(s) may also be allowed to acquire the foreign promoter's shareholding; and

(c) transfer of equity inter-se between existing Indian promoters may be permitted, provided the majority Indian promoter continues to hold at least the present shareholding for a period

of five years from the effective date of licence agreement. The merger may be permitted as long as competition is not compromised. TRAI will be consulted by the licensor in this matter." (Clause 1.3)

2.14 "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 same service. 'Substantial equity' herein will mean 'an equity of 10% or more'. A promoter company cannot have stakes in more than one licensee company for the same service area." (Clause 1.4 (ii))

2.15 "Management control of the licensee company shall remain in Indian Hands." (Clause 1.4 (iii))

Unified Access Service License Regime in 2003 and further developments

2.16 The Unified Access Service License Regime bringing the basic and cellular services under one license was introduced in the year 2003. The unified regime envisaged migration of existing Basic/CMTS licensee to the Unified Access Service License (UASL). The License agreement for provision of Unified Access Services after migration, issued in 2003, contained the following important clauses on ownership of the licensee company:

2.16.1 "Except prior permission in writing by Licensor there shall be no change in the Foreign promoter(s) or their equity participation. Normally there will be no objection in substituting an existing foreign promoter by another foreign promoter of similar standing subject to the total foreign equity being below the prescribed limit." (Clause 1.2)

2.17 "The licensee company may, under intimation to Licensor replace a promoter(s) by another promoter(s) as stipulated below:

(a) the Indian Promoter(s) or person(s) acquiring the foreign promoter's shareholding; and

(b) transfer of equity between Indian promoters or person(s) including Indian employees of the company." (Clause 1.3)

2.18 The merger may be permitted as long as competition is not compromised as defined in condition 1.4(ii)." (Clause 1.3.1)

2.19 "In case of company listed at a stock exchange(s), shares bought and sold by way of any transaction through the stock exchange(s) where the Company shares or depository receipts are listed will not be treated as change of equity for the purpose of this clause subject to total prescribed foreign equity ceiling unless otherwise it leads to change in management control within the definition of SEBI Act." (Explanation below Clause 1.4)

2.20 "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 cannot have stakes in more than one Licensee Company for the same service area." (Clause 1.4 (ii))

2.21 "Management control of the licensee company shall remain in Indian Hands." (Clause 1.4 (iii))

2.22 Through its letter dated 14.12.2005, the DoT effected amendments to various clauses of the License Agreement for Unified Access Service (UASL) including the ownership clause. A copy of that letter is at Annexure D. Some of the important amendments were as follows:

2.22.1 Increase in the limit of foreign equity from 49% of total equity to 74% total composite foreign holding;

2.22.2 Removal of permission for change in foreign promoters or their equity participation and removal of intimation for transfer of equity between Indian promoters or the Indian Promoter(s) acquiring the foreign promoter's shareholding;

2.22.3 Removal of clause on management control of the LICENSEE Company remaining in Indian Hands. Instead, it was stipulated that the majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens and that the Share Holder Agreements (SHA) should specifically incorporate such condition. It was further amended that Chief Technical Officer (CTO)/Chief Finance Officer (CFO) should be resident Indian citizens and the Licensor could also further notify key positions to be held by resident Indian citizens.

2.22.4 Introduction of the clause, "in order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company."

2.22.5 Substantial equity clause was made part of the clause relating to the merger of Indian companies.

2.23 Simultaneously, the DoT also issued guidelines for grant of Unified Access Service License on these lines. Most of the detailed conditions provided in the above amendments were made part of the guidelines. A copy of the guidelines is at Annexure E.

Existing clauses in the UASL Agreement

2.24 The relevant clauses in the existing UAS License Agreement related to ownership of the Licensee company, networth, restrictions on transfer of license etc. are reproduced below:

Ownership of the LICENSEE Company

"1.1 The LICENSEE shall ensure that the total foreign equity in the paid up capital of the LICENSEE Company does not, at any time during the entire Licence period, exceed 74% of the total equity subject to the following FDI norms :

(i) Both direct and indirect foreign investment in the licensee 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 licensee 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.

(ii) FDI up to 49 percent will continue to be on the automatic route. FDI in the licensee 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.

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

1.2 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.

1.3 The merger of Indian companies may be permitted as long as competition is not compromised as defined in condition 1.4 (ii).

1.4 The LICENSEE shall also ensure that:

(i) Any changes in share holding shall 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 License. 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.

(iii) Management control of the LICENSEE Company shall remain in Indian Hands."

Networth

1.7 "The promoters of LICENSEE shall have a combined net-worth[3] of Rs _____ crores (Rupees _____ crores only) and the net-worth of only those promoters shall be counted who have directly in their name at least 10% equity stake in the total equity of the company. In case of acquiring any other UASL licence, the licensee shall maintain additional net-worth as prescribed for new UASL for that service area also."

Restrictions on 'Transfer of Licence'

6.1 "The LICENSEE shall not, without the prior written consent as described below, of the LICENSOR, either directly or indirectly, assign or transfer this LICENCE in any manner whatsoever to a third party or enter into any agreement for sub Licence and/or partnership relating to any subject matter of the LICENCE to any third party either in whole or in part i.e. no sub leasing/partnership/third party interest shall be created. Provided that the LICENSEE can always employ or appoint agents and employees for provision of the service.

6.2 Intra service area mergers and acquisitions as well as transfer of licences may be allowed subject to there being not less than three operators providing Access Services in a Service Area to ensure healthy competition as per the guidelines issued on the subject from time to time.

6.3 Further, the Licensee may transfer or assign the License Agreement with prior written approval of the Licensor to be granted on fulfillment of the following conditions and if otherwise, no compromise in competition occurs in the provisions of Telecom Services :-

[3] Rs. 100 crore for Category A & Metro; Rs. 50 crore for Category B and Rs. 30 crore for Category C service areas

(i) When transfer or assignment is requested in accordance with the terms and conditions on fulfillment of procedures of Tripartite Agreement if already executed amongst the Licensor, Licensee and Lenders; or

(ii) Whenever amalgamation or restructuring i.e. merger or demerger is sanctioned and approved by the High Court or Tribunal as per the law in force; in accordance with the provisions; more particularly Sections 391 to 394 of Companies Act, 1956; and

(iii) The transferee/assignee is fully eligible in accordance with eligibility criteria contained in tender conditions or in any other document for grant of fresh license in that area and show its willingness in writing to comply with the terms and conditions of the license agreement including past and future roll out obligations; and

(iv) All the past dues are fully paid till the date of transfer/assignment by the transferor company and its associate(s) / sister concern(s) / promoter(s) and thereafter the transferee company undertakes to pay all future dues inclusive of anything remained unpaid of the past period by the outgoing company."

Recent Review of license terms and conditions and capping of number of access providers

2.25 It may be mentioned that TRAI received a reference dated April 13, 2007 from Department of Telecommunications seeking recommendations on the issue of determining the number of Access providers in each service area and review of the terms and conditions in the Access provider license which included substantial equity holding, transfer of licenses, Mergers & Acquisitions (M&A) (with reference to guidelines dated 21.02.2004 on M&A), permitting service

providers to offer access services using combination of technology under the same license, roll-out obligations, etc. The Authority released a Consultation Paper on "Review of license terms and conditions and capping of number of access providers" (Consultation Paper No. 7/2007, available on TRAI website: www.trai.gov.in) and subsequently gave its recommendations dated August 28, 2007 (also available on TRAI website) thereon. The recommendations relating to substantial equity, transfer of licenses, M&A etc. have a bearing on issues being discussed in this consultation paper. Accordingly, some of the relevant recommendations contained in the "Recommendations on Review of license terms and conditions and capping of number of access providers" dated 28.08.2007 are reproduced below:

Merger & Acquisition

2.25.1 The relevant service market be defined as wire line and wireless services. Wireless service market shall include fixed wireless as well.

2.25.2 The relevant geographic market shall be licensing service area as it exists today.

2.25.3 For determination of market power, market share of both subscriber base and adjusted gross revenue of licensee in the relevant market shall be considered to decide the level of dominance for regulating the M&A activity.

2.25.4 M&A guidelines should use Exchange Data Records (EDR) in the calculation of wireline subscribers and specifically VLR data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base.

2.25.5 The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market.

2.25.6 The market share of merged entity in the relevant market shall not be greater than 40% either in terms of subscriber base or in terms of Adjusted Gross Revenue.

2.25.7 No M&A activity shall be allowed if the number of wireless access service providers reduces below four in the relevant market consequent upon such an M&A activity under consideration.

2.25.8 The existing cap of 2x15 MHz per operator per service area for metros and category A circle and 2x12.4 MHz per operator per service area in category B and C circle applicable for a post merger entity be removed for purposes of regulating M&A activity.

2.25.9 The annual license fee and the spectrum charge are paid as a certain specified percentage of the AGR of the licensee. On the merger of the two licenses, the AGR of the two entities will also be merged and the license fee will be therefore levied at the specified rate for that service area on the resultant total AGR. Similarly, for the purpose of payment of the spectrum charge, the spectrum held by the two licensees will be added/merged and the annual spectrum charge will be at the prescribed rate applicable on this total spectrum.

Substantial Equity

2.25.10 Keeping in view these concerns, and also the need to provide for commercial flexibility to ensure efficiency in operations in the sector, the Authority suggests an upper limit of 20% for crossholding by an existing licensee in another licensee company in the same service area. However, the Authority would suggest a two stage process of clearance in this matter of cross holding. One, the existing limit of less than 10% would continue on an automatic basis as per the present

regime and any acquisition of 10% and above and up to 20% will require the prior approval of the licensor.

2.25.11 The Authority has also noted that the "substantial equity" clause in the license also separately puts a limit on the equity holding of a promoter company. The clause states "A promoter company/ legal person cannot have stakes in more than one LICENSEE Company for the same service area." In response to the consultation paper, a number of stakeholders have suggested doing away with this condition. The Authority also feels that such a condition is too restrictive and is not in consonance with the present telecom environment. Therefore the Authority recommends removal of this condition. The shareholding of a promoter company in more than one LICENSEE Company will also be governed by the substantial equity restriction recommended above.

2.25.12 A mix of ex-ante and ex-post approach for regulating acquisitions of equity stake of one licensee Company/ legal person/promoter company in the enterprise of another licensee in the same license area. Acquisition of equity capital up to 10% of the target licensee's enterprise shall be permitted by an automatic route and anything beyond that and up to 20% of the equity holdings of the target licensee company, shall be approved on a case by case basis and the process of such approvals will be based on the M&A guidelines contained in these recommendations.

Transfer/Assignment of License

2.25.13 The Authority while examining the issue of M&A had also deliberated on these terms for the transfer of licenses and has come to the conclusion that the present terms and conditions are adequate and therefore the Authority recommends that it does not require any change in the existing terms.

Roll out obligations

2.25.14 The present provisions of roll out obligations should not be changed for all the access service providers. (extracts of the License conditions on roll out obligations are at Annexure F)

2.25.15 Without any change in the provision of LD, in case the roll out obligation is not met even after 52 weeks of the period prescribed for completing roll out obligations, the Authority recommends that the reference to termination of license in clause no. 35.2 of UASL may be replaced by the following:

i. The performance bank guarantee be forfeited and the service provider may be asked to resubmit PBG of the same amount.

ii. No additional spectrum may be allocated to licensees till he does not fulfill the roll out obligations.

iii. Such a licensee should not be eligible to participate in any spectrum auction till the roll out obligation is met.

iv. Any proposal of permission of merger and acquisition should not be entertained till the roll out obligation is met.

2.26 While examining the TRAI recommendations, a critical deviation has been made in respect of the roll out recommendation at 2.25 (iv) above, which appears to be relevant to the instant consultation as well. The modification introduced by DoT is reproduced below:

2.26.1 "Any proposal for permission for merger shall not be entertained till the roll out obligation is met. However, request for permission for acquisition may be entertained." (DoT letter No.20-100/2007-AS-I dated 08.11.2007)

2.27 Thus a distinction has been made between merger and acquisition while accepting the recommendation of TRAI in this regard.

2.28 Consequent upon the TRAI recommendations, the DoT issued revised guidelines for intra service area merger of Cellular Mobile Telephone Service (CMTS)/Unified Access Services (UAS) Licenses vide their letter dated 22nd April, 2008. A copy of these guidelines is at Annexure G. An important digression is made in the guidelines by excluding any reference to the acquisition and restricting the guidelines to mergers only. This is also at variance with the earlier guidelines of the DoT on the subject, issued vide letter dated February 21, 2004 where acquisition is expressly mentioned alongside merger like "Merger of license consequent to mergers/acquisitions or restructuring of the operations…", "Any merger, acquisition or restructuring, leading to monopoly market…" etc. A copy of the earlier guidelines dated 21.02.2004 is at Annexure H. Further, the para 2.26.1 clearly implies that permission would be required for acquisition of another License. However, significantly, this has not found place in the guidelines issued by DoT on 22.04.2008 or through the amendment to the license conditions. Also, in the merger guidelines of DoT dated 22.04.2008, existing condition on substantial equity have been retained for regulating acquisitions of equity stake of one access service licensee company/legal person/promoter company in the enterprise of another access service licensee in the same license area. This is at variance with the recommendation of TRAI dated 28.08.2007 on this issue (see Para # 2.25.10 to 2.25.12). Another important condition, included in the said guidelines of DOT, which is relevant to this consultation, is reproduced below:

2.28.1 "Any permission for merger shall be accorded only after completion of 3 years from the effective date of the licenses."

2.29 The Authority sent a communication dated May, 23, 2008 to DoT (Annexure I) stating that the guidelines of DoT dated 22.04.2008 do

not bring out clearly the position on acquisitions. Accordingly, the following was suggested by TRAI for consideration of DoT:

2.29.1 Scope of the merger may be clarified to include acquisition so as to remove any ambiguity.

2.29.2 It may be clarified that merger or amalgamation or acquisition of license is only consequent to merger or amalgamation or acquisition or restructuring of the operations of the companies as reflected in paragraph 2 of the 2004 guidelines.

2.30 The DoT, however, did not accept TRAI's suggestions and the guidelines dated 22.04.08 remain unchanged.

2.31 The changes effected in the license terms and conditions relating to lock-in, M&A, substantial equity and transfer/assignment in CMTS/UAS licenses from time to time are tabulated in Table 3 (pages No. 49 - 56)

CHAPTER 3

ISSUES FOR CONSULTATION

3.1 It is evident from the previous chapter that lock-in provisions for promoter's equity were in existence initially in the telecom sector. The conditions relating to lock-in, transfer/assignment etc. in the license agreements have undergone a number of changes over the years – moving from termination for transfer of license to requirement of permission of Licensor to change promoters or their equity to mere intimation to the Licensor; from lock-in provisions of 3/5 years on promoter's equity to no lock-in provision, from restriction on dilution of promoter's equity below 10% for a specific period to no such restriction in present UASL agreement etc. (Refer Table 3). These changes perhaps have taken place in keeping with the policy of bringing in sustained reforms in the Telecom sector in India and removal of experience in the telecom sector from the license conditions as a necessary eligibility condition for grant of license.

3.2 Initially with restricted and limited entry of private operators in telecom sector, a cautious approach was called for to ensure entry of serious and committed players. With the further opening of telecom sector and changed market dynamics, the lock-in related conditions were modified to encourage competition and investment. It may be argued that in mature markets, such restrictions may no longer be required and also that it may be best left to the market forces to ensure development/maturity of the market. However, the recent events of sale of equity by promoters immediately on acquiring the UASL, as widely reported in media, and concerns of DoT stated in their reference under consideration, indicate that either the Indian Telecom Market is yet to mature and/or the removal/modification of lock-in related conditions have not had the desired effect.

3.3 Upto 2001, the license agreements for CMTS and Basic Services contained provisions like no change in the Indian and foreign promoters or their equity participation unless permitted by the Licensor in writing and permitting transfer of equity between existing Indian promoters, provided, the majority Indian promoter continues to hold at least the present shareholding for a period of five years from the effective date of license agreement.

3.4 Post migration of licenses from a fixed license fee regime to a revenue sharing arrangement under NTP 99, a lock-in of the then shareholding for a period of 5 years was introduced. Prior to this, license condition stipulated that equity of foreign promoters whose net worth or experience has been taken into consideration should not fall below 10% of the total for an aggregate period of 3 years.

3.5 As per the DoT reference, the Telecom Commission was of the considered view that the promoters who have 10% or more stakes in the company and whose networth has been taken into consideration for determining the eligibility for grant of UAS License should not sell their equity in the UAS License Company for a period of 3 years from the effective date of license (s). In a way, the DoT intends to reintroduce the lock-in provision as existed at the time of migration to revenue sharing regime with the modification in the period of lock-in (from 5 years then to 3 years now proposed)

Concept of LOCK IN PERIOD

3.6 A lock-in period is a pre-determined period of time during which a person cannot sell his shares in a company. An IPO (Initial Public Offer) lock-in is a common lock-in period in the equities market, used for newly issued public shares. Lock-in periods are generally intended to prevent shareholders with a large proportion of ownership (such as company executives) from flooding the market with shares during the initial trading period. While IPO lock-in periods are generally in the range of two to six months or so, long lock-in periods of two years or

more are also common for hedge funds, etc. Such longer lock-in periods are meant to protect majority of assets in the funds and to enable portfolio managers to keep a lower amount of cash on hand. Long lock-in periods under ESOP schemes also help prevent employees' attrition, as the concerned employees would generally wait for the end of such lock-in period so that they can sell the shares before leaving the company. Lock-in periods prescribed for various purposes can be based on either the purpose sought to be achieved by the company in prescribing them as part of the offers or the requirement of law/regulatory framework. The Securities and Exchange Board of India (SEBI) has, as a part of its Guidelines on "Disclosure and Investor Protection", prescribed certain requirements as to minimum promoters' contribution and lock-in period for (a) minimum promoters' contribution and (b) excess promoters' contribution. According to these guidelines, in case of any issue of capital to the public, the minimum promoters' contribution shall be locked in for a period of 3 years. An extract of the relevant provisions of these guidelines is placed at Annexure J.

Definition of Promoter

3.7 Though the term "Promoter" finds its place in the company law, it has not been defined anywhere under the Companies Act, 1956. This is because the term does not have any legal connotation but contains a business element. Promotion is a term of wide import denoting the preliminary steps taken for the purpose of registration and floatation of the company. The persons who assume the task of promotion are called promoters. A promoter may be an individual, association, partner or company.

3.8 Regulation 2(1)(h) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 contain the following definition of the term "promoter", namely:

"Promoter' means -

(a) any person who is in control of the target company;

(b) any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later;

and includes any person belonging to the promoter group as mentioned in Explanation I:

Provided that a director or officer of the target company or any other person shall not be a promoter, if he is acting as such merely in his professional capacity.

Explanation I: For the purpose of this clause, 'promoter group' shall include:

(a) in case promoter is a body corporate -

(i) a subsidiary or holding company of that body corporate;

(ii) any company in which the promoter holds 10% or more of the equity capital or which holds 10% or more of the equity capital of the promoter;

(iii) any company in which a group of individuals or companies or combinations thereof who holds 20% or more of the equity capital in that company also holds 20% or more of the equity capital of the target company; and

(b) in case the promoter is an individual -

(i) the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;

(ii) any company in which 10% or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;

(iii) any company in which a company specified in (i) above, holds 10% or more, of the share capital; and

(iv) any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10% of the total.

Explanation II: Financial Institutions, Scheduled Banks, Foreign Institutional Investors (FIIs) and Mutual Funds shall not be deemed to be a promoter or promoter group merely by virtue of their shareholding. Provided that the Financial Institutions, Scheduled Banks and Foreign Institutional Investors (FIIs) shall be treated as promoters or promoter group for the subsidiaries or companies promoted by them or mutual funds sponsored by them."

3.9 The concept of promoter is also enunciated in the Securities Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 ("DIP Guidelines") which is mostly from the disclosure perspective.

Specific Issues for Consultation

3.10 Lock-in period for Sale of Equity in the UAS Licensee Company

3.10.1 In the Telecom Sector stipulating a lock in period has significance since it ensures that the promoter whose networth has been considered for the eligibility for grant of license is a serious entrant, and does not trade spectrum which is a scarce resource that comes bundled with the license and has been obtained by virtue of possessing a UAS license. On the other hand, it may be argued that with heightened competition, and experience in the telecom sector no longer being a criterion for becoming eligible for a license, there may be no need for a lock-in period for sale of equity in the UAS license by any of the promoters, as long as the entity to which license was granted exists.

3.10.2 The issue of lock-in of promoters' equity has wide ranging ramifications. In case there is no restriction on lock-in of such equity, it might lead to trading of license and spectrum at prices which may be far removed from the rate at which the license has been obtained. Profit making may then become the sole objective of obtaining a license rather than provision of telecom service and improvement in accessibility, the intended objective of grant of license. Provision of a lock-in period would ensure participation by only serious players.

3.10.3 On November 25, 2008, the DoT has released a tender document for Mobile Number Portability (MNP) Service. The document is available on their website – www.dot.gov.in. As per the tender document, the net worth of only those Equity Share Holders shall be counted, who have 26% or more equity in the Bidder company, in the proportion of their direct equity. Clause 7.1 of the General Conditions stipulates the mandatory eligibility conditions for bidders. Sub-clause (viii) of this clause regarding "Experience" reads as follows:

"(A) The Applicant / bidder has the experience of two years of implementing and operating successfully MNP solution for a subscriber base of not less than 25 million mobile subscribers in one or more countries put together as on the date of bidding.

(B) For satisfying the eligibility condition(s) for experience criteria, under (A) above, the experience of the Bidder Company or its equity holders having direct equity of 26 % or more in the Company shall be computed.

(C) In case of successful award of license, the equity holder(s) whose experience has been taken into account for fulfilling the eligibility conditions and evaluation purpose, shall not be allowed to dilute its equity shareholding in the Company below 26% equity share capital for at least four years from the date of submission of bid."

3.10.3 It is clear from the preceding paragraph that a limited lock-in condition proscribing dilution of equity shareholding in the company below a certain percentage for a specified period is provided for equity holders whose networth and experience are counted towards eligibility of the bidder company for MNP service. A similar condition earlier existed in one form or the other in the CMTS licenses to the effect that either the equity share should not fall below a specified threshold for a specific period or the shareholding at the time of applying of license is maintained for a particular period of time. Though in UASL, there is no provision regarding promoter's experience as an eligibility condition for grant of license at present, it can be argued that for the promoters who have floated the company and applied for grant of license and also whose networth is considered towards networth of licensee company, a pre-determined lock-in period would ensure seriousness and commitment of promoters towards telecom sector, particularly when the licenses come bundled with spectrum. As such, the first and foremost issue which arises for consideration is:

Issue 1: Whether there should be a condition in the Unified Access Service license agreement providing for a lock-in period on sale of equity of promoters, who have 10% or more stakes in the Licensee Company and whose networth have been taken into consideration for determining the eligibility for grant of license?

3.11 Duration of lock-in period

3.11.1 There are two issues related to this – one, the period of lock-in and two, the period to be reckoned from which date. The DoT has suggested a lock-in period of 3 years from the effective date of license. In such a scenario, measures may be required to make the lock-in condition applicable to the licenses issued prior to the year 2006 or where changes in equity have taken place for want of lock-

in provision. It may be mentioned that during December, 2007 and January, 2008, 121 new UAS licenses were issued by the DoT.

3.11.2 In the recommendations on "Review of license terms and conditions and capping of number of access providers" dated August 28, 2007, the authority noted in respect of determination of date for the purpose of roll out obligation as follows:

> "Presently, the time for roll out is reckoned from the effective date of license. … the issue of license and allocation of spectrum is not co-terminus.… In the past there have been many cases where there was a huge time lag between the effective date of license and the date for allocation of initial spectrum. There have been delays in the past in the allocation of spectrum as it is subject to availability. If the UAS licensee plans to provide mobile services then it would not be possible for him to start rolling out his network without spectrum. Therefore, without spectrum allocation, fulfillment of roll out obligation is not possible, if the date is reckoned from the effective date of license. Moreover, main growth is happening in the wireless segment and the growth in fixed services subscriber base is stagnant."

3.11.3 The Authority, accordingly, recommended that for licensees interested in offering mobile services, the time for roll out should be reckoned from the effective date of license or date of spectrum allocation, whichever is later. The rationale applied by the Authority for this recommendation appears to be also relevant to determine the date to reckon lock-in period from as rolling out of network/start of operations is possible only after the allocation of the spectrum. Another view could be that in the case of roll out obligations, liquidated damage charges/termination of license is involved on non-fulfillment of the roll out obligations necessitating a linkage with the spectrum allocation. In case, a similar condition is

introduced for sale of equity, linking it up with spectrum allocation, it may lead to a situation where the equity is sold even before allocation of spectrum and roll out of service could commence. The question, therefore, is:

Issue 2: What should be the minimum lock-in period for sale of equity of such promoters?

Issue 3: What should be the date from which the lock-in period be reckoned?

Issue 4: Can there be a mechanism to address the earlier licenses which did not have a lock-in condition?

3.12 Alternative measures to lock-in provision

3.12.1 In case it is felt that no lock in period may be specified for promoter's equity, some other provisions may be necessary to ensure entry of genuine and committed service providers in UAS as well as to prevent entry of fly-by-night operators. In the current scenario with heightened competition and experience no longer being a criteria for becoming eligible for obtaining a license, could there be other means in lieu of the lock-in period to prevent undue gains arising out of sale of equity even before establishing the network and commencement of operations. One option could be to link sale of promoters' equity with meeting the roll out obligations i.e. no sale of any equity should be permitted before roll out obligations are met. It may, however, be recalled that in the recommendations dated August 28, 2007, the Authority had examined the issue of roll out obligations in detail and recommended various measures in case of failure to meet roll out obligations (see paragraphs 2.25.14 and 2.25.15 of the previous chapter) as a replacement to the termination of license clause. The Govt. has retained the termination clause and accepted to incorporate the recommendations with one key modification. One of

the recommendations was that any proposal of permission of merger and acquisition should not be entertained till the roll out obligation is met. The DoT accepted the same with modification, "any proposal for permission for merger should not be entertained till the roll out obligation is met. However, request for permission for acquisition may be entertained." It is discussed later in the consultation paper that there is not much difference between merger and acquisition and scope of merger should include acquisition as well. Whether another restriction with reference to roll out obligations may be included at this stage, needs to be considered.

3.12.2 As per the existing terms and conditions of UASL Agreement, the Licensee shall declare the Indian and 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. Though it suggests transparency in the equity transactions in the UAS Licensee Company, the prior intimation/permission for such transactions would perhaps be more appropriate instead of the information received on six monthly basis under this clause.

Issue 5: What measures may be taken to prevent entry of fly-by-night operators in the telecom sector? Please also indicate conditions, which should be stipulated as part of these measures.

Issue 6: Whether the sale of such equity should be linked to fulfilling roll out obligations under the terms of the license?

Issue 7: Whether in addition to linking up with the roll out obligations, prior intimation/permission should also be introduced for any change in the equity holdings?

3.13 Applicability of lock-in provisions to the shares transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the Licensee

3.13.1 Another issue that merits consideration is applicability of lock-in provisions to the shares transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the Licensee. The existing license conditions provide for transfer/assignment in favor of the lending financial institutions/ banks in the event of any default in payments by the Licensee. The relevant terms and conditions are reproduced in paragraph 2.24 of Chapter 2.

3.13.2 One of the conditions is that the LICENSEE shall not, either directly or indirectly, assign or transfer this LICENSE in any manner whatsoever to a third party or enter into any agreement for sub Licence and/or partnership relating to any subject matter of the LICENCE to any third party either in whole or in part i.e. no sub leasing/partnership/third party interest shall be created, without the prior written consent of the LICENSOR. It is further stipulated that the Licensee may transfer or assign the License Agreement with prior written approval of the Licensor to be granted on fulfillment of the certain conditions and if no compromise in competition occurs in the provisions of Telecom Services. One of the fulfilling conditions is when transfer or assignment is requested in accordance with the terms and conditions on fulfillment of procedures of Tripartite Agreement if already executed amongst the Licensor, Licensee and Lenders. A format for tripartite agreement between the Licensor, the Licensee and the Agent (the lender itself or an Agent for the lenders) is also prescribed in the license agreement.

3.13.3 It may be seen that restrictions on transfer of license are already in place and transfer of such shares can be governed by those

conditions. One view could be that since the existing conditions on transfer of license also envisage the issue of default in payment by the licensee company to the lending FIs/Banks, the existing license conditions relating to transfer/assignment of license may be sufficient to cover the transfer of shares pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers. On the other hand, it is for consideration whether another condition needs to be introduced in the agreement stipulating that the lock-in provisions should not be applicable to the shares transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers. The DoT has proposed a condition in respect of the transfer of shares that such shares should have been pledged for investment only in the particular licensed project. Accordingly, another issue is allowing transfer of shares in this manner with above condition. The issues therefore, that arises are:

Issue 8: Whether the lock-in provision should not be applicable to the shares, which are transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers with the condition that such shares should have been pledged for investment only in the particular licensed project? Whether the conditions relating to transfer/assignment of license need any modification and if so, what should be those modifications?

3.14 Additional equity share capital by the licensee companies/their holding companies by way of private placement/public issues

3.14.1 Issue of additional equity shares arise when a company wants to bring in additional resources for capital investment, diversification/ growth of business. This could be either within the existing

authorized but yet unsubscribed share capital, or through increase in the authorized share capital, if the shares are already subscribed to the extent of existing authorized shares. Raising of funds through additional equity shares is governed by Section 81 and power of limited company to alter its share is provided in Section 94 of the Companies' Act, 1956. The relevant extracts from the Act are placed at Annexure K.

3.14.2 A company can raise money by issuing either debt or equity. In the Public Issue, the amount of equity (capital) is raised by a public company by issue of shares to the public after complying the provisions of the companies Act and SEBI Guidelines in this regard. An initial public offering, or IPO, is the first sale of stock by a company to the public. If the company has never issued equity to the public, it is known as an IPO. In Private Placement, raising of capital is via private route rather than offering to public. It could be to a group of people or institutions providing equity or debt capital to a company. In private placements, the sale of securities is to a relatively small number of investors. Investors involved in private placements are usually promoters, their relatives, Financial Institutions, banks, mutual funds, insurance companies etc.

3.14.3 A condition allowing issue of additional equity by the licensee companies/their holding companies by way of private placement/public issues was in place in the licenses after migration to the revenue share regime in 1999. Such a condition ensures that while the promoters' whose networth was taken for the purpose of determining eligibility for grant of a license does not sell his equity, it does not restrict the company from infusion of more capital from the market/private placement necessary for expansion of the business provided it meets with all statutory requirements. It may be argued that issue of additional equity may lead to dilution of the share in the total equity of the promoters whose networth was taken into consideration for determining the eligibility for grant of UAS

license. This may lead to reduction of his stake in the company, which may result in transfer of control from such promoter to the new stakeholder by subscription to the additional equity in the company. However, the provisions of the Companies' Act on the issue of additional share capital does not restrict any company from issuing further share capital, subject to the condition that such additional share capital does not exceed the total authorized share capital of the company as provided in the Memorandum of Association of the Company. It may be argued that in the changed scenario, continuance of the existing promoters stake as at the time of signing of the license may no longer be relevant.

Issue 9: Whether issue of additional/fresh equity share capital by the licensee companies/their holding companies by way of private placement/public issues should be permitted without observing any lock-in period but subject to all necessary statutory provisions?

3.15 Dilution of stake of promoters

3.15.1 Another issue which is related to sale or bringing of additional equity is consequent dilution of stake of promoters. In the initial phase of opening up of telecom sector, there were clauses to the effect that the foreign promoter, whose networth or experience or both were taken into consideration for determining the eligibility of Licensee for award of the License, should not have less than 10% of the shareholding for the Licensee Company at least for 5 years from the date of issue of the License and also the shareholding of the Indian promoters should not go below 10% or the holding at the time of bidding, whichever is less, for the first 5 years.

3.15.2 Any change in equity of the licensee company by way of sale or addition of fresh equity might affect the relative strength of promoters' equity and may result in change in management control

also. It needs to be considered whether equity of significant promoters (whose networth was taken into consideration for determining the eligibility for grant of UAS license) should not go below a predetermined percentage of the resultant equity or below the level of the original shareholding, whichever is less, on selling or bringing in of fresh equity, during the lock-in period or even otherwise. It may also be argued that sale or addition of equity could be considered as business decisions and are also dictated by prevailing market scenario, such decisions may be left to the licensee company subject to the condition that shareholding of original promoters should not go below a specified percentage.

Issue 10: Whether the dilution of equity of promoters, having 10% or more stake and whose net worth was taken into consideration for determining the eligibility for grant of UAS license, should be restricted in terms of percentage of shareholding and/or the number of shares held at the time of grant of license?

Issue 11: Whether there should be any restriction on change in management control in addition to conditions restricting dilution of equity?

3.16 Restriction on declaration of special dividend by the company for a specific period in case of issue of fresh equity.

3.16.1 Special dividend is a dividend, which is not declared in the ordinary course of business of the company. Provisions about manner and time of payment of Dividends are governed under section 205 of the Companies Act, 1956, the Companies (Transfer of Profits to Reserves) Rules, 1975 and The Companies (Declaration of Dividend out of Reserves) Rules, 1975. These are placed at Annexure L.

3.16.2 A "Special dividend", also referred to as an "extra dividend", is a payment made by a company to its shareholders that is separate

from the typical recurring dividend cycle, if any, for the company. It has been described as a kind of non-recurring distribution of company assets, usually in the form of cash, to shareholders. A special dividend is larger compared to normal dividends paid out by a company. Special dividends are most often used to return capital to shareholders. Generally, special dividends are declared after exceptionally strong company earnings as a way to distribute the profits directly to shareholders. Special dividends can also occur when a company wishes to make changes to its financial structure.

3.16.3 The amount of the dividend is declared special or significant in relation to the stock price. For this reason, the ex-dividend date is set after the payment date. In the case of special or significant dividends, the stock trades without the dividend from the record date, through the Payment Date, then adjusts for the dividend paid and starts trading on an ex-distribution basis after the Payment Date. Any special dividend , as soon as it is paid out, normally results in a drop in the price of the stock in proportion to such special dividend since market makers will generally tend to adjust the price down by the amount of dividend.

3.16.4 The question of raising of additional equity by a licensee company, either by public issue or by private placement (soon after the award of license and allocation of spectrum) and the declaration of special dividends by such company (aimed at direct or indirect return of capital to shareholders) has serious implications for the telecom market as well as the national economy, particularly, having regard to the fact that a telecom license comes bundled with spectrum and there is scope for raising funds by issue of additional equity based on the increased net worth of the licensee company (consequent upon the securing of the license/ spectrum) by way of private placement and there is also scope for returning back a significant part of such additional inflow of cash as special dividends to the shareholders. Such a transaction, even though it does not result in

any change in the promoters' actual contribution (whether such promoters have any experience in the telecom sector or not) and, arguably, brings in additional resources and expertise and new synergies to the licensee company, nevertheless, leads to a situation where non-serious players can secure a license and then go for issue of additional equity and thus enriching themselves by significant windfall gains by declaration of special dividends and also leading to a situation where the management and control changes considerably even before the licensee company starts operations/roll out of service.

3.16.5 Though there is a merit in providing a lock-in period for declaration of special dividend in case additional equity capital is brought through private placement route, there may not be a case for restricting declaration of dividend for the equity augmented through public issue. As such, the issue for consideration is:

Issue 12: Whether there should be a restriction on declaration of special dividend by the company for a period coinciding with the lock-in period, in case money is brought into the company by issue of fresh equity?

3.17 Applicability of conditions on sale of equity and declaration of special dividend in case of issue of fresh equity in case licensees holding UAS/CMTS licenses for a period of 3 years acquire any new UAS licenses in some service areas to enlarge their area of operations

3.17.1 Various issues are involved in the suggestion of the DoT that the conditions relating to sale of equity, issue of additional equity and declaration of special dividend would not be applicable to the licensees holding UAS/CMTS licenses for a period of 3 years if they acquire any new UAS licenses in some service areas in order to enlarge their area of operations. Once the condition of lock-in for a

specified number of years is prescribed and applied uniformly across all UAS/CMTS licenses, the period of lock-in will get automatically determined from the effective date. Acquisition of new UAS license can be either through payment of entry fee subject to fulfillment of eligibility criteria or by way of acquisition of another UAS license.

3.17.2 Read with the condition 1.7 (see para 2.24 of Chapter 2) of Part-1, "General Conditions" of Schedule, "Terms and Conditions" of the UASL agreement, the acquiring of a new UAS license simply means getting a new UASL from the Licensor only and there is no implication of acquisition of any existing license. The DoT suggestion would imply that an existing UAS/CMTS Licensee can acquire a new UASL in some other service area to enlarge its area of operations after completion of the lock-in period (of 3 years, as proposed by Telecom Commission). However, with the closure of issue of fresh licenses by the DoT, the circumstance under which a new license can be acquired would possibly be only through acquisition of an existing license. In such a circumstance, an issue for consideration would be whether such new license would also be exempt from lock-in provision for sale of equity as well as from restriction on declaration of special dividend in case of additional equity.

3.17.3 It can also be argued that there is no issue of exemption from the lock-in etc. conditions, as discussed above, once the lock-in period is over for the earlier issued licenses. However, it is not clear if the lock-in provisions would suo moto become inapplicable to the other UAS license acquired either through licensing process or by acquiring an existing UASL. In case exemption is to be extended to the acquired license (that have not completed the lock-in period), it will be contrary to the objective of level playing field and make lock-in condition redundant in respect of such licenses.

3.17.4 The question, therefore, is whether UAS/ CMTS licensee can acquire after completion of the lock-in period and subject to any other conditions prescribed; including substantial equity condition; an existing licensee irrespective of the acquired licensee having fulfilled the lock-in period or not. In case such condition is not applied to Licensee whose license is being acquired, it may make the lock-in condition non-existent and ineffectual. Further, in case an existing licensee acquires a new UASL after fulfilling lock-in obligations in respect of existing UASL, whether the lock-in provisions would apply to its new license afresh or its new UASL would be allowed to sell its equity without any lock-in period.

3.17.5 In the recommendations on review of License terms and conditions and capping of number of access providers, the issue of M&A and substantial equity had been deliberated in great detail and the Authority had made various recommendations, which have been recalled in chapter 2. However the government did not fully accept TRAI's Recommendations and the guidelines for intra service area merger of CMTS/UASL dated 22nd April 2008 issued by the DoT while contained a condition stipulating permission for merger only after completion of 3 years from the effective date of Licenses, left out cases of acquisition. In the earlier guidelines issues by the DoT on 21st February, 2004, the merger consequent to mergers/acquisitions or restructuring of the operations was permitted subject to the conditions contained in the guidelines. The Authority has already suggested vide letter dated May 23, 2008 to the DoT to include acquisition within the scope of the merger to remove any ambiguity in this regard and to clarify that merger is only consequent to merger or amalgamation or acquisition or restructuring of operations as was the case in 2004 guidelines. The letter dated May 23, 2008 clearly implies that there is hardly much difference between merger and acquisitions and the real difference

lies in how the purchase is communicated to and received by the target company's board of directors, employees and shareholders.

3.17.6 In its guidelines dated 22.04.2008, the DoT has already stated that any permission for merger shall be accorded only after completion of 3 years from the effective date of the licenses. As such, there is already a lock-in provision for merger within the same service area. As merger within the same service area is allowed after completion of 3 years, acquisition of an existing UASL in other service area by another existing UAS/CMTS licensee is to be treated on the similar lines. In particular, the permission of DoT may be necessary for acquisition by an existing UASL of another existing UASL in another service area as is the case for merger of licenses in the same service area. Accordingly, the following issues are submitted for views/comments of the stakeholders:

Issue 13: Whether an existing UAS/CMTS licensee should be allowed to acquire any UAS license (including newly issued, notwithstanding the lock-in period) in some other service area? If yes, under what conditions should this be permitted? If no, the reasons therefor?

Issue 14: Under what circumstances would the existing licensees be exempt from the conditions of lock-in provision on sale of equity and declaration of special dividend in case of issue of fresh equity, if they acquire any new UAS license in some service area in order to enlarge their area of operations?

CHAPTER 4

SUMMARY OF ISSUES FOR CONSULTATION

4.1 Whether there should be a condition in the Unified Access Service license agreement providing for a lock-in period on sale of equity of promoters, who have 10% or more stakes in the Licensee Company and whose networth have been taken into consideration for determining the eligibility for grant of license?

4.2 What should be the minimum lock-in period for sale of equity of such promoters?

4.3 What should be the date from which the lock-in period be reckoned?

4.4 Can there be a mechanism to address the earlier licenses which did not have a lock-in condition?

4.5 What measures may be taken to prevent entry of fly-by-night operators in the telecom sector? Please also indicate conditions, which should be stipulated as part of these measures.

4.6 Whether the sale of such equity should be linked to fulfilling roll out obligations under the terms of the license?

4.7 Whether in addition to linking up with the roll out obligations, prior intimation/permission should also be introduced for any change in the equity holdings?

4.8 Whether the lock-in provision should not be applicable to the shares, which are transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers with the condition that such shares should have been pledged for investment only in the particular licensed project? Whether the conditions relating to transfer of license need any modification and if so, what should be those modifications?

4.9 Whether issue of additional/fresh equity share capital by the licensee companies/their holding companies by way of private placement/public issues should be permitted without observing any lock-in period but subject to all necessary statutory provisions?

4.10 Whether the dilution of equity of promoters, having 10% or more stake and whose net worth was taken into consideration for determining the eligibility for grant of UAS license, should be restricted in terms of percentage of shareholding and/or the number of shares held at the time of grant of license?

4.11 Whether there should be any restriction on change in management control in addition to conditions restricting dilution of equity?

4.12 Whether there should be a restriction on declaration of special dividend by the company for a period coinciding with the lock-in period, in case money is brought into the company by issue of fresh equity?

4.13 Whether an existing UAS/CMTS licensee should be allowed to acquire any UAS license (including newly issued, notwithstanding the lock-in period) in some other service area? If yes, under what conditions should this be permitted? If no, the reasons therefor?

4.14 Under what circumstances would the existing licensees be exempt from the conditions of lock-in provision on sale of equity and declaration of special dividend in case of issue of fresh equity, if they acquire any new UAS license in some service area in order to enlarge their area of operations?

4.15 Any other relevant issue you would like to suggest/comment upon.

Please give detailed reasoning in support of your replies/comments on the above issues.

Table 1 (Refer Chapter 1/Para 1.4)

(Service Area wise details of Access Service Licenses)

S. No.	Service Area	No. of UAS Licenses	No. of CMTS Licenses	Total Licenses
1)	Andhra Pradesh	10	3	13
2)	Assam	11	1	12
3)	Bihar	13	1	14
4)	Chennai	1	3	4
5)	Delhi	10	3	13
6)	Gujarat	9	3	12
7)	Haryana	10	3	13
8)	Himachal Pradesh	11	2	13
9)	Jammu & Kashmir	11	1	12
10)	Karnataka	11	2	13
11)	Kerala	9	3	12
12)	Kolkata	9	3	12
13)	Madhya Pradesh	11	2	13
14)	Maharashtra	10	3	13
15)	Mumbai	9	3	12
16)	North East	10	2	12
17)	Orissa	12	1	13
18)	Punjab	11	2	13
19)	Rajasthan	9	3	12
20)	Tamilnadu* (including as well as excluding Chennai)	9	3	12
21)	Uttar Pradesh (East)	9	3	12
22)	Uttar Pradesh (West)	10	2	12
23)	West Bengal	11	1	12

* With effect from 15.09.05, Chennai Metro & Tamil Nadu Telecom Circles were merged and new UAS licenses after that date are for merged Service Area.

Table 2 (Refer Chapter 1/Para 1.5)

Mobile market share of service providers in different service areas based on subscriber base, revenue and outgoing MOUs

			Market shares based on		
Circle Category	**Service Provider**	**Circle**	**Subscribers Base**	**Revenue**	**O/G MOU**
M	Bharti	Delhi	23%	33%	27%
M	Hutch	Delhi	19%	26%	20%
M	MTNL	Delhi	10%	7%	6%
M	IDEA	Delhi	12%	11%	11%
M	Reliance	Delhi	15%	11%	15%
M	Tata	Delhi	21%	13%	22%
M	BPL	Mumbai	10%	9%	8%
M	Vodafone	Mumbai	25%	37%	27%
M	MTNL	Mumbai	14%	9%	7%
M	Bharti	Mumbai	17%	21%	25%
M	Reliance	Mumbai	21%	14%	19%
M	Tata	Mumbai	13%	11%	12%
M	Bharti	Kolkata	22%	30%	24%
M	Vodafone	Kolkata	25%	34%	26%
M	BSNL	Kolkata	13%	10%	16%
M	Reliance	Kolkata	24%	16%	19%
M	Dishnet	Kolkata	1%	0%	2%
M	Tata	Kolkata	15%	11%	14%
A	Vodafone	Maharashtra	13%	17%	13%
A	IDEA	Maharashtra	24%	28%	23%
A	Bharti	Maharashtra	19%	23%	25%
A	BSNL	Maharashtra	15%	11%	16%
A	Reliance	Maharashtra	14%	10%	11%
A	Tata	Maharashtra	14%	12%	12%
A	Vodafone	Gujarat	35%	45%	37%
A	IDEA	Gujarat	16%	16%	16%
A	Bharti	Gujarat	17%	18%	20%
A	BSNL	Gujarat	13%	8%	10%
A	Reliance	Gujarat	14%	9%	11%
A	Tata	Gujarat	6%	5%	6%
A	IDEA	AP	16%	17%	14%
A	Bharti	AP	30%	38%	34%
A	Vodafone	AP	13%	14%	13%
A	BSNL	AP	11%	10%	12%
A	Reliance	AP	18%	12%	14%
A	Tata	AP	11%	9%	13%
A	Bharti	Karnataka	41%	49%	44%
A	Spice	Karnataka	10%	8%	7%
A	Vodafone	Karnataka	17%	18%	17%
A	BSNL	Karnataka	11%	11%	19%
A	Reliance	Karnataka	15%	9%	9%
A	Tata	Karnataka	6%	5%	5%
A	Vodafone	Tamil Nadu	18%	19%	16%
A	Aircel	Tamil Nadu	27%	23%	21%

			Market shares based on		
Circle Category	**Service Provider**	**Circle**	**Subscribers Base**	**Revenue**	**O/G MOU**
A	Bharti	Tamil Nadu	23%	28%	26%
A	BSNL	Tamil Nadu	14%	16%	25%
A	Reliance	Tamil Nadu	15%	10%	9%
A	Tata	Tamil Nadu	4%	4%	3%
B	IDEA	Kerala	25%	23%	20%
B	Vodafone	Kerala	18%	18%	14%
B	Bharti	Kerala	14%	16%	16%
B	BSNL	Kerala	22%	28%	33%
B	Reliance	Kerala	17%	12%	12%
B	Tata	Kerala	5%	4%	4%
B	Spice	Punjab	22%	21%	16%
B	Bharti	Punjab	26%	36%	29%
B	BSNL	Punjab	18%	16%	28%
B	Vodafone	Punjab	14%	14%	12%
B	HFCL	Punjab	3%	2%	2%
B	Reliance	Punjab	9%	5%	6%
B	Tata	Punjab	8%	5%	6%
B	IDEA	Haryana	16%	19%	16%
B	Vodafone	Haryana	21%	23%	21%
B	Bharti	Haryana	15%	19%	17%
B	BSNL	Haryana	20%	18%	26%
B	Reliance	Haryana	14%	10%	9%
B	Tata	Haryana	14%	10%	12%
B	IDEA	UP(W)	20%	25%	17%
B	Bharti	UP(W)	12%	15%	13%
B	BSNL	UP(W)	16%	15%	27%
B	Vodafone	UP(W)	23%	25%	18%
B	Reliance	UP(W)	17%	13%	15%
B	Tata	UP(W)	11%	7%	10%
B	Vodafone	UP(E)	23%	29%	20%
B	BSNL	UP(E)	25%	24%	36%
B	Bharti	UP(E)	22%	25%	20%
B	Escorts	UP(E)	7%	6%	4%
B	Reliance	UP(E)	17%	13%	15%
B	Tata	UP(E)	6%	4%	4%
B	Vodafone	Rajasthan	22%	22%	17%
B	Bharti	Rajasthan	30%	37%	32%
B	BSNL	Rajasthan	17%	20%	26%
B	Escorts	Rajasthan	6%	5%	4%
B	Reliance	Rajasthan	12%	8%	10%
B	Shyam Telelink	Rajasthan	1%	1%	1%
B	Tata	Rajasthan	12%	7%	10%
B	IDEA	MP	24%	30%	26%
B	Reliance	MP	30%	22%	25%
B	Bharti	MP	22%	29%	29%
B	BSNL	MP	17%	16%	15%
B	Tata	MP	6%	4%	6%

			Market shares based on		
Circle Category	**Service Provider**	**Circle**	**Subscribers Base**	**Revenue**	**O/G MOU**
B	Reliance	West Bengal	20%	15%	16%
B	BSNL	West Bengal	15%	15%	28%
B	Bharti	West Bengal	21%	26%	19%
B	Vodafone	West Bengal	30%	37%	26%
B	Dishnet	West Bengal	7%	2%	6%
B	Tata	West Bengal	7%	5%	6%
C	Bharti	HP	34%	44%	41%
C	Reliance	HP	30%	21%	12%
C	BSNL	HP	26%	27%	36%
C	Escorts	HP	4%	3%	4%
C	Dishnet	HP	2%	0%	2%
C	Tata	HP	5%	4%	4%
C	Reliance	Bihar	32%	27%	24%
C	BSNL	Bihar	15%	16%	30%
C	Bharti	Bihar	39%	48%	35%
C	Dishnet	Bihar	6%	2%	4%
C	Tata	Bihar	8%	7%	7%
C	Reliance	Orissa	27%	22%	18%
C	BSNL	Orissa	21%	26%	38%
C	Bharti	Orissa	35%	41%	32%
C	Dishnet	Orissa	9%	5%	6%
C	Tata	Orissa	8%	6%	7%
C	Reliance	Assam	24%	21%	10%
C	BSNL	Assam	25%	28%	37%
C	Bharti	Assam	22%	27%	29%
C	Dishnet	Assam	29%	24%	25%
C	Reliance	North East	16%	11%	7%
C	Bharti	North East	26%	27%	33%
C	BSNL	North East	30%	38%	31%
C	Dishnet	North East	29%	24%	29%
C	BSNL	J& K	38%	40%	49%
C	Bharti	J& K	47%	52%	45%
C	Dishnet	J& K	15%	9%	7%
C	Reliance	J& K	0%	0%	0%

Note: Data for Chennai is included in Tamil Nadu

Source: Data provided by the Service Providers as part of quarterly reports (based on data for Quarter ending June 2008)

Table 3 (Refer Chapter 2/Para 2.31)

Terms and conditions in License Agreements over the years relating to lock-in, M&A, Substantial Equity and Transfer/Assignment of License

CMTS Agreement in 1994	Basic Agreement in 1997	Amendment in CMTS Agreement under Migration to Revenue sharing Regime of NTP 1999	CMTS Agreement in 2001	UASL Agreement in 2003	Amendment in UASL Agreement in 2005	Existing UASL Agreement (2008)
CONDITIONS RELATING TO LOCK-IN						
No specific clause on lock-in* However, it contained the following two clauses for transfer/ assignment of license: "The Licensee will not assign or transfer its rights in any manner whatsoever under the licence to a third party or enter into any agreement for sub-licence and/or partnership relating to any subject matter of the licence to any third party either in whole or in part i.e. no sub-leasing/partnership/third party interest shall be created." (Clause 9 of the agreement) "Termination for transfer of Licence:	"The Licence is granted to the Licensee on the condition that any change in the Indian or Foreign promoters/partners or their equity participation shall not be made without the prior approval of the Licensor. Provided the foreign promoter, whose networth or experience or both have been taken into consideration for determining the eligibility of Licensee for award of this License, shall not be permitted to have less than 10% of the shareholding for the Licensee Company at least for 5 years from the date of issue of this	There shall be a lock-in of the present share holding for a period of five years counted from the date of license agreement i.e. effective date.# During that period, any transfer of share holding directly or indirectly through subsidiary or holding companies shall not be permitted. However, issue of additional equity share capital by the licensee company/its holding company by way of private placement/public issue was permitted. Further, the aforesaid lock-in provisions were not applicable in case the shares were transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers with the condition that such shares should have been pledged for investment	"There shall be no change in the Indian and Foreign promoter(s) or their equity participation unless permitted by the LICENSOR in writing." (Clause 1.2) "The licensee company may, with prior written consent of the Licensor replace a promoter(s) by another promoter(s) of equal or higher standing as stipulated below: (a) an existing foreign promoter may be substituted by another foreign promoter of similar standing; (b) the existing Indian Promoter(s) may also be allowed to acquire the foreign promoter's shareholding; and (c) transfer of equity inter-se between existing Indian promoters may be	"Except prior permission in writing by Licensor there shall be no change in the Foreign promoter(s) or their equity participation. Normally there will be no objection in substituting an existing foreign promoter by another foreign promoter of similar standing subject to the total foreign equity being below the prescribed limit." (Clause 1.2) "The licensee company may, under intimation to Licensor replace a promoter(s) by another promoter(s) as stipulated below: (a) the Indian Promoter(s) or person(s) acquiring the foreign promoter's shareholding; and	No clause on lock-in and removal of permission for change in foreign promoters or their equity participation and removal of intimation for transfer of equity between Indian promoters or the Indian Promoter(s) acquiring the foreign promoter's shareholding. Instead, it was amended to the effect: In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the	No lock-in condition. The LICENSEE shall declare the Indian & Foreign equity holdings (both direct and indirect) 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

The Licensee shall (clandestinely or otherwise) not transfer the licensing rights granted to him, to any other party. Any violation will be construed as a breach of licensing rights and the licence will be terminated in accordance with 15.1 (a) above." (Condition 15.7 of Terms and Conditions)	Licence. Similarly, the shareholding of the Indian promoters shall not go below 10% or the holding at the time of bidding, whichever is less, for the first 5 years." (Clause 15)	only in the particular licensed project. Provided always that with prior written approval of Licensor: (a) an existing foreign promoter can be substituted by another foreign promoter of identical or similar standing and experience; (b) Any existing Indian Promoter can acquire the foreign partner's shareholding; (c) Transfer of equity, inter-se, amongst Indian promoters can be permitted subject to the condition that the majority holding Indian partner continues to hold the original shareholding for a period of five years from the effective date of licence agreement.	permitted, provided the majority Indian promoter continues to hold at least the present shareholding for a period of five years from the effective date of licence agreement. (Clause 1.3) Any change in shareholding shall be subject to all necessary statutory requirements. (Clause 1.4 (i))	(b) transfer of equity between Indian promoters or person(s) including Indian employees of the company." (Clause 1.3) "In case of company listed at a stock exchange(s), shares bought and sold by way of any transaction through the stock exchange(s) where the Company shares or depository receipts are listed will not be treated as change of equity for the purpose of this clause subject to total prescribed foreign equity ceiling unless otherwise it leads to change in management control within the definition of SEBI Act." (Explanation below Clause 1.3) Any change in shareholding shall be subject to all applicable statutory permissions (Clause 1.4 (i))	resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company. The Indian & Foreign equity holdings in the LICENSEE company as disclosed by the LICENSEE company on the date of signing of the LICENCE AGREEMENT, are as follows: INDIAN EQUITY……. …… FOREIGN EQUITY…….. The LICENSEE shall declare the above information as on 1st January and 1st July by 7th January and 7th July respectively to LICENSOR. This is to be certified by the LICENSEE	Secretary or Statutory Auditor. (Clause 1.2) Any change in share holding shall be subject to all applicable statutory permissions (Clause 1.4 (i))

					company's company secretary or statutory auditor. The LICENSEE shall also ensure that any change in share holding shall be subject to all necessary statutory requirements.	
MERGER AND ACQUISITION AND SUBSTANTIAL EQUITY						
No such condition*	No such condition	Merger of Indian companies can be permitted as long as competition is not compromised. No single company/entity shall have any equity in more than one licensee company in the same service area for same service.	The merger of Indian companies may be permitted as long as competition is not compromised; TRAI will be consulted by the licensor in this matter. (Clause 1.2(c) "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 same service. 'Substantial equity' herein will mean 'an equity of 10% or more'. A promoter company cannot have stakes in more than one licensee company for the same service area." (Clause 1.4 (ii))	The merger of Indian companies may be permitted as long as competition is not compromised as defined in condition 1.4(ii)." (Clause 1.3.1) "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	The merger of Indian companies may be permitted as long as competition is not compromised as defined below: "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	The merger of Indian companies may be permitted as long as competition is not compromised as defined in condition 1.4 (ii). (Clause 1.3) 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,

				service area." (Clause 1.4 (ii)) 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 License. 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. Intra service area mergers and acquisitions as well as transfer of licences may be allowed subject to there being not less than three operators providing Access Services in a Service Area to ensure healthy competition as per the guidelines issued on the subject from time to time. (Clause 6.2)	of 10% or more'. A promoter company/ Legal person cannot have stakes in more than one LICENSEE Company for the same service area". Note : above clause(1.3) 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	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. (Clause 1.4 (ii)) 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 License. Further, Basic and Cellular Licensees existing as on 11.11.2003, shall not be

					licensees shall not be eligible for new UASL	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. Intra service area mergers and acquisitions as well as transfer of licences may be allowed subject to there being not less than three operators providing Access Services in a Service Area to ensure healthy competition as per the guidelines issued on the subject from time to time. (Clause 6.2)

TRANSFER/ASSIGNMENT OF LICENSE						
No transfer/ assignment of rights/license (as indicated in conditions relating to lock-in	The Licensee shall not, either directly or indirectly, assign or transfer its rights in any manner whatsoever to any other party or enter into any agreement for sub-license and/or partnership relating to any subject matter of the license to any third party either in whole or in part. Any violation of this term shall be construed as a breach of License Agreement and the license shall be liable for termination. Provided, however that installation of systems, equipment and network can be given on contract, but, providing the SERVICE can not be given to another party on contract. (Clause 10) The LICENSEE shall not, in any manner whatsoever transfer the licensing rights granted to it, to any	The Licensee shall not, without the prior written consent (can be granted only as described below) of the Licensor, either directly or indirectly, assign or transfer its rights in any manner whatsoever to any other party or enter into any agreement for sub-license and/or partnership relating to any subject matter of the license to any third party either in whole or in part. Any violation of this term shall be construed as a breach of License Agreement and the license shall be liable for termination. Provided, however that installation of systems, equipment and network can be given on contract, but, providing the SERVICE can not be given to another party on contract. Provided that the licensee can always employ or appoint agents or servants. (Clause 6.1) Provided that the aforesaid written consent permitting transfer or assignment will be granted: (i) in accordance with the terms and conditions and procedures described in Tripartite Agreement if duly executed amongst LICENSOR,LICENSEE	The Licensee shall not, without the prior written consent (can be granted only as described below) of the Licensor, either directly or indirectly, assign or transfer its rights in any manner whatsoever to any other party or enter into any agreement for sub-license and/or partnership relating to any subject matter of the license to any third party either in whole or in part. Any violation of this term shall be construed as a breach of License Agreement and the license shall be liable for termination. Provided, however that installation of systems, equipment and network can be given on contract, but, providing the SERVICE can not be given to another party on contract. Provided that the licensee can always employ or appoint agents or servants. (Clause 6.1) Provided that the aforesaid written consent permitting transfer or assignment will be granted: (i) in accordance with the terms and conditions and	6.1 "The LICENSEE shall not, without the prior written consent as described below, of the LICENSOR, either directly or indirectly, assign or transfer this LICENCE in any manner whatsoever to a third party or enter into any agreement for sub Licence and/or partnership relating to any subject matter of the LICENCE to any third party either in whole or in part i.e. no sub leasing/partnership/third party interest shall be created. Provided that the LICENSEE can always employ or appoint agents and employees for provision of the service. 6.2 Intra service area mergers and acquisitions as well as transfer of licences may be allowed subject to there being not less than three operators providing Access Services in a Service Area to ensure healthy competition as per the guidelines issued on the subject from time to time. 6.3 Further, the	No Change	Same as in UASL Agreement in 2003

	other party. Any violation shall be construed as a breach of license and the license shall be terminated … (Clause 14.4)	and LENDERS. (ii) Whenever a merger of two licensee (Indian) companies is approved by a High Court but no compromise in competition occurs in the provision of telecom service.	procedures described in Tripartite Agreement if duly executed amongst LICENSOR, LICENSEE and LENDERS. (ii) Whenever a merger of two licensee (Indian) companies is approved by a High Court but no compromise in competition occurs in the provision of telecom service.	Licensee may transfer or assign the License Agreement with prior written approval of the Licensor to be granted on fulfillment of the following conditions and if otherwise, no compromise in competition occurs in the provisions of Telecom Services :- (i) When transfer or assignment is requested in accordance with the terms and conditions on fulfillment of procedures of Tripartite Agreement if already executed amongst the Licensor, Licensee and Lenders; or (ii) Whenever amalgamation or restructuring i.e. merger or demerger is sanctioned and approved by the High Court or Tribunal as per the law in force; in accordance with the provisions; more particularly Sections 391 to 394 of Companies Act, 1956; and (iii) The transferee/ assignee is fully eligible in accordance with eligibility criteria		

				contained in tender conditions or in any other document for grant of fresh license in that area and show its willingness in writing to comply with the terms and conditions of the license agreement including past and future roll out obligations; and (iv) All the past dues are fully paid till the date of transfer/assignment by the transferor company and its associate(s) / sister concern(s) / promoter(s) and thereafter the transferee company undertakes to pay all future dues inclusive of anything remained unpaid of the past period by the outgoing company."		

* However, tender document was also part of the License Agreement, which is not available. It might contain related conditions on lock-in of equity etc.

\# Prior to this amendment, the clause stipulated that equity of foreign promoters whose networth or experience had been taken into consideration shall not fall below 10% of the total for an aggregate period of three years.

Annexure A
(Refer Chapter 1/Para 1.1)

DOT Letter dated 24.11.2008

No.20-100/2007-AS-I(Pt)
Government of India
Ministry of Communications
Sanchar Bhawan, 20, Ashoka Road, New Delhi-110 001.

Dated 24th November, 2008

To

The Secretary,
TRAI,
MTNL Exchange Building,
Jawahar Lal Nehru Marg, Minto Road,
New Delhi.

Sir,

The issue regarding prohibition of sale of promoter's equity for Unified Access Service (UAS) License holders is under consideration in the Government. It is pertinent to mention that presently there is no Lock-in condition of equity shareholding in the UAS Licenses. However, Government reserves the right under the license agreement for modification of the terms and conditions of the licenses in public interest.

2. The matter was deliberated in the Full Telecom Commission meeting held on 11.11.2008. The Telecom Commission was of the considered view that there should be following restriction in the license agreements in order to prevent fly-by-night operators making a windfall gain.

i) The promoters who have 10% or more stakes in the company and whose networth has been taken into consideration for determining the eligibility for grant of UAS license should not sell their equity in the UAS Licensee Company for a period of 3 years from the effective date of license (s). However, issue of additional equity share capital by the licensee companies/their holding companies by way of private placement/public issues shall be permitted. Further, the lock-in provisions shall not be applicable in case the shares are transferred pursuant to enforcement of pledge by the lending financial institutions/banks due to events of defaults committed by the borrowers with the condition that such shares should have been pledged for investment only in the particular licensed project.

ii) In cases, where money is brought into the company by issue of fresh equity, there shall be a restriction on declaration of special dividend by the company for a period of 3 years.

iii) The above conditions (i) and (ii) would not be applicable to the licensees holding UAS/CMTS licenses for a period of 3 years if they acquire any new UAS licenses in some service areas in order to enlarge their area of operations.

3. TRAI is requested to furnish their recommendations in terms of clause 11(1)(a)(iv) of TRAI Act 1997 as amended by TRAI Amendment Act, 2000, on the issue of prohibition of sale of promoter's equity for Unified Access Service (UAS) License holders and other issues as mentioned in para 2 above.

(A.K. Srivastava)
DDG(Access Services-I)
Tel: 23716874
Fax: 23372201

Annexure B
(Refer Chapter 1/Para 1.2)

TRAI letter dated December 31, 2008

Shri R. N. Choubey
Secretary-In-Charge
Phone: 2323 7448

D.O. No.11-3/2008-FA December 31, 2008

Dear Shri Srivastava,

Please refer to your office letter No. 20-100/2007-AS-I (Pt) dated 1st December, 2008 in the context of recommendations sought from TRAI on the issue of lock-in for sale of promoter's equity in Unified Access Service Licensee Company etc.

2. It may please be seen that Section 11(1)(a)(ii) pertains to recommendations on "terms and conditions of license to a service provider". The DoT itself has stated its intent to modify the terms and conditions of the UAS licenses in the letter dated 24.11.08. Accordingly, TRAI is examining the matter both under clause 11(1)(a)(ii) and clause 11(1)(a)(iv) of TRAI Act, 1997.

3. Further, in the context of the phrase, "...to prevent fly-by-night operators making a windfall gain" in your letter dated 24.11.08, it may be clarified whether any transaction involving sale of / change in equity of a UAS Licensee has taken place after the grant of new licenses. If so, the following information/documents may please be furnished:

(i) Details of such transactions including Domestic/Foreign parties/holding companies involved;
(ii) List of promoters along with their respective shareholding;
(iii) List of promoters after selling of / change in equity along with their respective shareholding;
(iv) Networth of promoters, who have 10% or more stake in the company and whose networth has been taken into consideration for determining the eligibility for grant of UAS License, at the time of grant of license and their present networth;
(v) Paid up equity capital at the time of grant of license and present paid up equity capital;
(vi) A copy of the license agreement. In case the license agreements signed for all service areas/service providers are similarly worded, one copy of the license agreement for any service area may be provided);
(vii) Dividend/Special Dividend declared/paid, if any, after sale of equity;
(viii) Any other information relevant in the matter.

With regards,

Yours sincerely,

(R. N. Choubey)

SHRI A. K. SRIVASTAVA
DDG (Access Services-I)
Ministry of Communications,
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road, New Delhi – 110 001.

ANNEXURE C
(REFER CHAPTER 1/PARA 1.8)

SUMMARY OF RECOMMENDATIONS DATED 28.08.2007 ON REVIEW OF LICENSE TERMS AND CONDITIONS AND CAPPING OF NUMBER OF ACCESS PROVIDERS

6.1 No cap be placed on the number of access service providers in any service area.

6.2 DoT should examine the issue early and specify appropriate license fee for UAS licensees who do not wish to utilize the spectrum.

6.3 The Authority is of the opinion that there is a need to tighten the subscriber criteria for all the service areas so as to make it more efficient form the usage and pricing point of view. Further, in the category A,B and C service areas the subscribers are widely distributed in the service area and therefore the amount of spectrum required in these areas for the same number of subscriber as in a metro will be comparatively lower.

6.4 In order to frame a new spectrum allocation criteria, a multi-disciplinary committee may be constituted consisting of representatives from DoT/TEC, TRAI, WPC wing, COAI & AUSPI. The committee may be headed by an eminent scientist/ technologist from a national level scientific institute like Indian Institute of Science, Bangalore. However, it is necessary to enhance the present subscriber norms as an adhoc measure so that the task of spectrum allocation is not stalled. The suggested revision is given below:-

GSM subscriber base criteria (millions of subscribers)

Service Area	2 x 6.2 MHz	2 x 8 MHz	2 x 10 MHz	2 x 12.4 MHz	2 x 15 MHz
Delhi/Mumbai	0.5	1.5	2	3.0	5
Chennai/Kolkata	0.5	1.5	2	3.0	5
A	0.8	3	5	8	10
B	0.8	3	5	8	10
C	0.6	2	4	6	8

CDMA subscriber base criteria (millions of subscribers)

Service Area	3rd carrier (2 x 3.75 MHz)	4th carrier (2 x 5 MHz)	5th carrier (2 x 6.25 MHz)	6th carrier (2 x 7.5 MHz)
Delhi/Mumbai	0.5	2	3.0	5
Chennai/Kolkata	0.5	2	3.0	5
A	0.8	5	8	10
B	0.8	5	8	10
C	0.6	4	6	8

6.5 GSM operators and CDMA operators may be given additional spectrum beyond 2X4.4 MHz and 2X2.5 MHz respectively after the operators achieve the required subscriber base and also report compliance of roll-out obligation.

6.6 Any licensee who seeks to get additional spectrum beyond 10 MHz in the existing 2G bands i.e. 800,900 and 1800 MHz after reaching the specified subscriber numbers shall have to pay a onetime spectrum charge at the above mentioned rate on prorata basis for allotment of each MHz or part thereof of spectrum beyond 10 MHz.

Service Areas	Price (Rs.in million) for 2X5 MHz
Mumbai, Delhi and Category A	800
Chennai, Kolkatta and Category B	400
Category C	150

For one MHz allotment in Mumbai, Delhi and Category A service areas, the service provider will have to pay Rs. 160 million as one time spectrum acquisition charge.

6.7 In future all spectrum excluding the spectrum in 800, 900 and1800 bands should be auctioned so as to ensure efficient utilization of this scarce resource.

6.8 The revenue share spectrum charges as given in table below: may be adopted.

Spectrum	**Current**	**Proposed**
Upto 2X4.4 MHz	2%	No Change
Upto 2X6.2MHz/2x5 MHz	3%	No Change
Upto 2X8MHz	4%	No Change
Upto 2X10MHz	4%	5.00%
Upto 2X12.5MHz	5%	6.00%
Upto 2X15 MHz	6%	7.00%
Beyond 2X15 MHz	-	8.00%

6.9 The relevant service market be defined as wire line and wireless services. Wireless service market shall include fixed wireless as well.

6.10 The relevant geographic market shall be licensing service area as it exists today.

6.11 For determination of market power, market share of both subscriber base and adjusted gross revenue of licensee in the relevant market shall be considered to decide the level of dominance for regulating the M&A activity.

6.12 M&A guidelines should use Exchange Data Records (EDR) in the calculation of wireline subscribers and specifically VLR data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base.

6.13 The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market.

6.14 The market share of merged entity in the relevant market shall not be greater than 40% either in terms of subscriber base or in terms of Adjusted Gross Revenue.

6.15 No M&A activity shall be allowed if the number of wireless access service providers reduces below four in the relevant market consequent upon such an M&A activity under consideration.

6.16 The existing cap of 2x15 MHz per operator per service area for metros and category A circle and 2x12.4 MHz per operator per service area in category B and C circle applicable for a post merger entity be removed for purposes of regulating M&A activity.

6.17 The annual license fee and the spectrum charge are paid as a certain specified percentage of the AGR of the licensee. On the merger of the two licenses, the AGR of the two entities will also be merged and the license fee will be therefore levied at the specified rate for that service area on the resultant total AGR. Similarly, for the purpose of payment of the spectrum charge, the spectrum held by the two licensees will be

added/merged and the annual spectrum charge will be at the prescribed rate applicable on this total spectrum.

6.18 A mix of ex-ante and ex-post approach for regulating acquisitions of equity stake of one licensee Company/ legal person/promoter company in the enterprise of another licensee in the same license area. Acquisition of equity capital up to 10% of the target licensee's enterprise shall be permitted by an automatic route and anything beyond that and up to 20% of the equity holdings of the target licensee company, shall be approved on a case by case basis and the process of such approvals will be based on the M&A guidelines contained in these recommendations.

6.19 The Authority while examining the issue of M&A had also deliberated on these terms for the transfer of licenses and has come to the conclusion that the present terms and conditions are adequate and therefore the Authority recommends that it does not require any change in the existing terms.

6.20 In case a licensee wishes to deploy any other advanced and efficient technology for providing mobile service, than the DoT should allocate spectrum subject to its availability.

6.21 A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology.

6.22 Levy of a specified amount of fee which should be, at least, equal to the entry fee for UAS licence. Further, for purposes of assessment of market power in the context of competition analysis in the market, the combined market share arising out of service provision through both the technologies will be taken into account and obligations if any to be imposed on such dominant operators as and when necessary in future

will be done with reference to combined market power of such licensees.

6.23 Regarding inter se priority for spectrum allocation, when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue and the inter se priority of allocation should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee.

6.24 The licensee will maintain separate detail of the subscriber number data for the purposes of spectrum allocation but the AGR will be the combined AGR of both the technologies. It is the combined AGR which will determine the license fee.

6.25 There is one major difference between a merged entity and an operator who has opted for multiple technologies for providing access services under one license. Such an operator will start deployment after the allocation of spectrum. It will be unfair to demand higher spectrum charges on grounds of combined total of spectrum without enrolling new subscribers. It would destabilize the financial working of such an operator. Therefore, it is fair to grant a moratorium of one year from the date of allocation of spectrum, after payment of specified fee, for the levy of spectrum charges based on the combined total of spectrum allocated. This would mean that the operator would pay spectrum charges/fee on the basis of allocated spectrum in respective technologies for one year before graduating to a slab earmarked for the combined total of spectrum. The one year will be counted from the date of allocation of spectrum for the second technology.

6.26 In order to ensure that the additional spectrum is efficiently and properly utilized in a timely manner; the licensee should also be required to fulfill the contingent roll out obligation.

6.27 The present provisions of roll out obligations should not be changed for all the access service providers.

6.28 TEC should give the required certificate of compliance or any other report of inadequacy within 90 days. This time limit should start from the date when the application has been submitted to TEC.

6.29 The present position of monitoring compliance of roll out obligation cannot be allowed to continue and a permanent workable solution has to be evolved. In case it is not practical to provide full staff strength to TEC then the TEC may consider outsourcing this work to technically qualified organizations. TEC may consider involving VTM cells of DOT, CDOT and technical institutes like IITs to take up this job on their behalf and they may be suitably compensated by way of fee prescribed by DoT.

6.30 SACFA clearance should be given in a stipulated time frame of 60 days. In case no communication is received in this prescribed time frame, the application will be deemed to be approved.

6.31 Without any change in the provision of LD, in case the roll out obligation is not met even after 52 weeks of the period prescribed for completing roll out obligations, the Authority recommends that the reference to termination of license in clause no. 35.2 of UASL may be replaced by the following:

i. The performance bank guarantee be forfeited and the service provider may be asked to resubmit PBG of the same amount.

ii. No additional spectrum may be allocated to licensees till he does not fulfill the roll out obligations.

iii. Such a licensee should not be eligible to participate in any spectrum auction till the roll out obligation is met.

iv. Any proposal of permission of merger and acquisition should not be entertained till the roll out obligation is met.

6.32 It is hoped that these will be serious deterrent and any linkage with termination of license in case of default in roll out obligation should be done away with.

6.33 The existing service providers who are in non-compliance of roll out obligation and do not possess the requisite TEC certificate may be given six months grace time as one time relief in present case only to comply with new certification scheme and imposition of penalty on earlier default will not be waived.

6.34 Any reintroduction of rural roll out obligation may pose legal issues including test of level playing field. Therefore, a scheme of financial incentive for the spread of infrastructure in the rural areas may be considered. As per this framework the licensee who covers 75% of development blocks in any service area (excluding the four Metro service areas) should be eligible for a payment at a reduced scale towards Universal Service Obligation fee. Such a licensee shall be required to pay 3% instead of present 5% contribution to the Universal Service Obligation Fund (USOF). The verification should be based on installation of identified physical infrastructure in the development blocks. It is natural that this financial incentive should come from the USOF as the scheme basically serves the objective of rural coverage only.

Annexure D
(Refer Chapter 2/Para 2.22)

DOT letter dated 14.12.05 reg. UASL amendment

Government of India
Ministry of Communications & IT
Department of Telecommunications
Sanchar Bhavan, 20 - Ashoka Road
New Delhi - 110001

F.No.10-21/2005-BS.I(Vol.II)/54 Dated, the 14th December, 2005.

To

All Unified Access Service Licensees (UASL)

SUB: Amendments in Unified Access Service Licence Agreement.

The undersigned has been directed to convey the approval of the competent authority for amendments to various clauses of the Licence Agreement for Unified Access Service(UASL) with immediate effect as per details enclosed as Annexure.

Other terms and conditions of the existing Unified Access Service licence shall remain unchanged.

(Govind Singhal)
Director (BS-III)
For and on behalf of President of India

Copy to :

1. Secretary TRAI
2. Sr. DDG(TEC)
3. DDG(LF)

Annexure

S. No.	No. of Existing Clauses	Amended Clause
1.	**1. Ownership of the LICENSEE Company.** 1.1 The LICENSEE shall ensure that the total foreign equity in the paid up capital of the LICENSEE Company does not, at any time during the entire Licence period, exceed 49% of the total equity. The details of the Indian & Foreign promoters/shareholders with their respective equity holdings in the LICENSEE Company and their respective net-worth as disclosed on the date of signing of the LICENCE AGREEMENT, are as follows: - - - - - - -- -- - -- - ------ - - - - - - -- 1.2 Except prior permission in writing by Licensor there shall be no change in the Foreign promoter(s) or their equity participation . Normally there will be no objection in substituting an existing foreign promoter by another foreign promoter of similar standing subject to the total foreign equity being below the prescribed limit. 1.3 The LICENSEE Company may, under intimation to Licensor replace a promoter(s) by another promoter(s) as stipulated below: (a) the Indian Promoter(s) or person(s) acquiring the foreign promoter's shareholding ; and (b) transfer of equity between Indian promoters or person(s) including Indian employees of the company.	1. OWNERSHIP OF THE LICENCEE COMPANY 1.A The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., herein after referred as FDI, will not exceed 74 per cent. The 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company and the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 percent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis. *1.B The majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens. The appointment to these positions from among resident Indian citizens shall be made in consultation with serious Indian investors. Serious investor has been defined below in para 1.G(i).* *1.C The Share Holder Agreements (SHA) shall specifically incorporate the condition that majority directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens and shall also envisage the conditions of adherence to Licence Agreement.* *1.D FDI upto 49 per cent will continue to be*

	1.3.1 The merger of Indian companies may be permitted as long as competition is not compromised as defined in condition 1.4 (ii). **<u>Explanation</u>** : In case of company listed at a stock exchange(s), shares bought and sold by way of any transaction through the stock exchange(s) where the Company shares or depository receipts are listed will not be treated as change of equity for the purpose of this clause subject to total prescribed foreign equity ceiling unless otherwise it leads to change in management control within the definition of SEBI Act. 1.4 The LICENSEE shall also ensure that: (i) Any changes in share holding shall 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	*on automatic route. Foreign Investment Promotion Board (FIPB) approval shall be required for FDI in the licensee company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment proposals, FIPB shall take note that investment is not coming from unfriendly countries.* 1.E The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement. *1.F FDI shall be subject to laws of India and not the laws of the foreign country/countries.* 1.G (i) In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company. *(ii) 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.* (iii) Chief Technical Officer (CTO)/Chief Finance Officer (CFO) shall be resident Indian citizens. The Licensor can also further notify key positions to be held by resident Indian citizens. Licensee shall notify the names and nationality of such officers on 1st of January and 1st of July every year to Licensor. (iv) The Company shall not transfer the following to any person/ place outside India:- (a) any accounting information relating to subscriber (except for roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ; (b) user information (except pertaining to foreign subscribers using Indian Operator's network while roaming); and (c) details of their infrastructure/network diagram except to telecom equipment suppliers/manufacturers who undertake the installation, commissioning etc. of the infrastructure of the licensee Company on signing of non-disclosure agreement.

	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. (iii) Management control of the LICENSEE Company shall remain in Indian Hands.	(v) The Company when entering into roaming agreements with service providers outside India must provide, on demand, the list of such users (telephone numbers, in case of foreign subscribers using Indian Operator's network while roaming). (vi) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavor to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement. (vii) No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any place outside India. For this purpose, the location of satellites serving for domestic traffic shall not be treated as outside India. (viii) No Remote Access (RA) shall be provided to any equipment manufacturer or any other agency out side the country for any maintenance/repairs by the licensee. However, RA may be allowed for catastrophic software failure (such as failure to boot up etc.) which would lead to major part of the network becoming non-functional for a prolonged period, subject to meeting the following conditions:- (a) Intelligence Bureau and Licensor will be notified, when RA is to be provided. (b) Remote Access password is to be enabled for a definite period only and only for access from pre-approved locations of the Original Equipment Manufacturer (OEM) Vendors and only for the equipments specifically under repair/maintenance. (c) The control of Remote Access i.e. activation, transfer of data, termination etc. shall be within the country and not at a Remote location, abroad. (d) The Government agency will be given all support to record the transactions for on-line monitoring. (e) Any equipment or software that forms part of the overall monitoring shall not be permitted to have remote access under any circumstances. (f) The terms catastrophic software failure, major part of the network and prolonged

		period used under this clause shall be defined by the Licensor from time to time. (ix) It shall be open to the Licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle. (x) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories. *(xi) For monitoring traffic, the licensee company shall provide blind access of their network and other facilities as well as to books of accounts to the security agencies.* (xii) In case of not adhering to Licence conditions envisaged in para 1.G the licence(s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance/financial bank guarantee(s) and the licensor shall not be liable for loss of any kind. 1.2 The conditions at para 1.A to 1.G above shall also be applicable to the existing companies operating telecom service(s), which had the FDI cap of 49%. The Indian & Foreign equity holdings in the LICENSEE company as disclosed by the LICENSEE company on the date of signing of the LICENCE AGREEMENT, are as follows: *INDIAN EQUITY……* *FOREIGN EQUITY……* The LICENSEE shall declare the above information as on 1st January and 1st July by 7th January and 7th July respectively to LICENSOR. This is to be certified by the LICENSEE company's company secretary or statutory auditor. 1.3 The merger of Indian companies may be permitted as long as competition is not compromised as defined below: "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 : above clause(1.3) 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. 1.4 The LICENSEE shall also ensure that any change in share holding shall be subject to all necessary statutory requirements.
2	2.2 (a) The SERVICES cover collection, carriage, transmission and delivery of voice and/or non-voice MESSAGES over LICENSEE's network in the designated SERVICE AREA and includes provision of all types of access services. In addition to this, except those services listed in para 2.2 (b)(i) licensee cannot provide any service / services which require a separate licence. The access service includes but not limited to wireline and / or wireless service including full mobility, limited mobility as defined in clause 2.2 (c) (i) and fixed wireless access. However, the licensee shall be free to enter an agreement with other service provider(s) in India or abroad for providing roaming	2.2 (a)(i) The SERVICES cover collection, carriage, transmission and delivery of voice and/or non-voice MESSAGES over LICENSEE's network in the designated SERVICE AREA and includes provision of all types of access services. Access Service Provider can also provide Internet Telephony. Internet Services and Broadband Services. If required, access service provider can use the network of NLD/ILD service licensee. In addition to this, except those services listed in para 2.2 (b)(i) licensee cannot provide any service / services which require a separate licence. The access service includes but not limited to wireline and / or wireless service including full mobility, limited mobility as defined in clause 2.2 (c) (i) and fixed wireless access. However, the licensee shall be free to enter an agreement with other service provider(s) in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised / directed by Licensor otherwise. The LICENSEE may offer " Home Zone Tarriff Scheme (s)" as a subset of

	facility to its subscriber under full mobility service unless advised / directed by Licensor otherwise. The LICENSEE may offer " Home Zone Tarriff Scheme (s)" as a subset of full mobile service in well defined geographical Areas through a tariff of its choice within the scope of orders of TRAI on the subject. Numbering and interconnection for this service shall be same as that of Full mobile subscribers.	full mobile service in well defined geographical Areas through a tariff of its choice within the scope of orders of TRAI on the subject. Numbering and interconnection for this service shall be same as that of Full mobile subscribers. 2.2 (a) (ii) Leased circuit is defined as virtual private network (VPN) using circuit or packet switched (IP Protocol) technology apart from point to point non-switched physical connections/transmission bandwidth. Public network is not to be connected with leased circuits/CUGs. 2.2 (a) (iii) The access service providers can provide Broadband services including triple play i.e voice, video and data.
3	*10.2(i) The LICENSOR may, without prejudice to any other remedy available for the breach of any conditions of LICENCE, by a written notice of 60 Calendar days from the date of issue of such notice to the LICENCEE at its registered office, terminate this LICENCE under any of the following circumstances :* If the LICENSEE: a) fails to perform any obligation(s) under the LICENCE including timely payments of fee and other charges due to the LICENSOR; b) fails to rectify, within the time prescribed, any defect/deficiency/correction in service/equipment as may be pointed out by the LICENSOR. c) goes into liquidation or ordered to be wound up. d) is recommended by TRAI for termination of LICENCE for non-compliance of the terms and conditions of the LICENCE.	*10.2(i) The LICENSOR may, without prejudice to any other remedy available for the breach of any conditions of LICENCE, by a written notice of 60 Calendar days from the date of issue of such notice to the LICENCEE at its registered office, terminate this LICENCE under any of the following circumstances :* If the LICENSEE: a) fails to perform any obligation(s) under the LICENCE including timely payments of fee and other charges due to the LICENSOR; b) fails to rectify, within the time prescribed, any defect/deficiency/correction in service/equipment as may be pointed out by the LICENSOR. c) goes into liquidation or ordered to be wound up. d) is recommended by TRAI for termination of LICENCE for non-compliance of the terms and conditions of the LICENCE. f) fails to comply with FDI norms.

Annexure E
(Refer Chapter 2/Para 2.23)

DOT guidelines dated 14.12.05 for grant of license

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20 Ashoka Road, New Delhi-110 001.

No.10-21/2005-BS.I(Vol.II)/49 dated, the 14th December, 2005.

SUB: GUIDELINES FOR UNIFIED ACCESS SERVICES LICENCE.

Consequent to opening of Internet Telephony and merger of Chennai & Tamilnadu Service Area, following are the broad Guidelines for grant of Unified Access Services Licence in a Service Area.

1. The applicant must be an Indian company, registered under the Indian Companies Act'1956.
2. The applicant company shall submit the application in duplicate in the prescribed Application form enclosed as (Annexure-III), for each Service Area separately.
3. The applicant company can apply for Licence in more than one service area subject to fulfillment of all the conditions of entry.
4. The applicant company shall pay a processing fee along with the application (Two copies) of Rs. 15,000/- in the form of Demand Draft/Pay Order from a Schedule Bank payable at New Delhi issued in the name of Pay & Accounts Officer (Headquarter) DOT and the same shall not be refunded for any reason whatsoever.

5.0

5.A The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., herein after referred as FDI, will not exceed 74 per cent. The 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company and the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 percent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such

foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis.

5.B The majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens. The appointment to these positions from among resident Indian citizens shall be made in consultation with serious Indian investors. Serious investor has been defined below in para 5.G(ii).

5.C The Share Holder Agreements (SHA) shall specifically incorporate the condition that majority directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens and shall also envisage the conditions of adherence to Licence Agreement.

5.D FDI upto 49 per cent will continue to be on automatic route. Foreign Investment Promotion Board (FIPB) approval shall be required for FDI in the licensee company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment proposals, FIPB shall take note that investment is not coming from unfriendly countries.

5.E The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.

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

5.G (i) There shall be a non-obstante clause in the licence which confers powers upon the licensor to cancel the licence under certain defined circumstances.

(ii) In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company.

(iii) 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.

(iv) Chief Technical Officer (CTO)/Chief Finance Officer (CFO) shall be resident Indian citizens. The Licensor can also further notify key positions to be held by resident Indian citizens.

(v) The Company shall not transfer the following to any person/ place outside India:-

(a) any accounting information relating to subscriber (except for roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ;

(b) user information (except pertaining to foreign subscribers using Indian Operator's network while roaming); and

(c) details of their infrastructure/network diagram except to telecom equipment suppliers/manufacturers who undertake the installation, commissioning etc. of the infrastructure of the licensee Company on signing of non-disclosure agreement.

(vi) The Company when entering into roaming agreements with service providers outside India must provide, on demand, the list of such users (telephone numbers, in case of foreign subscribers using Indian Operator's network while roaming).

(vii) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavor to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.

(viii) No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any place outside India. For this purpose, the location of satellites serving for domestic traffic shall not be treated as outside India.

(ix) No Remote Access (RA) shall be provided to any equipment manufacturer or any other agency out side the country for any maintenance/repairs by the licensee. However, RA may be allowed for catastrophic software failure (such as failure to boot up etc.) which would lead to major part of the network becoming non-functional for a prolonged period, subject to meeting the following conditions:-

(a) An identified Government agency (Intelligence Bureau) will be notified, when RA is to be provided.

(b) Remote Access password is to be enabled for a definite period only and only for access from pre-approved locations of the Original Equipment Manufacturer (OEM) Vendors and only for the equipments specifically under repair/maintenance.

(c) The control of Remote Access i.e. activation, transfer of data, termination etc. shall be within the country and not at a Remote location, abroad.

(d) The Government agency will be given all support to record the transactions for on-line monitoring.

(e) Any equipment or software that forms part of the overall monitoring shall not be permitted to have remote access under any circumstances.

(f) The terms catastrophic software failure, major part of the network, and prolonged period used under this clause shall be defined by Licensor from time to time.

(x) It shall be open to the Licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.

(xi) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.

(xii) For monitoring traffic, the licensee company shall provide blind access of their network and other facilities as well as to books of accounts to the security agencies.

(xiii) In case of not adhering to Licence conditions envisaged in para 5.G, the licence(s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance/financial bank guarantee(s) and the licensor shall not be liable for loss of any kind.

5.1 The conditions at paras 5.A to 5.G above shall also be applicable to the existing companies operating telecom service(s), which had the FDI cap of 49%.

6 The detail of non-refundable Entry fee, Category of service area, Financial bank guarantee , performance bank guarantee, Networth and Paid up equity capital required under the Unified Access Services Licence for each service area is as per Annexure-I. The prescribed paid-up equity capital shall be maintained during currency of the licence.

7 The licence for Unified Access Services shall be issued on non-exclusive basis, for a period of 20 years, extendable by 10 years at one time within the territorial jurisdiction of a licensed Service Area.

8 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. A certificate to this effect shall be provided by the applicant's company Secretary alongwith application.

9 The applicant company shall have a minimum paid up equity capital of the amount indicated in Annex-I for the respective Service Area on the date of the application and shall submit a certificate to this effect shall be provided by the applicant's company Secretary alongwith application.

10 The applicant and promoters of applicant company should have a combined net-worth of amount as detailed in the Table below:

Net-worth	Total Minimum Net-worth required
Rs.30 Crores for each Category C Service Area Rs.50 Crores for each Category B Service Area Rs.100 Crores for each Category A Service Area	100 X+50 Y+30 Z where X,Y & Z is respectively the Number of A, B & C Service Areas for which either LOI/ Licence have been issued or applied for in the name of applicant.

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 networth

shall mean as the sum total, in Indian Rupees, of paid up equity capital and free reserves. While counting Net-worth the foreign currency shall be converted into Indian Rupees at the prevalent rate indicated by the Reserve Bank of India as on the date of Application received. The minimum networth & paid-up capital shall be maintained during currency of the Licence

11 Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area.

12 SCOPE OF THE LICENCE:

(a) (i) The Unified Access Services cover collection, carriage, transmission and delivery of voice and/or non-voice MESSAGES over LICENSEE's network in the designated SERVICE AREA and includes provision of all types of access services. Access service provider can also provide Internet Telephony , Internet Services and Broadband Services. If required , access service provider can use the network of NLD/ILD service licensee. In addition to this, except those services listed in para 12(b)(i) licensee cannot provide any service / services which require a separate licence. The access service includes but not limited to wireline and / or wireless service including full mobility, limited mobility as defined in clause 12 (c) (i) and fixed wireless access. However, the licensee shall be free to enter an agreement with other service provider(s) in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised / directed by Licensor otherwise. The LICENSEE may offer " Home Zone Tariff Scheme (s)" as a subset of full mobile service in well defined geographical Areas through a tariff of its choice within the scope of orders of TRAI on the subject. Numbering and interconnection for this service shall be same as that of Full mobile subscribers.

(a) (ii) Leased circuit is defined as virtual private network (VPN) using circuit or packet switched (IP Protocol) technology apart from point to point non-switched physical connections/ transmission bandwidth . Public network is not to be connected with leased circuits/ CUGs.

(a) (iii) The access service providers can provide broadband services including triple play i.e. voice, video & data.

(b) (i). Further, the LICENSEE can also provide Voice Mail, Audiotex services, Video Conferencing, Videotex, E-Mail , Closed User Group (CUG) facilities over its network to the subscribers falling within its SERVICE AREA on non-discriminatory basis. The Licensee cannot provide any service except as mentioned above, which require a separate licence. However, an intimation before providing any other VALUE ADDED SERVICE has to be sent to the LICENSOR and TRAI.

(ii) No separate Entry Fee shall be charged for Voice Mail / Audiotex, Video Conferencing, Videotex, E-Mail service provided by the LICENSEE. However, all the revenue earned by the LICENSEE through these service shall be counted towards the revenue for the purpose of paying LICENCE Fee under the LICENCE AGREEMENT.

(c) (i) In respect of subscriber availing limited mobility facility, the mobility shall be restricted to the local area i.e. Short Distance Charging Area (SDCA) in which the subscriber is registered. While deploying such systems, the LICENSEE has to follow the SDCA based linked numbering plan in accordance with the National Numbering Plan of the respective SDCA within which the service is provided and it should not be possible to authenticate and work with the subscriber terminal equipment in SDCAs other than the one in which it is registered. Terminal of such subscriber in wireless access system can be registered in only one SDCA. Multiple registration or Temporary subscriber/ Subscription facilities in more than one SDCA using the same Subscriber terminal in wireless access systems is not permitted and the same Subscriber Terminal can not be used to avail Limited Mobile facility in more than one SDCA. The system shall also be so engineered to ensure that hand over of subscriber does not take place from one SDCA to another SDCA under any circumstances, including handover of the calls through call forwarding beyond SDCA. The Licensee must ensure that the mobility in case of such limited mobile service/ facility remains restricted to SDCA.

(d). In case of Fixed Wireless in Local Loop service, the terminal used for fixed wireless services should be strictly confined to the premises of the subscriber where the telephone connection is registered.

13 The applicant will be required to pay one time non-refundable Entry Fee based on the Letter of Indent (LOI) before signing the Licence Agreement, as per annexure-I.

14 In addition to the non refundable Entry fee described above, the Licensee shall also pay Licence fee annually @ 10/8/6% of **Adjusted Gross Revenue (AGR) for category A/B/C service areas respectively** excluding spectrum charges.

15 Licence Fee shall be payable in four quarterly installments during each financial year (FY). Quarterly installment of licence fee for the first three quarters of a financial year shall be paid within 15 days of the completion of the relevant quarter. This Fee shall be paid by the LICENSEE on the basis of actual revenue (on accrual basis) for the quarter, duly certified with an affidavit by a representative of the LICENSEE, authorized by the Board Resolution coupled with General Power of Attorney. However, for the last quarter of the financial year, the LICENSEE shall pay the Licence Fee by 25th March on the basis of expected revenue for the quarter, subject to a minimum payment equal to the actual revenue share paid of the previous quarter.

16 Any delay in payment of Licence Fee, or any other dues payable under the LICENCE beyond the stipulated period will attract interest at a rate which will be 2% above the Prime Lending Rate (PLR) of State Bank of India existing as on the beginning of the financial year (1st April) in respect of the licence fees pertaining to the said financial year. The interest shall be compounded monthly and a part of the month shall be reckoned as a full month for the purpose of calculation of interest.

17 In case, the total amount paid on the self-assessment of the LICENSEE as quarterly LICENCE Fee for the 4 (four) quarters of the financial year, falls short by more than 10% of the payable LICENCE Fee, it shall attract

a penalty of 50% of the entire amount of short payment. This amount of short payment along with the penalty shall be payable within 15 days of the date of signing the audit report on the annual accounts, failing which interest shall be further charged as per terms of Condition in above para-16. However, if such short payment is made good within 60 days from the last day of the financial year, no penalty shall be imposed.

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

19 The LICENSEE shall pay spectrum 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.

20 Further royalty for the use of spectrum for point to point links and other access links shall be separately payable as per the details and prescription of Wireless Planning & Coordination Wing. The fee/ royalty for the use of spectrum /possession of wireless telegraphy equipment depends upon various factors such as frequency, hop and link length, area of operation and other related aspects etc. Authorization of frequencies for setting up Microwave links by Licensed Operators and issue of Licenses shall be separately dealt with WPC Wing as per existing rules.

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

22 The applicant company shall submit Financial Bank Guarantee (FBG) of amount equal to Rs. 50, 25 and 5 Crores for category 'A' 'B' & 'C' service areas respectively before the date of signing the licence agreement in the prescribed Proforma given in the Licence Agreement. Initially, FBG shall be valid for a period of one year and shall be renewed from time to time for such amount as may be directed by the Licensor. The applicant shall also submit Performance Bank Guarantees (PBG) of amount equal to Rs. 20, 10 and 2 Crores for category 'A' 'B' & 'C' service areas respectively in the prescribed Proforma given in the Licence Agreement before signing the licence. PBG shall be valid for a period of three year and shall be renewed from time to time. FBG and PBG must be from any Scheduled Bank or Public Financial Institution duly authorized to issue such Bank Guarantee.

23 The application shall be decided, so far as practicable, within 30 days of the submission of the application and the applicant company shall be informed accordingly. In case the applicant is found to be eligible for grant of licence for UNIFIED ACCESS Service an 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.

24 In case the applicant is found to be not eligible for the grant of licence for UNIFIED ACCESS service the applicant shall be informed accordingly. Thereafter the applicant is permitted to file a fresh application if so desired.

25 LICENSEE shall ensure "Roll-out obligations" that

(i) Atleast 10% of the District Headquarters (DHQs) will be covered in the first year and 50% of the District Headquarters will be covered within three years of effective date of Licence.

(ii) The choice of District Headquarters/towns to be covered and further expansion beyond 50% District Headquarters/towns shall lie with the Licensee depending on their business decision.

(iii) There is no requirement of mandatory coverage of rural areas.

26 On completion of one year from the effective date of Licence and meeting the coverage criteria stipulated for first year, the PBG shall be reduced to Rs.10/5/1 crores for category 'A'/'B'/'C' service areas on self-certification provided by the Licensee. Further on fulfilling the roll out obligations as stipulated in clause 34 of Licence agreement, the balance PBG shall be released on receipt of test certificate / test certificates issued by TEC in respect of coverage.

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

28 The LICENSEE shall commission the Applicable Systems within one year from the effective date of the Licence. The date of Test Certificate issued by Telecom Engineering Centre of DOT will be reckoned as the date of commissioning the service for the purpose of calculating liquidated damage charges in terms of Condition 35 Part V. However, the LICENSEE may start providing service to customers at any time without the need of specific approval of the Licensor.

29 **Liquidated damages:**In case the LICENSEE fails to bring the Service or any part thereof into commission (i.e., fails to deliver the service or to meet the required coverage criteria/ network roll out obligations) within the period prescribed for the commissioning, the Licensor shall be entitled to recover LD charges @ Rs. 5 Lakh (Rupees: Five Lakhs) per week for first 13 weeks; @ Rs 10 lakhs for the next 13 weeks and thereafter @ Rs. 20 lakhs for 26 weeks subject to a maximum of Rs. 7.00 crores. Part of the week is to be considered as a full week for the purpose of calculating the LD charges. For delay of more than 52 weeks the Licence may be terminated under the terms and conditions of the Licence agreement. The week shall means 7 Calendar days from (from midnight) Monday to Sunday; both days inclusive and any extra day shall be counted as full week for the purposes of recovery of liquidated damages.

30 The Licensor may also impose a financial penalty not exceeding Rs. 50 crores for violation of terms and conditions of licence agreement This penalty is exclusive of Liquidated Damages as prescribed above.

31 Change in the name of the Licensee company shall be permitted in accordance with the provisions under the Indian Companies Act, 1956.

32 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.

33 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.

34 The applicant company shall make its own arrangements for Right of Way (ROW). However, the Central Government has issued necessary notification conferring the requisite powers upon the licensee for the purposes of placing telegraph lines under Part III of the Indian Telegraph Act'1885. Provided that non-availability of the ROW or delay in getting permission / clearance from any agency including WPC delay shall not be construed or taken as a reason for non-fulfillment of the Rollout obligations.

35 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. Any digital technology having been used for a customer base of one lakh or more for a continuous period of one year anywhere in the world, shall be permissible for use regardless of its changed versions. A certificate from the manufacturers about satisfactory working for a customer base of one lakh or more over the period of one year, shall be treated as established technology.

36 The subscriber terminals employed in the network shall be of a type/ model certified by an internationally accredited agency with respect to ITU/ETSI/TEC/ International standardization bodies such as 3GPP/3GPP-2/ETSI/IETF/ANSI/EIA/TIA/IS or any other international standard as may be approved by the Government. . Only such category of subscriber unit as has been granted such a certificate shall be brought into and operated within India under this Agreement. The mode of ownership of subscribers' terminal equipment will be at the option of the subscriber.

37 For wireless operations in SUBSCRIBER access network, the frequencies shall be assigned by WPC wing of the Department of Telecom from the frequency bands earmarked in the applicable National Frequency Allocation Plan and in coordination with various users. Initially a cumulative maximum of upto 4.4 MHz + 4.4 MHz shall be allocated in the case of TDMA based systems @ 200 KHz per carrier or 30 KHz per carrier or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA based systems @ 1.25 MHz per carrier, on case by case basis subject to availability. While efforts would be made to make available larger chunks to the extent feasible, the frequencies assigned may not be contiguous and may not be the same in all cases or within the whole Service Area. For making available appropriate frequency spectrum for roll out of services under the licence, the type(s) of Systems to be deployed are to be indicated.

38 Additional spectrum beyond the above stipulation may also be considered for allocation after ensuring optimal and efficient utilization of the already allocated spectrum taking into account all types of traffic and guidelines / criteria prescribed from time to time. However, spectrum not more than 5 + 5 MHz in respect of CDMA system or 6.2 + 6.2 MHz in respect of TDMA based system shall be allocated to any new Unified Access Services Licensee. The spectrum shall be allocated in 824-844 MHz paired with 869 - 889 MHz, 890 - 915 MHz paired with 935 - 960 MHz, 1710 – 1785 MHz paired with 1805 – 1880 MHz.

39 In the event, a dedicated carrier for micro-cellular architecture based system is assigned in 1880 - 1900 MHz band, the spectrum not more than 3.75 + 3.75 MHz in respect of CDMA system or 4.4 + 4.4 MHz in respect of TDMA system shall be assigned to any new Unified Access Services Licensee.

40 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.

41 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 shall also be obtained by the Licensee.

42 The LICENSEE shall register demand/request for telephone connection without any discrimination from any applicant, at any place in the licensed service area and provide the SERVICE, unless otherwise directed by the LICENSOR. The LICENSEE shall not in any manner discriminate between subscribers and provide service on the same commercial principle and shall be required to maintain a transparent, open to inspection, waiting list. The LICENSEE shall clearly define the scope of Service to the Subscriber(s) at the time of entering into contract with such Subscriber(s). LICENSOR shall have right to impose suitable penalty, not limited to a financial penalty, apart from any other actions for breach of this condition. The LICENSEE shall launch the SERVICE on commercial basis only after commencement of registration in the manner prescribed. Before commencement of SERVICE in an area, the LICENSEE shall notify and publicize the address where any subscriber can register demand /request for telephone connection. Any change of this address shall be duly notified by the LICENSEE.

43 The licensee shall provide independently or through mutually agreed commercial arrangements with other Service Providers all public utility services including TOLL FREE services such as police, fire, ambulance, railways/road/air accident enquiry, police control, disaster management etc. While providing emergency services such as police, fire, ambulance etc. it shall be ensured that such calls originated shall be delivered to the control room of the concerned authority for the area from where call is originated.

44 LICENSEE shall be free to carry intra-Service Area long distance traffic without seeking additional licence. However, subject to technical

feasibility, the subscriber of the intra-Service Area long distance calls, shall be given the choice to use the network of another Service Provider in the same service area, wherever possible. The LICENSEE can also make mutual agreements with National Long Distance Operators for carrying intra Circle Long Distance traffic.

45 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. In case of providing choice of Long Distance Operator, the equipment shall support the selection facilities such as dynamic call-by-call selection and pre-selection as per prevailing regulation, direction, order or determination issued by LICENSOR or TRAI on the subject.

46 It shall be mandatory for the LICENSEE to provide interconnection to all eligible Telecom Service Providers as well as NLD Operators whereby the subscribers could have a free choice to make inter-circle/ international long distance calls through NLD/ ILD Operator. For international long distance call, the LICENSEE shall normally access International Long Distance Operator's network through National Long Distance Operator's network subject to fulfillment of any Guidelines/ Orders/ Directions/ Regulation issued from time to time by Licensor/ TRAI. The LICENSEE shall not refuse to interconnect with the International Long Distance Licensee directly in situations where ILD Gateway Switches/ Point of Presence (POP), and that of Access Provider's (GMSC/ Transit Switch) are located at the same station of Level -I TAX .

47 Direct interconnectivity among all Telecom Service Providers in the licensed SERVICE AREA is permitted. LICENSEE shall interconnect with other Service Providers, subject to compliance of prevailing regulations, directions or determinations issued by TRAI. The interconnection shall have to be withdrawn in case of termination of the respective licensed networks of another 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.

48 Interconnection between the networks of different SERVICE PROVIDERs shall be as per National Standards of CCS No.7 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. However, if situation so arises, INTERCONNECTION with R2MF signaling may be permitted by LICENSOR.

49 The LICENSEE may enter into suitable arrangements with other service providers to negotiate Interconnection Agreements whereby the interconnected networks will provide the following:

(a) To meet all reasonable demand for the transmission and reception of messages between the interconnected systems.

(b) To establish and maintain such one or more Points of Interconnect as are reasonably required and are of sufficient capacity and in sufficient numbers to enable transmission and reception of the messages by means of the Applicable Systems,

(c) To connect, and keep connected, to their Applicable Systems.

50 The terms and conditions of interconnection including standard interfaces, points of interconnection and technical aspects will be as mutually agreed between the service providers, subject to compliance of prevailing regulations, directions and determinations issued by TRAI from time to time.

51 The Interconnection Tests with network of other Service Provider may be carried out by mutual arrangement.

52 For the purpose of providing the SERVICE, the LICENSEE shall install his own equipment so as to be compatible with other service providers' equipment to which the LICENSEE's Applicable Systems are intended for interconnection.

53 The Licensee shall comply with any order, direction, determination or regulation as may be issued from time to time by the Licensor or TRAI as the case may be.

54 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.

55 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.

56 In the interests of security, suitable monitoring equipment as may be prescribed for each type of system used will be provided by the LICENSEE for monitoring as and when required by LICENSOR. The specific orders or directions from the Government, issued under such conditions, shall be applicable.

57 The LICENSEE shall provide necessary facilities depending upon the specific situation at the relevant time to the Government to counteract espionage, subversive act, sabotage or any other unlawful activity.

58 The LICENSEE shall make available on demand to the person authorized by the LICENSOR, full access to the switching centers, transmission centers, routes etc. for technical scrutiny and for inspection, which can be visual inspection or an operational inspection.

59 All foreign personnel likely to be deployed by the LICENSEE for installation, operation and maintenance of the LICENSEE's network shall be security cleared by the Government of India prior to their deployment. The security clearance will be obtained from the Ministry of Home Affairs, Government of India, who will follow standard drill in the matter.

60 The LICENSEE shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place.

61 The network resources including the cost of upgrading/ modifying interconnecting networks to meet the service requirements of the LICENSEE will be mutually negotiated keeping in view the orders and regulations issued by the TRAI from time to time.

62 LICENSEE can appoint any franchisee not limited to Cable Service Provider for provision of last mile linkages including suitable rural exchanges to provide service. However, all responsibilities for ensuring compliance of terms & conditions of the LICENCE shall vest with the LICENSEE. The terms of franchise agreement between LICENSEE and his franchisee shall be settled mutually by negotiation between the two parties involved.

63 The LICENSEE shall not, without the prior written consent of the LICENSOR, either directly or indirectly, assign or transfer this LICENCE in any manner whatsoever to a third party or enter into any agreement for sub-Licence and/or partnership relating to any subject matter of the LICENCE to any third party either in whole or in part i.e. no sub-leasing/partnership/third party interest shall be created. Provided that the LICENSEE can always employ or appoint agents and employees for provision of the service.

64 The LICENSEE shall not employ bulk encryption equipment in its network. Any encryption equipment connected to the LICENSEE's network for specific requirements has to have prior evaluation and approval of the LICENSOR or officer specially designated for the purpose. However, Any encryption equipment connected to the LICENSEE's network for specific requirements has to have prior evaluation and approval of the LICENSOR or officer specially designated for the purpose. However, the LICENSEE shall have the responsibility to ensure protection of privacy of communication and to ensure that unauthorised interception of MESSAGE does not take place.

65 LICENSOR shall have the right to take over the SERVICE, equipment and networks of the LICENSEE or revoke/terminate/suspend the LICENCE either in part or in whole of the Service area in the interest of national security or in case of emergency or war or low intensity conflict or any other eventuality in public interest as declared by the Government of India. Any specific orders or direction from the Government issued under such conditions shall be immediately applicable to the LICENSEE without loss of time and shall be strictly complied with. Further, the LICENSOR reserves the right to keep any area out of the operation zone of the service if implications of security so require. Provided any taking over or suspension of licence, issuance of an order and exclusion of an area, as described above shall neither be a ground of extension of licence period or expansion of area in different corner or reduction of duly payable fee.

66 The LICENSOR reserves the right to modify at any time the these guidelines and terms and conditions of the LICENCE, if in the opinion of the LICENSOR it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the telegraphs. The decision of the LICENSOR shall be final and binding in this regard.

67 LICENSEE will ensure that the Telecommunication installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.

68 The LICENSEE shall take necessary measures to prevent objectionable, obscene, unauthorized or any other content, messages or communications infringing copyright, intellectual property etc., in any form, from being carried on his network, consistent with the established laws of the country. Once specific instances of such infringement are reported to the LICENSEE by the enforcement agencies, the LICENSEE shall ensure that the carriage of such material on his network is prevented immediately.

69 The LICENSEE is obliged to provide, without any delay, all the tracing facilities to trace nuisance, obnoxious or malicious calls, messages or communications transported through his equipment and network, to authorized officers of Government of India including Police, Customs, Excise, Intelligence Department officers etc. when such information is required for investigations or detection of crimes and in the interest of national security. Any damages arising on account of LICENSEE's failure in this regard shall be payable by the LICENSEE.

70 In case any confidential information is divulged to the LICENSEE for proper implementation of the Agreement, it shall be binding on the LICENSEE and its employees and servants to maintain its secrecy and confidentiality.

71 The LICENSOR or its authorized representative shall have right to inspect the sites used for extending the Service and in particular but not limited to, have the right to have access to leased lines, junctions, terminating interfaces, hardware/software, memories of semiconductor, magnetic and optical varieties, wired or wireless options, distribution frames, and conduct the performance test including to enter into dialogue with the system through Input/output devices or terminals. The LICENSEE will provide the necessary facilities for continuous monitoring of the system, as required by the LICENSOR or its authorized representative(s). The Inspection will ordinarily be carried out after reasonable notice except in circumstances where giving such a notice will defeat the very purpose of the inspection.

72 In case any confidential information is divulged to the LICENSEE for proper implementation of the Agreement, it shall be binding on the Licensee and its employees and servants to maintain its secrecy and confidentiality.

73 The terms and conditions applicable to the licence for Unified Access Service shall be given in detail in the Licence Agreement.

74 Applications are to be submitted to the Assistant Director General (BS-III), Department of Telecommunications, Room No.713, Sanchar Bhavan, 20 Ashok Road, New Delhi-110 001.

(R.K.GUPTA)
Assistant Director General(BS-III)
on behalf of President of India
ph. +91-11-23036574

ANNEXURE-I

(Amount in Rs. Crores)

S. No.	Service Area	Cate - gory	Entry fee	FBG Requi red	PBG requir ed	Networth	Paid up equity capital of Applica nt Compa ny
1	West Bengal	B	1.0000	25.00	10.00	50	5
2	Andhra Pradesh	A	103.0100	50.00	20.00	100	10
3	Assam	C	5.0000	5.00	2.00	30	3
4	Bihar	C	10.0000	5.00	2.00	30	3
5	Gujarat	A	109.0100	50.00	20.00	100	10
6	Haryana	B	21.4600	25.00	10.00	50	5
7	Himachal Pradesh	C	1.1000	5.00	2.00	30	3
8	Jammu & Kashmir	C	2.0000	5.00	2.00	30	3
9	Karnataka	A	206.8300	50.00	20.00	100	10
10	Kerala	B	40.5400	25.00	10.00	50	5
11	Madhya Pradesh	B	17.4501	25.00	10.00	50	5
12	Maharastra	A	189.0000	50.00	20.00	100	10
13	North East	C	2.0000	5.00	2.00	30	3
14	Orissa	C	5.0000	5.00	2.00	30	3
15	Punjab	B	151.7500	25.00	10.00	50	5
16	Rajasthan	B	32.2500	25.00	10.00	50	5
17	Tamilnadu	A	233.0000	50.00	20.00	100	10
18	Uttar Pradesh (West)	B	30.5500	25.00	10.00	50	5
19	Uttar Pradesh (East)	B	45.2500	25.00	10.00	50	5
20	Delhi	A	170.7000	50.00	20.00	100	10
21	Kolkata	A	78.0100	50.00	20.00	100	10
22	Mumbai	A	203.6600	50.00	20.00	100	10

ANNEXURE-II

SERVICE AREA (TELECOM CIRCLES/ METROS) AND THE AREAS COVERED BY THEM FOR THE PURPOSE OF THIS LICENCE

Sl. No.	Name of Telecom Circle/ Metro Service Area	Areas covered	Cate-gory
01.	West Bengal	Entire area falling within the Union Territory of Andaman & Nicobar Islands and area falling within the State of West Bengal and the State of Sikkim excluding the areas covered by Kolkata Metro Service Area.	B
02.	Andhra Pradesh	Entire area falling within the State of Andhra Pradesh.	A
03.	Assam	Entire area falling within the State of Assam.	C
04.	Bihar	Entire area falling within the re-organised State of Bihar and newly created State of Jharkhand pursuant to the Bihar Reorganisation Act, 2000 (No.30 of 2000) dated 25th August, 2000.	C
05.	Gujarat	Entire area falling within the State of Gujarat and Union Territory of Daman and Diu, Silvassa (Dadra & Nagar Haveli).	A
06.	Haryana	Entire area falling within the State of Haryana except Pachkula town and the local areas served by Faridabad and Gurgaon Telephone exchanges.	B
07.	Himachal Pradesh	Entire area falling within the State of Himachal Pradesh	C
08.	Jammu & Kashmir	Entire area falling within the State of Jammu & Kashmir including the autonomous council of Ladakh.	C
09.	Karnataka	Entire area falling within the State of Karnataka	A
10.	Kerala	Entire area falling within the State of Kerala and Union Territory of Lakshadeep and Minicoy.	B
11.	Madhya Pradesh	Entire area falling within the re-organised State of Madhya Pradesh as well as the newly created State of Chattisgarh pursuant to the Madhya Pradesh Reorganisation Act, 2000 (No:28 of 2000) dated 25th August, 2000.	B
12.	Maharashtra	Entire area falling within the State of Maharashtra and Union Territory of Goa, excluding areas covered by Mumbai Metro Service Area.	A
13.	North East	Entire area falling within the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura.	C
14.	Orissa	Entire area falling within the State of Orissa.	C
15.	Punjab	Entire area falling within the State of Punjab and Union territory of Chandigarh and and Punchkula Town of Haryana.	B
16.	Rajasthan	Entire area falling within the State of Rajasthan.	B
17.	Tamilnadu	Entire area falling within the State of Tamilnadu	A

		and Union Territory of Pondichery including Local Areas served by Chennai Telephones, Maraimalai Nagar Export Promotion Zone (MPEZ), Minzur and Mahabalipuram Exchanges	
18.	Uttar Pradesh-West	Entire area covered by Western Uttar Pradesh with the following as its boundary districts towards Eastern Uttar Pradesh : Pilibhit, Bareilly, Badaun, Etah, Mainpuri and Etawah. It will exclude the local telephone area of Ghaziabad and Noida. However, it will also include the newly created State of Uttaranchal pursuant to the Uttar Pradesh Re-organisation Act, 2000 (No.29 of 2000) dated 25th August, 2000.	B
19.	Uttar Pradesh _ East	Entire area covered by Eastern Uttar Pradesh with the following as its boundary districts towards Western Uttar Pradesh : Shahjahanpur, Farrukhabad, Kanpur and Jalaun.	B
20.	Delhi	Local Areas served by Delhi, Ghaziabad, Faridabad, Noida, and Gurgaon Telephone Exchanges	Metro
21.	Kolkata	Local Areas served by Calcutta Telephones.	Metro
22.	Mumbai	Local Areas served by Mumbai, New Mumbai and Kalyan Telephone Exchanges	Metro

NOTE:

1. Yenum, an area of Union Territory of Pondicherry is served under Andhra Pradesh Telecom Circle in East Godavari LDCA.

2. The definition of Local areas of exchanges will be as applicable to the existing cellular operators, i.e. at the time of grant of cellular Licences in Metro cities.

3. The definition of local areas with regard to the above service area as applicable to this Licence is as per definition applicable to Cellular Mobile Service Licences as in the year 1994 & 1995, when those Licences were granted to them. This is in accordance with respective Gazette Notification for such local areas wherever issued and as per the statutory definition under Rule 2 (w) Indian Telephones Rules, 1951, as it stood during the year 1994/1995 where no specific Gazette Notification has been issued.

ANNEXURE-III

(PROCESSING FEE OF APPLICATION FORM – RS. 15,000/- ONLY)

GOVERNMENT OF INDIA

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

DEPARTMENT OF TELECOMMUNICATIONS

(BS CELL)

SANCHAR BHAWAN, 20 ASHOKA ROAD, NEW DELHI-110 001.

APPLICATION FOR LICENCE TO PROVIDE UNIFIED ACCESS SERVICE(UASL) IN _____ SERVICE AREA

1. Name of Applicant Company: _____
_____

2. Complete postal address with Telephone/FAX Nos./E-Mail
i) Corporate Office _____
_____
ii) Registered Office _____
_____

3. Address for correspondence with Telephone/FAX Nos./E-mail _____
_____
_____

4. Name of Authorised contact person, his designation, address and Telephone/FAX Nos./Email _____

5. Details of payment of processing fee (DD/PO to be enclosed in a separate envelope).

6. Certified copy of Certificate of Registration along with Articles of Association and Memorandum of Understanding. (Company Secretary to certify the copy)

7. (a) Details of Promoters/Partners/Shareholder in the Company: The Promoters to be indicated.

S.No.	Name of Promoter/ Partner/Shareholder	Indian/ Foreign	Equity %age.	Networth

(Complete break-up of 100% of equity must be given. Equity holding upto 5% of the total equity shared among various shareholder can be clubbed but Indian and Foreign equity must be separate.)

(b) **Equity details**

Indian ----------

Foreign ----------

Total

(Certificate from Company Secretary to be attached)

(c) The applicant is required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74%.

Certificate from Company Secretary to be attached)

8. Details of the Cellular and Unified access licence in the name of the applicant company and Networth required for the Licence

No. of Cellular/UAS licence in category A service area	No. of Cellular/UAS licence in category B service area	No. of Cellular/UAS licence in category C service area
A	**B**	**C**
A * 100=P	B* 50=Q	C* 30=R

Total = P+Q+R

9. Paid up capital (Certificate from Company Secretary certifying the paid up capital to be provided.)

10. Does Foreign Collaboration has have any objection for possessing of this UAS Licence in the service area applied. If no, then a self certificate to that effect, to be provided by Company Secretary.

11. Certified copy of Agreement between the Indian company and foreign partner(s), If applicable

12. Certified copy of approval of Government of India for terms of Foreign Collaboration or copy of application submitted to SIA/ Government in this regard with proof of Submission.(Copy to be certified by the Company Secretary)

13. List of Telecom Service Licence (s) held by the company and its allies/sister concerns/partners, if any, and their present status. (Attach separate sheet, if required)

Type of the Licence And Service area	Name of the Company	Status Whether Operative/surrendered/Terminated
----------	----------	----------

(Type of the Licence means Basic/ Cellular/ UASL/Paging/NLD/ILD/IP-II licences etc. details of all the Licences held by Allies/Sister concerns/ Partners or legal entities with 10 % or more common equities must be shown separately.)

14. Details of business plan along with the funding arrangement for financing the project.

15. (a) **Names of Chairman / Managing Director / Directors of the applicant Company** **Nationality**

---------- ----------
---------- ----------

(b) **Details of Chief Executive Officer / Chief Technical Officer /Chief Finance Officer**

Name	**Designation**	**Nationality**
----------	----------	----------
----------	----------	----------

(c) **Details/para no. of Memorandum of Association of Company for compliance to Clause 5.6(iii) of guidelines.**

16. Power of Attorney by Resolution of Board of Directors that the person signing the application is authorized signatory.

Certificates/undertaking:

A. I hereby certify that I have carefully read the guidelines and Licence Agreement for providing Unifies Access Services(UASL). I undertake to fully comply with the terms and conditions therein.

B. I certify that no single promoter company/ legal person, either directly or through its associates, 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 where the 'Substantial equity' mean 'an equity of 10% or more'.

C. I understand that this application if found incomplete in any respect and/or if found with conditional compliance or not accompanied with the processing fee shall be summarily rejected.

D. I understand that processing fee is non-refundable irrespective of any reason whatsoever.

E. I undertake to sign the Licence Agreement, within the prescribed time notified to me failing which my application shall be taken as rejected and processing fee forfeited.

F. I understand that all matters relating to the application or licence if granted to me will be subject to jurisdiction of courts/Tribunal(s) in Delhi/New Delhi only.

G. I understand that if at any time, any averments made or information furnished for obtaining the licence is found incorrect, then my application and the licence if granted thereto on the basis of such application, shall be cancelled.

Date
Place.

Signature and name of the
Authorised Signatory
(Company's Seal)

Annexure F
(Refer Chapter 2/Para 2.25.14)

Extracts from the UAS License Agreement on roll out obligations

Roll-out Obligations

"34.1 LICENSEE shall be solely responsible for installation, networking and operation of necessary equipment and systems for provision of SERVICE, 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.

34.2(a) Applicable for Category "A", "B" and "C" Service Area Licence(s) LICENSEE shall ensure that

(i) Atleast 10% of the District Headquarters (DHQs) will be covered in the first year and 50% of the District Headquarters will be covered within three years of effective date of Licence.

(ii) The licensee shall also be permitted to cover any other town in a District in lieu of the District Headquarters.

(iii) Coverage of a DHQ/town would mean that at least 90% of the area bounded by the Municipal limits should get the required street as well as in-building coverage.

(iv) The District Headquarters shall be taken as on the effective date of Licence.

(v) The choice of District Headquarters/towns to be covered and further expansion beyond 50% District Headquarters/towns shall lie with the Licensee depending on their business decision.

(vi) There is no requirement of mandatory coverage of rural areas.

34.2(b) Applicable for Metro Service Area Licence(s)

The LICENSEE shall be required to provide in 90% of the service area Street as well as in-building coverage within one year of the effective date."

Annexure G
(Refer Chapter 2/Para 2.28)

DoT Merger guidelines dated 22.04.2008

No.20-100/2007-AS-I
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road, New Delhi

22nd April, 2008

Subject: Guidelines for intra service area Merger of Cellular Mobile Telephone Service (CMTS)/Unified Access Services (UAS) Licences

The intra service area Merger of CMTS/UAS Licenses shall be permitted as per the guidelines mentioned below for proper conduct of Telegraphs and Telecommunication services, thereby serving the public interest in general and consumer interest in particular :-

1. Prior approval of the Department of Telecommunications shall be necessary for merger of the licence.
2. Merger of licences shall be restricted to the same service area.
3. Merger of licence(s) shall be permitted in the following category of licences :
   (i) Cellular Mobile Telephone Service (CMTS) Licence with Cellular Mobile Telephone Service (CMTS) Licence;
   (ii) Unified Access Services Licence (UASL) with Unified Access Services Licence (UASL);
   (iii) Cellular Mobile Telephone Service (CMTS) Licence with Unified Access Services Licence (UASL);

   Merged licences in all the categories above shall be in UASL category only.
4. The relevant service market be defined as wire line and wireless services. Wireless service market shall include fixed wireless as well.
5. Exchange Data Records (EDR) shall be used in the calculation of wireline subscribers and specifically Visitor Location Register (VLR) data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base.
6. For determination of market power, market share of both subscriber base and adjusted gross revenue of licensee in the relevant market shall be considered to decide the level of dominance for regulating the M&A activity.

7. The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market.

8. The market share of merged entity in the relevant market shall not be greater than 40% either in terms of subscriber base separately for wireless as well as wireline subscriber base or in terms of Adjusted Gross Revenue.

9. No M&A activity shall be allowed if the number of UAS/CMTS access service providers reduces below four in the relevant market consequent upon such an M&A activity under consideration.

10. Consequent upon the Merger of licenses in a service area, the post merger licensee entity shall be entitled to the condition that after merger, licensee entity shall entitled to the total amount of spectrum held by the merging entities, subject to the condition that after merger, licensee shall meet, within a period of 3 months from date of approval of merger by the Licensor, the prevailing spectrum allocation criterion separately for GSM & CDMA technologies, as in case of any other UAS/CMTS licensee(s).

    In case of failure to meet the spectrum allocation criterion in the above mentioned period of 3 months, post merger Licensee shall surrender the excess spectrum, if any, failing which it may be treated as violation of terms and conditions of the licence agreement and action accordingly shall be taken. In addition, after the expiry of above mentioned period of 3 months, the applicable rate of spectrum charge shall be doubled every 3 months in case of excess spectrum held by post merger licensee.

    Further, the spectrum transfer charge, as may be specified by the Government, shall be payable within the prescribed period.

11. On merger, spectrum enhancement charge shall also be charged as applicable in case of any other UAS/CMTS licensee.

12. Discretion to choose the band to surrender the spectrum beyond the ceiling will be of new entity.

13. All dues, if any, relating to the licence of the merging entitities in that given service area, will have to be cleared by either of the two licencees before issue of the permission for merger of licences.

14. In case consequent to merger of licences in a service area, the licensee becomes a “Significant Market Power” (SMP) post merger, then the extant rules & regulations applicable to SMPs would also apply to the merged entity.

15. The annual license fee and the spectrum charge are paid as a certain specified percentage of the AGR of the licensee. On the merger of the two licenses, the AGR of the two entities will also be merged and the license fee will be therefore levied at the specified rate for that service area on the resultant total AGR. Similarly, for the purpose of payment of the spectrum charge, the spectrum held by the two licensees will be added/merged and the annual

spectrum charge will be at the prescribed rate applicable on this total spectrum.

However, in case of holding of spectrum for various technologies by the entity subsequent to M&A, spectrum charges & license fee etc. or any other criterion being followed by the licensor shall be applicable as in case of any other UAS/CMTS licensee.

16. For regulating acquisitions of equity stake of one access services licensee Company/legal person/promoter company in the enterprise of another access services licensee in the same license area, present guidelines on Substantial Equity shall continue i.e

"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 Services. '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".

17. Any permission for merger shall be accorded only after completion of 3 years from the effective date of the licences.

18. The duration of licence of the merged entity in the respective service area will be equal to the remaining duration of the Licence of the two merging licencees whichever is less on the date of merger.

For example, if licence of company 'A' is merging with Licence of company 'B' and the remaining duration of licence of 'A' or 'B' whichever is less will be applicable for the merged entity in the respective service area.

19. The dispute resolution shall lie with Telecom Dispute Settlement and Appellate Tribunal as per TRAI Act 1997 as amended by TRAI (Amendment) Act 2000.

20. LICENSOR reserves the right to modify these guidelines or incorporate new guidelines considered necessary in the interest of national security, public interest and for proper conduct of telegraphs.

21. These guidelines are issued in supersession of earlier guidelines issued vide Office Memo No.20-232/2004-BS-III dated 21st February, 2004.

(R.K. Gupta)
Assistant Director General (AS-I)
For and on behalf of the President of India
Ph.23036574

Annexure H
(Refer Chapter 2/Para 2.28)

DoT Merger guidelines dated 21.02.2008

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20 Ashok Road, New Delhi-110 001.

No.20-232/2004-BS.III Dated, the 21st February, 2004.

OFFICE MEMORANDUM

Sub: Guidelines for merger of licences in a service area.

In keeping with the policy of bringing in sustained reforms in the Telecom sector in India for making the service available in the most efficient and affordable manner, Government have decided, after due consideration of the recommendations of Telecom Regulatory Authority of India, the following Guidelines for merger of Basic, Cellular and Unified Access Service licences in a given Service Area for proper conduct of Telegraphs and Telecommunication services, thereby serving the public interest in general and consumer interest in particular: -

1. Merger of licences shall be restricted to the same service area.

2. Merger of licence consequent to mergers/acquisitions or restructuring of the operations shall be permitted in the following category of licences:

(i) Cellular Licence with Cellular Licence;
(ii) Basic Service Licence with Basic Service Licence;
(iii) Unified Access Services Licence (UASL) with Unified Access Services Licence;
(iv) Basic Service Licence with Unified Access Services Licence;
(v) Cellular Service Licence with Unified Access Services Licence;

In case of a merger of a basic service license with UASL, the basic service licensee shall pay, at the time of application for merger, the difference of

amount of the entry fee, if any, as per the Guidelines for migration to UASL dated 11.11.2003.

3. Merger of licences will be permitted subject to the condition that there are at least three operators in that service area for that service, consequent upon such merger. It is clarified that Unified Access Service Licensee will be counted for Basic as well as Cellular service separately while deciding the number of operators in a given service area.

4. Prior approval of the Department of Telecommunications will be necessary for merger of the licence. The findings of the Department of Telecommunications would normally be given in a period of about four weeks from the date of submission of application.

5. Any merger, acquisition or restructuring, leading to a monopoly market situation in the given Service Area, shall not be permitted. Monopoly market situation is defined as market share of 67 per cent or above within a given Service Area, as on the last day of previous month. Subscriber base shall be criteria for computing the market share. For example, if an application is made on the 10th January, the market share as on 31st December of the previous year, shall be taken into account. For this purpose, the market will be classified as fixed and mobile separately. The category of fixed subscribers shall include wire-line subscribers and fixed wireless subscribers. The number of subscribers shall be as per the Exchange Data Records. The category of mobile subscribers shall include limited mobile subscribers and full mobile subscribers. The subscriber figure, as per the Home Location Register (HLR) and Exchange Data Record shall be taken into account for the purpose of calculating the number of mobile subscribers in a given Service Area. Further, the Department is at liberty to verify these figures from any other source. In case of merger of two Unified Access Service Licences, the total subscriber base of each will be taken into account.

6. Consequent upon the Merger of licences, the merged entity shall be entitled to the total amount of spectrum held by the merging entities, subject to the condition that after merger, the amount of spectrum shall not exceed 15 MHz per operator per service area for Metros and category 'A' Service Areas, and 12.4 MHz per operator per service area in category 'B' and category 'C' Service Areas. Subject to these limits, the merged spectrum will remain with the merged entity and would be treated as a starting point for further allocation and revision, as per the detailed Spectrum Guidelines to be issued separately. The guidelines on efficient utilization of spectrum and its pricing shall be applicable.

7. The spectrum utilization charges beyond 10 + 10 MHz for GSM based system and 5 + 5 MHz for CDMA/ETDMA based systems shall be prescribed separately. The merged entity will have to pay the prescribed charges from the date of merger of licences.

8. Discretion to choose the band to surrender the spectrum beyond the ceiling will be of the new entity.

9. All dues, if any, relating to the licence of the merging entities in that given service area, will have to be cleared by either of the two parties before issue of the permission for merger of licences.

10. Subject to the orders of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), in Appeal No. 11/2002 (BSNL Vs. TRAI) it may be noted that TRAI has already classified an operator having market share greater or equal to 30% of the relevant market as one having "Significant Market Power" (SMP) in its Reference Interconnect Offer (RIO). In case the merged entity becomes an SMP post merger, then the extant rules & regulations applicable to SMPs would also apply to the merged entity.

11. The dispute resolution shall lie with Telecom Dispute Settlement and Appellate Tribunal as per TRAI Act 1997 as amended by TRAI (Amendment) Act 2000.

12. While granting permission for merger of licences, the Licensor may, suitably amend / relax/waive the conditions in the respective licences relating to the Clause on holding of 'substantial equity'.

13. LICENSOR reserves the right to modify these guidelines or incorporate new guidelines considered necessary in the interest of national security, public interest and for proper conduct of telegraphs.

14. These Guidelines can be reviewed after a period of one year, or earlier if warranted.

(Sukhbir Singh)
Director (BS.III)

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20 Ashok Road, New Delhi-110 001.

No.20-232/2004-BS.III Dated, the 17th March, 2004.

MEMORANDUM

Sub: Guidelines for merger of licences in a service area – Clarification regarding effective date.

In continuation of this office O.M. even number dated 21st February, 2004 on the above mentioned subject, it is clarified that the duration of licence of the merged entity will be equal to the duration of Licence of acquiring company. For example, if licence `B' is merging with Licence `A', then the duration of Licence `A' will be applicable for merged entity.

(Govind Singhal)
Director (BS.III)

Annexure I
(Refer Chapter 2/Para 2.29)

TRAI letter dated 23.05.2008 reg scope of merger to include acquisition

D.O. NO.: LA5-31/2008-LEGAL

MAY 23, 2008

Dear Shri Behura,

Consequent upon the recommendations dated 28th August, 2007 by TRAI on the subject of Intra Circle Merger and Acquisition, DoT has issued revised guidelines dated 22nd April, 2008.

2. The guidelines do not bring out clearly the position on acquisitions. The concept of merger and acquisition has been examined by our Legal Division with reference to UASL licence. The opinion of the Legal Division is enclosed for further necessary action.

3. In case the legal opinion is concurred DoT is requested to take-action on the following two suggestions:

(a) Scope of the merger may be clarified to include acquisition so as to remove any ambiguity;

(b) It may be clarified that merger or amalgamation or acquisition of license is only consequent to merger or amalgamation or acquisition or restructuring of the operations of the companies as reflected in paragraph 2 of the 2004 guidelines.

With best wishes,

Yours sincerely,

(Nripendra Misra)

Shri Siddharth Behura
Secretary
Department of Telecommunications,
Sanchar Bhavan
New Delhi

OPINION ON MERGER AND ACQUISITION

(a) Whether there is any difference between the concept of "merger" and the concept of "acquisition" and what are the legal provisions governing these two concepts?;

A.1 The expressions"merger" and "acquisition" have not been defined in the TRAI Act,1997 and the Indian telegraph Act, 1885. Therefore reference may be made to the definitions of the said expression in the other statutes. The expression"acquisition" has been defined in the competition Act, 2002 as under:-

"ACQUISITION"

"(a) "acquisition" **means**, directly or indirectly, acquiring or agreeing to acquire—

(i) shares, voting rights or assets of any enterprise; or

(ii) control over management or control over assets of any enterprise;".

A.2 AMALGAMATION /MERGER:-

In Halsbury's Laws of England (4th Edn.) para 1539, the attributes of amalgamation of companies have been stated as under:

"Amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does, not, it seems, cover the mere acquisition by a company of the share capital of other companies which remain in existence and continue their undertakings, but the context to which the term is used may show that it is intended to include such an acquisition.(See Singer India Limited v Chander Mohan Chadha and others2004 (7) SCC 1,)

A.3 Section 2(1B) of the Income tax Act,1961 defines amalgamation as under:-

"(1B)"amalgamation", in relation to companies, means the merger of one or more companies with another companies or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamation company or

companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that –

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;
(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation becomes the liabilities of the amalgamated company by virtue of the amalgamation;
(iii) stakeholders holding not less that [three-fourths] in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company;]".

A.4 UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992:

The legal regime governing "Substantial Acquisition of Shares and Takeovers" has been laid down by the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 framed by the Securities and Exchange Board of India in exercise of the powers conferred upon it by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) under which different thresholds and different requirements to be followed by the acquirer have been prescribed.

A.5 Distinction between Mergers and Acquisitions

Although they are often uttered in the same breath and used as though they were synonymous, ***the terms merger and acquisition mean slightly different things***.

(1) When one company takes over another and clearly established itself as the new owner, the purchase is called an acquisition. From a legal point of view, the target company ceases to exist, the buyer "swallows" the business and the buyer's stock continues to be traded.

(2) In the pure sense of the term, a merger happens when two firms, often of about the same size, agree to go forward as a single new company rather than remain separately owned and operated. This kind of action is more precisely referred to as a "merger of equals." Both companies' stocks are surrendered and new company stock is issued in its place.

In practice, however, actual mergers of equals don't happen very often. Usually, one company will buy another and, as part of the deal's terms, simply allow the acquired firm to proclaim that the action is a merger of equals, even if it's technically an acquisition. Being bought out often carries negative connotations, therefore, by describing the deal as a merger, deal makers and top managers try to make the takeover more palatable.

A purchase deal will also be called a merger when both companies agree that joining together is in the best interest of both of their companies. But when the deal is unfriendly - that is, when the target company does not want to be purchased - it is always regarded as an acquisition.

Whether a purchase is considered a merger or an acquisition really depends on whether the purchase is friendly or hostile and how it is announced. In other words, the real difference lies in how the purchase is communicated to and received by the target company's board of directors, employees and shareholders.

An acquisition may be only slightly different from a merger. In fact, it may be different in name only. Like mergers, acquisitions are actions through which companies seek economies of scale, efficiencies and enhanced market visibility. Unlike all mergers, all acquisitions involve one firm purchasing another - there is no exchange of stock or consolidation as a new company. Acquisitions are often congenial, and all parties feel satisfied with the deal. Other times, acquisitions are more hostile.

A.6 In an acquisition, as in some of the merger deals a company can buy another company with cash, stock or a combination of the two. Another possibility, which is common in smaller deals, is for one company to acquire all the assets of another company. Company X buys all of Company Y's assets for cash, which means that Company Y will have only cash (and debt, if they had debt before). Of course, Company Y becomes merely a shell and will eventually liquidate or enter another area of business.

Regardless of their category or structure, all mergers and acquisitions have one common goal: they are all meant to create synergy that makes the value of the combined companies greater than the sum of the two parts. The success of a merger or acquisition depends on whether this synergy is achieved.

A.7 CONCLUSION:

(1) A merger can happen when two companies decide to combine into one entity or when one company buys another. An acquisition always involves the purchase of one company by another.

(2) Acquiring companies use various methods to value their targets. Some of these methods are based on comparative ratios - such as the P/E and P/S ratios - replacement cost or discounted cash flow analysis.

(3) An M&A deal can be executed by means of a cash transaction, stock-for-stock transaction or a combination of both. A transaction struck with stock is not taxable.

(See website http://www.investopedia.com/university/mergers/mergers1.asp)

The concept of “merger/amalgamation” is totally different from the concept of “acquisition”. The former is an “arrangement” under which two or more companies are fused into one by merger or by one taking over the other. Such an arrangement results in either the creation of a third entity or in one entity being absorbed or blended into another. Such an arrangement,

i.e., a scheme for amalgamation, under the Companies Act, requires the sanction of the Court, i.e., the jurisdictional High Court. Even though amalgamation, stricto senso, does not cover the mere acquisition by a company of the share capital of the other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition; two companies may join to form a new company but there may be absorption or blending of one by the other and both amount to amalgamation.

(b) ***Whether the Authority has made any recommendations as regards "acquisitions" in its recommendations dated the 28th August, 2007 or in its earlier recommendations on "Intra-circle Mergers & Acquisition Guidelines" dated the 30th January, 2004?;***

B.1 As regards (b), the Authority had made the following recommendation in paragraphs 4 and 5(1)(v) of its recommendations dated the 30th January, 2004:-

"4. License conditions and equity holdings
As per license conditions, 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 same Service. 'Substantial equity' wherein means 'an equity of 10% or more'. A promoter company is not permitted to have stakes in more than one licensee company for the same service area. While examining M&A cases, this aspect needs to be kept in mind in cases where there are two such companies operating in the same market even under different licenses.

…….

v. For the purpose of the conditions (i) to (iv) above, the impact of equity share holding by the same business group / promoter in more than one company in the same license area as described in Para 4 above needs to be kept in mind."

(Conditions (i) to (iv) referred to in this provision related to mergers and amalgamations but it was, in effect, recommended that even in cases of mergers and amalgamations, the equity structure emerging out of such merger or amalgamation should satisfy the requirement of 'substantial equity' as recommended in paragraph 4.)

B.2 Thus, it may be seen that the recommendations of 2004 did not deal directly and specifically with the question of acquisition of equity but as part of the Authority's recommendations on mergers and amalgamations, the Authority recommended that the impact of the equity share holding in more than one company by the same business group which emerges out of mergers needs to be kept in mind while approving mergers and amalgamations.

B.3 It is also to be noted that the 2004 recommendations did not propose any change in the existing licence condition that 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 same Service nor did it propose any change in the licence provision as regards the definition of substantial equity (10% or more) or in the restriction placed on promoter companies that "a promoter company is not permitted to have stakes in more than one licensee company for the same service area.".

B.4 As regards the recommendations made by the Authority on 28th August, 2007, the Authority made, inter alia, the following recommendation on acquisitions, namely:-

"3.94 Accordingly, the Authority recommends that a mix of ex-ante and ex-post approach for regulating acquisitions of equity stake of one licensee Company/ legal person/promoter company in the enterprise of another licensee in the same license area. **The Authority further recommends that acquisition of equity capital up to 10% of the target licensee's enterprise shall be permitted by an automatic route and anything beyond that and up to 20% of the equity holdings of the target licensee company, shall be approved on a case by case basis and the process of such approvals will be based on the M&A guidelines contained in these recommendations."** (emphasis supplied).

The Authority had, inter alia, given the following reasoning (in paragraph 3.91) for the said recommendations, namely:-

"The purpose of restricting crossholdings could be twofold. One, to allay the fears that complete removal of restrictions and crossholding could lead to one major operator influencing the decision of another licensee enterprise in the same service area and another is the concern expressed in some quarters that such crossholdings in a rival licensee company should not be used to sabotage the growth plans of the target licensee company. Keeping in view these concerns, and also the need to provide for commercial flexibility to ensure efficiency in operations in the sector, the Authority suggests an upper limit of 20% for crossholding by an existing licensee in another licensee company in the same service area. However, the Authority would suggest a two stage process of clearance in this matter of cross holding. One, the existing limit of less than 10% would continue on an automatic basis as per the present regime and any acquisition of 10% and above and up to 20% will require the prior approval of the licensor.".

B.5 A careful reading of the existing licence condition as regards the acquisition of substantial equity and the endorsement of the same by the Authority to be kept in view even while considering mergers and amalgamations would show that the said restriction not only applies to an existing service provider who intends to acquire equity of another service provider but it also applies to any entity (be it a company or any other legal person) which intends to acquire equity of a licencee company. (This is very clear from the use of the expression "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 same Service."). In other words, any company or legal person which has acquired substantial equity in one licensee company (in a service area for a telecom service) cannot acquire substantial equity in any other licencee providing same service in the same service area. Apart from this, a promoter company cannot have any stakes in more than one licensee company for the same service area. Thus, there is a total ban on acquisition of equity in any telecom company in the service area by a promoter company. This is evidently on the premise that a promoter company already has substantial equity in the company it has promoted. In its latest recommendations dated 28th August, 2008, however, the Authority has recommended that acquisition of equity capital up to 10% of the target licensee's enterprise shall be permitted by an automatic route and anything beyond that and up to 20% of the equity holdings of the target licensee company, shall be approved on a case by case basis. Thus, it may please be seen that the recommendation dated 28th August, 2007 is in general

terms and recommends permitting upto 10% equity acquisition to any company/legal person by the automatic route and an additional ten percent. on case by case basis. Further, it appears to have removed the restriction on promoter company not to acquire any stakes in another licensee in the same service area. Thus, it would appear that the recommendation of the Authority dated the 28th August, 2007 is a major deviation from the existing licence provisions.

ANNEXURE J
(Refer Chapter 3/Para 3.6)

Extracts from SEBI(DIP) Guidelines on "Lock-In Requirements"

(Updated upto December 8, 2008)

CHAPTER IV

PROMOTERS' CONTRIBUTION AND LOCK-IN REQUIREMENTS

PART I – PROMOTERS' CONTRIBUTION

4.0 [72](Promoters' contribution in any issue shall be in accordance with the following provisions as on –

(i) the date of filing red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with ROC or letter of offer with Designated Stock Exchange, as the case may be, in case of a fast track issue; and

(ii) the date of filing draft offer document with the Board, in any other case.)

4.1 **Promoters' Contribution in a Public Issue by Unlisted Companies**

4.1.1 In a public issue by an unlisted company, the promoters shall contribute not less than 20% of the post issue capital.

4.1.2 [73](Deleted)

4.2 **Promoters' Shareholding in Case of Offers for Sale**

4.2.1 The promoters' shareholding after offer for sale shall not be less than 20% of the post issue capital.

4.3 **Promoters' Contribution in Case of Public Issues by Listed Companies**

4.3.1 In case of public issues by listed companies, the promoters shall participate either to the extent of 20% of the proposed issue or ensure post-issue share holding to the extent of 20% of the post-issue capital.

4.4 **Promoters' Contribution in Case of Composite Issues**

4.4.1 In case of composite issues of a listed company, the promoters' contribution shall at the option of the promoter(s) be either 20% of the proposed public issue or 20% of the post-issue capital.

---

[72] Substituted vide SEBI Circular No. SEBI/CFD/DIL/DIP/28/2007/29/11 dated November 29, 2007 for the following:
"Promoters' contribution in any public issue shall be in accordance with the following provisions [72](as on the date of filing of draft offer document with SEBI, unless specified otherwise in this Part):"

[73] Omitted the following clause vide SEBI Circular No. RMB (Compendium) Series Circular No. 2 (1999-2000) dated February 16, 2000:
"For unlisted companies eligible to bring out public issue at premium in accordance with Clause 3.2.2 in Chapter III, the promoters shall contribute not less than 50% of the post issue capital of the issuer company."

4.4.2 Rights issue component of the composite issue shall be excluded while calculating the post-issue capital.

4.5 [74](Deleted)

4.6 **Securities Ineligible for Computation of Promoters' Contribution**

4.6.1 Where the promoters of any company making an issue of securities have acquired equity during the preceding three years, before filing the offer documents with the Board, such equity shall not be considered for computation of promoters contribution if it is;

(i) acquired for consideration other than cash and revaluation of assets or capitalisation of intangible assets is involved in such transaction(s); or

(ii) resulting from a bonus issue, out of revaluation reserves or reserves created without accrual of cash resources [75](or against shares which are otherwise ineligible for computation of promoters' contribution);

4.6.2 In case of public issue by unlisted companies, securities which have been [76](acquired by) the promoters during the preceding one year, at a price lower than the price at which equity is being offered to public shall not be eligible for computation of promoters' contribution.

Provided that the shares for which the difference between the offer price and the issue price for these shares is brought in by the promoters shall be considered eligible subject to issuer company complying with the applicable provisions of the Companies Act, 1956 (such as passing of revised resolution by shareholders or issuer's Board, filing of revised return of allotment with ROC, etc.)

[77](**Provided further that** nothing contained in clause 4.6.2 shall apply to shares acquired by promoters interse, if such shares had been acquired by the transferor promoter during the preceding one year at a price equal or higher than the price at which equity is being offered to

---

[74] Omitted the following clauses vide SEBI Circular No. RMB (Compendium) Series Circular No. 2 (1999-2000) dated February 16, 2000:

*"4.5 **Promoters contribution in case of public issues by infrastructure companies***

4.5.1 For unlisted infrastructure companies eligible to bring out public issues at premium in accordance with Clause 3.2.3 of Chapter III, the promoters alongwith equipment suppliers and other strategic investors shall contribute not less than 50% of the post issue capital of the issuer company at the same or higher price than the price at which the securities are being offered to the public.

4.5.2 The contribution by equipment suppliers and other strategic investors shall be eligible to be treated as promoters contribution."

[75] Inserted vide SEBI Circular No. SEBI/CFD/DIL/DIP/25/2007/30/4 dated April 30, 2007.

[76] Substituted vide SEBI Circular No. SEBI/CFD/DIL/DIP/25/2007/30/4 dated April 30, 2007 for the words *"issued to"*.

[77] Inserted vide SEBI Circular No. SEBI/CFD/DIL/DIP/25/2007/30/4 dated April 30, 2007.

public or had been acquired by the transferor promoter prior to the preceding one year.)

[78](**Provided further that** nothing contained in clause 4.6.2 shall apply to an unlisted government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

[79](**Provided further that** nothing contained in clause 4.6.2 shall apply to shares acquired by promoters in lieu of business and invested capital which had been in existence for a period of more than one year prior to the restructuring scheme under sections 391-394 of the Companies Act, 1956, as approved by a High Court, which entitled the promoters to acquire such shares.)

Explanation:

For the purposes of 3rd proviso above, the term "Infrastructure sector" shall have the same meaning as assigned to it in Explanation to proviso to sub-clause (i) of clause 3.7.1.)

4.6.3 In respect of companies formed by conversion of partnership firms, where the partners of the erstwhile partnership firm and the promoters of the converted company are the same and there is no change in management, the shares allotted to the promoters during previous one year out of the funds brought in during that period shall not be considered eligible for computation of promoters contribution unless such shares have been issued at the same price at which the public offer is made.

Provided that if the partners' capital existed in the firm for a period of more than one year on a continuous basis, the shares allotted to promoters against such capital shall be considered eligible.

4.6.4 In respect of Clauses 4.6.1, 4.6.2 and 4.6.3, such ineligible shares acquired in pursuance to a scheme of merger or amalgamation approved by a High Court shall be eligible for computation of promoters' contribution.

[80](4.6.4A Pledged securities held by promoters shall not be eligible for computation of promoters' contribution.)

---

[78] Inserted proviso to clause 4.6.2 and Explanation thereto, vide SEBI Circular No. SEBI/CFD/DIL/DIP/27/2007/10/7 dated July 10, 2007.

[79] Inserted proviso to clause 4.6.2, vide SEBI Circular No. SEBI/CFD/DIL/DIP/32/2008/28/08 dated August 28, 2008.

[80] Inserted clause, vide SEBI Circular No. SEBI/CFD/DIL/DIP/25/2007/30/4 dated April 30, 2007.

4.6.5 For the purposes of computing the promoters' contribution referred to in Clauses 4.1.1, 4.1.2, 4.2.1, 4.3.1, 4.4.1 & 4.5.1 above, minimum contribution of Rs.25000 per application from each individual and minimum contribution of Rs.1 lac from firms and companies (not being business associates like dealers and distributors), shall be eligible to be considered towards promoters' contribution.

4.6.6 No securities forming part of promoters' contribution shall consist of any private placement made by solicitation of subscription from unrelated persons either directly or through any intermediary.

4.6.7 The securities for which a specific written consent has not been obtained from the respective shareholders for inclusion of their subscription in the minimum promoters' contribution subject to lock-in shall not be eligible for promoters' contribution.

4.7 **Computation of Promoters' Contribution in Case of Issue of Convertible Security**

4.7.1 In case of any issue of convertible security by a company, the promoters shall have an option to bring in their subscription by way of equity or by way of subscription to the convertible security being offered through the proposed issue so that the total promoters' contribution shall not be less than the required minimum contribution referred to in Clauses 4.1.1, 4.1.2, 4.2.1, 4.3.1, 4.4.1 & 4.5.1 above.

Provided that, if the conversion price of emerging equity is not pre-determined and the same has not been specified in the offer document (instead a formula for conversion price is indicated), the promoters shall not have the said option and shall contribute by subscribing to the same instrument.

4.7.2 In case of any issue of security convertible in stages either at par or premium (conversion price being predetermined), the promoters' contribution in terms of equity share capital shall not be at a price lower than the weighted average price of the share capital arising out of conversion.

Explanation: For the purposes of clause 4.7.2,

(a) "weights" means the number of equity shares arising out of conversion of security into equity at various stages.

(b) "price" means the price of equity shares on conversion arrived at after taking into account predetermined conversion price at various stages.

4.7.3 The promoters' contribution shall be computed on the basis of post-issue capital assuming full proposed conversion of such convertible security into equity.

Provided that where the promoter is contributing through the same optional convertible security as is being offered to the public, such contribution shall be eligible as promoters' contribution only if the promoter(s) undertakes in writing to accept full conversion.

4.8 **Promoters' Participation in Excess of the Required Minimum Contribution to be Treated as Preferential Allotment**

4.8.1 In case of a listed company, participation by promoters in the proposed public issue in excess of the required minimum percentage referred in Clauses 4.3.1 and 4.4.1 shall attract the pricing provisions of Guidelines on preferential allotment, if the issue price is lower than the price as determined on the basis of said preferential allotment guidelines.

4.9 **Promoters' Contribution to be brought in before Public Issue Opens**

4.9.1 Promoters shall bring in the full amount of the promoters' contribution including premium at least one day prior to the issue opening date [81](which shall be kept in an escrow account with a Scheduled Commercial Bank and the said contribution/ amount shall be released to the company along with the public issue proceeds.)

[82](**Provided that**, where the promoters' contribution has been brought prior to the public issue and has already been deployed by the company, the company shall give the cash flow statement in the offer document disclosing the use of such funds received as promoters' contribution.)

Provided [83](**further**) **that** where the promoters' minimum contribution exceeds Rs.100 crores, the promoters shall bring in Rs.100 crores before the opening of the issue and the remaining contribution shall be brought in by the promoters in advance on pro-rata [84](basis) before the calls are made on public.

4.9.2 The company's board shall pass a resolution allotting the shares or convertible instruments to promoters against the moneys received.

---

[81] Inserted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000.

[82] Inserted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000.

[83] Inserted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000.

[84] Inserted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000.

4.9.3 A copy of the resolution along with a Chartered Accountants' Certificate certifying that the promoters' contribution has been brought in shall be filed with the Board before opening of the issue.

4.9.4 The certificate of the Chartered Accountants shall also be accompanied by a list of names and addresses of friends, relatives and associates who have contributed to the promoters' quota along with the amount of subscription made by each of them.

4.10 **Exemption from Requirement of Promoters' Contribution**

4.10.1 The requirement of promoters' contribution shall not be applicable:

(a) in case of public issue of securities by a company which has been listed on a stock exchange for at least 3 years and has a track record of dividend payment for at least 3 immediately preceding years.

Provided that if the promoters participate in the proposed issue to the extent greater than higher of the two options available as per Clauses 4.3.1 and 4.4.1 above, the subscription in excess of such percentage shall attract pricing guidelines on preferential issue, if the issue price is lower than the price as determined on the basis of said guidelines on preferential issue.

(b) in case of companies where no identifiable promoter or promoter group exists.

(c) in case of rights issues.

Provided [85](**that**) in case of (a) and (c) above, the promoters shall disclose their existing shareholding and the extent to which they are participating in the proposed issue, in the offer document.

PART II - LOCK-IN REQUIREMENTS

4.11 **Lock in of Minimum Specified Promoters' Contribution in Public Issues**

4.11.1 In case of any issue of capital to the public the minimum promoters' contribution (as per clause 4.1, 4.2, 4.3, 4.4 & 4.5) shall be locked in for a period of 3 years.

4.11.2 The lock-in shall start from the date of allotment in the proposed public issue and the last date of the lock-in shall be reckoned as three years

[85] Inserted vide SEBI Circular No. SEBI/CFD/DIL/DIP/14/2005/25/1 dated January 25, 2005.

from the date of commencement of commercial production or the date of allotment in the public issue whichever is later.

Explanation:

The expression "Date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

4.12 **Lock-in of Excess Promoters' Contribution**

4.12.1 In case of a public issue by unlisted company, if the promoters' contribution in the proposed issue exceeds the required minimum contribution, such excess contribution shall also be locked in for a period of [86](one year).

4.12.2 In case of a public issue by a listed company, participation by promoters in the proposed public issue in excess of the required minimum percentage shall also be locked-in for a period of [87](one year) as per the lock-in provisions as specified in Guidelines on Preferential issue.

Provided that excess promoters' contribution as per Clause 4.10.1(a) of Part I of this Chapter shall not be subject to lock-in.

4.12.3 In case shortfall in the firm allotment category is met by the promoter as specified in clause 8.5(e), such subscription shall be locked in for a period of [88](one year).

4.13 [89](Deleted)

4.13.1 [90](Deleted)

---

[86] Substituted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000 for *"3 years"*.

[87] Substituted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000 for the words *"three years"*.

[88] Substituted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000 for the words *"three years"*.

[89] Omitted the following clause vide SEBI Circular No. SEBI/CFD/DIL/DIP/28/2007/29/11 dated November 29, 2007:
"4.13 Securities Issued Last to be Locked-in First"

[90] Omitted the following clause vide SEBI Circular No. SEBI/CFD/DIL/DIP/28/2007/29/11 dated November 29, 2007:
"4.13.1 The securities forming part of promoters' contribution as specified in Clauses 4.1.1, 4.1.2, 4.2.1, 4.3.1, 4.4.1 & 4.5.1 of Part I of this Chapter and issued last to the promoters shall be locked in first for the specified period.
***Provided that** the securities issued to the financial institutions appearing as promoters, if issued last, shall not be locked-in before the shares allotted to the other promoters."*

4.14 **Lock-in of pre-issue share capital of an unlisted company**

4.14.1 [91](The entire pre-issue capital, other than that locked-in as minimum promoters' contribution, shall be locked-in for a period of one year from the date of allotment [92](in the proposed public issue).

Provided that where shares held by promoter(s) are lent to the SA under clause 8A.7, they shall be exempted from the lock in requirements specified above for the period starting from the date of such lending and ending on the date on which they are returned to the same lender(s) under clause 8A.13 or under clause 8A.15, as the case may be.)

4.14.2 [93](Clause 4.14.1 shall not be applicable to:

---

[91] Substituted vide SEBI Circular No. SEBI/CFD/DIL/DIP/19/2006/31/3 dated March 31, 2006 for the following:
"The entire pre-issue share capital, other than that locked-in as promoters' contribution, shall be locked-in for a period of one year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

***Provided that** where shares held by promoter(s) are lent to the SA under clause 8A.7, they shall be exempted from the lock in requirements specified above, for the period starting from the date of such lending to the date when they are returned to the same promoter(s) under clause 8A.13 or under clause 8A.15, as the case may be."*

Prior to the above, clause 4.14.1 was substituted vide SEBI/CFD/DIL/DIP/Circular No. 11 dated August 14, 2003 for the following:
"The entire pre-issue share capital, other than that locked-in as promoters' contribution, shall be locked-in for a period of one year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later."

[92] Inserted vide SEBI Circular No. SEBI/CFD/DIL/DIP/23/2006/16/10 dated October 16, 2006.

[93] Substituted vide SEBI/CFD/DIL/DIP/Circular No. 11 dated August 14, 2003 for the following:
"4.14.2 Clause 4.14.1 shall not be applicable to the pre-issue share capital)
(i) [93](held by Venture Capital Funds and Foreign Venture Capital Investors registered with the Board. However, the same shall be locked-in as per the provisions of the SEBI (Venture Capital Funds) Regulations, 1996 and SEBI (Foreign Venture Capital Investors) Regulations, 2000 and any amendments thereto

(ii) held for a period of at least one year at the time of filing draft offer document with the Board and being offered to the public through offer for sale.)"

Prior to the above, sub-clause (i) of clause 4.14.2 was substituted vide SEBI Circular No. RMB (Compendium) Series Circular No. 1 (2001-2002) dated July 17, 2001.

Prior to the above amendments made (vide footnotes 55 and 56), clauses 4.14.1 and 4.14.2 were substituted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000 for the following:
"4.14.1 Any security issued to promoters or other shareholders, out of revaluation of assets or capitalisation of intangible assets, within a period of 3 preceding years from the date of filing of offer documents with the Board, shall be locked-in for a period of 3 years from the date of allotment of the proposed issue of capital.

4.14.2 Any security to promoters or other shareholders, issued by way of bonus out of revaluation reserves, within a period of 3 preceding years, shall be locked-in for a period of 3 years from the date of allotment of the proposed issue of capital.

4.14.3 In case of unlisted companies, any security issued to promoter or to any other shareholder, during the preceding one year, at a price lower than the price at which equity is being offered to public shall be locked-in for a period of 3 years from the date of allotment of the proposed issue of capital."

(i) [94](pre-issue shares held by a Venture Capital Fund or a Foreign Venture Capital Investor, subject to the following conditions:

(a) the shares have been held by the Venture Capital Fund or the Foreign Venture Capital Investor, as the case may be, for a period of at least one year as on the date of filing draft prospectus with the Board;

Explanation:

(I) If the shares being held by the Venture Capital Fund or Foreign Venture Capital Investor have been acquired on conversion of convertible instruments at any time before the date of filing draft prospectus with the Board, then the period during which the convertible instruments were held by the Venture Capital Fund or the Foreign Venture Capital Investor as fully paid up, shall be included for purpose of calculation of the period mentioned in item (a).

(II) Convertible Instruments shall be deemed to be fully paid up for the purpose of clause (I), if the entire amount payable thereon has been paid and no further payment is envisaged to be made at the time of their conversion.

(b) shares shall be locked in as per the provisions, if any, in SEBI (Venture Capital Funds) Regulations, 1996 or SEBI (Foreign Venture Capital Investors) Regulations, 2000, as the case may be.)

(ii) pre-issue share capital held for a period of at least one year at the time of filing draft offer document with the Board and being offered to the public through offer for sale;

[95](**Provided that** the minimum holding requirement of pre-issue capital shall not apply to an offer for sale of equity shares of an unlisted government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

---

[94] Substituted sub-clause (i) vide SEBI Circular No. SEBI/CFD/DIL/DIP/23/2006/16/10 dated October 16, 2006 for the following:

"(i) pre-issue share capital held by Venture Capital Funds and Foreign Venture Capital Investors registered with the Board. However, the same shall be locked-in as per the provisions of the SEBI (Venture Capital Funds) Regulations, 1996 and SEBI (Foreign Venture Capital Investors) Regulations, 2000 and any amendments thereto;"

[95] Inserted proviso to sub-clause (ii), vide SEBI Circular No. SEBI/CFD/DIL/DIP/ 27/2007/10/7 dated July 10, 2007.

[96](**Provided further that** the minimum holding requirement of pre-issue capital shall also not apply to shares which have been acquired during one year preceding the date of filing draft offer document with the Board in lieu of business and invested capital which had been in existence for a period of more than one year prior to the restructuring scheme under sections 391-394 of the Companies Act, 1956, as approved by a High Court, which entitled acquisition of such shares.)

Explanation:

For the purposes of [97](1st proviso above), the term "Infrastructure sector" shall have the same meaning as assigned to it in Explanation to proviso to sub-clause (i) of clause 3.7.1.)

(iii) pre-IPO shares held by employees other than promoters, which were issued under employee stock option or employee stock purchase scheme of the issuer company before the IPO. However the same is subject to the issuer company complying with the requirements laid down in Clause 22.4 of SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.)

[98](4.14A **Lock-in of securities issued on firm allotment basis**

Securities issued on firm allotment basis shall be locked-in for a period of one year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.)

---

[96] Inserted Proviso to sub-clause (ii) clause 4.14.2, vide SEBI Circular No. SEBI/CFD/DIL/DIP/32/2008/28/08 dated August 28, 2008

[97] Substituted vide SEBI circular No. SEBI/CFD/DIL/DIP/32/2008/28/08 dated August 28, 2008 for the words "**this proviso".**

[98] Substituted vide SEBI Circular No. DIP (Compendium) Circular No. 3 dated August 04, 2000 for the following clause:
*"**Lock-in of pre issue share capital of an unlisted company***
Where an unlisted company eligible to make a public issue and desirous of getting its securities listed on a recognised stock exchange pursuant to a public issue has issued shares to any person within six (6) months prior to the date of opening of the public issue at a price lower than the price at which equity is being offered/issued to public, the entire share capital (except shares issued to venture capitalists and employees of the company) existing prior to public issue shall be locked in for a period of six (6) months from the date of trading of the shares on the regional stock exchange.

Provided, the lock-in would not apply to the shares (other than shares issued to promoters, friends, relatives and associates) if the same were issued more than 6 months prior to the date of opening of the public issue and are offered under offer for sale."

Initially inserted vide SEBI Circular No. RMB (Compendium) Series Circular No. 2 (1999 – 2000) dated February 16, 2000.

PART III - OTHER REQUIREMENTS IN RESPECT OF LOCK-IN

4.15 **Pledge of Securities Forming Part of Promoters Contribution**

4.15.1 Locked-in Securities held by promoters may be pledged only with banks or financial institutions as collateral security for loans granted by such banks or financial institutions, provided the pledge of shares is one of the terms of sanction of loan.

[99](**Provided that** if securities are locked in as minimum promoters' contribution under clause 4.11.1, the same may be pledged, only if, in addition to fulfilling the requirements of this clause, the loan has been granted by such banks or financial institutions for the purpose of financing one or more of the objects of the issue.)

4.16 **Inter-se Transfer of Securities Amongst Promoters**

4.16.1 [100](**Inter-se Transfer of Locked- in Securities**

a) Shares held by the person other than the promoters, prior to Initial Public Offering (IPO), which are locked in as per Clause 4.14 of these Guidelines, may be transferred to any other person holding shares which are locked in as per clause 4.14 of these Guidelines subject to continuation of lock-in in the hands of transferees for the remaining period and compliance of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997, as applicable.

b) Shares held by promoter(s) which are locked in as per the relevant provisions of this chapter, may be transferred to and amongst promoter/ promoter group or to a new promoter or persons in control of the company, subject to continuation of lock-in in the hands of transferees for the remaining period and compliance of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997, as applicable.')

4.17 **Inscription of Non-Transferability**

4.17.1 The securities which are subject to lock-in shall carry inscription `non transferable' along with duration of specified non-transferable period mentioned in the face of the security certificate.

---

[99] Inserted proviso, vide SEBI Circular No. SEBI/CFD/DIL/DIP/25/2007/30/4 dated April 30, 2007.

[100] Substituted vide SEBI Circular No. RMB (Compendium) Series 2003-2004 Circular No. 9 dated May 2, 2003 for the following clause:
"Transfer of locked-in securities amongst promoters as named in the offer document, can be made subject to the lock-in being applicable to the transferees for the remaining period of lock in."

ANNEXURE K
(Refer Chapter 3/Para 3.14.1)

Extracts from the Companies' Act, 1956 on issue of additional equity

SECTION 81

FURTHER ISSUE OF CAPITAL.

(1) Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then

(a) such further shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid-up on those shares at that date;

(b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined.

(c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (b) shall contain a statement of this right;

(d) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company.

Explanation : In this sub-section, "equity share capital" and "equity shares" have the same meaning as in section 85.

(1A) Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons [whether or not those persons include the persons referred to in clause (a) of sub-section (1)] in any manner whatsoever -

(a) if a special resolution to that effect is passed by the company in general meeting, or

(b) where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting and the

Central Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company.

(2) Nothing in clause (c) of sub-section (1) shall be deemed -

(a) to extend the time within which the offer should be accepted, or

(b) to authorise any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation.

(3) Nothing in this section shall apply -

(a) to a private company; or

(b) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company -

(i) to convert such debentures or loans into shares in the company, or

(ii) to subscribe for shares in the company :

1.12 Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term :

(a) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules 197 , if any, made by that Government in this behalf; and

(b) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans.

(4) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963, the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into shares 201 in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion.

(5) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstance, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan

liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company.

(6) A copy of every order proposed to be issued by the Central Government under sub-section (4) shall be laid in draft before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(7) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (4) shall be final and conclusive.

SECTION 94

POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL.

(1) A limited company having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum as follows, that is to say, it may -

(a) increase its share capital by such amount as it thinks expedient by issuing new shares;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its fully paid up shares into stock, and reconvert that stock into fully paid up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

SECTION 94A

SHARE CAPITAL TO STAND INCREASED WHERE AN ORDER IS MADE UNDER SECTION 81(4).

(1) Notwithstanding anything contained in this Act, where the Central Government has, by an order made under sub-section (4) of section 81, directed that any debenture or loan or any part thereof shall be converted into shares in a company, the conditions contained in the memorandum of such company shall, where such order has the effect of increasing the nominal share capital of the company, stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(2) Where, in pursuance of an option attached to debentures issued or loans raised by the company, any public financial institution proposes to convert such debentures or loans into shares in the company, the Central Government may, on the application of such public financial institution, direct that the conditions contained in the memorandum of such company shall stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(3) Where the memorandum of a company becomes altered, whether by reason of an order made by the Central Government under sub-section

(4) of section 81 or sub-section (2) of this section, the Central Government shall send a copy of such order to the Registrar and also to the company and on receipt of such order, the company shall file in the prescribed form within thirty days from the date of such receipt, a return to the Registrar with regard to the increase of share capital and the Registrar shall, on receipt of such order and return, carry out the necessary alteration in the memorandum of the company.

SECTION 95

NOTICE TO REGISTRAR OF CONSOLIDATION OF SHARE CAPITAL, CONVERSION OF SHARES INTO STOCK, ETC.

(1) If a company having a share capital has -

(a) consolidated and divided its share capital into shares of larger amount than its existing shares;

(b) converted any shares into stock;

(c) re-converted any stock into shares;

(d) sub-divided its shares or any of them;

(e) redeemed any redeemable preference shares;

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under sections 100 to 104;

the company shall within thirty days after doing so, give notice thereof to the Registrar specifying, as the case may be, the shares consolidate, divided, converted, sub-divided, redeemed or cancelled, or the stock reconverted.

(2) The Registrar shall thereupon record the notice, and make any alterations which may be necessary in the company's memorandum or articles or both.

(3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

SECTION 97

NOTICE OF INCREASE OF SHARE CAPITAL OR OF MEMBERS.

(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the authorised capital and where a company, not being a company limited by shares, has increased the number of its members beyond the registered number, it shall file with the Registrar, notice of the increase of capital or of members within thirty days after the passing of the resolution authorising the increase; and the Registrar shall record the increase and also make any alterations which may be necessary in the company's memorandum or articles or both.

(2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions, if any, subject to which the new shares have been or are to be issued.

(3) If default deal is made in complying with this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

ANNEXURE L
(Refer Chapter 3/Para 3.16.1)

PROVISIONS ABOUT MANNER AND TIME OF PAYMENT OF DIVIDENDS

DECLARATION OF SPECIAL DIVIDEND

Dividend

A dividend is that portion of distributable profit to which each member of the company is entitled when it is formally declared at Annual General Meeting of the company.

A **special dividend** is a payment made by a company to its shareholders that is separate from the typical recurring dividend cycle, if any, for the company. The amount of the dividend is declared special or significant in relation to the stock price. The determining factor for a special or significant dividend is usually when the dividend is 20% or greater in relation to the underlying price of the stock/security.

In India a company may declare dividend out of current year profits or out of reserves available with the company. Where a company declares dividend out of current year profits and / or out of reserves, following provisions of the Companies Act 1956 and Rules are applicable.

Payment of Dividend to be paid only out of profits.

Section 205 (1) No dividend shall be declared or paid by a company for any financial providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government:

Provided that -

a) if the company has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, it shall before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years;
b) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960, then the amount of the loss

or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation in accordance with the provisions of sub-section (2) or against both;

c) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation.:

Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the Companies (Amendment) Act, 1960.

(1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.

(1B) the amount of dividend including interim dividend so deposited under sub-section (1A) shall be used for payment of interim dividend.

1 (C) the provisions contained in sections 205, 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to any interim dividend.

The Companies (Transfer of Profits to Reserves) Rules, 1975

In exercise of the powers conferred under Section 205(2A), the Central Government has notified "The Companies (Transfer of Profits to Reserves) Rules, 1975" regarding the 'transfer of profits to reserves'. The rules have been amended after years of their promulgation vide "the Companies (Transfer of Profits to Reserves) Amendment Rules, 1976." The rules in their amended form provide as follows:

1. **Percentage of profits to be transferred to reserves.** No dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) of Section 205 of the Act, except after the transfer to the reserves of the company of a percentage of its profits for that year as specified below.
   i) Where the dividend proposed exceeds 10 per cent but not 12.5 per cent of the paid up capital, the amount to be transferred to the reserves shall not be less than 2.5 per cent of the current profits.
   ii) Where the dividend proposed exceeds 12.5 per cent but does not exceed 15 per cent of the paid up capital, the amount to be

transferred to the reserves shall not be less than 5 per cent of the current profits.

iii) Where the dividend proposed exceeds 15 per cent but does not exceed 20 per cent of the capital the amount to be transferred to the reserves shall not be less than 7.5 per cent of the current profits. And

iv) Where the dividend proposed exceeds 20 per cent of the paid up capital, the amount to be transferred to reserves shall not be less than 10 per cent of the current profits.

The following points may be noted in respect of the above mentioned rules.

a) The term 'Reserves' means only 'free reserves' and transfer to Capital Reserve or Special Reserve or Development Rebate Reserve will not meet the requirement of transfer to Reserves under the rules.
b) Where the proposed dividend is less than 10 per cent, no amount is required to be transferred to reserve under the Rules.
c) The reference to 'dividend made in the Rules is to equity dividend and also to that portion of dividend relating to participating preference shares.
d) The term 'current profits' for the purpose of transfer of specified percentage thereof to reserves means profits after statutory transfer to the Development Rebate Reserve and also after providing arrears of depreciation, if any, as well as after transfer to tax as per the Income-tax Act.

2. *Conditions governing voluntary transfer of a higher percentage.* Nothing in rules 1 (given above) shall be deemed to prohibit the voluntary transfer by a company of a percentage higher than 10 per cent of its profits to its reserves for any financial year, so however, that:

i) Where a dividend is declared, -
a) a minimum distribution sufficient for the maintenance of dividends to shareholders at a rate equal to the average of the rates at which dividends declared by it over the three years immediately preceding the financial year is ensured; or
b) in a case where bonus shares have been issued in the financial year in which the dividend is declared or in the three years immediately preceding the financial year, a minimum distribution sufficient for the maintenance of dividends to shareholders at an amount equal to the average amount (quantum) of dividend declared over the three years immediately preceding the financial year is ensured;
Provided that in a case where the net profits after tax are lower by 20 per cent or more than the average net profits after tax of the two financial years immediately preceding, it shall not be necessary to ensure such minimum distribution.

ii) Where no dividend is declared, the amount proposed to be transferred to its reserves from the current profits shall be lower than the average amount of the dividends to the shareholders declared by it over three years immediately proceeding the financial year.

In respect of the Rule 2 (given above) the following points are worth noting:

a) Rule 2 (i) (a) aims to restrict the power of the directors of a company to transfer to the reserves an excessive amount of current profits, thereby reducing the amount available for dividends. However, as per the clarification issued by the Department of Company Affairs, a company is not prohibited from carrying forward any balance of current profits in the Profit and Loss Account without transferring them to reserves.
b) Rule 2 (i) (b) aims to enable companies to issue bonus shares more liberally, for according to this rule the companies issuing bonus shares will have to maintain the quantum of dividend distribution and not the rate of dividend of the average of the preceding three years when they transfer 10 per cent of more of profits to reserves.
c) As per the clarification issued by the Department of Company Affairs, the above stated Rule 2 would not be applicable in the case of a newly incorporated company in which case no dividends would have been declared over the three years immediately preceding the financial year. Such a company would, therefore, be governed by the provisions contained in rule 1 (given above). In other words, such a company is prohibited from transferring more than 10 per cent of its profits to its reserves.

Penalty. If a company fails to comply with any of the provisions contained in these Rules, the company and every officer of the company in default, shall be punishable with fine which may extend to Rs. 500, and where the contravention is a continuing one, with a further fine which may extend to Rs. 50 for every day, after the first, during which such contravention continues.

Where the company wants to declare more than the current year's profit, it can use its reserves subject to compliance of following Rules.

Payment of Dividend to be paid only out of Reserves.

The Companies (Declaration of Dividend out of Reserves) Rules, 1975

In exercise of the powers conferred under Section 205 A (3), the Central Government has enacted "The Companies (Declaration of Dividend out of Reserves) Rules, 1975" regarding the 'declaration of dividend out of reserves' which provide as follows:

Declaration of dividend out of reserves. In the event of inadequacy or absence of profits in any year, dividend may be declared by a company for that year out of the accumulated profits earned by it in previous years and transferred by it to the reserves, subject to the conditions that –

i) the rate of the dividend declared shall not exceed the average of the rates at which dividend was declared by it in the five years immediately preceding that year or ten per cent of its paid up capital, whichever is less.

ii) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves shall not exceed an amount equal to one-tenth of the sum of its paid up capital and free reserves and the amount so drawn shall first be utilized to set off the losses incurred in the financial year before any dividend in respect of preference or equity share is declared, and

iii) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital.

Explanation. For the purpose of this Rule, "profit earned by a company in a pervious years and transferred by it to the reserves" shall mean the total amount of net profit after tax, transferred to reserves as a the beginning of the year for which the dividend is to be declared; and in computing the said amount, the appropriations out of the amounts transferred from the Development Rebate Reserve (at the expiry of the period specified under the Income-tax Act, 1961) shall be included and all items of Capital Reserves including reserves created by revaluation of assets shall be excluded.

LIST OF ACRONYMS

Sl. No.	Acronyms	Full Text
1.	ADRs	American Depository Receipts
2.	CMTS	Cellular Mobile Telephone Service
3.	DIP Guidelines	Securities Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000
4.	DoT	Department of Telecommunications
5.	EDR	Exchange Data Records
6.	FCCBs	Foreign Currency Convertible Bonds
7.	FDI	Foreign Direct Investment
8.	FIIs	Foreign Institutional Investors
9.	FIPB	Foreign Investment Promotion Board
10.	GDP	Gross Domestic Product
11.	GDRs	Global Depository Receipts
12.	HUF	Hindu Undivided Family
13.	IPO	Initial Public Offer
14.	M&A	Mergers & Acquisitions
15.	MNP	Mobile Number Portability
16.	MVNO	Mobile Virtual Network Operator
17.	NRIs	Non-resident Indians
18.	NTP 1999	New Telecom Policy, 1999
19.	SEBI	Securities and Exchange Board of India
20.	TRAI	Telecom Regulatory Authority of India
21.	UASL	Unified Access Service Licenses
22.	VLR	Visited Location Register
23.	VOIP	Voice Over Internet Protocol