

TCL/RA/TRAI-MS/CP/01/2012

February 24, 2012

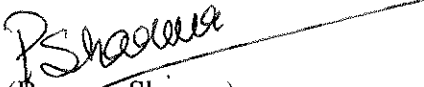
Principal Advisor (MS)  
Telecom Regulatory Authority of India,  
Mahanagar Door Sanchar Bhawan,  
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New Delhi – 110002

**Sub: Response to Consultation Paper dated 16<sup>th</sup> January, 2012 on Draft Guidelines for Unified Licensing Regime**

Dear Sir,

Kindly find attached herewith Tata Communications Ltd. response to Consultation Paper dated 16<sup>th</sup> January, 2012 on Draft Guidelines for Unified Licensing Regime for your consideration and perusal please.

With kind regards,  
For Tata Communications Ltd.

  
(Praveen Sharma)  
Authorized Signatory

Encl: a/a.

**TATA COMMUNICATIONS**

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## **TCL Response to TRAI Consultation on Draft Guidelines for Unified Licensing Regime**

### **General:**

We welcome the initiative taken by TRAI to usher the new Unified Licensing regime which it is hoped will further spur the growth in the telecom sector.

*Q1. Kindly give your response to each clause of Chapters I to IV above.*

**TCL Response:** Please see TCL response to the various issues as below. We have stated the only relevant proposed terms and our response on the same (Pg1-20 of response).

### **I. Draft Guidelines for Unified Licence**

#### **A. Unified Licence**

##### **1. Framework**

- 1.1 There shall be three levels of Unified Licence: National level, Service area level and District level. The applicant company can apply either for National level Unified Licence or Service area level Unified Licence or District level Unified Licence. District level Unified Licence will not be given for Metro areas of Delhi, Mumbai and Kolkata.
- 1.2 For the purpose of the Unified Licence, the service areas shall be as listed in Annexure – I.
- 1.3 A company can apply for Unified Licence in more than one service area or district. However, if a company desires to apply for Unified Licence in more than four districts in a service area, it has to apply for Service area level Unified Licence.

**TCL Response:** In our view, the key objectives of the Unified Licensing/Authorization Regime is to encourage free growth of new applications and services leveraging on the technological developments in the Information and Communication Technology (ICT) area. Other main objectives of the Unified Licensing Regime are to simplify the procedure of licensing in the telecom sector, ensure flexibility and efficient utilization of resources



keeping in mind the technological developments, mapping of existing service specific licenses into Unified Licensing Model and providing a clearly defined migration path for existing licensees of Basic, Unified Access, Cellular Mobile, NLD, ILD and Internet services, to ensure easy entry and no worse-off position for existing Operators.

India is a large country having more than 400 districts and presently telecom service licensing is administered on Service area basis for Access licenses wherein Service areas are generally coterminous with various States in India. Creation of Unified License at District level is not recommended as it would lead to complications related to interconnection issues, MNP or number portability implementation issues and such licenses would also be difficult to administer in terms of allocation of resources by the licensor like Number Series allocation, SPC allocation etc. Looking at the large number of Districts, it would be difficult to manage licensing regime at a District level. The viability of business case for a licensee at District level is also expected to be difficult. For these reasons, district level licensing for ISP services which was earlier introduced as cat C ISP license has since been abolished. It would be therefore advisable to continue with the Service area level licensing while introducing National Level licensing which would entitle similar obligations and privileges in License as on a Service area level basis. This would also facilitate smoother transition to the new licensing regime without disturbing the level playing field. Earlier there was a Category C license at district level for ISP services but the same was discontinued for similar reasons.

1.4 Subject to fulfilment of relevant eligibility conditions, Licence shall be issued on non exclusive basis, without any restriction on the number of licences.

**TCL Response: We support the introduction of Open Licensing regime with no restriction on the number of licensees permissible in a Service area. This would go a long way in fostering more competition in the Telecom services sector.**

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

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

1.7 District level Unified Licence shall permit the licensee to offer any or all of the telecom



services mentioned in Para 5.1 in the district for which licence is given. However, a District level Unified licensee shall not be permitted to offer NLD, ILD, GMPCS, VSAT & Resale of IPLC, INSAT-MSS and wireless access service. Also, these licensees would not be entitled for assignment of spectrum resources for access services. District level Unified Licence will not be given for Metro areas of Delhi, Mumbai and Kolkata.

**TCL Response: We do not recommend creation of district level Unified License for the reasons listed earlier. In case we want to use wire-line assets of cable Operators, an easy to operate franchisee scheme can be permitted under Unified License at national/service area level. This would prevent fragmentation of market below Service area level and would also create opportunities for use of wireline assets present in the district, if any for provision of telephony and broadband services.**

## **2. Eligibility Conditions**

- 2.1 The applicant must be an Indian company, registered under the Indian Companies Act 1956.
- 2.2 The total foreign equity in the paid up capital of the applicant company should not exceed 74% of the total equity subject to the following FDI norms :
  - a. Both direct and indirect foreign investment in the applicant company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment shall mean foreign investment in the company/ companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the applicant company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.
  - b. FDI up to 49 percent will continue to be on the automatic route. FDI in the applicant company/Indian promoters/investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.



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

**TCL Response: As regards ( a ), according to FEMA, indirect or proportionate foreign investment is not be counted if investing company is Indian owned and controlled. However, if the Authority has some specific justification for treating telecom differently, the same may kindly be clarified.**

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

**TCL Response: According to us, requirement given in 3.8 above is not required as the same is not the prevalent practice in any other sectors of the economy. It may be recalled that such a requirement was in the past incorporated in UASL on 6<sup>th</sup> February 2006 by DoT and after vociferous protests from industry it was not implemented and was removed from UASL in 2007.**

**We believe that such matters are best left to be decided between the shareholders and companies and the Government should not interfere with shareholders' rights in this regard. This is because the Memorandum and Articles bind the company and its shareholders and not the company with the Government of India (GoI). The rationale for this requirement is not clear.**

#### **4. Entry Fee**

- 4.1 One time **non refundable** Entry fee for Unified Licence shall be:

- a. Rs. 20 (Twenty) crore for National level Unified Licence;
- b. Rs. 2 (Two) crore for Metro and 'A' Category Service area;
- c. Rs. 1 (One) crore for B category Service area;
- d. Rs. 50 (Fifty) lakh for C category Service area; and
- e. Rs. 15 (Fifteen) lakh for District level Unified Licence.



**TCL Response: One time entry fee should be charged to only cover the cost of administering the licensing and regulation of telecom sector and should be fixed in a manner so as to deter non-serious players from entering in the telecom services sector.**

- 4.2 While granting a National level or Service area level Unified Licence, Entry fee already paid for the service area level licences or district level licences will be adjusted on *pro rata* basis for the balance validity period of such Licences at hand against the Entry fee for the National level or Service area level Unified Licence. However, where the sum of entry fee already paid exceeds the entry fee to be paid, there will be no refund of the Entry fee.

**TCL Response: 4.2 above require more clarity especially in respect of existing Licensees who have taken license of pan-Indian nature like NLD & ILD licenses. In case of NLD & ILD licenses, the entry fees were reduced in the year 2006. It may be clarified that for existing Licensees who were granted Licenses during the period 2001-2005 when entry fee was Rs 100 Crores /Rs 25 Crores for NLD/ILD license respectively, the pro- rata adjustment would be based on higher entry fee prevalent at that time so that these existing Licensees will get the due credit for the earlier stipulated higher entry fee. For the ILD license granted during the period 2001-2005, the pro-rata adjustment would work out as Rs 1.25 Crores per year for remaining period of the validity of the License whereas for for NLD License granted during the said period, the pro-rata amount would be Rs 5 Crores per year for remaining period of the validity of the License.**

## 5. Scope of the Licence

- 5.1 Unified Licence will be service and technology neutral and the Unified licensee shall be permitted to provide any telecom service, as defined below on a non-exclusive basis, anytime, anywhere, using any technology within its licence area as prescribed below:
- a. Collection, carriage, transmission and delivery of voice and/or non-voice MESSAGES over LICENSEE's network in the designated LICENCE AREA and includes provision of all types of access services. Unified licensee can also provide Internet Telephony, Internet Services including IPTV and Broadband Services including triple play i.e. voice, video and data. The Licensee shall be free to enter an agreement with other service provider in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised / directed by Licensor otherwise.



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

- b. Unified licensee can provide dark fibres, Right of Way, duct space, towers on lease / rent / sale basis to the licensees of telecom services on mutually agreed terms and conditions. The Licensee will also be allowed to install and share active network limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission systems and to seek SACFA siting clearance for erecting towers with or without agreement with licensed Service Providers.
- c. Unified licensee is permitted to provide leased circuit within its licence area. Public network is not to be connected with leased circuits/CUGs.
- d. A Unified licensee shall be permitted to offer any/all services covered under 'Class licence' and 'Licensing through Authorization' but not vice-versa.
- e. The Licensee cannot provide any other service which otherwise require a separate licence.
- f. The Licensee cannot provide broadcasting services, for which a separate licence / registration is required as per Cable TV Act 1995 and guidelines for DTH Licence issued by Ministry of Information and Broadcasting.

**TCL Response: In view of technology neutrality, each operator is allowed to use any technology, subject to emission restriction, in any of the allotted bands. Since all technologies e.g. 2G, 3G, BWA and LTE can be launched in any of the cellular bands, it is for the operators to decide when to introduce a particular service based on commercial consideration in the spectrum band allotted. The Unified License would allow the licensee to offer many services, and the licensee may decide to offer all or few at any given time.**

**Like UAS license ,inter and intra circle roaming arrangement should be made part of UL and not of the spectrum license. Nothing that is permitted under UAS license should be removed from the scope of UL. Level Playing Field issues need to be taken care of while amending scope of Service.**

**The prohibition of public network connectivity with leased circuits/CUGs needs to be reviewed whether such restrictions would be relevant in the technology neutral Unified License Regime when IP based telephony is freely permitted to be deployed under ULR. This would provide flexibility in provision of services to BPO sector as well. In any case,**



**the term “public network “needs to be appropriately defined in case restriction is still sought to be imposed.**

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

- a. National level Unified Licence shall permit the Licensee to offer any or all of the telecom services mentioned in Para 5.1 in any/all service areas.
- b. National level Unified licensee can also provide GMPCS, NLD and ILD services, Resale of IPLC.
- c. Service area level Unified Licence shall permit the Licensee to offer any or all of the telecom services mentioned in Para 5.1 except National Long Distance (NLD), International Long Distance (ILD), Global Mobile Personal Communication by Satellite (GMPCS) services, Very Small Aperture Terminal (VSAT) services, Resale of IPLC and INSAT Mobile Satellite System (INSAT-MSS) Reporting Service, in the specified service area for which licence is given. Service area level Unified licensee will be allowed to apply for National level Unified Licence.

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

**TCL Response: Creation of Unified License at District level is not recommended as it would lead to complications related to interconnection issues, MNP or number portability implementation issues and such licenses would also be difficult to administer in terms of allocation of resources by the licensor like Number Series allocation, SPC allocation etc. Looking at the large number of Districts, it would be difficult to manage licensing regime at a District level. The viability of business case for a licensee at District level is also expected to be difficult .For these reasons, district level licensing for ISP services which was earlier introduced as cat C ISP license has since been abolished. It would be therefore advisable to continue with the Service area level licensing while introducing National Level licensing which would entail similar obligations and privileges in License as on a Service area level basis. This would also facilitate smoother transition to the new licensing regime without disturbing the level playing field. Earlier there was a Category C license at district level for ISP services but the same was discontinued for similar reasons.**





## 10. Penalty

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

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

**TCL Response: The Indian Telegraph Act was enacted as far back as in 1885. Section 4 of the said Act provides for exclusive privilege of the Central Government in respect of establishing, maintaining and working telegraphs. The proviso appended thereto, however, enables the Central Government to grant a licence on such conditions and payment of such fee as it deems fit to any person to establish, maintain or work a telegraph within any part of India. Apart from the said provision, unlike statutes framed by various States dealing with excise, lottery and other prohibited category of business, there does not exist any provision for grant of licence. ‘Telegraph’ is in the Union List. It is not, thus, one of the subjects which is considered ‘Res extra Commercium’. The special privilege doctrine in a case of this nature cannot be said to have conferred any right on the licensor to act arbitrarily. ‘Telegraph’ being covered by a ‘law’, the Union of India is to be governed thereby. It is also bound by the provisions of the Indian Contract Act. (Extracts from TDSAT order in Petition 12/2002 dtd 11-07-2011)**

**It is a well settled position that in respect of grant of any right or licence by the Central Government or an authority which can be held to be State within the meaning of Article 12 of the Constitution not only the source of the power has to be traced, but it has also to be found that the procedure adopted for such grant was reasonable, rational and in conformity with the conditions which had been announced. It is also well settled that only because a statute empowers a State to grant a licence or enter into a business with a third**



party, the same by itself would not render the contract a statutory one.(Extracts from TDSAT order in Petition 12/2002 dtd 11-07-2011)

With the above background, we would like to submit that penalty for violation of terms of license by a licensee has to be in line with Section 20A of Indian Telegraph Act 1885 which specifically deals with such a situation and is reproduced below:

**“20A. Breach of condition of license ♦ If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.”**

Without prejudice to the above argument, we would like to submit that proposed penal stipulation in a license agreement would also be subject to Indian Contract Law as held by Hon’ble TDSAT and specifically to the S73&74 of the Contract Act. The said provisions are to be construed conjointly. Section 73 does not envisage recovery of damages which is indirect or remote in nature. Such a penal provision either in the Contract or otherwise having regard to sufferance of civil consequences by a party deserves strict scrutiny. Before imposition of such penalty, it is also necessary to comply with the conditions precedent laid down therefor. If a penal clause is possible to be interpreted differently, an interpretation which favours the licensee should be preferred. Illustration (d) appended to Section 74 of the Indian Contract Act, in this context deserves our attention which reads as under :

**“(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.”**

This illustration also shows the consequential damages suffered by any person by reason of delay in payment which is remote and indirect would not be payable. Section 74 of the Contract Act clearly stipulates that if any amount named in the contract is payable in case of breach of contract, the Courts in a given case may award an amount which would appear to be reasonable by way of compensation not exceeding the amount provided for in the contract. What would be the reasonable amount would, however, depend on facts and circumstances of each case.

If the penal clause is to act ‘in terrorem’, it, save in exceptional cases, would be rendered invalid. It is also a well settled principle of law that some claim in the contract by way of pre-estimated damages, may not be enforced by a court of law and only a reasonable amount out of the pre-estimated damage would be payable, unless the amount named is



held to be a reasonable pre-estimate. There cannot, however, be any doubt or dispute that the penal clause in question is required to be considered in the light of Section 74 of the Indian Contract Act.

Thus even as per Contract Act, the quantum of penalty imposed in a case of violation should have direct nexus only with the financial loss caused to the Government exchequer due to such violation. It is recommended that for National level Unified license, maximum penalty should be 5 Crores for a major violation and Rs 50 Lakhs for a minor violation.

## **Financial Conditions**

### **11. Fees payable**

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

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

**TCL Response:** License Fee as a percentage of Adjusted Gross Revenue should be applicable only from the revenues accruing to the Unified Service Licensee from the provision of licensed telecom services as listed in the license. Pass through revenues should comprise of all revenues paid out to the other licensed telecom service providers to avoid the double incidence of license fee. The recommendations earlier made by TRAI in respect of AGR needs to be revisited and reiterated while firming up the provisions for license fee based on AGR definition. Global practices in respect of charging of license fee may also need to be examined in this context.

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

**TCL Response:** For the spectrum bought at the market price by the Licensees through an auction, there should not be any annual spectrum usage charges levied on the Licensee unless specified in the auction terms and conditions



## **General Conditions**

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

**TCL Response: It is recommended that Telecommunication should be declared “essential” services to avoid RoW obstacles. This would help laying and maintain of fibre through public and private infrastructure without getting delayed in difficult and cumbersome approval processes or ad-hoc, very high costs that are levied by various local, municipal, state and central authorities. Local bodies are charging arbitrarily hefty amounts for permitting fibre laying. Fibres are cut off even after High Court restraint orders. There is a sharp increase in telecommunications service disruptions owing to damaged high-capacity fiber-optic cable facilities. This is caused by frequent cable cuts by agencies/organizations that lay underground infrastructure or are constructing roads and other types of infrastructure. As the Indian economy continues to expand, six key initiatives of the government (Electrification, Roads, Irrigation, Telephone connectivity, Water and Housing) will all increase the potential for more damage to communications cables and other infrastructure. Telecom Sector should be given the status of Infrastructure as available to many other sectors and a National level policy guideline for ROW issues should be made available for faster growth of the sector.**

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

**TCL Response: Both Active and passive infrastructure should be allowed to be shared. In order to have optimum utilization of national services, sharing of infrastructure, including switches / MSCs, between operators should be encouraged by the Government. The sharing of infrastructure should be permitted to only to those operators who come under the purview of Unified Licensing. This will act as an incentive for other operators to opt for Unified Licensing regime.**



**B. Additional Guidelines for Spectrum assignment associated with Unified licence**

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

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

**TCL Response: in our view, only one licensee company from a Group should be allowed to bid for a spectrum of particular category of services viz. 2 G, 3G or BWA. More so now when even Spectrum sharing is proposed to be permitted amongst the licensees as per the latest Policy statement of the Government, there is no rationale for having more than one entity belonging to a Group for independently apply/bid for Spectrum in an auction.**

**II. Draft Guidelines for Class Licence**

**10. Penalty**

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



**TCL Response:** The quantum of penalty imposed in a case of violation should have direct nexus only with the financial loss caused to the Government exchequer due to such violation and with amount of Entry fee paid for obtaining the Unified license. It is recommended that for Class license , maximum penalty should be 30 lakh for a major violation and Rs. 10 Lakhs for a minor violation.

### **Financial Conditions**

#### **11. Fees payable**

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

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

**TCL Response:** License Fee as a percentage of Adjusted Gross Revenue should be applicable only from the revenues accruing to the Unified Service Licensee from the provision of licensed telecom services as listed in the license. Pass through revenues should comprise of all revenues paid out to the other licensed telecom service providers to avoid the double incidence of license fee. The recommendations earlier made by TRAI in respect of AGR needs to be revisited and reiterated while firming up the provisions for license fee based on AGR definition. Global practices in respect of charging of license fee may also need to be examined in this context.

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

**TCL Response:** For the spectrum bought at the market price by the Licensees through an auction, there should not be any annual spectrum usage charges levied on the Licensee unless specified in the auction terms and conditions



## **General Conditions**

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

**TCL Response:** It is recommended that Telecommunication should be declared “essential” services to avoid RoW obstacles. This would help laying and maintain of fibre through public and private infrastructure without getting delayed in difficult and cumbersome approval processes or ad-hoc, very high costs that are levied by various local, municipal, state and central authorities. Local bodies are charging arbitrarily hefty amounts for permitting fibre laying. Fibres are cut off even after High Court restraint orders. There is a sharp increase in telecommunications service disruptions owing to damaged high-capacity fiber-optic cable facilities. This is caused by frequent cable cuts by agencies/organizations that lay underground infrastructure or are constructing roads and other types of infrastructure. As the Indian economy continues to expand, six key initiatives of the government (Electrification, Roads, Irrigation, Telephone connectivity, Water and Housing) will all increase the potential for more damage to communications cables and other infrastructure. Telecom Sector should be given the status of Infrastructure as available to many other sectors and a National level policy guideline for ROW issues should be made available for faster growth of the sector.

## **III. Migration of Existing Licence to Unified Licence**

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



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

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

Unified Licences (restricted) – 6 licences

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

**After migration to Unified Licence – 1 Unified Licence**





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

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

Type of Existing Licence	Migration to	Rebate
ILD/NLD	National level	Rs 12.5 lakh x No of years remaining for existing NLD/ILD Licence validity <b>TCL Comment: This should be Rs 1.25 crores x No of years remaining for existing ILD License validity for ILD licenses granted before 01.01.2006 and Rs 5 crores x No of years remaining for existing NLD License validity for NLD licenses granted before 01.01.2006 .</b>
UASL/ CMTS	Service area level	Rs 10 lakh, 5 lakh and 2.5 lakh for Metro/Cat A, Cat B and Cat C service areas respectively x No of years remaining for existing UASL/CMTS Licence validity.
UASL /CMTS in various service area	National level	Rs 10 lakh, 5 lakh and 2.5 lakh for Metro/Cat A, Cat B and Cat C service areas respectively x No of years remaining for existing UASL/CMTS Licence validity subject to maximum limit of Rs. 20 crore.



**TCL Response :** The computation and adjustment of entry fee for balance period requires more clarity especially in respect of existing Licensees who have taken license of pan-Indian nature like NLD & ILD licenses as these licenses were subjected to higher entry fee till the year 2005. These Licensees who were granted licenses prior to the year 2006 should be given due credit for the higher Entry fee in order to maintain level playing field. The Licensees who were granted Licenses during the period up to the year 2005, the entry fee was Rs 100 Crores /Rs 25 Crores for NLD/ILD license respectively therefore pro-rata adjustment should be based on higher entry fee prevalent at that time so that these existing Licensees will get the due credit for the earlier stipulated higher entry fee. For the ILD license granted during the period up to the year 2005, the pro-rata adjustment would work out as Rs 1.25 Crores per year for remaining period of the validity of the ILD License whereas for NLD License granted during the said period, the pro-rata amount would be Rs 5 Crores per year for remaining period of the validity of the NLD License. It is requested that credit due on account of old NLD/ILD licenses may accordingly be given to the eligible existing NLD/ILD licensees.

9. On expiry of the validity of the Unified Licence (restricted), the licensee shall be required to take a Unified Licence.
10. IP-I shall be covered under Unified Licence. The existing IP-I providers would be required to take the Unified Licence as soon as the same comes into being and the conditions in the Unified Licence will apply to IP-I provider too. IP-I shall have to pay the prescribed entry fee to take the Unified Licence.

**TCL Response:** IP-I should not be brought under the Unified licensing framework as creation of passive infrastructure like towers and dark fibers is a civil construction activity and not a telecom network activity. Therefore the telecom infrastructure creation activity like establishing towers, shelters with extension of power to such telecom facilities and laying of fiber is not covered under Section 4 of the Indian Telegraph Act, 1885 for licensing.

11. In the event a holder of Unified Licence (restricted), having spectrum, obtains a Unified Licence, it will continue to retain the spectrum assigned for the remaining validity period of the existing Licence. In case of 3G /BWA spectrum holders, the spectrum assigned will be retained for the period for which the spectrum blocks have been assigned. The licensee holding access spectrum shall be required to maintain the net-worth and paid up equity as per existing licence, in case these are higher than the amount prescribed in the



Unified Licensing Regime.

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



## Annexure II

### DEFINITIONS

**Access Providers:** Access Providers means the Basic, Cellular and Cable Service Providers who have a direct access with the subscribers.

**TCL Response:** Cable Service Providers are not licensed under Indian Telegraph Act by DoT. Internet Service Providers also have a direct access with the subscribers hence ISPs also may be included in the category/definition of Access Providers.

**International Long Distance (ILD):** The ILD Service is basically a network carriage service (also called Bearer) providing International connectivity to the Network operated by foreign carriers.

**TCL Response:** The ILD service definition should be in accordance with the provisions of the ILD License agreement in the scope of service clause (2.2).

**International Private Leased Circuit (IPLC):** IPLC is defined as point to point non-switched physical connections/transmission bandwidth from India to destination country.

**TCL Response:** IPLC definition needs to be amended to include the Leased Circuit definition given in the ILD service agreement which is as follows:

**“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”.**

**Internet Access:** Internet access means use of any device/technology/ methodology to provide access to internet including IPTV and all content available without access restriction on Internet including web hosting, web-colocation but it does not include service provider’s configured Closed User Group Services (VPN).

**TCL Response:** Web hosting and Web Collocation are not part of Internet Access Service and need to be excluded from the definition of Internet Access.



**Internet Telephony:** Internet Telephony mean a service to process and carry voice signals offered through Public Internet by the use of Personal Computers (PC) or IP based Customer Premises Equipment (CPE) connecting the following:

- a) PC to PC; within or outside India
- b) PC/a device/Adapter conforming to standard of any international agencies like-ITU or IETF etc. in India to PSTN/PLMN abroad.
- c) Any device / Adapter conforming to standards of International agencies like ITU, IETF etc. connected to ISP node with static IP address to similar device / Adapter; within or outside India.

Explanation: Internet Telephony is a different service in its scope, nature and kind from real time voice service as offered by other licensed operators like Basic Service Operators (BSO), Cellular Mobile Service Operators (CMSO) and Unified Access Service Operators (UASO).

- (i) The Internet Telephony described in condition (a to c) above, is only permitted.
- (ii) Addressing scheme for Internet Telephony shall only conform to IP addressing Scheme of Internet Assigned Numbers Authority (IANA) exclusive of National Numbering Scheme / plan applicable to subscribers of Basic / Cellular Telephone service. Translation of E.164 number / private number to IP address allotted to any device and vice versa, by the licensee to show compliance with IANA numbering scheme is not permitted.
- (iii) The Licensee is not permitted to have PSTN/PLMN connectivity. Voice communication to and from a telephone connected to PSTN/PLMN and E.164 numbering is prohibited in India.

**TCL Response:** Internet Telephony service as applicable to ISPs was deliberately kept different in scope, nature and kind from real time voice service as offered by other licensed operators like Basic Service Operators (BSO), Cellular Mobile Service Operators (CMSO) and Unified Access Service Operators (UASO) as the entry fee for ISPs was very less as compared to that applicable for BSO/CMSO/UASO. However, it was clarified by DoT that UASOs can provide real time Internet Telephony (IP) based Voice services similar in scope and nature to the circuit switched telephony based Voice services. It is recommended that under the new proposed Unified License, the restrictions imposed upon Internet Telephony services as per definition above should be removed.



## **Response to Q2 –Q11 of the Consultation Paper**

2. *What are your views on the scope of Licence for Unified Licence (National level/Service area level/District level) and Class Licence? (Clause 5 of draft guidelines for Unified Licence and Clause 5 of draft guidelines for Class Licence)*

**TCL Response:** The key objectives of the Unified Licensing/Authorization Regime is to encourage free growth of new applications and services leveraging on the technological developments in the Information and Communication Technology (ICT) area. Other main objectives of the Unified Licensing Regime are to simplify the procedure of licensing in the telecom sector, ensure flexibility and efficient utilisation of resources keeping in mind the technological developments, mapping of existing service specific licenses into Unified Licensing Model and providing a clearly defined migration path for existing licensees of Basic, Unified Access, Cellular Mobile, NLD, ILD and Internet services, to ensure easy entry and no worse-off position for existing Operators. According to us, following should be the scope of license for Unified License, Class License and License through Authorization:

- **Unified licence at Service Area (circle and Pan India level only) covering UASL/CMTS, NLD, ILD, Internet, and GMPCS;**
  - **Class licence covering VSAT services , PMRTS and Radio Paging**
  - **Licensing through Authorisation covering IP I, Voice Mail/Audio Tex/Unified Messaging Service and OSP services as stipulated by DoT**
3. *What, in your opinion, are the actions that should be classified as minor violations and major violations? (Clause 10 of draft guidelines for Unified Licence)*

**TCL Response:** Please see response against 10.1 in the Unified License guideline (pg8-9 of response).

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



**TCL Response :**The factors which should be taken into account for determining the quantum of penalty are the severity of the violation and whether the violation was intentional?, amount of loss caused to the Government, the resulting harm to users and service provision, the amount of benefit that the Licensee derived from the violation, prior violations, repetition of violations, early admission of the violation, cooperation or refusal to cooperate with the investigation, and the economic and financial situation of the licensee.

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

**TCL Response :**The service provider who wants to offer services covered in this category of 'Licensing through Authorisation' should be able to get license merely by informing the licensor and submitting a statement on compliance with certain terms and conditions regarding security, etc which may be issued by Department of Telecom and put on its website. IP I , IT enabled services such as call centres, electronic-commerce, tele-banking, tele-education, tele-trading, tele-medicine, videotex, video conferencing, voice mail, Audiotex, e-mail, other service provides as stipulated by DoT, Unified messaging service and such other as may be prescribed, may be covered under this category.

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

**TCL Response:** It is proposed that Voice mail/Audiotex/UMS services should be covered under licensing through Authorization whereas Radio Paging services may be considered for placement under Class License.

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

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

**TCL Response:** As per Section 4 of Indian Telegraph Act 1885, the Central Government exclusively has the right of granting licenses. Also, the TRAI Act 1997 provides for an



independent Regulator to regulate the telecom sector whereas the same Act also provides for an effective dispute resolution mechanism in form of TDSAT for resolving disputes between Licensees, between Licensee and Licensor and Appeal against the orders of Regulator. This model of having three different entities performing the task of licensing, regulating and resolving disputes has managed the telecom sector of the country very effectively and is recommended to be continued.

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

**TCL Response:** IP-I should not be brought under the Uniform licensing framework along with access services and the foreign equity need not be restricted.

However, in any case if IP-I operators are brought under Unified Licensing, then the foreign equity in the total equity of the license be restricted to 74% and a time frame of 1-2 years be given to comply with the FDI limit and UASL operators need to be given deduction for payments made to IP-I as pass through charges else there will be double charging of license fee.

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

**TCL Response:** In our view , this is a step in the right direction as the the substantial equity bar clause loses relevance when there is open competition both for the ULR License now delinked with the Spectrum and open auction as the method for grant of Spectrum to any of the ULR licensee. Moreover Government has also announced norms for sharing of the Spectrum on the stipulated terms and conditions. The substantial equity bar clause was introduced in the CMTS/UAS/BSO licenses at the time when limited number of such





licenses was available due to scarcity of spectrum. Now that Unified License is proposed to be delinked from the Spectrum and there is no restriction on number of licenses to be issued, the substantial equity bar clause is not relevant in such a scenario as taking more than one license by one Entity would not bestow any competitive benefit upon such entity. Moreover the proposed new unified License which is without spectrum is a different License category altogether and relating it with earlier spectrum entitled UAS/CMTS/Basic license is neither logical nor desirable. Also this would tantamount to imposing a restriction on number of service providers/licenses in the ULR license where none should exist in the interest of fostering more competition in the market.

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

**TCL Response:** While the draft guidelines have been prepared in continuation of TRAI earlier Recommendations dated 11.05.2010 and its response dated 03.11.2011 to DoT, it is our submission that evolution of new Unified License regime should be on the basis of National Telecom Policy presently under consideration of the Government post comments from all the stakeholders and new Licensing regime should strive to meet the objectives set-out in the National Telecom Policy as and when it gets finalized. Specifically the draft National Telecom Policy released by the Government for comments of all the stakeholders had following stipulations relevant to the evolution of a new licensing regime:

**“III. OBJECTIVES:**

- “11. *Create licensing framework to ensure flexibility in licensing to further extend converged services. This will not cover content regulation. This will provide high quality converged services across the country including rural and remote areas.*”
32. *Evolve a framework for financing the sector and streamlining taxes and levies for long term sustainability of telecom sector.*

**“IV STRATEGIES:**

**“3. LICENSING, CONVERGENCE AND VALUE ADDED SERVICES”**

- “3.1. *To orient, review and harmonise the legal, regulatory and licensing framework in a time bound manner to enable seamless delivery of converged services in a technology neutral environment. Convergence would cover:*



- 3.1.1. Convergence of services i.e. convergence of voice, data, video, Internet telephony (VoIP), value added services and broadcasting services*
- 3.1.2. Convergence of networks i.e. convergence of access network, carriage network (NLD/ILD) and broadcast network*
- 3.1.3. Convergence of devices i.e. telephone, Personal Computer, Television, Radio, interoperable set top boxes and other connected devices.”*
- 3.2. To move towards Unified License regime in order to exploit the attendant benefits of convergence, for which there is already an in-principle acceptance. A migration path will also have to be provided for existing licensees to Unified License Regime.*
- 3.4. To establish new licensing regime taking care of the requirements of level playing field, rollout obligations, policy on merger & acquisition and non-discriminatory interconnection while ensuring adequate competition. “*
- 3.7. The technology neutral Unified Licenses are envisaged to be in two separate categories:*
  - 3.7.1. Network Service Operator (NSO)/ Communication Network Service Operator (CNSO)*
  - 3.7.2. Service Delivery Operator (SDO)/ Communication Service Delivery Operator (CSDO)*
- 3.8. Network Service Operator (NSO) would be licensed to set up and maintain converged networks capable of delivering various types of services e.g. Voice, Data, Video, broadcast, IPTV, VAS etc. in a non-exclusive and non-discriminatory manner.*
- 3.9. The Service Delivery Operator (SDO) would be licensed to deliver any/ all services e.g. tele-services (voice, data, video), internet/broadband, broadcast services, IPTV, Value Added Service and content delivery services etc.”*

**We would like to submit that for the reason of regulatory certainty and to avoid frequent changes in the licensing regime, all the issues listed above in draft National Telecom Policy should be considered while recommendations for terms and conditions of new proposed Unified License are issued. There is also an urgent need to consult and evolve on the issue of AGR and other various levies imposed upon the Licensees for ensuring long term**



**sustainability of telecom sector as also to achieve finality on the issue of AGR. It may be noted that litigation regarding AGR are currently under litigation due to lack of clarity at different stages for virtually the entire Telecom service industry and some clarity going forward even on a prospective basis would benefit the industry. It is indeed encouraging to note that Government in its draft NTP has stated that revenue generation would have a secondary role in achieving the Policy goals. We need to emulate the practices adopted in other geographies in evolving the tax and levy structure for telecom sector in our country and we would request that this may also be considered while recommending the terms and conditions of ULR to the Government.**