

**RESPONSE TO THE CONSULTATION ON DRAFT GUIDELINES FOR UNIFIED
LICENCE / CLASS LICENCE AND MIGRATION OF EXISTING LICENCES**

1. Framework

- 1.1 There shall be three levels of Unified Licence: National level, Service area level and District level. The applicant company can apply either for National level Unified Licence or Service area level Unified Licence or ~~District level Unified Licence. District level Unified Licence will not be given for Metro areas of Delhi, Mumbai and Kolkata.~~
- 1.2 For the purpose of the Unified Licence, the service areas shall be as listed in Annexure I.
- 1.3 A company can apply for Unified Licence in more than one service area or district. However, if a company desires to apply for Unified Licence in more than four districts in a service area, it has to apply for Service area level Unified Licence.
- 1.4 Subject to fulfilment of relevant eligibility conditions, Licence shall be issued on non-exclusive basis, without any restriction on the number of Licences.
- ~~1.5 In addition to a Unified Licence, the Licensor reserves the right to award/allocate Licences to offer specific services like Mobile Number Portability (MNP) services and such other services as may be recommended by TRAI from time to time.~~
- 1.5 Unified Licence will not, *per se*, carry with it any access spectrum. A holder of Unified Licence, other than District level Unified Licence, may separately obtain spectrum as per the prevailing policy.

VTL Submission:

- a. **District Level Unified Licenses would lead to fragmentation which will demand access to all resources as well. This would also lead to problems in monitoring and enforcement of such licensees. However, incase it is considered as a category Chennai being a Metro should also be excluded**
- b. **IP-1 should be kept out of the purview of the licensing regime as it would not only be against the provisions of the Indian Telegraph Act but would also inhibit the growth and rollout of the sector. We note that the DoT decision announced on 15 February 2012 has deferred its decision to bring IP-1 under the licensing regime.**
- c. **Clause 1.5 is not in the purview of a UL, hence, should be removed.**

- d. UL will not carry access spectrum per se. However, point to point links as per conditions of clause 43.4 of UASL would be required for any UL seeking access spectrum, a provision should be actively built in the new/migration UL.

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

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

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

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



Table - Minimum Net-worth requirement for various Unified Licences

Type of Licence	Net-worth requirement	Total Minimum Net-worth required for more than one Licence areas
National Level Unified Licence	Rs 25 Crore	
Services area level Unified area	Rs 2.5 crore for each service area	(Rs. in crore) 2.5 x Number of Services areas for which either LOI/Licence have been issued and applied for in the name of applicant.
District level Unified Licence	Rs. 25 lac for each district.	(Rs. in lac) 2.5 x Number of Districts for which either LOI/Licence have been issued and 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 net worth shall mean the sum total, in Indian Rupees, of paid up equity capital and free reserves. While counting Net-worth, foreign currency shall be converted into Indian Rupees at the prevalent rate indicated by the Reserve Bank of India as on the date the application is received.

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

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

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

VTL Submission:



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

3. Application Procedure

- 3.1 The applicant company shall pay a processing fee of Rs. 100,000 (Rs. One Lac) for National level Unified Licence, Rs. 50,000 (Rs. Fifty Thousand) for Service area level Unified Licence and Rs 15, 000 (Rs. Fifteen Thousand) for District level Unified Licence.
- 3.2 The applicant company shall submit the application in duplicate in the prescribed Application form for each licence area separately.
- 3.3 Incomplete application shall be rejected and the processing fee will not be refunded.
- 3.4 The complete application shall be decided, within 60 days of submission of the application and the applicant company shall be informed accordingly.
- 3.5 ~~Licensor reserves the right to accept or reject any application without assigning any reasons.~~ In the interest of transparency and fair play the licensor should explain/ justify the reasons for rejecting any application.
- 3.6 In case the applicant is found to be eligible for grant of Unified Licence, a Letter of Intent (LOI) will be issued. The applicant shall be required to deposit Entry Fee and submit Bank Guarantees / other documents and sign the licence agreement within a period as mentioned in the letter(LOI) from the date of issue of the letter (LOI) failing which the offer of grant of licence shall stand withdrawn at the expiry of permitted period.
- 3.7 The applicant company will be required to pay one time non-refundable Entry Fee before signing the license agreement, based on Letter of Intent (Lol).

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

VTL Submission:

- a. Rejection of applications should be done after sufficient time has been allowed for correction of the same.
- b. We suggest that compliance with license conditions should be a part of the Articles of Association that lay down the rules and not a part of the Memorandum of Association which lays down the objects of the company.

4. Entry Fee

4.1 One time nonrefundable Entry fee for Unified Licence shall be:

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

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

5. Scope of the Licence

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

- a. The scope of the license cannot be lower than the scope of the existing access, NLD, ILD, ISP, VSAT, re-sale of IPLC, GMPCS, INSAT-MSS, PMRTS and Radio Paging licenses combined. These may include but are not limited to G collection, carriage, transmission and delivery of voice and/or non-voice MESSAGES over LICENSEE's network in the designated

Response on draft guidelines for Unified Licence / Class Licence
and Migration of Existing Licences

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 its own licenses service area or in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised/directed by Licensor otherwise.

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

- b. Unified licensee 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_ 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 services which otherwise require a separate licence.

VTL Comments

- (1) 5.1 b clause would require further clarifications would be required with respect to procedures to be adopted for importing wireless equipment incase a UL does not acquire any access spectrum.

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

Response on draft guidelines for Unified Licence / Class Licence
and Migration of Existing Licences

communication by Satellite (GMPCS) services, Very Small Aperture Terminal (VSAT) services, Resale of IPLC and INSAT Mobile Satellite System (INSAT-MSS) Reporting Service, in specified service area for which licence is given. Service area level Unified licensee will be allowed to apply for National level Unified Licence.

~~d. District level Unified Licence shall permit the licensee to offer any or all of the telecom services mentioned in Para 5.2 in the district for which licence is given. However, a District level Unified licensee shall not be permitted to offer NLD, ILD, GMPCS, VSAT & Resale of IPLC, INSAT MSS and wireless access service. Also, these licensees would not be entitled for assignment of spectrum resources for access services. District level Unified Licence will not be given for Metro districts.~~

VTL Submission:

- a) **Operator should be allowed to provide any of the services listed above using any technology using allocated spectrum, either by creating their own network or using roaming facility**
- b) **We reiterate that 'District Level Unified License' will lead to too much fragmentation and is not required. If at all allowed, the scope of the District Level Unified license should be restricted only to wireline services. They should not be allowed to offer any wireless service using any spectrum including de-licensed spectrum**

6. Ownership of licensee company

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

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

7. Duration of Licence

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



8. Renewal of Licence

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

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

9. Suspension/revocation/termination/Surrender of Licence

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

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

VTL Submission:

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

10. Penalty

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

Type of License	Minor violation	Major violation
National Level	Not exceeding Rs 5 Crore	Not exceeding Rs 50 Crore

Response on draft guidelines for Unified Licence / Class Licence
and Migration of Existing Licences

Service Area Level	Not exceeding Rs 2 Crore	Not exceeding Rs 20 Crore
District Level	Not exceeding Rs 10 Lacs	Not exceeding Rs 1 Crore

VTL Submission:

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

Financial Conditions

11. Fees payable

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

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

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

VTL Submission:

- a) **We suggest a uniform license fee of 6% of AGR on all the services provided under the unified license. However, it should be ensured that the services provided under a class license & license through Authorization be subjected to license fees at the same rate to avoid any regulatory arbitrage.**
- b) **We would like to suggest that the license fee be de-linked from the USO contribution. At present, the annual license fee levy includes a 5% contribution towards USO. The objectives of these two levies are different – the license fee is an annual levy for operating the license whilst the USO levy is a contribution to a subsidy for facilitating universal availability of telecom services.**
- c) **Hence, the USOF levy should be de-linked from licence fee and should be gradually reduced with time. It is important to note that even with lowering of the USOF levy; there will be no loss of revenues to the exchequer as revenues of the mobile segment are growing at a robust pace.**
- d) **Further, since, the unified licensee will be providing a bouquet of services which may or may not require spectrum for provision of services, it should be ensured that WPC Charges are only levied on the revenue from services using the Spectrum. The revenue from services which do not utilize the spectrum should not be subjected for payment of any WPC Charges. The same is also required to ensure due parity in the regulatory costs for the services provided under class license and the unified license.**
- e) **Minimum licensee fee without any spectrum allocation is not required, since there are no resources that are blocked. Moreover, the entry fee itself is sufficient to ensure that some meaningful activity occurs within the license.**
- f) **Further, it is also recommended to bring in more clarity and justice to the items to be included in the definition of Gross Revenue and Adjusted Gross Revenue. The following should merit the consideration of regulator as a way forward:**
 - **Gross Revenue should include only revenue from telecom services i.e. only from licensed activity.**
 - **Deduction shall be allowed on Accrual Basis as revenue on accrual and expense on paid basis creates a mismatch which is against the principal of Matching Concept.**
 - **In case the IP-1 service providers are being brought under licensing, there should be no license fees on the revenues earned by the licensee for the provision of IP-1 Services or alternatively, allow the costs incurred (revenue passed to IP-1 Service Providers) by the**

Telecom Service provider be allowed as deduction while calculating AGR. This would avoid imposition of double license fees.

- **Deduction should also be allowed towards amount paid / payable to content service providers and channel broadcasters.**

12. **Bank Guarantee**

12.1. The Financial bank Guarantee (FBG) shall be equivalent to the Licence Fee payable for two quarters. The minimum annual Licence Fee is 10% of the entry fee, therefore, for new entrants, initially FBG shall be for an amount of Rs. 1 (One) crore for National level Unified Licence, Rs. 10 (Ten) lac, 5 (Five) lac and 2.5 lac for metro/category A, B and C Service area level Unified Licence respectively. For District level Unified Licence the FBG shall be Rs. 75,000 (Seventy Five thousand). The amount of FBG shall be reviewed on six monthly basis by licensor and subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to Licence Fee for two quarters, ~~and other dues not otherwise securitized and any additional amount as deemed fit by the Licensor.~~

VTL Submission:

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

13. **Merger of Unified Licences**

13.1 Merger of Unified Licences may be permitted as per guidelines issued by DoT

from time to time.

General Conditions

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

VTL Submission:

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

Technical Conditions

17. The LICENSEE shall be responsible for, and is authorized to own, install, test and commission all the Applicable system for providing the Services under this Licence agreement.
- ~~18. The licensee shall make its own arrangements for Right of Way (ROW).~~
- ~~19.~~18. Licensee shall make its own arrangements for all infrastructures involved in providing the service and shall be solely responsible for installation, networking, operation and commissioning of necessary equipment and systems, treatment of subscriber complaints, issue of bills to its subscribers, collection of its component of revenue, attending to claims and damages arising out of his operations.



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

~~21-20.~~ In case of provision of bandwidth by the Licensee through the satellite media, the Licensee shall abide by the prevalent Government orders, directions or regulations on the subject like satellite communication policy, V-SAT policy etc.

~~21.~~ Sharing of active/passive infrastructure shall be as per the guidelines issued by the Licensor from time to time permitted. MSS sharing for NGN networks will be permitted provided.

VTL Comments:

1. The DoT has already permitted Passive infrastructure sharing as per clause 33 of the existing UASL. This should be included in the Unified License as well.
2. DoT in its guideline dated 2nd April 2008 had permitted active infrastructure sharing with scope defined as also included in these draft guidelines clause 5.1 b. This should also be included in this unified license.

~~22.~~ The LICENSEE shall ensure adherence to the National FUNDAMENTAL PLAN which includes National Numbering, routing and Transmission plan issued by Department of Telecommunications and technical standards as prescribed by LICENSOR or TRAI, from time to time. The only national published plans relevant to the licensees are National Numbering Plan 2003 & the NFAP (National Frequency Allocation Plan), and adherence to only these should be prescribed.

Operating Conditions

24. The licensee providing access service, shall provide independently or through mutually agreed commercial arrangements with other Service Providers, all public utility services including TOLL FREE services namely police, fire, ambulance or any other emergency number as may be specified by the Licensor from time to time. While providing emergency services such as police, fire, ambulance etc. it shall be ensured that such calls shall be delivered to the control room of the concerned authority for the area from where call is originated.

25. **Interconnection**

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

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

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

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

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

26. **Quality of service**

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

27. **Security Conditions**

27.1 The Licensee shall comply with the security conditions interalia relating to

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

VTL Submission:

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

B. Additional Guidelines for Spectrum assignment associated with Unified licence

VTL Submission:

- a) **We feel that since the Unified License has been proposed to be de-linked for Spectrum the Spectrum related conditions may be dealt with separately through the auction related terms and conditions.**



II & IV. Class Licenses & Migration to Class Licenses

VTL Comments: We have no comments to offer on the issue of Guidelines for Class Licenses

III. Migration of Existing Licence to Unified Licence

VTL Comments:

- a. There may be cases where a group company holds a NLD, ILD and ISP License along with UAS License for few service areas, while its other group companies are holding UAS Licenses for different service areas. On migration to Unified Licensing regime, such a situation will arise that the Group Company will have All India Unified License that will overlap with the Service Area Unified Licenses of its other Group Entities for the respective Service Areas. This overlap of licenses which is occurring due to legacy issues should not create any inadvertent conflict /violation of existing laws/provisions. Thus clarity on this issue is required
- b. The cross holding restrictions have been basically included to avoid hoarding of spectrum and are only provided for the licenses having either bundled spectrum such as UASL/CMTS or are imposed on other kind of licensees such as ISP when they have been allocated BWA spectrum.
- c. In view of the above, we would like to submit that the substantial equity restrictions should instead be applied ONLY to spectrum holdings so that it is clearly stipulated that no entity can bid/apply for spectrum in a service area where a group company has already been allocated/assigned spectrum, i.e. the spectrum assignment is restricted to only one company in a service area.



V. Issues for Consultation

Q2. 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)

For Unified Licence, we are of the opinion that Unified license should be awarded on National and Service area level only. District level Unified license should not be permitted.

IP-I need not be brought under the ambit of Unified License.

Q3. 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)

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Q4. 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)

We are of the firm opinion that there is no need of classification of violations. The violation to the terms and conditions of the license should be dealt in accordance of natural justice, wherein licensee should be give a fair chance to represent and accordingly financial penalty should be imposed. Our detailed comments are included with the relevant clause of the draft guidelines.

Q5. 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?

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Q6. Whether Voice mail/Audiotex/UMS services and Radio paging should continue to be under licensing regime?

We believe that licenses for services like Voice mail / Audiotex / UMS services and radio paging should be allowed under the framework of Licensing through authorization.

Q7. Is there any other service(s), which needs to be brought under licensing regime?



Draft Guidelines is quite broad and service neutral and there is no necessity of bringing any specific service under a licensing regime.

- Q8. 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?**

Reference to Section 4 of Indian Telegraph Act 1885, the Central Government exclusively has the right of granting licenses, therefore in our view licenses may be granted by the Central Government.

- Q9. 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.**

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

Further, no license fee should be levied, as creation of passive infrastructure like towers and dark fibers is a civil construction activity and not a telecom network activity.

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.

- Q10. 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.**

Government may put cross holding restriction between various Unified licensees where spectrum holding is involved. In case, if IP-I registered companies are brought under the ambit of Unified license then amount of equity held by any



Response on draft guidelines for Unified Licence / Class Licence
and Migration of Existing Licences

shareholder in these companies shall be allowed subjected to the cross holding restrictions applicable for the same.

