

bharti airtel Ltd.
india & south asia
airtel center, plot no. 16,
udyog vihar, phase - IV,
gurgaon - 122 015

www.airtel.in
call+91 124 4222222
fax +91 124 4248063

Dated: February 24, 2012

No. RP/FY 11-12/067/001



To,

Secretary
Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
J.L. Nehru Marg, (Old Minto Road),
New Delhi - 110 002

Kind Attention:- Shri Sudhir Gupta, Pr. Advisor (MS)

Subject: Draft Guidelines for Unified Licence/Class Licence and Migration of Existing Licences

Ref: Consultation No. 03/2012

Dear Sir,

This is with reference to TRAI's Consultation Paper on the subject matter. In this regard, kindly find enclosed our response for your kind consideration.

Yours Sincerely,
For Bharti Airtel Ltd.

A handwritten signature in blue ink, appearing to read 'R. Gandhi', is written over a blue horizontal line.

Ravi P. Gandhi
Vice President
Head Regulatory Policy
India and South Asia

Bharti Airtel's Response to TRAI Consultation Paper on Draft Guidelines for Unified Licence/ Class Licence and Migration of Existing Licences

We welcome the Authority's initiative for seeking operators' comments on draft guidelines for Unified Licencing Regime and migration of existing licences. Our detailed response to the Consultation Paper is enclosed as below:

1. Kindly give your response to each clause of chapter I to IV above.

Airtel's Response to Q1:

Migration to Unified Licence/ Class Licence:

In 2003, when UASL regime was implemented, none of the operators were forced to migrate to UASL, therefore even today, CMSP and BSO licence exists. We would recommend that the migration to the Unified Licence (restricted)/ Unified Licence / Class Licence (restricted)/ Class Licence should be optional and the operators **should not be forced to migrate to the new licencing framework.**

The migration of licence should be a bilateral agreement and all terms and conditions should be put for the consultation beforehand. Therefore, we suggest that the draft Unified Licence agreement should be put up for consultation and comments of the operators before finalization. Further, TRAI should also specifically recommend to the DoT that any amendment to the Unified Licence in future should also be bilateral.

The migration of existing licences to Unified Licences should not affect the various approvals such as FIPB approvals, authorizations and other clearances etc. obtained by the licensee. All existing approvals/ authorizations/ clearances should automatically be extended upon migration and the same should be stated in the guidelines and licences.

The existing numbering plan, point codes, network codes etc. for each service may be continued under the new regime upon migration. The operators should be allowed to continue providing any services as indicated in the scope of licence using any technology, by using the allocated spectrum, either by creating their own network or using roaming facility.

There is also the issue of different effective dates for different licenses. It is suggested that migration to unified license may look at re-setting the clock afresh and propose that all licenses, those acquired at an earlier date and those acquired at a later date, be made co-terminus. Upon migration the Unified License should be extended qua the 3G spectrum to 20 years from the Effective Date on existing terms without any charges.

Following issues also need due consideration and resolution before the guidelines for unified licencing are finalized:

A. Migration Plan:

The migration plan should adhere to the principles of “Level Playing field” and “No-worse off situation” for any operator while ensuring that the investments made by various operators such as UASL/NLDO/ILDO/ISP etc. are protected. Migration should also ensure continuity of service & resource allocation such as spectrum, numbering scheme etc. A detailed migration plan for each type of licence along with payment/refund of entry fee, penalties, licence fee, spectrum usage charge, network interconnection points etc. shall be formulated before the announcement of the policy of unified licencing.

- **Refund of the entry fee:** TRAI has proposed not to refund the entry fee during migration in case the old entry fee is higher than the new licence entry fee. This will create a non-level playing field between the new and old operators.

For example, an operator who has obtained a licence in the past for 20 years by paying significant amount of entry fee which gets reduced for the new operators, the older operator will be at a competitive disadvantage position as it has already paid a larger entry fee than the new operator.

Therefore, it is suggested that in case the entry fee for the unified licence is lower than the actual entry fee paid by any operator then the **difference of the entry fee should be refunded on prorated basis for the unexpired term of the licence**. If, any licence is rendered needless in the post migration scenario e.g. NLD/ILD Licence post migration of UASL to pan India Unified Licence, then the entry fee paid for that licence shall be refunded for the unexpired term of the licence or adjusted with the future payouts of licence fee/spectrum usage charge.

- **Spectrum Usage charge:** The present allocation of spectrum and charging thereof is Circle based. Due to differences in quantum of spectrum allocated, there is different percentage of revenue share for spectrum usage charge. We would suggest that the operators should continue spectrum usage charge as per the circle wise holding of spectrum. The following also merits consideration while we move to the unified licencing regime:

- a. Spectrum Usage charge on the auctioned spectrum: Internationally, whenever the price of the spectrum is derived through auction, the recurring spectrum charge is levied only to recover the administrative cost;

We therefore suggest that the spectrum usage charge for the auctioned spectrum should be kept minimum to recover only the administrative costs. This will be in line with the international best practices.

- b. Removing ongoing arbitrage on spectrum usage charge: Presently, there is an existing arbitrage over 2G spectrum recurring charges. For example, if one 2G operator holds 9.4MHz in 900MHz & 1800MHz together, they pay the spectrum charge @ 6% of their entire revenue. However, another 2G operator holdings 9.4MHz in 800MHz & 1800MHz pay the spectrum charge @3%;

On two occasions in the past, including its recommendations in Aug.'07, TRAI had recommended maintaining parity over 2G spectrum recurring charges, by proposing the following scheme of spectrum usage charge for dual technology operators:

"4.31 The other issue related to the spectrum charges/fee payable by such operators who have opted for use of multiple technologies for providing access services. Here again, the spectrum charges/fee will be governed by the combined total of spectrum allocated in different technology specific bands, i.e. the slab of spectrum charge/fee would be determined by the combined total of spectrum."

However, this recommendation of the TRAI was neither accepted by the DoT nor it was referred back to TRAI in compliance with the fifth proviso to Section 11 of the TRAI Act, for its reconsideration;

Therefore, we would request TRAI to recommend correction of this anomaly.

- c. Spectrum Usage Charge to be levied only on wireless services using access spectrum: In the present Unified Access Service/CMTS Licence the revenues from the services other than wireless services using the access spectrum is also included in AGR while calculating spectrum usage charge. To correct this anomaly, we would suggest that **the revenue from only those services which are provided using that spectrum should only be included in AGR for the purpose of spectrum usage charge.**
- **Licence Fee:** TRAI has not indicated the licence fee percentage. However, has stated that from second year onwards, the minimum licence fee would be 10% of the paid entry fee. We suggest a LF of 6% of AGR.

B. Interconnection:

- At present the Inter circle calls i.e. STD calls are routed through NLD operators. After migration to pan India Unified licence, NLD licence would not be required for a pan India unified licensee.

- As the circle/district based unified licence cannot build a network outside their geographical territory, therefore the pan India unified licensee shall be allowed to carry their calls to and from their geographical areas.
- Since, the allocation of spectrum and numbering resources as well as the deployment of networks is on a circle basis, we would suggest the interconnection to continue at the circle level.
- The point of interconnection shall be left for mutual negotiation between the operators. However, every Point of Interconnection (PoI) shall always be in the common area of geographical jurisdiction of both the interconnecting licensees i.e. both the end of a PoI should lie the common area of jurisdiction of the two interconnecting operators.
- For a national level unified licensee, it should be mandatory to have point of presence in each circle for the purpose of interconnection.
- Each operator shall identify and declare the point of termination of call in their network and allow termination of call at that PoI. In case it requires any further carriage of call, then it shall be the responsibility of the terminating operator.
- It shall be mandatory for each operator to provide the interconnection for termination of the calls in its network.
- In case any operator is unable to have a direct connectivity with other terminating operator then it can use the carriage services of any other operator. However, it should be the exclusive choice of the originating operator to choose its carrier network and terminating operator should not deny termination of the calls from any carrier network.
- The Interconnection Usage Charge/Termination charge between the operators shall be on the principle of cost recovery.
- Any operator including BSNL/MTNL should not have any favorable interconnections rules than other operators. Currently, the interconnection agreements between PSUs and private operators are skewed in favour of PSU operators. We suggest that the new Unified Licence should remove this anomaly.

Since, the introduction of Unified Licencing and subsequent migration of the existing licensees to Unified Licencing may lead to a comprehensive change in the interconnection scenarios, we would request the Authority to have a detailed consultation to review the interconnection regime as well the Interconnection Usage charges simultaneously.

C. Infrastructure sharing:

Infrastructure sharing should be allowed between all services/networks if any operator holds the Unified Licence as well as the Class Licence/Licence through Authorization.

Draft Guidelines for Unified Licence/ Class Licence:

Please refer to Annexure 1 & Annexure 2 for clause wise response to draft guidelines.

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

Airtel's Response to Q2:

A. Licencing of Infrastructure Provider - I (IP-I):

A Telecom licence is granted by the Government under Section 4 of the Indian Telegraph Act 1885 for allowing a licensee the privilege of "*establishing, maintaining and working telegraphs.*" While the Infrastructure Providers provide the passive infrastructure such as Dark Fiber, Duct space, Tower, building etc., they do not have the privilege of establishing, maintaining and working telegraphs and hence, rightly operate under a registration instead of a licence.

IP-I registered companies are engaged primarily in the Towers and building space for housing the BTS equipments and laying ducts and dark fiber cables. The provision of 'Towers' by the IP-1 registered companies cannot be termed as 'Telegraphs' as it does not fall within the definition of 'Telegraph' provided under the Indian Telegraph Act, 1885. IP-1 registered companies are allowed only to provide the infrastructure, or in other words, to house the telegraph equipment namely the transmitter and receiver, on behalf of the telecom licensee.

'Tower' is purely an arrangement to raise the height of transmitting and receiving antennas, which can alternatively be done by installation on the roof top/walls of the high-rise buildings.

In case when the antennas are mounted on the building instead of any structure like tower then can the owners of those building be mandated to obtain a telecom licence for construction of those buildings? Therefore, it will be improper to include infrastructure companies having IP-1 registrations within the ambit of licencing under Section 4 of Indian Telegraph Act 1985.

Further, bringing IP-1 registrants under Licencing Regime and imposing any Licence fee on IP-1 companies would lead to an increase in their cost structure, which would then be passed on to the licenced Telecom Service Providers, thereby increasing their

costs. The present revenue sharing regime only envisages the sharing of revenue earned by a licensee on account of provision of services to the customers and does not envisage sharing of costs of the telecom service providers. The payout to infrastructure providers being cost of licenced service providers should not be brought under the revenue sharing regime else would tantamount to double licence fee.

DoT in its reply to the Authority dated 29th Oct, 2008 has already opined that as per the statutory provisions the activity pertaining to installation of towers does not qualify for grant of licence and had rejected the Authority suggestion to bring the IP-1 under the licencing regime stating the following:

" The revenues and profits from such activities attract necessary statutory charges as applicable e.g. income tax, corporate tax etc. Higher valuation cannot be a reason to bring IP-1 under licencing regime."

The infrastructure providers should therefore not be brought under licencing regime.

Further, urban tele-density has reached almost 100% and the major operators are in the process of making investments in rolling out the networks in rural areas. The rollout of broadband network is another big challenge in front of operators. The sector needs a policy to boost investments in telecom infrastructure and incentives on infrastructure sharing. Therefore the continuation of registration policy for IP-1 companies should be viewed in that direction; as any licencing of IP-1 would be a retrograde step to the Government's vision to increase infrastructure sharing and to make the mobile services ubiquitous especially in the rural and the remote areas of the Country.

Therefore, infrastructure related activities such as Dark Fiber, Duct space, Tower, building etc. should continue to be out of the purview of the telecom licencing framework.

Without prejudice to above submission, if at all Authority decides to bring the IP-1 under licencing regime then the same should be under a Licencing through Authorization and not a Unified Licence. In the event of licencing of IP-1 companies, either there should be no licence fees on the revenues earned by the IP-1 companies or alternatively the costs incurred (revenue passed to IP-1 companies) by the Telecom Service provider be allowed as deduction while calculating AGR. This would avoid imposition of double licence fees.

The reference is also drawn towards the consultation paper issued by TRAI on Unified Licencing Regime in 2004 wherein a specific question regarding licencing of IP-1 was put up in the following words:

“...Please also comment whether IP-I, IP-II, VSAT and GMPCS services should be part of Unified Licencing Model or they should be licenced separately? Should IP-I and IP-II services be licenced at all?”

After detailed deliberations on the issue with all the stakeholders, TRAI in its recommendations dated January 13, 2005 on Unified Licencing had placed IP-1 operators under “Licencing through Authorization” with nil entry fee/ licence fee, Bank Guarantee etc. It may be appreciated that there has been no material change since the last recommendations and we would therefore request the Authority to adopt its earlier recommendations and migrate IP-1 to only “Licencing through Authorization” with nil entry fee, licence fee, BG etc.

B. Unified Licence:

Unified Licencing regime should be implemented, keeping in mind the legacy of the existing framework and be adhered to the principles of “Level Playing field” and “No-worse off situation” for any operator. The terms and conditions prescribed under the new licences should not be inferior to those contained under the existing licences so as to ensure that the interest of existing operators are not adversely affected.

National Level Unified Licence:

We agree with the scope proposed by TRAI except IP-1 should not be included in Unified Licence. The scope of a unified licence should also include the present scope contained in various licences existing today i.e. UASL/CMTS, NLD, ILD, VSAT, ISP, ISP-IT, ISP(2007 guidelines), Cable Landing Station, E-mail, Audiotext/Videotext/Unified messaging, PMRTS, GMPCS, INSAT-MSS etc.

Service area Level Unified Licence:

Service area Level Unified Licencing would be typically the present UASL. It should allow all the services including Internet/Internet Telephony presently allowed under the scope of UASL.

District Level Unified Licence:

We do not agree to the proposed District level Unified Licence as it will lead to too much fragmentation.

If at all the district level unified licence is allowed, **the district level licensee should not be allocated any spectrum.** Therefore, the scope of the District Level Unified licence should be restricted only to wireline/Fixed Line services. If it is allowed to offer any wireless services such as Wi-fi, Wimax, cordless, Mobile or Limited Mobile etc. then it will lead to following problems;

- Spectrum allocation at district level will be very inefficient.
- The number of issue related to geographical coverage boundaries would be very high and unmanageable.
- Restricting the mobility within and outside the district will be almost impossible.

C. Class Licence:

The scope of the class licence should include VSAT, INSAT- MSS, E-mail, Audiotext/Videotext/Unified messaging, Radio Paging and PMRTS.

The services proposed to be provided by the class licensee can also be provided by the Unified Licensee. However, if there is a difference in Licence Fee for “Unified Licence” and “Class Licence” then it would lead to a competitive distortion.

Therefore we would suggest;

- a) Licence Fee for the “Unified Licence” and “Class licensee” should be same; **OR**
- b) The Licence Fee/Revenue Share on the revenue from any kind of services should be same irrespective of whether it is provided under a “Unified licence” or under a “Class Licence”; **OR**
- c) A unified licensee or its associate companies should be free to get the class licence in addition to the unified licence to also enable them to provide these services under the “Class Licence’ instead of “Unified Licence”.

3. What in your opinion, are the actions that should be classified as minor violation and major violation? (Clause 10 of draft guidelines for Unified Licence)

AND

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)

Airtel’s Response to Q 3&4:

At the outset, we appreciate the Authority’s initiative to deliberate upon this critical issue and come up with an idea of differential penalty amount for minor and major violation.

There have been several instances in the past where DoT had imposed the maximum penalty even on the minor operational issues and in many cases such mechanical imposition of penalty has been done without even providing any proper hearing or sufficient time to the telecom service provider to send the data. In some cases the operational correspondence by the TERM cells at the circles with the operational teams have been treated as a substitute of show cause notice while imposing the penalty.

In order to eliminate the subjectivity during the imposition of any penalty, it is important that a broad understanding of minor Vs major violation be determined. Any kind of violation which arises out of routine operation of network and provisioning of services such as Subscriber Verification, Quality of Services, Interconnection, Call Routing, Data Storage, Provisioning of Data, Equipment Testing, Routine approval for the new VAS etc shall be treated as Minor violation. Any violation should be treated as a Major violation only when it has resulted in a serious security breach or is due to the willful act which has resulted in substantial loss to the exchequer

In order to have a penalty which act as a deterrent for the service provider to comply the terms and conditions of the licence and at the same time does not seriously impact the sustenance of the service provider, we would suggest the following;

- A Standing Committee with representatives from DoT, TRAI, Industry Associations and Academia is formed to look into the matters of violations. The committee should go into the merits of a particular case and should be empowered to seek any data/documents. This committee on the principles of natural justice provides the proper opportunity to the Licencee before deciding the imposition of any penalty and its quantum.
- Whenever DoT/TRAI carries out any investigation for breach or violation of licence condition, the service provider should be provided an opportunity with reasonable time frame to provide the necessary data/ documents, after the said violation has been told/explained.
- A reasoned show cause notice should also be served upon the telecom service provider enabling it to be aware of the concerns and violations being observed by the Licencor. This should be followed by the personal hearing to/by the experts.
- Any report of the investigation should clearly spell out whether the violation has taken place due to:
 - a. Technical fault without any wrong intention.
 - b. Malafide intention.
- Any penalties should only be imposed while disposing off reply to show cause notice and personal hearings. The penalty notice should be a speaking order and should clearly indicate as to why the standing committee and then subsequently Government did not agree with telecom operator's views.

Further, Hon'ble Supreme Court of India in its decision (dated Feb 02, 2012 regarding cancellation of 122 licences issued in 2008) have imposed only Rs 50 Lakhs as maximum penalty on the telecom operators in case of major violation leading to cancellation of their licences. Hon'ble Supreme court observed that:

“Respondent Nos. 4, 6, 7 and 10 shall pay cost of Rs.50 lakhs each because they too had been benefited by the wholly arbitrary and unconstitutional exercise undertaken by the DoT for grant of UAS Licences and allocation of spectrum in 2G band.”

Therefore the maximum penalty in case of any violation of a Unified Licence should be considerably lower than proposed in the consultation paper and the provision of imposition of penalty should only be invoked as a last resort and should be in proportion to any loss suffered by the government.

It may be worthwhile to mention that while there was no provision for imposition of penalty in the CMTS licence issued in 2001 or before, the provision for imposition of 50 Crores penalty was unilaterally imposed on the operators while migrating the CMTS licence to UASL in 2005 without any recommendations/ consultation by TRAI.

The Authority would appreciate that the Hon’be Minister for Communication and IT has also suggested DoT to adopt a rational and scientific criteria for levying any penalty. We therefore request the Authority to have a separate consultation on this matter to deliberate on the classification of major and minor violations and issue the detailed guidelines to avoid operators being victim of very high penalties being imposed. The resolution of this issue is very important as the penalties not only put stress on the profitability and sustainability of operators but also reduces the affordability of services due to the simple fact that the general penalties imposed on all operators are actually passed on to the every customer.

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

Airtel’s Response to Q5

The Infrastructure providers (IP-1) and OSPs should continue to be under Licencing through Authorization/registration.

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

Airtel’s Response to Q6:

Yes, Voice mail/ Audiotex/ UMS services and Radio paging should continue to be under licencing regime as the services provided are essentially telegraph services as governed by the provisions of Indian Telegraph Act, 1885.

Post migration to unified licence, these services can either be provided by the “Unified Licence” or by “Class Licence”. We would suggest that the licence fee/revenue share on these services should be same irrespective of these services provided either by Unified Licence or under Class licence.

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

Airtel’s Response to Q7:

Any Telecom Service which requires the licence under Indian Telegraph Act and is not covered by “Class Licence” shall be covered under the National Unified Licence.

8. In the new Licencing 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?

Airtel’s Response to Q8:

No comments

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 Licencee 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.

Airtel’s Response to Q9:

No comments, in view of our submission that the IP-1 should not be brought under licencing regime.

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.

Airtel's Response to Q10:

Yes, we agree with the proposed condition. The cross holding restriction should only apply if both the Unified Licencee have been allocated access spectrum in the same service area.

To further clarify, the cross holding restrictions should not apply in case of a national unified licensee not holding access spectrum in a particular service area where other national unified licensee or service area licensee holds access spectrum. No two unified licensees having access spectrum in the same area should not be allowed to have cross holding.

In case of two licensees holding spectrum in the same service area, directly or indirectly through its associates/sisters concerns/ subsidiaries or any other group company, the allowed cross holding of 10% should be reviewed and reduced to 0% to ensure that this particular clause is not misused in future.

We would suggest that the clause 29 of the draft guidelines for unified licence should be replaced with the clause as below:

"At the time of applying/bidding for spectrum, no single company/ legal person having any equity in the applicant company, either directly or through its associates, shall have an equity holding in any other company having Unified /UAS/CMTS/Basic Licence holding Access (2G, 3G, BWA etc) spectrum in the same service area."

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

Airtel's Response to Q11:

Vide table in Annexure - 1, the comments on the draft guidelines have been submitted, following are the additional issues which merits consideration:

1) Accounting Separation Report (ASR):

With Unified licence being technology neutral, the requirement of ASR loses its significance.

The licence being technology neutral will mean the use of common assets between different types of services. This will lead to complexity in allocation of Capex between different Services. Further, the bifurcation of services into various sub-components will not only lead to complexity of issues but will also lead to issues on true and fair value of the allocations.

Hence in the new regime the requirements of ASR should be dispensed off with or suitably amended to bring out the impact of unified licencing.

2) Centralized and On line Payment Mechanism

With the unified licencing regime there should be a move towards centralizing and on-line payment mechanism for both Licence Fees and WPC Charges. This will save time and cost both for the Operators and the Government/ Licencor, besides doing away with administrative issues.

Bharti Airtel's Response to Draft Guidelines for Unified Licence

Our comments on the draft guidelines for Unified Licence are attached as indicated in the table below:

| S. No. | Section | Comments |
|--------|------------------------|--|
| 1. | Framework | <p>In general we agree to the categorization of Unified Licence between National Level and Service Area level</p> <p>However, we do not agree to the proposed District level Unified Licence as it will lead to too much fragmentation.</p> |
| 2. | Eligibility Conditions | <p>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.</p> <p>It is therefore suggested that instead of prescribing a FDI limit in the licence, the same should be governed via the FDI policy of the Government and the changes there in.</p> |
| 5. | Scope of Licences | <p>We agree with the proposed scope of the Unified Licence at the National level Unified licences for the reasons already deliberated in detail in the main response to the consultation paper. However the IP-I should not be licenced.</p> <p>The National Unified licensee should be allowed to provide any telecom service including but not limited to the scope of services allowed under UAS/ CMTS, NLD, ILD, ISP (2007 guidelines), ISP-IT, VSAT, Cable Landing Station, E-mail, Audiotext/Videotext/Unified messaging etc. as proposed in the draft guidelines.</p> <p>The scope of the Service Area Level Unified Licencing would be typically the present UASL. It should allow all the services including Internet/Internet Telephony presently allowed under the scope of UASL.</p> <p>We do not agree to the proposed District level Unified Licence as it will lead to too much fragmentation. If at all the district level unified licence is allowed, it should not be allocated any spectrum. Therefore, the scope of the District Level Unified licence should be restricted only to wireline/Fixed Line services. If it is allowed to offer any wireless services such as Wi-fi, Wimax, cordless, Mobile or Limited Mobile etc. then it will lead to following problems;</p> <ul style="list-style-type: none"> • Spectrum allocation at district level will be very inefficient. |

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| | | <ul style="list-style-type: none"> • The number of issue related to geographical coverage boundaries would be very high and unmanageable. • Restricting the mobility within and outside the district will be almost impossible. |
| 7. | Duration of Licence | We agree with the duration of licence of 20 years |
| 8. | Renewal/ Extension of Licence | <p>The term renewal may be replaced with extension as the term used in the present license is “extension.”</p> <p>It is also suggested that the extension may be given for 20 years at a time, instead of the 10 years as provided under the current licenses as DoT has been auctioning spectrum rights for 20 years and it would be logical that the underlying operating license has similar tenure/duration.</p> <p>It will also be rational that if spectrum is allocated for 20 years to an entity under an auction then its corresponding Unified License be extended simultaneously up to that period.</p> <p>The Spectrum being allocated to the licensee via market based mechanism for a period of 20 years. The licensee holding spectrum should have the right of first refusal upon expiry of spectrum rights. In case the entity decides not to exercise their option to renew, the spectrum should be auctioned again in a fair and transparent manner wherein the entity who did not exercise its option, is also allowed to participate.</p> |
| 9. | Suspension/ revocation/ termination/ Surrender of licence | <p>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.</p> <p>It is therefore suggested that the existing provision be maintained in the proposed regime.</p> |
| 10. | Penalty | The detailed response with regards the penal provisions has been put forth in the response to Q2 & Q3 of the consultation paper. |
| 11. | Licence Fees & WPC Charges | a) It is submitted that the term Annual Gross Revenue be replaced by Adjusted Gross Revenue (AGR) which is the term presently used in the licence agreement for better clarity and |

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| | | <p>understanding.</p> <p>b) We propose the Licence Fee and Spectrum Usage Charge to be applied on the principle of ad valorem duty in which the revenue paid to any other Telecom Service Provider for obtaining the input services such as IUC/Roaming/Bandwidth/International Bandwidth Connectivity/Last Mile etc. should be excluded/ deducted while arriving to the AGR.</p> <p>c) We recommend a uniform licence fee of 6% of AGR on all the services provided under the unified licence. However, to avoid any arbitrage, it should be ensured that the services provided under a “Class licence” & “Licence through Authorization” be subjected to licence fees at the same rate as of “Unified Licence” and vice versa.</p> <p>d) We would also 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.</p> <p>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.</p> <p>e) 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 levied only on the revenue from services provided using the Access Spectrum.</p> <p>The revenue from services which do not utilize the spectrum should not be subjected for payment of any WPC Charges/Spectrum Usage Charge. This is required to ensure due parity in the regulatory costs between the two unified licensees, one having spectrum and other not having spectrum, while providing the same services. This is essential to ensure the level playing field.</p> <p>f) 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 TRAI as a way forward:</p> <p>i. Revenue should only include revenue from telecom</p> |
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| | | <p>services i.e. only from licenced activity.</p> <p>ii. The revenue on accrual and expense on paid basis creates a mismatch which is against the principal of Matching Concept. Therefore, while calculating the AGR the deductions shall also be allowed on Accrual Basis.</p> <p>In case the IP-I service providers are being brought under licencing, there should be no licence 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 licence fees.</p> <p>It is therefore requested that the definition of AGR should be reviewed keeping in mind the above issues.</p> <p>Also, the Statement of Revenue and Licence Fees in its present form is very lengthy as well as cumbersome and does not serve any purpose beyond the computation of Licence Fees and WPC amount. Segregation of revenue under various components as per the present format does not impact the calculation of Licence Fees and WPC charges. Keeping in mind the spirit of Unified Licence, which being technology neutral, it is proposed that the AGR statement may be simplified .</p> |
| 12. | Bank Guarantee | <p>In some other sector of economy, e.g. the bidding for oil blocks, the companies with a net worth in excess of a particular limit have been exempted from the requirement of BG. The requirements of bank guarantees should also be done away with in case of telecom sector as well.</p> <p>Alternatively, DoT may, instead of Bank Guarantees, accept Corporate Guarantees from Licensees having a net worth of more than Rs. 10,000/- Crore and are in telecom business for a period of more than 5 Years in India. The requirement of BG shall be continued in other cases.</p> |
| 16. | The Licensee shall comply with any order issued by the Licensor OR any order, direction, determination or regulation as | <p>It is submitted that the right of the Licensor to unilaterally amend the Licence should only be confined to specific circumstances of national security. Exercise by the Licensor of this unilateral right must be demonstrably and explicitly justified.</p> <p>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.</p> |

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| | may be issued by TRAI from time to time | |
| 22. | Sharing of active/passive infrastructure shall be as per the guidelines issued by the Licensor from time to time | Infrastructure sharing should be allowed between all services/networks if any operator holds the Unified Licence as well as the Class Licence/Licence through Authorization. |
| 23. | 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 | It is submitted that the only plans relevant to the operators are the National numbering plan & NFAP (National Frequency Allocation Plan), and adherence to only these should be prescribed. |
| 25. | Interconnection | <ul style="list-style-type: none"> • Interconnection issues require resolution while migrating to the Unified licencing which can be National, service Area or district based. The following is therefore recommended: • At present the Inter circle calls i.e. STD calls are routed through NLD operators. After migration to pan India Unified licence, NLD licence would not be required for a pan India unified licencee. • Since, the spectrum and numbering resources are allocated on a circle basis as well as the networks are deployed on a circle basis, we would suggest the interconnection to continue at the |

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| | | <p>circle level.</p> <ul style="list-style-type: none"> • As the circle/district based unified licence cannot build a network outside their geographical territory, therefore the pan India unified licensee shall be allowed to carry their calls to and from their geographical areas of the Circle Based Licence. • For a national level unified licensee, it should be mandatory to have point of presence in each circle for the purpose of interconnection. • The point of interconnection shall be left for mutual negotiation between the operators. However, every Point of Interconnection (PoI) shall always be in the common area of geographical jurisdiction of both the interconnecting licensees. • It shall be mandatory for each operator to provide the interconnection for termination of the calls in its network. • In case any operator is unable to have a direct connectivity with other terminating operator then it can use the carriage services of any other operator. However, it should be the exclusive choice of the originating operator to choose its carrier network and terminating operator should not deny termination of the calls from any carrier network. • The Interconnection and its usage charges between the operators shall be on the cost basis. • Any operator including BSNL/MTNL should not have any favorable interconnections rules than any other operators. Currently, the interconnection agreements between PSUs and private operators are skewed in favour of PSU operators. We suggest that the new Unified Licence should remove this anomaly. <p>Since, the introduction of Unified Licencing and subsequent migration of the existing licensees to Unified Licencing may lead to a comprehensive change in the interconnection scenarios, we would request the Authority to have a detailed consultation to review the interconnection regime as well the Interconnection Usage charges simultaneously.</p> |
| 27. | Security Conditions | <p>We would like to highlight certain challenges faced by the industry while implementing Security related policies. For example - The subscriber verification guidelines prescribe certain mandatory documents as POI, POA etc as pre requisites for acquiring a customer. Due to limited availability of these documents amongst the rural population, it is becoming increasingly difficult to acquire customers in rural areas. To ensure viability of telecom in the rural areas the policy should review the</p> |

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| | | <p>various alternatives for subscriber verification and simplify the requirements.</p> <p>The following submissions should be considered to enable Operators to comply with the existing requirements on network security:</p> <ul style="list-style-type: none"> a) Security controls, audit mechanism and inspections should be mandated only for high risk systems. b) Since the related elements in the telecom networks are already Common criteria certified, the same should be accepted as certified. c) Vendors capable of performing testing conforming to the relevant standards should be able to certify the equipment. d) Labs of reputed international vendors having establishments in India should be allowed to perform testing from April 1, 2013. e) 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. f) 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. g) A rational criterion may be developed for sharing of costs beyond a threshold limit between Government and the service providers in implementing security measures rather than mandating it via the licencing conditions. |
| 34. | <p>Unified Licensees who will be assigned spectrum, will be required to comply with roll out obligations as applicable, with attendant incentives and penalty as linked to allotment of that particular spectrum block</p> | <ul style="list-style-type: none"> a) It is submitted that the roll out obligations be specified at the time of grant of spectrum only. There should be no change in roll out obligations at a later date. b) There should be no spectrum usage charges for the spectrum acquired via market based mechanism |

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| | as may be specified at the time of allotment of spectrum or as may be specified from time to time | |
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Bharti Airtel's Response to Draft Guidelines for Class Licence

Our comments on the draft guidelines for Class Licence are attached as indicated in the table below:

| S. No. | Section | Comments |
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| 1. | Framework | We agree with the class licence framework as proposed by TRAI. |
| 2. | Eligibility Conditions | <p>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.</p> <p>It is therefore suggested that instead of prescribing a FDI limit in the licence, the same should be governed via the FDI policy of the Government and the changes there in.</p> |
| 5. | Scope of Licences | <u>The scope of the class licence should include VSAT, INSAT-MSS, Radio Paging and PMRTS.</u> |
| 7. | Duration of Licence | We agree with the duration of licence of 20 years |
| 8. | Renewal/ Extension of Licence | <p>The term renewal may be replaced with extension as the term used in the present license is "extension."</p> <p>It is also suggested that the extension may be given for 20 years at a time, instead of the 10 years as provided under the current licenses</p> |
| 9. | Penalty | The detailed response with regards the penal provisions has been put forth in the response to Q2 & 3 of the consultation paper. |
| 10. | Licence Fees & WPC Charges | <p>The services being provided by the class licensee can also be provided by the Unified Licence. Any kind of difference in Licence Fee for the services provided by the Unified Licences and class Licensee would lead to a competitive distortion. Therefore we would suggest;</p> <p>a) Licence Fee for the "Unified Licence" and "Class licensee" should be same; OR</p> <p>b) The Licence Fee/Revenue Share on the revenue from any kind of services should be same irrespective of whether it is provided under a "Unified licence" or under a "Class</p> |

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| | | <p>Licence”;OR</p> <p>c) A unified licensee or its associate companies should be free to get the class licence in addition to the unified licence to also enable them to provide these services under the “Class Licence’ instead of “Unified Licence”.</p> |
| 22. | Sharing of active/passive infrastructure shall be as per the guidelines issued by the Licensor from time to time | Infrastructure sharing should be allowed between all services/networks if any operator holds the Unified Licence as well as the Class Licence/Licence through Authorization. |
| 23. | 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 | It is submitted that the only plans relevant to the operators are the National numbering plan & NFAP (National Frequency Allocation Plan), and adherence to only these should be prescribed. |
| 26. | Security Conditions | <p>The Operators are already providing requisite support to the LEAs through various measures. It is submitted that technical feasibility and trials are conducted prior to mandating any requirement on a pan India Basis.</p> <p>A rational criterion may be developed for sharing of costs beyond a threshold limit between Government and the service providers in implementing security measures rather than mandating it via the licencing conditions.</p> |