

TELECOM REGULATORY AUTHORITY OF INDIA

**Summary of Comments
On
The Consultation Paper (No. 99/2)
On
License Fee and Terms & Conditions of the
License Agreement For GMPACS Service**

September 9, 1999

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CHAPTER – I

INTRODUCTION

1. The TRAI had issued a Consultation Paper (No. 99/2) on "License Fee and Terms & Conditions of the License Agreement for Global Mobile Personal Communications by Satellite (GMPCS) Service" on 27th July 1999. The Consultation Paper presented various issues relevant for licensing of GMPCS service. Even though the basis of this Paper was the Provisional License Agreement entered into with the Iridium India Ltd., the issues were approached in a generic manner so as to solicit views of all stakeholders, before formulating the recommendations of the TRAI to the Government. Clauses/ conditions of the Provisional License Agreement for GMPCS service were analysed in the Paper to flag relevant points for initiating public debate. An attempt was made to present the alternate draft of the License Agreement by restructuring and rationalising the terms & conditions of the Provisional License Agreement. Certain substantive issues having a bearing on the rationale for levying license fee as a percentage of the revenue share were also raised in the Consultation Paper for debate. Some of the Issues for Public debate included the following:

- a. NTP 1999 envisages one-time entry fee and annual license fee as a percentage of revenue sharing for the GMPCS Service. However, the policy does not lay down any guideline for its quantification. What should be the basis of license fee structure (in terms of fixed and/or variable components) for the GMPCS service?
- b. What should be the definition of Gross Revenue?
- c. What items of receipts appearing in the total turnover have to be excluded in arriving at the Gross Revenue?
- d. What mechanism should be prescribed for independent verification of the declared Gross Revenue?
- e. Since mobile handset would be sold as a proprietary item in the initial years and its usage would be specific to a particular GMPCS network, should the sales proceeds thereof be included as an integral part of the network revenue?
- f. What should be the modalities for payment of License fee i.e.,
 - Initial payment;
 - Quarterly or half- yearly instalments;
 - Due dates for payments;
 - Interest for delayed payments;
 - Basis for quantification of revenue during the financial year pending annual audit of accounts;
 - Final reconciliation of the License Fee payable based on audited annual accounts.

2. Valuable comments from all concerned were received on the issues raised in the Consultation Paper, including comments on the restructured License Agreement. A summary of these comments under the broad

categories enumerated above is presented in this Document in a **bulleted gist** form. In line with the transparent process of decision making, the TRAI proposes to hold Open House Sessions at different places to publicly debate these comments before formulating its recommendations on the matter. The date, place and venue of Open House Sessions to be held at different places would be notified separately.

Summary of Comments on the GMPCS Consultation Paper

Issue 1. NTP 1999 envisages one-time entry fee and annual license fee as a percentage of revenue sharing for the GMPCS Service. However, the policy does not lay down any guideline for its quantification. What should be the basis of license fee structure (in terms of fixed and/or variable components) for the GMPCS service?

Comments Received

- The license fee in what so ever form is fixed by the Government should be such that it does not artificially lower the price of GMPCS services as compared to Cellular Services. (DOT)
- No reason to impose high license fee as these projects are highly capital intensive with huge up-front investments. Possibility of non-serious players entering the field is almost nil. (ACS)
- One time entry fee should be derived to cover the administrative cost directly attributable to cover the individual license.(TCIL, TransCapital) It should not exceed Rs. One Crore. (ASC)
- Consider GMPCS as an infrastructure project and provide exemption from payment of license fee for 5 years. (TCIL)
- Annual fees only if certain costs (such as for USO) are required to be incurred on a recurring basis and not covered by the fixed component. It can at most be around 1% of the gross revenue. However, no license fees in the initial 2 years of the service commencement. An additional waiver for 3 years for home-based satellite systems. (ASC)
- Entry fee and revenue sharing for GMPCS should be set slightly higher than that for FSPs and CMSPs in view of much larger service area within which the GMPCS service can be offered. (BPL Mobile)
- VSNL agrees to the logic of restricting the entry license fee to cover only the administrative costs incurred in the issue, management, control and enforcement of the license. (vsnl)
- One time entry fee between Rs. 50 lakhs to a maximum of Rs. 1 Crore. (AceS)
- Huge investment required in the business and risk involved is a natural deterrent for the non-serious players. Too high entry fee may become a barrier even to the serious players desirous of entering the market. The levy of license fee should not put financial burden on the operator as it retards the network expansion. In keeping with the NTP 1999 directives, Rs. 50 lakhs may be the entry fee and 5% of the revenue as recurring annual license fee. (VSNL)
- An alternate license condition can be such that for every 250 GMPCS subscribers, the GMPCS provider shall provide a satellite payphone booth in a remote village at the subsidised rate of the DOT. (VSNL)
- Besides entry fee, any additional charges may be levied by way of revenue sharing in case the degree of competition is limited and there is scope for rental gains to the operators. Since in GMPCS there is unlimited competition, the question of mopping up the rents should not arise. (VSNL)
- If at all a recurring License fee has to be levied, it may be levied on the operating margin of the Service Provider Company, i.e. on the total revenue from operation under the license net of all charges payable for down-stream distribution, interconnection charges to PSTN charge etc. (VSNL)
- Since unlimited licenses are envisaged in the GMPCS service, nominal license fee should be charged. One time entry fee of Rs. One Crore. (IITL)
- Countries that have adopted for revenue sharing do not charge more than 2% of the gross revenue. 16% for revenue sharing is very high. It should be in the range of 1 to 1.5% of the gross revenue generated out of the airtime service rendered in India. (IITL)
- Entry barriers have no relevance in the GMPCS service. Low revenue sharing percentage in initial

years and graded increase in subsequent years as the business develops. Service will not be viable at 16% revenue share. Indonesia charges 1% of gross revenue as license fee, Malaysia charges 0.08%. (Mr. A. M. Joshi)

- Industry is facing competition from the existing service of INMARSAT. This service has low license fee. A level playing field needs to be ensured. (IITL)
- Though the NTP 1999 did not envisage raising resources for the Budget through the license fee, but differential service tax can appropriately be levied on affluent users. This will enable to fix lower charges for the rural subscribers. (VSNL)
- In keeping with trends in other countries, one time license fee of Rs. 5 lakhs be there for GMPCS. No annual license fee. If the Government is bent upon charging license fee on annual basis, it should not be more than 1 to 3 % of the gross revenue be the license fee. (Inmarsat)

- As has been argued in Para 57, the huge investment required in the business and risk involved would be a natural deterrent to the non-serious players. However, VSNL envisages a reasonable amount to be charged as entry barrier to stop entry of non-serious players. On the other hand, a too high entry fee may become a barrier even to the serious players in entering Indian market. (VSNL)

- NTP 1999 states that the Telecom licenses should be granted subject to the payment of an entry fee and a share of revenue. These are issues having a wider relevance than their application solely in the context of GMPCS services. They are relevant to India's approach to licensing in the telecommunications industry generally and accordingly common principles should be devised. They should also recognise that the higher the licence fees, the greater is likely to be the adverse impact upon the end-user and upon accessibility of telecommunication services. Having regard to the question of entry fee, there is little case for such a fee other than to have the cost of issuing licenses reimbursed. Some regimes go further and use entry fees as some kind of a guarantee as to the substance of an applicant and a measure of its bonafides. That is a reasonable principle if it is felt necessary to resort to such a measure. Given the costs involved in providing the GMPCS service, the bonafides of potential operators is unlikely to be in question. However, a modest charge consistent with the approach adopted across the industry should not prove an issue. (British Telecom)
- The revenue share arrangement should be established on a basis which has an application across the entire telecommunications industry. There are two approaches to determine the revenue share. One approach, which can be regarded as the purest approach is that a revenue share could be struck at a figure sufficient to meet the cost of operation of the industry regulator. Under a more expansive approach, the levy figure determined should be sufficient not only to meet the cost of the industry regulator but also the cost of USO. This levy would produce an amount sufficient to meet the cost of providing telecommunication access in non-economic areas, as well as meeting any losses arising from providing service to those areas. If this approach is followed, there would be no need for a separate USO levy as referred to in the NTP 1999 (BT).

Issue 2. What should be the definition of Gross Revenue?

Issue 3. What items of receipts appearing in the total turnover have to be excluded in arriving at the Gross Revenue?

Issue 4. What mechanism should be prescribed for independent verification of the declared Gross Revenue?

Comments Received

- Definition of Gross Revenue should be simple, easily audited, and rule out any manipulations. It can include income accruing to the service provider, interconnect access charges, sale of user terminals, WPC charges for spectrum passed on to WPC, Payment for USO, Payment to VSNL for gateway operations, obligatory bypass charges, roaming revenues collected on behalf of other GSM operators and passed on to them, service tax, sales tax, etc. (ASC, BPL Mobile)

- Sale of proprietary items such as GMPCS handset be included in the Gross Revenue for calculating license fee (DOT, BPL Mobile)
- Gross revenue should include the rentals and call charges revenue earned by the operators in provisioning the GMPCS service. (BPL Mobile)
- Since all calls originating or terminating from the mobile terminals in India shall pass through the gateway located in India, all the calls from the GMPCS will get recorded at the gateway. The accounts of gateway provider can be checked on a sample basis. An escrow account mechanism be put in place to ensure collection. (BPL Mobile)
- Gross revenue is after settlement with PSTN, CMSPs, and VSNL. (TCIL)
- Gross revenue to be less of cost of hand sets, interconnect charges and roaming interconnect charges (TransCapital)
- TRAI to also verify the accounts independently through its own auditors. (TransCapital)
- The auditor can verify declared gross revenue at the end of the financial year. (VSNL)
- Gross revenue measured on all revenues accruing to the licensee by rendering services under the license, except the revenue from the handset may complicate the whole exercise. The Gross Revenue should be Total Revenue from the operation under the license, less payments to the system operators, down-stream distributors, interconnection charges to PSTN operators and sale proceeds of mobile handsets. (VSNL)
- Gross revenue should deduct PSTN interconnect charges, service provision charges paid to the service providers like CMTS operators. But Gross revenue to include monthly access charges, activation fees, revenue from other value added services. (IITL, Inmarsat)
- The definition of an appropriate revenue concept – one, which does not permit avoidance through being too narrow but does not levy charges on inappropriate types of revenue through being too wide, is an issue which has been addressed by number of other regimes. Information from Australia, Hong kong and Singapore, in this regard, will be of relevance. (BT)
- Operators should be required to provide a verification statement prepared by an independent auditor. (BT)
- Mechanism for independent verification of the declared Gross Revenue as proposed by the TRAI in Paragraph 67 of Chapter IV of the Consultation Paper. (AceS)

Issue 5. Since mobile handset would be sold as a proprietary item in the initial years and its usage would be specific to a particular GMPCS network, should the sales proceeds thereof be included as an integral part of the network revenue?

Comments Received

- Sales proceeds of handsets should not be included as part of network as the sale of handset as an activity is an adjunct to the provision of GMPCS service and is not the main business. (ASC, BPL Mobile, VSNL, IITL)
- Difference between selling cost and cost of handsets can contribute towards the GMPCS license revenue, in case the handset is a proprietary item. (TCIL)
- Sale of handsets to form part of revenue. (TransCapital)
- The sale of proprietary items e.g. GMPCS handsets etc. should be included while estimating **Gross Revenue** for the purpose of calculating license fee payable by the service providers to the Government. (DOT)
- Revenue from the sale of equipment would represent a very small part of an operators' revenue. There is no reason why revenue from the sale of handsets should not be added to the relevant portion in assessing revenue. (BT)

Issue 6. What should be the modalities for payment of License fee i.e.,

- **Initial payment;**
- **Quarterly or half- yearly instalments;**
- **Due dates for payments;**
- **Interest for delayed payments;**
- **Basis for quantification of revenue during the financial year pending annual audit of accounts;**
- **Final reconciliation of the License Fee payable based on audited annual accounts.**

Comments Received

- Initial payment at the time of grant of license (ASC, IITL)
- Initial payment within six months of signing the license agreement. (VSNL)
- Annual fee as percentage of gross revenue (ASC)
- If it is only one time payment, it can be paid in two equal instalments – first on signing of License Agreement, and the second within a year of commencement of the service. (TCIL)
- Annual license fee be paid on quarterly or half-yearly on pro-rata basis of previous year's revenue with necessary adjustment at the end of the financial year. (VSNL)
- License fee be paid on quarterly basis. Initial payment as per operator's accounts. Reconciliation based on audited annual accounts. (BPL Mobile)
- Interest could be charged on market rate for delayed payments. (BPL Mobile)
- Interest could be charged at the PLR of the SBI. (VSNL, IITL)
- License period for 15 years, with an extension of 5 years at a time. (Inmarsat)
- License period for 15-20 years.(TCIL)
- License period for 20 years, with an extension of 10 years at a time. Actual extension letter be issued at least one year in advance. (Iridium ITL)
- Interest for delayed payment to be charged at 2% per month or part thereof. (TransCapital)
- Due date for payments be 30 days from the end of every quarter in the first year and the end date of every quarter from the 2nd year. (VSNL)
- Entry fee to be paid before commencement of service. However, Bank Guarantee for this amount of the entry fee should be paid at the time of signing the License, which should get converted towards Entry fee when the service commences. (AceS)
- Quarterly self-declaration report be the basis for payment of license fee on revenue sharing. (IITL)
- Quarterly payment on 31st July, 31st October, 31st January and 30th April. (IITL)
- Gross Revenue to be declared on accrual basis. Interest payable on the positive difference of audited revenues @ 2% per month on final adjustment. In case there is variation of more than 5% between revenue reported and revenue verified the service provider must pay penalty of 3% per month on the amount of default. (TransCapital)
- Basis of quantification be previous year's revenue, and final reconciliation be done after annual accounts are audited. (VSNL)
- No additional charges for spectrum. Money charged for license to cover spectrum charges also. (Inmarsat)
- Entry fee is seen as a one time payment for the right to enter the market and as such, it is appropriately paid when the license is issued. (bt)
- Revenue share payments should be payable in arrears allowing for delays inherent in the retail billing and payment cycles as well as in determining inter-industry revenues and charges. It is suggested that a six-monthly cycle for payment would be a reasonable approach for all parties with the payment made being two calendar months after the end of the relevant period. (BT)
- Interest should be payable on any payment not received by the appropriate date with recourse to the license conditions in any case where payment is significantly late. (BT)
- While progressive payments will vary from the final audited liability, these payments should be as accurate as possible. To ensure this objective, it may be possible to devise a provision whereby a penalty is incurred if the interim payment understates the final calculation by more than a significant percentages. (BT)

Issue 7. Other Issues

- GMPCS service not only enhances the mobility offered today through GSM, but, in developing countries, it has a significant role as the per-line cost of GMPCS is the lowest compared to PSTN and PLMN. In India, GMPCS will fulfil the important objective of providing 'Universal Access'. (VSNL)
 - While NTP 1999 envisages to create an environment for '*continued investment in the telecom sector*' and '*speedy augmentation of the communication infrastructure*', it is not understood as to what way the NTP objectives are achieved by payment of one time entry fee and license fee as percentage of revenue share in the context of GMPCS services. It may be elaborated in the light of rationale put forward by TRAI in para 43 of the consultation paper. (VSNL)
 - GMPCS service results in bypass of the "Access Providers" and the "Domestic Long Distance Operators" for which they should be suitably compensated by the GMPCS service providers. (DOT)
 - Gmpcs service is a premium service and it should be made to contribute significantly higher percentage of its revenue, viz-a-viz other service providers to the USO fund to promote development of the telecom services in rural and backward areas, in addition to the contribution to the sector development through research and studies. (DOT)
 - As GMPCS is basically extending Cellular coverage, it should be considered as infrastructure project and should get the benefit of exemptions from Income Tax. (TCIL)
 - GMPCS service has the characteristics of coverage in the country permitting telecom services to be utilized from anywhere within the country at no extra cost of building or expanding infrastructure as for other services (like basic/cellular). Hence GMPCS be granted infrastructure status permitting reduction in import duty on Hardware/Software required for Gateway Equipments and User Terminals thereby substantially reducing cost to the end user.
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- Being an All India service, GMPCS service should be permitted to provide PCO services in the country, and allowed to meet the Universal Service Obligation utilizing Universal Access levy. (AceS)
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- TRAI should urge the Govt. of India to sign the GMPCS-MOU piloted by the ITU (Mr. A. M. Joshi)

Issue 8. Specific Comments on terms and conditions of the draft Restructured License Agreement for GMPCS Service presented in the Consultation paper of Appendix-IV.

LICENSE AGREEMENT

This AGREEMENT is made on the ____th day of (month) (year) between the **President of India** acting through Director (VAS-III), Department of Telecommunications (DOT), Sanchar Bhavan, 20 –Ashok Road, New Delhi – 110 001 (**hereinafter called the LICENSOR**) of the ONE PART

and

M/s XYZ Ltd., a company registered under the Companies Act 1956, having its registered office at _____ (hereinafter called the LICENSEE which expression shall, unless repugnant to the context, include its successor in business, administrators, liquidators and assigns or legal representatives) of the OTHER PART.

WHEREAS in exercise of the powers under Sub-Section (2) of Section 4 of the Indian Telegraph Act, 1885, the Central Government delegated its powers to 'Telecom Authority' (hereinafter referred to as "Authority") by GSR 806 Gazette of India, Part II, Section 3 (i) dated 24th August, 1985; and

WHEREAS pursuant to the request of the LICENSEE, the LICENSOR has agreed to grant this License to set up and operate GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE SERVICE (GMPCS) NETWORK and to provide GMPCS SERVICE in India. This License is valid for a period of _____ years from the date of issue (unless revoked earlier by the licensor) on the terms and conditions appearing hereinafter. Having agreed to accept the same, the LICENSEE shall abide by the terms and conditions set out in this license agreement and ensure compliance thereof including payment of licence fee retrospectively from the date of issuance of the provisional licence.

Comments:

- Delete the underlined word SERVICE (ACS)
- The license has to be only for provision of GMPCS service in India and it cannot be for operation of GMPCS Network. However, the obligation of System operator to the licensee company in India has to be recognized in the license agreement. (Mr. A. M. Joshi)

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

In consideration of observance of mutual covenant, the payment of licence fee, and due performance of all the terms and conditions on the part of the LICENSEE, the LICENSOR does, hereby grant, on a non-exclusive basis, the licence to establish and operate the GMPCS Network and provide Service, on the terms and conditions mentioned in this license agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed through their respective authorised representatives on the (day) (month), (year).

The Licensee hereby agrees and undertakes to fully comply with all terms and conditions stipulated in this

License Agreement without any deviation and reservation.

Signed and Delivered for and on behalf of President of India

By

Director (VAS-III), DoT

Signed on behalf of M/S XYZ Ltd. by Mr. _____, Managing Director, holder of General Power of Attorney dated xxx, 1999 executed in accordance with the Resolution No. ____ dated _____ passed by the Board of Directors of M/S XYZ Ltd.

In the presence of:

Witnesses:

TERMS AND CONDITIONS

1. Ownership of the Licensee Company

1. The LICENSEE shall ensure that the total foreign equity in the LICENSEE Company does not, at any time, exceed 49% of the total paid up equity. The details of the Indian & Foreign partners/promoters with their respective equity holdings in the LICENSEE Company (as on the date of the signing of the license agreement are given in the Appendix __). Any change in the Indian and Foreign partner(s) or their equity participation, which has the effect of changing the management control over the LICENSEE company or a shift in its legal entity shall not be made without the prior approval of the LICENSOR.

Comments

- **Licensee should be recognised by its corporate name and registration/incorporation as a legal entity. The very fact of its being a public limited company must be recognised necessarily with the characteristic free transferability of its shares. In this context following proviso may be added to the draft:**

"Provided that the change in equity, as referred to above, shall not mean or include

any change resulting from transfer of shares held by the public, whether comprising of natural or artificial persons, and shall mean and include only such change as would result in change in the effective management and control of the Licensee company." (ASC)

- o Licensee has been defined in paragraph 17 of Attachment I. License should be the service provider, who would pay license fee. There is no need to mention GMPCS operator. The ownership of 51% by an Indian Company may be feasible in case of service providers, but GMPCS satellite operators would in most cases be consortia wherein Indian companies are unlikely to have a majority share-holding. Applying ownership requirements seems irrelevant and unduly restrictive in terms of achieving policy objectives to make communication available everywhere. (Inmarsat)

Note: Format of the details to be furnished in the Appendix:

Sr.No	Name of Promoters/Technology Providers/Equity Holders	No. of Shares	Value of Shares	Indian/Foreign	Equity % age
1					
2					
3					

2. The Licensee shall disclose complete details on terms and conditions of the contract with his parent company/ satellite system provider including the contract with the foreign Government where the parent company is located. This information shall be furnished to the Licensor prior to starting operations in India and updated on a regular basis during the validity of the license.

Comments

- Only ITU approved GMPCS system should be considered for issue of license in India (IITL)

2. Scope of the License

1. The Licence is issued to provide Service as defined in Attachment I to this License Agreement on a non-exclusive basis i.e. other companies may also be granted licence for the same service at the discretion of the Licensor.

Comments

- **Add, however, on conditions not less burdensome/ more favourable than those imposed hereunder. (ASC)**

DOT on its own or through a designated Public Authority has the right to operate the service in any part/ whole of the country. Provided further that a pilot project may also be approved and licensed for any period by the LICENSOR for inducting a new technology or management techniques or both. However, before inducting any agency to provide the Service on commercial basis, the LICENSOR shall seek the recommendations of the Telecom Authority of India (TRAI) on the need and timing for introduction of the new service provider as well as the terms and condition of the license.

1. The LICENSEE shall clearly define the scope of **Service** to the subscriber(s) at the time of entering into contract with such subscriber(s). Any dispute with regard to the service shall be a matter between the subscriber and the licensee only. The licensee shall suitably notify the above to all his subscriber(s) before provisioning of the service. The DOT in its capacity as the Licensor as well as the service provider, MTNL, VSNL or any other service provider licensed to provide connectable systems shall be impleaded as a party in such disputes only when there is some prima facie instance of laches on their part subject to satisfaction of the Court/ Competent Authority.

Comments

- **DOT in its capacity as the service provider, MTNL, VSNL or any other service provider licensed to provide connectable systems should not be impleaded as a party in any dispute between GMPCS service providers and its subscribers. The Clause 2.2 of the draft suggested by TRAI needs to be amended. (DOT)**

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3. Delivery of Service

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3.1 The LICENSEE shall install and run Applicable Systems within X years (6 months or one/ two years) from the effective date of the license; and offer the service on demand to its customers unless any extension in time for commissioning of service has been duly approved by Telecom Authority for reasons to be recorded in writing. Commissioning of service shall mean providing commercial service to customers. The extension of time, if granted, shall not have any effect on the due date for payment of licence fee.

Comments

- **Service to commence within one year from the effective date of license. (AceS)**

- **Service to commence within six months of the effective date or within such other period as is mutually agreed on the basis of the progress in implementation of the Applicable system, its national and international co-ordination status and financial commitments made. (ASC)**

4. Network

1. The Licensee would furnish information regarding the type of the Satellite System (using the constellation of GEO or MEO or LEO satellites) and the type of the GMPCS service (Global or Regional) to be provided through its Network. The launch schedule of the Satellite System is _____(TO BE SPECIFIED).
2. The LICENSEE shall be responsible and is authorised to install, test and commission all the equipment to provide the GMPCS service.
3. The Licensee is also authorised to own, install and commission GMPCS Gateway(s) that shall be operated and maintained by Videsh Sanchar Nigam Limited (VSNL) or an agency authorised by the Government. The gateways will provide ground infrastructure comprising of satellite earth stations, switching equipment, and associated control electronics. The LICENSEE will be given the choice to establish the number of gateways.

Comments

- **While there is in principle agreement with the above clause, following suggestions may be included:**
 - **that the operation and maintenance of the gateway should be the responsibility of the Licensee. This will enable the network to function more smoothly and reduce day to day operational problems. From the security and control angle the following terms could be stipulated:**
 - a. **The gateway shall be located at a place authorised by the Licensor.**
 - b. **The gateway operations should be carried out by Indian Nationals only.**
 - c. **The Licensor retains full right to inspect the gateway at any time.**
 - d. **The government can take over the operations and maintenance in case of emergency etc. or if it finds that the Licensee is not adhering to any of the Licence conditions.**
- **The Government has already allowed private parties to own and operate VSAT hubs. Recent ISP policy allows ISPs to operate their network. Similar arrangements may be allowed to TV uplink stations. In these cases sufficient protective clauses from security point of view have been built in. Hence there is no reason why such an arrangement in the case of GMPCS cannot be adopted. (ASC)**

- **In addition, GMPCS customer in India should be served from the Gateway located in India only so that traffic so generated can be monitored and measured with a view to compensate DOT and VSNL suitably for the traffic bypassed by GMPCS operator. Enough safeguards must be there so that the network (satellite segment) provider does not switch the operation of India to any other gateway located outside India. (DOT)**
 - **GMPCS operators should not be compelled to have VSNL manage their gateway operations. GMPCS operators should be permitted to manage their own gateway facilities themselves. However, if the concern is that of national security, GMPCS operators should have to compulsorily provide monitoring facilities, as is being provided by CMSPs today. (BPL Mobile)**
1. The LICENSEE shall publicly notify pockets, if any, within the service area, which are not covered by the foot- print of the satellite for availability of service or for some other technical reasons.

5. Duration of License

5.1 The licence for operation of the GMPCS service shall be for a period of xxx years reckoned retrospectively from the date of the provisional licence, unless terminated for default or for insolvency or for convenience or for transfer of the licence in accordance with Condition stipulated in this License Agreement.

(THE PERIOD OF LICENSE IS TO BE DETERMINED BASED ON CONSULTATIONS).

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Comments

- **The license be initially for 20 years. (AceS, ASC, BPL Mobile)**
- **Change the word "provisional license" by the term "effective license". (ASC)**
- **Initial license for 10 year period. Thereafter extension to be granted for 10 years at a time. (IITL)**
- **License period should be at least 12 years with automatic extension for further 12 years except in case of default. (Mr. A.M. Joshi)**
- **License period of 15 years with extension of 5 years (Inmarsat)**

6. Extension of License

1. The period of licence can suitably be extended if requested by the LICENSEE latest by the end of Xth year from the effective date. The extension in the licence period will be granted by the LICENSOR for a period of years at one time after seeking recommendations of the TRAI in

accordance with the provisions of the TRAI Act, 1997. If, however, the extension is to be given on the same terms and conditions as per the existing license, no recommendation of the TRAI will be required. The decision of the LICENSOR shall be final in this regard.

Comments

- **The license be extendable for a period of 10 years. (AceS, ASC, BPL Mobile)**
- **Extension of license be requested by the end of 19th year from the effective date. (ASC)**

7. License Fee

1. The license fee is payable by the LICENSEE in consideration for grant of this license for the complete duration for which this license is in existence. The license fee has no relation to other mutual obligation(s) between the licensee and any other service provider (including DOT, MTNL or VSNL), Central or State Government, Local or statutory body.

Comments

- **One time entry fee of Rs. 50 lakhs to Rs. 1 Crore. (AceS)**
- **Entry fee to be paid before the commencement of the service. Bank guarantee for this sum to be paid at the time of signing the license agreement. (AceS)**
- **Variable component to be of the order of 1 to 1.5 % of the revenue. (AceS)**

8. Quantum of License fee and Schedule of Payment

1. The Licensee will be required to pay one-time Entry Fee of Rs XXX and an annual license fee at the rate of YY percent of the Gross Revenue generated from the service.

(THE QUANTUM OF ENTRY FEE AND THE PERCENTAGE OF REVENUE SHARE ARE THE SUBSTANTIVE ISSUES, WHICH WILL BE DETERMINED BASED ON PUBLIC CONSULTATIONS)

Comments

- **One time Entry Fee between Rs.50 lakhs to Rs. One Crore is proposed, and in any case the Fee should not exceed Rs.One Crore as stipulated in the Provisional License.(Aces)**
- **Variable Component**

AceS India proposes that the variable component levied should not be on the Gross revenue but on any one of the following options mentioned below and the percentage share of this revenue to be of the order of 1 to 1.5% which is generally the international norms as tabulated in Appendix VI of the TRAI Consultation Paper.

- a. **Net Revenue (Gross Revenue less mandatory charges paid to the Govt., Cellular/Basic operators and Air Time to Satellite owner).**

- o Interconnect charges
- o Access Charges
- o VSNL by pass charges
- o Basic/Cellular routing charges
- o Airtime payment to the satellite owner
- o License Fee (One time Entry Fee)
- o WPC fee

- a. **Earning Before Interest Depreciation and Tax (ebidt)**

(Net Revenue less expenses on following fixed/semi variable components)

- o Salary/Wages
- o Travel
- o Communication
- o Administration
- o Rental etc.

- a. **Profit Befroe Tax (PBT)**

(EBIDT less payments made on following account)

- o Interest
- o Depreciation

- a. **Profit After Tax (PAT)**

(PBT less Tax paid)

The percentage fee charged should ideally be on Profit after Tax (PAT) and in any case should not exceed Net Revenue. (ACeS)

- o Refer comments against Issue No.1 on quantum of license fee.

1. **Schedule of payment of licence fee :**

1. The Entry Fee of Rs. ____ Crore shall be paid in advance before signing of the licence agreement.

Comments

- **The one time Entry Fee should be paid before commencement of service. However, a Bank Guarantee to this effect should be paid at the time of signing License and this should get converted towards Entry Fee when Service commences. (ACeS)**
- **Refer comments against Issue No.6**
 1. The component of licence fee payable as a percentage of Gross Revenue, as specified in Condition 8.1, shall be paid in four quarterly instalments. The year for the purpose of levy of variable component shall be the financial year ending 31st March. The first year may, therefore, be less than 12 months in most of the cases. However, from the second year onwards, the year will be reckoned as the financial year with effect from 1st April to 31st March of the next calendar year.
 2. The quarterly instalments shall be paid by the end of the month following the quarter, i.e. the quarterly instalments shall fall due on 31st July, 31st October, 31st January and 30th April.
 3. The quarterly instalments of License fee shall be quantified on self certification basis by the Licensee and paid provisionally based on Gross Revenue for the relevant quarter. Final adjustment of the license fee for all the four quarters of the financial year shall be made on or before 30th June of the following year. Gross Revenue figures shall be certified by the Chartered Accountant engaged by the Licensee for auditing the annual accounts of its company.

Comments

- **Revenue sharing to be paid quarterly. (AceS)**

1. Any delay in payment beyond the time stipulated in Condition 8.2.3 will attract interest linked to the Prime Lending Rate (PLR) of State Bank of India, as notified from time to time. The interest shall be compounded at the rate(s) applicable for the period(s) of default. A part of the month shall be reckoned as a full month for the purposes of calculation of interest.

Comments

- **Agreed. (AceS)**

(AFOREMENTIONED CONDITIONS AT 8.2.1 to 8.3 WILL FINALLY BE DETERMINED BASED ON PUBLIC CONSULTATIONS)

1. Payments of licence fee becoming due and payable as mentioned in this license agreement shall be paid by the LICENSEE through a demand draft drawn on any Scheduled Bank in New Delhi in favour of the Pay & Accounts Officer (HQ), DOT.
2. If due payment is not received within the stipulated time, the outstanding license fee shall be recovered by adjustment of such unpaid amounts through the Bank Guarantee, after affording an opportunity to the Licensee. In addition, the LICENSOR may also initiate steps for termination of the licence in accordance with the provisions of this license after affording an opportunity to the LICENSEE and after obtaining the recommendations of the TRAI. This is without prejudice to any other remedy that the LICENSOR may decide to resort to.
3. The LICENSEE, in addition to paying the Licence Fee, will separately pay the full access charges for carriage of calls originating in his network but carried and terminated in the DOT/MTNL/VSNL/ Other Service Providers' networks at applicable rates from time to time. The LICENSEE shall also separately pay charges for network resources provided to the licensee on licensee's request by the DOT/ MTNL/ VSNL / other licensed providers, at the rates applicable from time to time. The access charges and the charges for network resources will be negotiated keeping in view the orders and regulations issued by the TRAI from time to time.

Comments

- **In addition, the licensee shall compensate to DOT/MTNL/VSNL/other service providers for the entire cost of upgradation/modifications required to be carried out in their network to meet the service requirement of GMPCS service providers". (DOT)**

9. Penalty for Default in Observance of Terms and Conditions

9.1 The LICENSOR reserves the right to impose any penalty as it may deem fit under the provisions of this agreement, in case of a default of any of the terms and conditions stipulated in the Licence Agreement.

10. Restrictions on Transfer of License

1. The LICENSEE shall not, without the prior written consent of the Licensor, either directly or indirectly, assign or transfer its rights as per this license in any manner whatsoever to any other party. The LICENSEE will also not enter into any agreement with any third party either in whole or in part for sub-licence and/or partnership for the provision of service as per this licence. Any violation of this shall be construed as a breach of Licence Agreement, which may even attract the termination of the license.

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Comments

- It is likely that certain parts of the system and the equipment will be operated by a contractor. For instance, the Gateways have to be operated by VSNL through an agreement. The following may, therefore, be added at the end of this clause:

"Provided, however, that installation and or operations of systems, equipment and network or parts thereof can be given on contract, but providing of the SERVICE cannot be given to another party on contract. Provided, further nothing herein contained will affect or prejudice the rights of the Licensee to enter into or operate under Service Provider Agreements with the telecommunications service providers or other arrangements for more effectively offering the Licensed Services." (ASC)

- VSNL is contemplating to form a Joint Venture Company for GMPCS Service Provision (of ICO Global) in India. Pending formation of the company, VSNL has submitted an application for Service License based on the GMPCS Policy declared by DOT in September 1998. Hence, it becomes imperative that Licensee may be allowed to assign, delegate on sub-contract the license to the JV Company formed within the regularly framework. This may be regularised, if TRAI feels so, based on a Tripartite Agreement as mentioned in Para 10 of terms and conditions contained in the draft Restructured format of License Agreement furnished in Appendix IV. (vsnl)
1. The written consent permitting transfer or assignment of the License may, however, be granted in accordance with the terms and conditions, and procedures described in **Tripartite Agreement** if duly executed amongst LICENSOR, LICENSEE AND LENDERS.

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Comments

- Agreed. (AceS)

(PUBLIC CONSULTATIONS SHOULD ALSO LEAD TO THE CONTENTS OF THE TRIPARTITE AGREEMENT).

11. Modifications in the Terms and Conditions of License

11.1 The LICENSOR reserves the right to modify at any time the terms and conditions of the license, if in the opinion of the LICENSOR it is necessary or expedient to do so in the interest of the general public or for the proper conduct of telegraphs or on security considerations or for extension of license. The LICENSOR will seek recommendations of the TRAI before effecting any such modifications in the terms and conditions of the License. The decision of the LICENSOR shall, however, be final in this regard.

12. Termination of License

1. The LICENSOR may, without prejudice to any other remedy for the breach of conditions of licence, by written notice of reasonable time issued to the LICENSEE at its registered office, seek termination of this license in whole or part under any of the following circumstances:

- a. In case the LICENSEE fails to commission or deliver the SERVICE within the time period(s) specified in the licence or in any extension thereof, if granted by the LICENSOR. However, this does not prevent the licensee from commissioning the service even after scheduled date of commissioning, provided the licence does not already stand terminated: or
- b. In case the LICENSEE fails to perform any other obligation(s) under the licence including remittance of timely payments of Licence fee due to the LICENSOR; or
- c. In case the LICENSEE does not rectify the failure, as may be pointed out to the LICENSEE, within a notice period of 30 days or during such further period as the LICENSOR may authorise in writing in this regard; or

d) In case the LICENSEE becomes bankrupt or otherwise insolvent. In that event, the LICENSOR may terminate the licence even without compensation to the licensee. Such termination shall not prejudice or affect any right of action, which has accrued or will accrue thereafter to the LICENSOR. The right of termination will arise on the LICENSEE being adjudicated or applying for being adjudicated as bankrupt.

Provided that the recommendations of the TRAI will be taken before revoking the License, which will not be binding on the LICENSOR. In the event the TRAI recommends the revocation of the license after affording an opportunity to the LICENSEE, the LICENSOR may give 30 days written notice to the LICENSEE for revoking the license. However, in the event the TRAI does not recommend the revocation but the LICENSOR still decides to revoke the license, a written notice of at least 90 days shall be given to the LICENSEE; or

1. If the LICENSEE intends to surrender the licence, it shall give an advance notice of XX days to the Licensor to this effect. If the service is in operation, the licensee shall also intimate its subscribers of consequential withdrawal of service by serving a XX days notice to them. Also the licensee shall be liable to pay the license fee till the end of the notice period.

(NUMBER OF DAYS OF NOTICE PERIOD TO BE DETERMINED BASED ON PUBLIC CONSULTATIONS)

Comments

- **30 days notice to be given by the licensee. (AceS, ACS)**

1. During the period when a notice for termination of licence is pending, the Quality of Service to the Subscribers as defined for the purpose shall be maintained. If the SERVICE quality is not maintained, (during the notice period), it will be treated as breach of licence conditions and will be dealt with as such.

13. Actions pursuant to Termination of License

1. In the event of termination of the licence, the LICENSOR may procure upon such terms and conditions and in such manner as deemed appropriate, the required resources and make up for those not installed, not delivered or not brought into commission so as to enable provision of SERVICE. The LICENSEE shall be liable to the LICENSOR for any excess/extra costs for such corrective efforts. The criteria for determining the terms and conditions for such procurement will depend upon the market prices prevailing at the time of procurement. The decision of the LICENSOR in this matter shall be final in all respects.

Comments

- **The above underlined portion be replaced by:**

"such required resources as had not been installed, delivered or brought into commission by the Licensee" (ASC)

1. Whenever the licence is terminated or not extended, the LICENSOR may in order to ensure the continuity of the SERVICE take such steps as are necessary including the following:
 - a. permit the Department of Telecommunications/MTNL or its successor to take over;
 - or
 - b. issue license to another Indian Company for running the SERVICE. The LICENSEE shall facilitate taking over by DoT/MTNL or the new LICENSEE all those assets as are essential for the continuity of the SERVICE. In such circumstances, LICENSEE shall receive from DoT/MTNL or the new LICENSEE, as the case may be, reasonable compensation for the assets made over.
1. In case for any reasons the service cannot be continued, priority will be given to refund the deposits made by the subscribers with the LICENSEE.
2. Any sum of money due and payable to the LICENSEE (including earnest money refundable to

the Licensee) under this licence may be appropriated by the Government or any other person or persons through the Government of India. The same may be set off against any claim of the Government or of such other person(s) for payment of any sums of money arising out of this licence or under any other licence made by the LICENSEE with the Government, or such other person or persons including TELECOM AUTHORITY contracting through Government of India.

3. The Financial Bank Guarantees shall be returned to the licensee company 6 months after the termination of the licence and after ensuring clearance of any dues which the licensee company is liable to pay, including the dues payable to the subscribers. In case of failure of the licensee to pay the dues the amounts will be realised through encashment of Bank Guarantee, apart from other action to recover the dues.

Comments

- o **The underlined portion may be replaced by**

"without prejudice to other action for recovery of amounts due to the LICENSOR not secured by the Bank Guarantee." (ASC)

14. Obligations imposed on the Licensee

1. The provisions of the Indian Telegraph Act 1885, the Indian Wireless Telegraphy Act 1933, and the Telecom Regulatory Authority of India Act, 1997 as modified from time to time including the Government of India Policy on Satellite Communications shall govern the license.

Comments

- **The above clause may be reworded/ replaced by**

"A separate license for establishment, maintenance and operation of wireless stations which includes GMPCS gateway(s) and mobile terminals, will be given by WPC Wing of the Ministry of Communications under Indian Telegraph Act, 1885." (ASC)

1. The Licensee shall furnish all necessary means and facilities as required for the application of provisions of Section 5(2) of the Indian Telegraph Act, 1885, whenever occasion so demands. Nothing provided and contained anywhere in this License Agreement shall be deemed to affect adversely anything provided or laid under the provisions of Indian Telegraphs Act, 1885 or any other law in force.
2. The LICENSEE shall not, in any manner whatsoever, transfer the licensing rights granted to it to

any other party. Any violation shall be construed as a breach of licence.

3. Establishment, maintenance and operation of wireless stations which includes GMPCS gateway (s) and mobile terminals shall be strictly subject to obtaining separate valid licence from WPC Wing of the Ministry of Communications under Indian Telegraph Act, 1885 under terms and conditions of that licence. Decision to grant such licence shall be governed by guidelines for such purpose which shall include, inter-alia, successful completion of national and international co-ordination, frequency availability, SACFA site clearance, appropriate clearances from other Ministries, payment of licence fee and royalty as decided by Government of India from time to time.

Comments

- **Grant of WPC license should be automatic once the DOT decides on GMPCS service provision license. Spectrum fee should be minimal and to promote efficient use of spectrum. (Mr. A.M. Joshi)**
- **No separate radio license fee. (Inmarsat)**

15. Interconnection

a) Network Connectivity

15.1 All calls originating or terminating or transmitting from Mobile terminal in India shall pass through the GMPCS gateway located in India. Such calls will not be routed through any other Gateway located outside India.

Comments

- **Keeping in view the Global connectivity of the GMPCS service it will be cost effective to the end user if the calls are routed optimally through onboard switches directly to the called subscriber. In such direct routing VSNL could be compensated as per TRAI's terms and conditions. (AceS)**

15.2 There will also be direct connectivity between each of the Licensee's gateway to the nearest technically feasible VSNL Gateway for all calls from GMPCS to other countries and from other countries to GMPCS except for the countries for which arrangements of routing calls from DoT's network exist.

3. The international inter-network calls will be routed through VSNL gateway except for the countries for which arrangements of routing calls to DoT's Network exist. Till the opening up of international long distance communications to competition, VSNL is to be compensated in case the Gateway is bypassed for any international long distance calls.

Comments

- **Terms and conditions on rate of compensation to VSNL for Gateway bypass be recommended by the TRAI. (AceS)**
- **There should not be any additional compensation to VSNL for calls within GMPCS system. Revenue received on the outgoing calls made by the GMPCS subscriber to overseas countries or incoming calls from overseas countries to GMPCS subscriber can be shared with VSNL/DOT for the local (inland) and international sector. (TCIL)**
- **The licensee should have option to seek interconnection to other International long distance carriers once the ILD communication is opened up. (IITL)**

15.4 All other interconnection issues pertaining to inter-network calls and connectivity to Gateways shall be subject to Orders/ Regulations issued by the TRAI from time to time.

Comments

- **To reduce last mile charges to the end customer for national inter-network calls, interconnect the Gateway to TAXes and switches of other service providers through leased line connectivity. (AceS)**

15.5 The LICENSEE and the interconnected network will mutually define interconnection performance standards in quantitative terms. The same will be based on the Orders/ Regulations issued by the TRAI from time to time.

b) Interface

6. The LICENSEE shall operate and maintain the licensed Network conforming to the interface standards of specified quality as laid down for connectivity to other operator's network. For the purpose of providing the SERVICE, the LICENSEE shall install his own equipment so as to be compatible with other service providers' equipment to which the licensee's Applicable Systems are intended for interconnection.
7. The additional telecommunication resources for the provision of the service and networking the geographically dispersed equipment of the LICENSEE shall be leased/ rented on mutually agreed terms from service providers including DOT, MTNL, VSNL or authorised Telecom Service providers. The same will be governed by the orders/ notifications of the TRAI issued from time to time on interconnection/ access charges.

Comments

- **The provision of additional telecommunication resources required for provision of the GMPCS services shall be on mutually agreed terms and conditions and need not be regulated by TRAI. (DOT)**
6. The charges for accessing other networks i.e. PSTN, PLMN etc. for inter-network calls shall be based on mutual agreements between the two service providers, subject to the Orders/ Regulations on interconnection charges/ revenue sharing arrangements as notified by the TRAI from time to time.

16. Tariffs

1. The tariffs to be charged by the licensee from subscribers of GMPCS Service in respect of Mobile-Mobile calls or Mobile-PSTN-Mobile calls or for any other service shall be in accordance with the rates and orders as notified by the TRAI from time to time.

Comments

- **TRAI should not control tariffs as it may lead to difficulties in a competitive market. Fixing of tariffs be left to service providers and be dictated by market forces. (Inmarsat)**
- **To add at the end of the above line:**

... giving due consideration to the adoption of anti-dumping measures as and when required. (AceS)

17. Customer Service

1. The LICENSEE shall provide the service to any individual or legal person, without any discrimination, unless directed by the LICENSOR in writing.

Comments

- **The following may be added at the end of the above clause. This will ensure that licensee does not accumulate bad debts on account of defaulting subscribers. This practice is adopted by cellular operators, credit card companies etc:**

"Provided, nothing herein contained will affect or prejudice the rights of the licensee to carry out commercial checks on creditworthiness of the prospective subscribers." (ASC)

1. It shall be the responsibility of the Licensee to issue or cause to be issued bills to the GMPCS subscribers for use of the service. The Licensee shall maintain such records so as to produce itemised billing information. GMPCS system shall be able to generate the billing information, in adequate details, to ensure satisfaction to the customer about the genuineness of the bill. The billing disputes between the LICENSEE and its subscribers will be settled amongst themselves and the licensor will not have any *locus standi* in the matter.

18. Publication of the Service Directory

1. The licensee shall publish a Service Directory containing the commercial information on the service with name and address, and access number of the subscribers. If any subscriber does not wish his name and address to be published in the Directory, the service provider shall do so after obtaining concurrence of the subscriber in writing.
2. All the subscribers of the service shall be entitled to one free entry in this Directory and any additional information/specific printing in a particular type at the request of the subscriber may be charged for.
3. The Authority reserves the right to include information of the subscribers in any other Directory which may be published by the Authority for PSTN/Telex/data Services etc. and the licensee shall be bound to supply the required information as and when asked for.

Comments

- **The following may be added at the end of the above clause:**

"The Authority will ensure that such directory will not be used for commercial purposes." (ASC)

1. The Authority or its representative(s) will have an access to the Database relating to the subscribers of the Licensee. The Licensee shall also update the list of his subscribers and make available the same to the Authority at such intervals as may be prescribed. The Licensee shall make available, at any prescribed instant, to the Authority or its representative details of the subscribers using the service.
2. The Licensee will ensure confidentiality of the call details extracted for clearing house purposes, which are passed on to the Satellite Constellation Provider of the GMPCS network.

19. Quality of Service

1. The LICENSEE shall ensure the good quality of SERVICES to be provided by him, consistent with the established and generally accepted standards. The LICENSEE shall be responsible for repair of defects and making good any degradation in the SERVICE with promptness and within reasonable period.

2. It will be mandatory for the Licensee to comply with such parameters of Quality of Service as may be prescribed by the TRAI from time to time.

3. The LICENSOR reserves the right to carry out performance tests and also evaluate the QUALITY OF SERVICE parameters on licensee's network at any time during the currency of licence. Such QoS standards will, however, be in accordance with the regulations and orders issued by the TRAI from time to time.

Comments

- **The Quality standards be considered while designing the network in India before commercial launch of the service. QoS be defined before Lol is issued. (AceS, Inmarsat)**
- **The principle of Telecom Authority setting up the quality standards and conducting performance tests is accepted. However, the standards have to be set before the service commences, in fact before the system construction starts. Also in GMPCS, the service providers are planning to provide services for which worldwide standards may not exist as of now. In view of the above, the following may replace the above clause 19.3:**

"The Licensor reserves the right to carry out performance tests on the Licensee's network at any time during the currency of license to ascertain that the network meets the declared quality of service." (ASC)

1. The LICENSEE shall be responsible for: -
 - i. Maintaining the performance and quality of service standards.
 - ii. Maintaining the MTTR (Mean Time to Restore) within the specified limits of the quality of service as given below :
 - a. 90% of faults resulting due to subscriber's complaints should be rectified within 24 hours and 99% within 3 days.
 - b. The Licensee will keep a record of number of faults and rectification reports in respect of the service, which will be produced before the LICENSOR/ TRAI as and when and in whatever from desired.

(ABOVE STANDARDS ARE APPLICABLE FOR NORMAL FAILURES EXCLUDING CATASTROPHIES LIKE SATELLITE FAILURE)

1. The Licensee shall be responsive to the complaints lodged by his subscribers. He shall rectify the anomalies within the MTTR specified and maintain the history sheets for each installation, statistics and analysis on the overall maintenance status.

20. Security Conditions

20.1 The operation and maintenance of the GMPCS gateway, which may be located in India, shall be entrusted to VSNL or an agency authorised by the Government for this purpose. The Licensee shall demonstrate the system capabilities with respect to security aspects including monitoring to the Licensor prior to starting operations in India.

Comments

- **As per comments given under Clause 4 on Network. (ACS)**

20.2 The precise delineation of geographical borders taken by the licensee for the purpose of defining Indian service area shall have prior approval of the Government of India. The terrestrial boundaries of India shall be as depicted in the maps issued by Survey of India.

20.3 The Licensee shall give an undertaking to the Licensor that satellites deployed for GMPCS service shall be used over the Indian territory only for the services authorised by the Licensor. No activities such as surveillance, electronic warfare etc. shall be carried out over the Indian Territory, which may jeopardise the sovereignty and security of the country.

20.4 The LICENSEE shall create a buffer zone along the India international border where no service would be permitted. Width of this buffer zone along the borders within the Indian Territory shall be as decided by the Govt. of India. The Government will spell out the area, width and co-ordinates of the buffer zone.

Comments

- **To clarify if the Buffer Zone is also required along Indian Coastal region. (AceS)**
- **Co-ordinates should be intimated at least 30 days in advance. (AceS)**
- **Gmpcs services are used extensively by Defence authorities around the world. Blocking out the service in bufferzones would affect such users as well. Hence this clause should be deleted. (Inmarsat)**

20.5 The Government through appropriate notification may debar usage of mobile terminals in certain areas in the country. By suitable man/ machine command to be given by the operation and maintenance of the licensee in the GMPCS gateway, it should be possible to deny service to subscribers in certain specified areas.

-

Comments

- **This clause should be deleted. (Inmarsat)**
- **Government to intimate co-ordinates of the area where the service is to be denied at least 30 days in advance. (Aces)**

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

-

Comments

- **GSM encryption is meant for protecting privacy of subscriber communications and to avoid unlawful interception In this context, the following may be added at the end of the above clause:**

"For this purpose standard GSM encryption technique will be allowed." (ACS)

20.7 LICENSOR shall have the right to take over the SERVICE, equipment and networks of the LICENSEE (either in part or in whole of the service area) in case any directions are issued in the public interest by the Government in the event of emergency or war or low intensity conflict or any other eventuality. Any specific orders or directions from the Government issued under such conditions shall be applicable to the LICENSEE and shall be strictly complied with.

20.8 The LICENSEE shall make available on demand to the agencies authorised by the Government full access to the switching centres, transmission centres, routes etc. for detailed technical security/inspection for espionage, subversive act, sabotage or any other unlawful activity.

20.9 All foreign personnel likely to be deployed by the LICENSEE for installation, operation and maintenance of the licensed network shall be security cleared by the Government of India prior to their deployment. The security clearance will be obtained from the Ministry of Home Affairs, Govt. of India.

20.10 LICENSOR reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security.

Comments

- **Certainty of terms & conditions is a necessary part of any valid agreement and performance of any part of the agreement is based on a given set of facts and circumstances fully known to the parties at the time of execution thereof. Since the condition hints at the possible introduction of "new conditions", it is necessary that certain safeguards are also inserted, as would allow unhindered compliance. It is necessary that the Licensee is given sufficient notice and that due regard will be given to technical and financial feasibility. The following may be added in the above context to the above clause:**

"However, sufficient notice shall be given to the Licensee together with appropriate degree of compliance expected of such condition, regard being had to the technical and financial feasibility there of." (ASC)

20.11 Adequate monitoring facility should be made available by the licensee at the GMPCS Gateway to monitor all traffic (transit as well as traffic originating/terminating in India) passing through the applicable system. For this purpose, the licensee shall set up at his cost, the requisite interfaces, as well as features and facilities for monitoring of calls by authorised agencies as directed by the licensor from time to time.

Comments

- **Monitoring of transit calls is covered under International legal requirement. (AceS)**
- **Cost of monitoring equipment and extension in the Monitoring agencies' premises borne by the Govt. (AceS)**
- **There is need for monitoring of the calls/ messages passing through the network by lawful agencies and it is national duty to co-operate with and facilitate lawful monitoring by security and law enforcement agencies. For the purpose, a comprehensive monitoring arrangement that meets the national security requirements and at the same time takes into account the common law obligations of the Licensee, its obligations to its customers, the cost of implementation and technical feasibility needs to be evolved. The idea of monitoring is to help law enforcement on the assumption that unlawful elements make use of the system. But it is not necessary that an impression be given that GMPCS systems are more closely monitored. Further, monitoring mechanism should not end up in higher tariffs to the ordinary subscribers and it should also not discriminate between different Service Providers. (ASC)**
- **The system provides for monitoring of a subscriber simultaneously by upto 5 agencies. (IITL)**

20.12 The Licensee shall ensure that any mobile terminal registered in the gateway of another country shall register with Indian Gateway when operating from Indian Territory.

20.13 The Licensee should provide a list of his subscribers, which should be updated at quarterly intervals. The licensee shall ensure adequate verification of each and every customer before enrolling him as a subscriber. The mobile terminal to be used shall be registered against each subscriber. The licensee shall make it clear to the subscriber that the mobile terminal registered against him is non-transferable and that he alone will be responsible for proper and bonafide use of the service. The LICENSEE shall have provision to scan subscriber operations (**Comments - operations of subscribers specified by security/lawful agencies – ASC**) through certain sensitive areas within the Indian territory and shall provide their identity and positional location (latitude and longitude) to Licensor on as and when required basis.

Comments

- **The TRAI should recommend necessary set of details for enrolling a customer. (AceS)**
- **While the system may have the ability to provide information on the activities of any individual subscriber from the commercial data base, the monitoring itself could be done only by the security agencies after due authorisations. (ASC)**
- **Aspect of 'verification' as proposed by the TRAI. (IITL)**

20.14 Any foreigner who comes in the country with a registered mobile terminal should declare the same to the custom Authorities who will record the details on his Passport and issue an authorisation for the use of the same, provided such Overseas Subscriber takes the same mobile terminal out of India. An Indian subscriber is permitted to carry the mobile terminal with him/her, after due endorsement on the passport provided he/she brings the same back to the country on his/her return.

Comments

- **This is a requirement by the Custom Department, need not be the Licensee' conditions. (AceS)**

20.15 The Licensee shall have in-built capabilities in the system to deny service to terminals clandestinely brought into the Indian Territory. The LICENSOR will delineate suitable administrative mechanism with the Customs Authority for co-ordinating the prompt exchange of information on a regular basis between the Air/ Land/ Sea Customs and the LICENSEE in respect of all such mobile terminals, which are legally brought into the country following the due procedures of law. This arrangement would facilitate the identification and segregation of mobile terminals (registered in other countries) clandestinely brought in to the Indian Territory for denial of service. Such visiting subscriber terminals other than those registered on the equipment identification register (EIR) of the service provider could be denied service, if identified.

Comments

- **All registered subscribers in their respective gateway, called the Home Gateway, are treated as authorised subscribers by the visiting gateway after due authentication by their Home gateway. Govt should intimate the user terminals that are to be denied service. (AceS)**
- **EIR is generally used to deny services to stolen mobile equipment, as stolen mobile equipment can access the service with legitimate SIM, where normal HLR based subscription barring may prove insufficient. In view of that, modification of the underlined portion is suggested as under:**

"Service to such visiting subscribers, if identified can be denied in GMPCS system based on their subscription parameters in HLR." (ASC)

- **The starting line should read as "the licensee shall have in-built capabilities in the system**

to deny service to terminals notified by security agencies as working clandestinely or working against national interest". (Inmarsat)

20.16 A format would be prescribed by the LICENSOR to delineate the details of information required before enrolling a customer as a subscriber. Such details could be uniformly maintained by the service providers and submitted for verification whenever called for by the Government agency.

20.17 Licensee will ensure that the Telecommunication installation carried out by him should not become a safety hazard and is not in contravention of Laws of the land.

21. Financial Conditions

-

a) Bank Guarantee

1. **The licensee shall submit a financial bank guarantee of an amount commensurate with the annual licence fee in the format (as per draft given in Attachment II to Appendix IV) prior to the signing of the licence agreement. The LICENSEE shall submit the Financial Bank Guarantee from any Scheduled Bank, to be renewed from time to time and initially valid for a period of two years.**

(THE CONDITION FOR BANK GUARANTEE AND THE FINANCIAL BANK GUARANTEE PROFORMA WILL HAVE TO BE BASED ON THE LICENSE FEE STRUCTURE AS MAY BE DETERMINED THROUGH PUBLIC CONSULTATIONS)

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Comments

- o **Bank Guarantee to be given for one time entrance fee. Can be submitted at the time of signing the License and be converted into entry fee when the service commences. (AceS)**

21.2 The licensee will be liable to extend the validity of the financial Bank Guarantee one month prior to its date of expiry on its own without demand from the Licensor for a further period of one year on year to year basis during the full currency of the licence. Any failure to do so may result in the en-cashing the financial bank guarantee after affording a reasonable opportunity to the LICENSEE. This is without prejudice to any other action that may be taken under the terms and conditions of the licence.

21.3 Without prejudice to its right to some other remedy, the LICENSOR may encash Financial Bank Guarantee (in part or in full) in case of any other breach in the terms and conditions of the licence by the LICENSEE. Such an action will, however, be taken after affording an opportunity to the LICENSEE and after obtaining the recommendations of the TRAI.

Comments

- **The Bank Guarantee can be only for securing payment of License fee, as the provisions of Condition 21.1 envisage furnishing of a Bank Guarantee of "an amount commensurate with the fixed component of the license fee". The underlined portion may be substituted by:**

"Non-payment of license fee." (ASC)

4. Breach of non-fulfilment of licence conditions may come to the notice of the LICENSOR through complaints or as a result of the regular monitoring. Wherever considered necessary, LICENSOR will conduct an inquiry to determine whether there has been any breach in compliance of the terms and conditions of the Licence. The LICENSEE will be given an opportunity before any action adverse to his interest is taken and recommendations of the TRAI will be taken before revoking the license.

b) Preparation of Accounts:

21.5 The LICENSEE shall:

- a. Compile and maintain accounting records, sufficient to show and explain its transactions in respect of each completed financial year of the License period during which this License Agreement is in force, or of such lesser periods as the Licensor may specify, fairly presenting the costs (including capital costs), revenue and financial position of the Licensee's business including a reasonable assessment of the assets employed in and liabilities attributable to the Licensee's business.
- b. Procure in respect of each of those accounting statements prepared in respect of a complete financial year, a report by the Licensee's Auditor stating whether in his opinion that statement is adequate for the purpose of this condition; and
- c. Deliver to the Licensor a copy of each of the accounting statements not later than three months after the end of the period to which they relate.

In this condition, the "Auditor" means the Licensee's auditor for the time being appointed in accordance with the requirements of the Companies Act, 1956.

- d. Send to the Licensor a certified statement of Gross Revenue from the Service for each quarter before the end of calendar month following the quarter.

22. Prohibition of certain Activities by the Licensee

22.1 The Licensee shall not engage in the provision of any other Service other than GMPCS as defined in this license agreement.

2. To remove any doubt, it is, hereby, clarified that nothing contained in condition in Para above shall preclude the Licensee from engaging in advertising and promotional activities relating to any of the Applicable Systems.

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

Comments

- **It would be highly impracticable for the Licensee to prevent any communication from being passed through its system that would have any bearing on the I. P. Rights of a third party. It will not be possible for any telecommunications operator or network. Hence it would be only in fairness if the degree of burden imposed vide this condition can be slightly reduced by adding the words "endeavour to" instead of the underlined words "shall ensure". (ASC)**
- **GMPCS Service enables two people to communicate at a distance via satellite. The ability to control what they might say is not easy. Monitoring, as suggested in paragraph 20.121 is, however, possible specially when there is a gateway or switch located in India to route all calls. (Inmarsat)**

2. The Licensee is obliged to provide, without any delay, tracing facility to trace nuisance or malicious calls, messages or communications transported through his equipment and network. Any damages arising out of default on the part of licensee in this regard shall be payable by the licensee.

Comments

- **The licensee shall provide tracing facility to trace any nuisance or malicious call once specified or reported by the authorised agency or the recipient. (AceS)**
2. In case any confidential information is divulged to the Licensee for proper implementation of the Agreement, it shall be binding on the Licensee and its employees and servants to maintain its secrecy and confidentiality.

23. Inspection and Testing of Installations

1. The Licensor will also carry out all performance tests required for successful commissioning of the service, if it so desires, before the service is commissioned for public use. The LICENSEE shall supply all necessary literature, drawings etc regarding the equipment installed for commissioning of the services, and shall also supply all the tools, test instruments and other accessories to the testing party of the LICENSOR for conducting the tests. The list of performance tests will be furnished by the LICENSEE one month prior to the date of commissioning to the Licensor. In case the Licensor chooses to conduct performance test and some deficiency is found therein by the licensor, the delay caused for rectification of the deficiencies, if any, for the commissioning/ provisioning of the service will be entirely on account of the Licensee.

Comments

- **The licensee shall provide all the equipment and tools for testing the licensee's gateway. (AceS)**
1. The Acceptance Testing for each and every interface with the DOT/ MTNL/ VSNL/Other Service providers' network may be carried out by licensor or any one authorised by the licensor. The Acceptance Testing schedule shall be mutually agreed. Adequate time, not less that 30 days, will be given by the licensee for these tests.

Comments

- **Since the interfacing with the DOT/MTNL/VSNL and any other Service Provider network is to be mutually agreed and implemented by the Licensee and the concerned network, the acceptance testing of the interfaces should be left to the parties involved. The Licensor may be provided with the basic interconnect agreement and test results if it so desires. Hence the suggested modifications for the above clause are**

"The acceptance testing for each and every interface with DOT/MTNL/VSNL or other Service Provider may be carried out by mutual arrangement between Licensee and the other Party involved. The Licensor shall be provided with the basic interconnect agreement and acceptance/performance test result if so required by the Licensor." (ASC)

24. Right to Inspect

1. The Licensor, the TRAI or its authorised representative shall have the right to inspect the sites used for extending the Serviced. The Licensor shall, in particular but not limited to, have the right to have access to leased lines, junctions, terminating interfaces, hardware/software, memories of semiconductor, magnetic and optical varieties, wired options, distribution frames, and to enter into dialogue with the system through Input/output devices or terminals. The Licensee will provide the necessary facilities for continuous monitoring of the system, as required by the Licensor or its authorised representative(s). The Licensor will ordinarily carry out inspection after reasonable notice except in circumstances where giving such a notice will defeat the very purpose of the inspection.

25. Location of Switches

1. The LICENSEE shall provide to the LICENSOR location details of switching centres, transmission centres, including routing details etc., and location of these centres shall not be changed without prior approval of the LICENSOR.

26. Requirement to furnish Information to the Licensor

26.1 The Licensee shall furnish to the Licensor as well as to the TRAI, in the manner and as per the time frames that these Authorities may demand, such documents, accounts, estimates, returns, reports or other information as may be prescribed.

26.2 Engineering Details

- a. The Licensee shall furnish to the Telecom Authority, in such manner and at such times as the Authority may require, complete technical details with all calculations for engineering, planning and dimensioning of the system/network, concerned relevant literature, drawings, installation materials regarding the applicable system.
- b. List of performance tests shall be furnished by the Licensee one month prior to the date of commissioning of service.
- c. Licensee shall supply all tools, test instruments and other accessories to the testing party of Licensor for conducting tests, if it so desires.

27. Disputes Settlement

(CONDITIONS ON DISPUTES SETTLEMENT WILL HAVE TO BE FORMULATED BASED ON DEBATE IN PUBLIC CONSULTATIONS. THE TRAI ACT CONTAINS SPECIFIC PROVISIONS SUCH AS SECTION 11(1) (n) AND SECTION 14(2) FOR HANDLING DISPUTES BETWEEN SERVICE PROVIDERS)

Comments

- **The TRAI be settling the disputes. (AceS)**
- **Arising out of an appeal matter pending before the Honourable High Court of Delhi, the issue of whether TRAI has jurisdiction over licensing matter, including disputes involving the licensor (DOT) and or those between the licensor and service provider/licensee on licensing issues, is presently before the court. It is proper to reserve the comments on the issue pending court decision.(ASC)**

28. GMPCS Mobile Terminals

1. The Licensee shall have the right to undertake the sale, hire purchase, lease or renting of the mobile terminals (**GMPCS Terminals – ASC**). Proper usage of terminal at subscriber's premises shall be responsibility of the subscriber.
2. The Licensee shall be responsible to ensure that the mobile terminal (**GMPCS Terminals – ASC**) is operated within India in accordance with the terms of the License and the WPC license. The mobile terminal (**GMPCS Terminals – ASC**) is non-transferable.
3. The mobile terminals (**GMPCS Terminals – ASC**) employed in the network shall be of a type/model certified by an internationally accredited agency with respect to ITU/ETSI standards or any other international standard as may be approved by the Government. They should carry a marking specifying their compliance with such standards. Only such category of mobile subscriber unit as has been granted such a certificate shall be allowed to be brought into and operated within India under this Agreement.
4. The designated Authority of the Central/ State Government as conveyed to the Telecom Authority from time to time in addition to the Telecom Authority or its nominee shall have the right to monitor the telecommunications traffic in every gateway switch set up in India. Necessary features facilities and the licensee shall provide interface for such monitoring at their expenses. Provision should be made for simultaneous monitoring by at least six Indian agencies or more. The Licensee shall make following type of provision for extending monitored calls :
 - a. Extension on PSTN line
 - b. Extension on E-1 links (30 channels Pulse Modulation-PCM), which can be stored in a voice logger at gateway and simultaneously transported to user agencies on dedicated line with correlated call Related Information (CRI).

Comments

-

- **Number of Security agencies be fixed. (AceS)**
- **The cost of monitoring equipment and extension of monitored calls over PSTN line or E-1links at monitoring agency premises be borne by the Government. (AceS)**
- **In case of Systems meant for only India and meeting specific requirements of the country, ITU/ETSI standards may not exist. But ASC believes that the national standards agency should play a prominent role in setting standards. (ASC)**

29. Miscellaneous Conditions

a) Interpretation of Terms/ Definitions

1. Unless the context otherwise requires, the different terms and expression used in this license agreement shall have the meaning assigned to them as explained in Attachment 1 to this Appendix.

b) Force- Majeure

2. If at any time, during the continuance of this licence, the performance in whole or in part, by either party, of any obligation under it is prevented or delayed, by reason of war, or hostility, acts of the public enemy, civic commotion, sabotage, fire, flood, Act of State or direction from Statutory Authority, explosion, epidemic, quarantine restriction, strikes and lockouts (as are not limited to the establishments and facilities of the Licensee), or act of GOD (hereinafter referred to as event), provided notice of happenings of any such EVENT is given by either party to the other, within 21 days from the date of occurrence thereof, neither party shall, by reason of such event, be entitled to terminate the licence, nor shall either party have any such claims for damages against the other, in respect of such non-performance or delay in performance. Provided service under the licence shall be resumed as soon as practicable, after such EVENT comes to an end or ceases to exist. The decision of the Licensor as to whether the service may be so resumed (and the time frame within which the service may be resumed) or not, shall be final and conclusive. However, the Force Majeure events noted above will not in any way cause extension in the period of the License. While it will normally not be a ground for non-payment of licence fee, the liability for payment of license fee for such inoperative period(s) due to force majeure clause may, however, be reduced/waived by the LICENSOR, at its discretion based on circumstances of the EVENT.

Comments

- **In the event of force majeure it is always the practice to enter into good faith negotiations and discussions to mitigate the effects of force-majeure conditions. This is in the public interest. Hence the following modifications are suggested for the underlined portion of the above clause:**

"The Licensor, after good faith discussions with the Licensee, will have the discretion to decide as to whether service may be so resumed (and the time frame within which the Service may be resumed) or not." (ASC)

1. The Licensee shall be bound by the terms and conditions of this License Agreement as well as by such orders/ regulations and instructions as are issued by the Licensor? TRAI and/or their successors from time to time.

2. All matters relating to this License will be subject to jurisdiction of Courts in Delhi/ New Delhi.

ATTACHMENT-1
(APPENDIX IV)

DEFINITIONS AND INTERPRETATIONS RELATING TO THE EXPRESSIONS USED IN THE TERMS & CONDITIONS OF LICENSE AGREEMENT

Unless the context otherwise requires, the different terms and expression used in the license agreement shall have the meaning assigned to them as explained in the following paragraphs:

1. **APPLICABLE SYSTEMS:** The "applicable system" means all the necessary equipment/ sub-systems engineered to provide GLOBAL MOBILE PERSONAL COMMUNICATION BY SATELLITE in accordance with operational/technical and quality requirements and other terms and conditions of the licence agreement.

Comments

- **Add the word SERVICE after the SATELLITE. (acs)**
1. Auditor means the Licensee's auditor for the time being appointed in accordance with the requirements of the Companies Act, 1965.

2. Connectable System means a telecommunication system which is authorised to be run under a Licence to provide public telecommunications service and is authorised to be connected to the Applicable system.
3. DIRECT EXCHANGE LINE (DEL): A telephone connection between the subscriber's terminal equipment and the terminal exchange.
4. DOT means Department of Telecommunications, Government of India as Telecom Service Provider and/ or its successors.
5. EFFECTIVE DATE: The effective date is the date on which this Licence Agreement is signed by the parties and if the parties have signed on different dates the latter of the two dates. This licence comes into effect from the effective date of the licence.
6. Emergency means an emergency of any kind, including any circumstances whatever resulting from major accidents, natural disasters and incidents involving toxic or radio-active materials.
7. Emergency Services in respect of any locality means the relevant public, police, fire, ambulance and coast guard services for that locality.
8. ENGINEERING : The technical application of the dimensioning rules and results thereof in order to provide network resources to meet specified Grade of Service (GOS).
9. GMPCS : GMPCS means Global Mobile Personal Communications by Satellite.
10. "GMPCS Gateway means a land based satellite link station established to provide a communication link between the Satellite/Satellite Constellation and the 'National PSTN' and 'International Gateway', thereby facilitating the provisions of telecommunications services between Mobile terminal and any telephone linked to the connected PSTN or PLMN.

COMMENTS RECEIVED

- **Most of the GMPCS satellite network owners don't have a global presence and look for a national carrier in a particular geographical region to build and operate the Gateway, which is**

the interface between the satellite network and the PSTN/PLMN. The operators of these gateways could be called the Gateway Operator, who may or may not own the gateway equipment but generally own the gateway Infrastructure. (VSNL)

1. GMPCS Service Provider means an Indian registered company, which has been licensed under this licence to set up and operate GMPCS Network and to provide GMPCS Service (as defined by ITU) to the public within the boundaries of Indian Union.

TRAI's OBSERVATIONS: In the provisional License Agreement, GMPCS Operator and GMPCS Service Provider have separately been defined. It states that the GMPCS Operator would mean the legal entity responsible for the operation of GMPCS network. Since the license has been issued for establishing and operating the network as well as for providing service, there is perhaps no need of a separate definition of GMPCS Operator.

COMMENTS RECEIVED

- **GMPCS System Operator:** The entity responsible for the operation of a GMPCS System. (asc)
 - **GMPCS Terminal:** A user terminal intended to be operated with a GMPCS System. (ASC)
 - Any entity responsible for offering the GMPCS services in a particular country/region or has got the franchise for doing so from the GMPCS network operator, is the GMPCS service provider. Here it needs to be made clear that the GMPCS service provider need not necessarily be the GMPCS network operator or the gateway operator. It may be an altogether different party. Like in the case of Iridium, Iridium Inc. is the GMPCS network owner, Iridium India Telecom Ltd. (IITL) is the service provider and VSNL is the gateway operator. (VSNL)
-
- gmpcs service providers need not necessarily be Network Providers. The GMPCS system network (Satellite Segment) may be owned by some other company (not necessarily an Indian Company) and may be termed as network providers. However, the related ground segment in India may be installed and provision of service to the end users may be carried out by an Indian Company licensed for provision of GMPCS services in India. The GMPCS service providers in the country may be allowed to have roaming agreement with the cellular operators and may be permitted to market dual mode handset for the purpose. (DOT)
-
- In the provisional License Agreement, GMPCS Operator and GMPCS Service Provider have separately been defined. It states that the GMPCS Operator would mean the legal entity responsible for the operation of GMPCS network. Since the license has been issued for establishing and operating the network as well as for providing service, there is perhaps no need of a separate definition of GMPCS Operator. (ASC)
-
1. GMPCS Network means any satellite based telecommunication network providing telecommunication services directly to end users through the use of mobile terminal (**GMPCS Terminal -ASC**) from a satellite/constellation of satellite.

COMMENTS

- **The big multinational consortia's that launch, own and maintain the fleet of satellites in the space, may be classified as the GMPCS network owner/operator. The GMPCS network operator may or may not own the gateway or the gateway equipment depending on their agreements with different gateway owners and operators around the world. (VSNL)**
- **This definition seems to include the satellites, gateways, mobile terminals and any terrestrial interconnecting equipment, which is very broad. (Inmarsat)**

14. GMPCS mobile terminal or mobile terminal means the equipment used by the subscribers to avail the GMPCS service such as Mobile Handset; also called user terminal.

Comments

- **This needs to be expanded to cater for semi-fixed, portable and fixed GMPCS terminals planned for rural telephony as rural PCOs by GMPCS operators. (Mr. A.M. Joshi)**

15. GROSS REVENUE: (The term Gross Revenue needs to be defined in the context of levying license fee as a percentage of revenue sharing as envisaged in the New Telecom Policy 1999. Chapter IV of this Paper contains the details of substantive issues to be debated in this regard during the public consultations).

COMMENTS:

- **Refer comments summarised separately in response to Issues 2, 3 & 4.**

16. **LICENSE:** Licence means a licence granted or having effect as if granted under section 4 of the Indian Telegraph Act 1885 and Indian Wireless Act 1933.

17. **LICENSEE:** A registered Indian Company that has been awarded license to set up and operate Global Mobile Personal Communications by Satellite (GMPCS) network and to provide the GMPCS service.

COMMENTS RECEIVED

- **While defining the licensee, we need not necessarily mix up the GMPCS service provider and the GMPCS operator. A licensee can be defined as the entity, which is responsible for offering GMPCS services in the country/region. The licensee can be a joint venture of the GMPCS network operator and one or more local partners or even the local gateway operator or a different company, which has the franchise for the GMPCS services from a particular operator in a particular region/ country. (VSNL)**
 - **If the definition of licensee is meant to cover only operation of gateway and service provision, it should say that and it should mention only gateways (defined in Paragraph 11 and service provision. Also refer to comments against Clause 1.1 of Terms & Conditions. (Inmarsat)**
18. LICENSOR shall refer to the President of India acting through any authorised person, who granted Licence under Section 4 of Indian Telegraph Act 1885 and Indian Wireless Telegraph Act 1933, unless otherwise specified.
19. Message means anything falling within sub Clause/paragraph (3) of section 3 of the Indian Telegraph Act 1885.
20. MTNL means Mahanagar Telephone Nigam Limited.
21. OR/QR Specifications means technical and quality requirements contained in the OR/QR Specifications of Telecom Engineering Centre Department of Telecommunications unless otherwise specified.
22. Public Switched Telephone Network (PSTN) means a fixed specified switched public telephone network a two-day switched telecommunications service to the general public.
23. Public Land Mobile Network (PLMN) means land based mobile network e.g. Cellular Mobile Telephone Service being operated within the country under licence from Telecom Authority on non-exclusive basis.
24. QUALITY OF SERVICE: "Quality of Service" is evaluated on the basis of observable measure on the grade of service, calls lost due to wrong processing, the bit error rate or the response time and also included acceptable grade of number of faults per unit population of the subscriber served, the mean time to restore (MTTR), faults carried over beyond the MTTR and the satisfactory disposal thereof.

25. SERVICE AREA: Service area for Global Mobile Personal Communication Service by Satellite is the territorial jurisdiction of the Union of India except specified areas that may be notified to be excluded from time to time.

26. Services or service means Global Mobile Personal Communications by Satellite Service and shall include the tele-services, bearer services and supplementary services as defined by ITU.

27. Subscriber: Subscriber means any person or legal entity, which avails of the Global Mobile Personal Communications by Satellite Service from the Licensee.

28. TELECOM AUTHORITY: The Director General, Telecommunications, Government of India and includes any officer empowered by him to perform all or any of the functions of the Telegraph Authority under the Indian Telegraph Act, 1885 or such authority as may be established by law.

TRAI Observations: The expression 'Telecom Authority' has been defined and then used in the license agreement at different places to denote the Director General, Telecommunications and any officer empowered by him under the Indian Telegraph Act, 1885 to perform all or any of the functions. This expression (i.e. Telecom Authority) has been used by the DOT in other license agreements such as for basic services. In view of the fact that the Telecom Regulatory Authority of India was constituted in March 1997, the expression Telecom Authority till now used for the Director General Telecommunications (or his authorised officer) should be replaced with the expression Telegraph Authority.

29. TARIFF: Tariff means rates and related conditions at which telecommunication services within India and outside India may be provided including rates and related conditions at which messages shall be transmitted to any country outside India, deposits, installation fees, rentals, free calls, usage charges and any other related fees or service charge. The term tariff will have the same meaning as may be defined in the Telecommunication Tariff Orders to be issued by the TRAI from time to time.

30. TRAI means Telecom Regulatory Authority of India constituted under TRAI Act, 1997.

31. VSNL means "Videsh Sanchar Nigam Ltd."

32. WPC means Wireless Planning and Co-ordination Wing of the Ministry of Communications, Department of Telecommunications, Government of India.

ATTACHMENT II**(APPENDIX IV)****PROFORMA FOR FINANCIAL BANK GUARANTEE**

To

The President of India

Acting through the Telecom Authority

In consideration of the President of India acting through the Telecom Authority (hereinafter called 'the Authority') having agreed to grant a licence to M/s..... of (hereinafter called 'the Licensee') to establish, maintain and operate GLOBAL MOBILE PERSONAL COMMUNICTAION BY SATELLITE SERVICE (GMPCS Service) (hereinafter called 'the SERVICE') as per Letter of Intent (LoI)/Licence number dated In the country in accordance with the Application Form for obtaining GMPCS Service licence and on the terms and conditions contained in the said licence, which interalia provides for production of a Bank Guarantee to the extent of Rs..... (..... in words) under the said licence by way of security for payment of the said licence fee as well as such other fees or charges required to be paid by the Licensee under the Licence. We (indicate the name and address and other particulars of the Bank) (hereinafter referred to as 'the Bank') at the request of the Licensee hereby irrevocably and unconditionally guarantee to the Authority that the licensee shall pay all the dues, including but not limited to, the licence fee to the Authority.

2. We, the Bank, hereby undertake to pay the Authority an amount not exceeding Rs. (Rupees..... only) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any failure of the Licensee to pay all the above mentioned fees, dues and charges or any part thereof within the periods stipulated in the licence.
3. We, the Bank, hereby further undertake to pay as primary Obligor and not merely as surety to pay such sum not exceeding Rs. (Rupees.....only) to the Authority immediately on demand and without demur stating that the amount claimed is due by way of failure of the licensee to pay any fees or charges or any part thereof in terms of the said licence.

4. WE, THE BANK, DO HEREBY DECLARE AND AGREE that the decision of the Authority as to whether LICENSEE has failed to pay the said licence fees or any other fees or charge or any part thereof payable under the said Licence and as to the amount payable to the Authority by the Bank hereunder shall be final and binding on us.
5. WE, THE BANK, DO HEREBY DECLARE AND AGREE that the
- a. Guarantee herein contained shall remain in full force and effect for a period of two years from the date hereof and that it shall continue to be enforceable till all the dues of the Authority and by virtue of the said Licence have been fully paid and its claims satisfied or discharged or till Authority satisfies that the terms and conditions of the said licence have been fully and properly carried out by the said Licensee and accordingly discharged this guarantee.
 - b. The Authority shall have the fullest liberty without our consent and without affecting in any matter our obligations hereunder to vary any of the terms and conditions of the said licence or to extend time of performance of any obligations by the said LICENSEE from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said LICENSEE and to forbear or to enforce any of the terms and conditions relating to the said Licence and we shall not be relieved from our liability by reason of any variation or extension being granted to the said LICENSEE or to give such matter or thing whatsoever which under the law relating to sureties would but for this provision, have effect of so relieving us.
 - c. Any claim which we have against the LICENSEE shall be subject to and subordinate to the prior payment and performance in full of all the obligations of us hereunder and we will not without prior written consent of the Authority exercise any legal right or remedy of any kind in respect of any such payment or performance so long as the obligations of us hereunder remains owing and outstanding.
 - d. This Guarantee shall be irrevocable and the obligations of us herein shall not be conditional of any prior notice by us or by the LICENSEE.
2. We the Bank undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.

Dated day..... for

(Name of the bank)

Witness:

1.

2.

-
-
**ABBREVIATIONS OF THE NAMES OF AGENCIES/PERSONS WHO SENT THEIR
COMMENTS ON THE PAPER**

Sl.No. Name of the Agency / Individual Abbreviation

1. **A. M. Joshi, Retd. Wireless Advisor A. M. Joshi**
2. **AceS (India) Private Limited ACeS**
3. **ASC Enterprises Limited ASC**
4. **BPL Mobile Communications Ltd. BPL Mobile**
5. **British Telecom BT**
6. **Department of Telecommunications DOT**
7. **Inmarsat Ltd. Inmarsat**
8. **Iridium India Telecom Ltd. IITL**
9. **Telecommunications Consultants India Ltd. TCIL**
10. **TransCapital A. P. TransCapital**
11. **Videsh Sanchar Nigam Ltd. VSNL**

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