

Comments of Infotel Broadband Services Ltd on Issues raised in the Consultation Paper on 'Draft Guidelines for Unified Licence / Class Licence and migration of existing Licences'

Though India has had tremendous growth in telecom sector and has achieved a tele-density of 75%, the digital divide between urban and rural telecom growths is still wide. Rural tele-density is at 36% against the national average of 75%, and urban tele-density of 166%. About 55 crores of the rural population is still un-served. In order to facilitate growth of telecom services in the un-served and under-served areas, introduction of low cost competition is must, for which a Unified Licence with spectrum delinked is the appropriate way forward to enable and encourage small/ local operators to provide competitive telecommunication services.

Nevertheless, the technological developments over the years have blurred the line among traditional licenses; therefore, an immediate introduction of a new licensing regime is necessary to ensure that licensing process remain relevant in line with continual technological advancements. The proposed telecom policy has also recognised convergence of services, convergence of networks and convergence of devices and has proposed move towards Unified Licence Regime that will help to exploit the benefits of convergence. Keeping this in view, we welcome the steps taken by the Authority to propose guidelines for unified licensing regime covering Unified Licence and Class Licence along with the framework for migration of existing licensees to the new regime. The Draft Guidelines have largely covered all the vital areas and we welcome the proposed guidelines.

Our comments on the issues enlisted for consultation are submitted as below for kind consideration of the Authority:

Issue 1: Kindly give your response to each clause of Chapters I to IV above.

Our views on specific provisions in Chapters I to IV of the proposed guidelines are as follows:

Chap I-Clause 4.2 – It is understood that this clause is meant for only new unified licenses taken at District level or at the Service Area level after the introduction of Unified license scheme and when they desire to change from District level/ Service area level to Service area/ National level unified license and not for the migration of existing UASL/ other licenses to the Unified Licensing Regime. This may please be clarified. Further, as and when a licensee changes over from lower level unified license to any higher level license, it has to pay for the difference after pro-rata adjustment of entry fee paid as suggested in the clause. In this case, a clarification is

required as to whether its new unified license will be for a further period of 20 years from the date of migration or it will continue to be for 20 years from the date of original license from where the licensee is migrating.

Chapter I and II, Clause 11.2 License Fee – We make an earnest request to TRAI to reconsider recommending the exclusion of revenue from pure Internet access services from the calculation of Adjusted Gross Revenue earned while computing the License fees. TRAI had made similar recommendations earlier regarding uniform license fee across all telecom licenses and service areas, as per the present practice. This has more relevance in case of BWA operators as BWA Spectrum bidding was based on a legitimate expectation that the Nil licence fee on pure internet services, as at the time of BWA auction, would continue. Any increase in the licence fee will adversely impact the business case considered while making the spectrum bids. Considering present state of broadband proliferation in India and our stated policy objective of providing reliable and affordable broadband access to all with a target of 600 million broadband connections by year 2020, there is a strong case for supporting broadband services with a nil licence fee on pure internet revenue.

Chap I-Clause 25 – Interconnection

- (a) It is respectfully submitted that a basic framework is required to be prescribed in the Guidelines on Unified Licensing Regime with respect to - (a) Points of interconnection for National Level Unified Licensee interconnecting with other National level as well as Service Area level Unified Licensee; (b) point of interconnection for district level Unified Licensee with another District level/Service area/National level Unified licensee; and (c) point of interconnection of National Level/Service Area level/District level Unified Licensees with the existing Unified Licensee (restricted).
- (b) It is further submitted that with the proposed implementation of Unified Licensing Regime, it will be appropriate to put in place the IP-IP interconnection regime also.
- (c) The call routing arrangement as it exists will also need a change. It may be different among the National level Unified Licensees, different for a National level unified licensee & service area/ District level unified licensee and different among Service area level licensee. Moreover, flexibility may also have to be provided for the inter-operator call routing arrangements in such a scenario.
- (d) In the consultation paper, though it has indicated that the interconnection arrangement will be as per regulations/ orders of the Authority but some basic aspects may be indicated in the guidelines. Alternatively, the consultation paper on interconnection, call routing, numbering scheme and any change in the existing scheme of NLD/ILD concept may be issued separately so that the revised interconnection framework is put in place along with the implementation of Unified Licensing Regime.

Chapter I -Clause 28 Net worth requirement: The proposed provision for net worth requirement is “The promoter of the applicant company shall have a combined net-worth of - - - --“. This provision should be amended in line with clause 10 of existing guidelines for UASL i.e. “The applicant and promoters of applicant company should have a combined net-worth - - - --“

Chapter III - Clause 7 to 9- As per this clause, all individual licenses of an entity will get converted into UL (Restricted) and on payment of fee as per the formula given will be converted to Unified license. It appears on migration to UL, the new UL will be for 20 years from the date of migration. It is suggested that it may be clearly specified in the final guidelines.

Similarly, existing operators may have different group entities for different circles (e.g. Circle UASL in different entities) and / or different services (UASL and ISP). Therefore, there should be an explicit provision permitting migration of multiple licences across group entities into a single Unified Licence and necessary set off to be provided for entry fee already paid across group entities during such migration.

As per Clause 8, the adjustment of entry fee already paid on pro rata basis has been provided only for NLD / ILD / UAS / CMTS licence. We are of the opinion that the same provision should also be extended for ISP licensees who have paid entry fee. The rebate for ISP licensees may be calculated as Rs 1.5 lakh x No. of years remaining for existing ISP Category-A licence validity and Rs 0.75 lakh x No. of years remaining for existing ISP Category-B licence validity.

Chap III-Clause 10 - The decision to bring IP-I Service Providers under licensing regime has been deferred by the government for further examination as per the Press Statement made by Hon’ble Minister on 15th Feb, 2012. It is expected that the condition in Unified License for payment of annual License Fee as a percentage of Annual Gross Revenue (AGR) may not apply to the Infrastructure Providers. We respectfully submit that the Internet service is also like the Infrastructure service and in case the revenue of IP-I Service Providers are exempted from paying the License Fee , the revenue from the Internet services also should be exempted from payment of the annual License Fee under Unified Licensing regime.

Annexure ‘Internet Telephony’ definition - As Unified Licensee can provide any service without any restriction, the definition of Internet Telephony should be same as given in the present UAS Licence namely “**Internet Telephony” means “transfer of message(s) including voice signal(s) through public internet.”** as amended by

DOT in April 2008, and the restrictive definition reproduced from existing ISP licence condition should be continued for the ISP licenses who will be designated as Unified License (Restricted) on the implementation of Unified License regime.

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

The proposed scope of Licence for Unified Licence and Class Licence is in line with the Unified Licence regime framework that was outlined by the Authorities in earlier recommendations.

We understand that the intent behind creation of District level unified licence now is to re-introduce “Category C” ISP operator so that small operators including the cable operators can offer internet services. In this context, the proposed scope for District level unified license should be tightly defined and services like internet telephony, active and passive infrastructure provisioning, provisioning of leased circuits etc. should be excluded from the scope of District level unified license, so as to maintain level playing field.

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

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

We welcome the step taken by the Authority in proposing penalty in the tiered structure wherein the penalty amount gets capped based on type or nature of violation.

Any penal action by the Licensor, for violation of terms and conditions of License agreement should be in proportion of the violation and the entire process needs to be fair and reasonable for all stakeholders. While penalty amount should act as deterrent for violation, it should not result into unjust enrichment for the Licensor. For any alleged violation, penalty needs to be levied only after adequate investigation by the Licensor. The violating party should get proper notice with an opportunity to respond and present its defence. Post issuance of penalty order, the

other party should also get opportunity to seek an appeal to a higher level. The proposed penalty structure should also be encompassing all violations under the licence and there should not be a separate penalty structure for specific issues such as security breach.

While it might be difficult to list all possible factors for defining nature of violation or determining penalty amount, which needs to be assessed on case to case basis, the guiding factors can be

- (i) whether the act was intentional or the violation occurred inadvertently or negligently;
- (ii) actual or potential revenue loss to the exchequer and /or economic or financial benefit derived by infringing party;
- (iii) duration of the infringement;
- (iv) Number of service areas affected by the infringement;
- (v) Conduct of the operator in reporting the violation on its own for violation / breach carried out in its network by a third party beyond the control of the operator
- (vi) Repeated violations or continuation of a violation even after issuance of the notice;
- (vii) impact on the competition

Based on such factors, Licensor may decide whether any violation is minor violation or major violation. For minor violations, Licensor may issue notice to the infringing operator and decide upon the amount after hearing defence of the infringing party. In the event Licensor evaluates any infringement as major violation, the matter should be referred to a working committee represented by Licensor, Regulator and an independent eminent personality from the legal field (such as former judge of Supreme Court). This committee will have authority to reconsider initial decision taken by the licensor regarding nature of the violation and will also decide upon the penalty amount for major violation after hearing defence of the infringing party.

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

In our opinion, if any entity desires to provide Voice mail/Audiotex/UMS services only, these can be brought under Licensing through Authorisation. The Other Service Providers (OSPs) may also be brought under Licensing through Authorisation. This would ensure continuity of the Government's supervision over these types of services and help prevent any misuse of the same. The terms and conditions of Licensing through Authorisation can be in line with proposed guidelines for Class License with applicable provisions regarding net worth requirement, entry fee, licence fee, Bank Guarantees, etc.

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

As submitted above, Voice mail, Audiotex, Videotex, and UMS services should be brought under Licensing through Authorisation. These are mainly value added services and they can be exempted from license fee. As far as Radio Paging service is concerned, it is almost not having any demand as mobile service has overtaken almost all the functions of Radio Paging. However, if any entity request for this service, it should be under Unified Licensing regime.

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

Under proposed regime, clarity should be provided for other licenses / registrations that are prevalent today but are not explicitly covered in the current draft. For example Other Service Providers Registration category is not specified under new regime. Similarly clarity needs to be provided for existing Telemarketers registration process. Authority may also consider covering these activities under 'Licensing through Authorisation'.

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

The prevalent regime of segregated functional roles for Licensing, Regulating and dispute resolution has worked well for the industry. An independent, neutral regulator has helped to reinforce investor confidence, market performance while

enhancing consumer benefits and in our opinion the same should be continued. If there are some role overlaps or conflict of interest in these roles, the same should be resolved by amending respective acts while maintaining independence of the regulatory body.

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

The decision to bring IP-I Service Providers under licensing regime has been deferred by the government for further examination as per the Press Statement made by Hon'ble Minister on 15th Feb, 2012. Regardless of this, TRAI may consider three months as a time period which may be given to the IP-I to comply with the FDI condition of 74% after grant of Unified Licence. This will be in line with 3G / BWA spectrum guidelines wherein maximum time period of three months was provided to the successful bidder to acquire the relevant service licence and thus foreign entities as new entrants were required to comply with the FDI restriction within this time period.

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

Since the Unified licence will be delinked of the spectrum and additional guidelines for spectrum assignment associated with Unified licence contain this restriction on holding of substantial equity, we believe removal of restrictions regarding holding of substantial equity in more than one access service licence in the same service area in the Unified licence guidelines is reasonable.

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

As significant changes are expected in the prevalent licensing regime due to introduction of Unified licensing regime, it might be difficult to envisage all issues at this stage and the same can be addressed as and when encountered. However, some of the additional issues that can be addressed at this juncture are submitted below for the kind consideration of the Authority:

- (i) In case of National Level Unified Licensee having spectrum assignment in few of the services areas, there should be clarity regarding (a) offering its access services to customers in services areas not having spectrum assignment; (b) levy of inter-circle roaming charges to its customers.
- (ii) The guidelines should be made applicable equally for all operators providing services using licensed spectrum as well as un-licensed spectrum.
- (iii) In the current market scenario, the fixed wireline services are reducing and wireless services, mainly with mobility, are predominately deployed. In view of this and in order to move towards One Nation – One License across services and service areas, it is suggested that in the new Unified Licensing Regime, we may have National level Integrated Numbering Plan for all services for optimal utilisation of the scarce numbering resource. Similarly, the present SDCA based local call concept applicable for fixed lines may also be revised, to be in line with that of the mobile services.
- (iv) It is suggested that this opportunity may be utilised for revising the service area particularly related to Kolkata & West Bengal, UP (E) & UP (W), and Mumbai & Maharashtra to bring the integrated State level concept. Accordingly, the Annexure I to the Draft Guidelines may be valid for existing license while it is revised for new license. The road map for convergence of these two cases can also be given to the existing licensee. This will also settle the issue of roaming within the same State.
- (v) With the introduction of Unified License concept, it is suggested to introduce the concept of Switch sharing also as in future IP switches and NGN are likely to be introduced in the network.
- (vi) It is felt that the District area unified license may have to be introduced with utmost care to restrain ‘fly-by-night’ entities from taking the license and getting away with the customers’ money by closing down the services at random. In addition, the District level license is likely to pose interconnection issues with other District/Service area/National level licenses.