

Annexure A

**Idea Cellular Response
To
TRAI Consultation Paper
On
Review of Voice Mail/Audiotex/Unified Messaging Services Licence
Dated June 14, 2016**

Summary:

Violation by existing Voice Mail / Audiotex /UMS licensees

- a) We welcome TRAI's initiative to issue this CP on "**Review of Voice Mail /Audiotex /Unified Messaging Services Licence**". **The consultation assumes significance in view of recent violations of Indian Telegraph Act/ terms & conditions of the Voice Mail /Audiotex /Unified Messaging Services licenses by some of the licensees. There is thus an underlying need for a review of the regulatory framework governing issuance and obligations under such Licenses.**
- b) As you would be aware, the licensees mentioned above were not only violating some of the key terms and conditions of the Voice Mail /Audiotex /Unified Messaging Services licenses, but also **exploiting the arbitrage arising out of the differential termination charges for mobile and fixed line services as specified by TRAI in its Telecommunication Interconnection Usage Charges (Eleventh Amendment) Regulations, 2015 (1 of 2015) dated 23rd February, 2015 to offer calls at much cheaper tariffs than those offered by Mobile TSPs for their voice calls.**
- c) The modus operandi of these entities included at the first step, a capture of the calling and called party numbers, whenever a customer initiated a voice call through their calling app. The information so captured was then used to generate two simultaneous and distinct calls, one for the Called number and another for the Calling number, after which these calls were conferenced.

Arbitrage exploited, causing revenue loss

- d) These entities were thus converting an outgoing call from a mobile operator network into an incoming call from a fixed line network, and therefore, resultantly depriving the access operators of their legitimate call charges as well as termination charges, wherever applicable. **Such a practice ultimately translated into a huge revenue loss for the concerned access operators and more significantly a lesser payout to exchequer in the form of license fee on the curtailed operator revenues.**
- e) We would like to similarly highlight that various service providers (with / without Audiotex license) offer "missed call service" as a service on commercial basis to enterprises. The services are offered to initiate "Call to Action" for which the Telecom resources of the operator are utilized. However, while there is work done by the operator network in terms of carrying the call, no revenue gets realized by the carrying operator because of the use of missed call facility for such activity, thus translating to revenue loss for the operator as well as Government.

Security issues

- f) Further, the Security threat emanating from such an illegitimate route cannot be overemphasized. It is understood that under the methodology used by the said violating licensees, the CDR's

generated captured all calls as Mobile Terminating (MT) calls from person 'C' (i.e. App), while the communication practically happened between person A and person B. Hence there was no way one could link the two calls together on the basis of generated CDR's to conclusively establish that actual conversation took place between person A and Person B. **Thus this created a huge security threat wherein the occurrences of calls by Person A or Person B could not be traced back.**

Other Licensing violations

- g) **In context of the above-mentioned point, it is pertinent to mention here that provisioning of Point-to-Point Conferencing and calling card facility is not allowed under the Audiotex License as per the following clause:**

"30.6: Point to point conferencing and calling card facility shall not be provided by Voice Mail/Audiotex licensees."

Further, it is also understood that the point to point conferencing was also being extended to international locations in violation of the following clauses under the Audiotex license:

"2.1: The Licensee shall be permitted to provide in its area of operation Voice Mail/Audiotex/Unified Messaging Service using MTNL/BSNL/Other Licensed Private Operators Network."

"30.7: Dial out facility shall not be used in whatsoever manner for any illegal by pass of STD/ISD traffic of any licensed access service providers. Voice Mail/Audiotex licensee shall have to give undertaking in this regard."

Schedule of Service Area.

"The Service Area for which this Licence is awarded is given below and shall be Short Distance Charging Area (SDCA) on the basis of local dialing."

Clause '9' of Annexure 1 under the head "Definitions of Terms and Expressions":

"Service Area" defines the Short Distance Charging Area (SDCA) within which the Licensee may operate and offer the Services as given in Schedule "A".

- h) Thus the acquisition of customers by such licensees covered not only their own licensed service area, which happens to be the SDCA, basis the licensing definition, but also the customers beyond their known licensed boundaries, namely other SDCAs, states and even countries, which is not allowed as per license.
- i) In this context, we also understand that a few Audiotex licensees are using the functionality of switching by converting national free phone traffic into international free phone traffic by indirectly routing traffic outside India. It is pertinent to mention here that the origination charge for international free phone traffic is under forbearance and is much higher than the charge for domestic free phone services. It is thus possible that that some of these Voice Mail / Audiotex / Unified Messaging Services licensees are making unlawful gains by way of carrying the international traffic and masking the same as national traffic. Thus access operators are getting a much lesser share of call charge, eventually also translating into a loss to the exchequer by way of reduced license fee.

Thus, keeping in consideration the above, we believe that there is a need to introduce suitable checks and safeguards through prohibitions, penalties, etc. in the licensing terms of the Voice Mail / Audiotex / UMS Licences to strengthen their framework and prevent any possible misuse.

Need for Regulatory Clarity:

- j) Currently, Voice Mail / Audiotex can be provided by any licensee holding Access Service license including UL (Access Authorization) while UMS can be provided by any licensee holding Access Service license including UL (Access or ISP Authorizations). Idea Cellular agrees with the Authority's reference in the CP that the current situation of absence of terms and condition applicable for provision of Voice Mail / Audiotex / Unified Messaging services under the Basic Service License or Unified Access Service License or UL License with Access Service Authorization does create an uncertainty around legal enforceability for such Licensees.

In our considered view, this issue needs to be immediately addressed through inclusion of the necessary Terms and conditions with respect to the Voice Mail / Audiotex / UMS under the Basic Service License or UASL or UL license with Access Service authorization and existing Voice mail / Audiotex / UMS licenses need be immediately brought under the Unified License so that terms & conditions are similar for all market operators, and no arbitrage opportunity exists.

Further, in order to ensure that scope of services are clearly defined for Audiotex under the Unified License, we further recommend that Audiotex services should not be seen as content services. We recommend that scope of services under the Unified License (*in context of Audiotex licenses*) should be classified under two categories: A) Audio Conference Services B) IVRS. This would ensure that service context is clearly defined and no Regulatory grey areas emerge.

In view of the above we would like to make following suggestions to the Authority:

- I. There should not be any standalone licenses for Voice mail/ Audiotex /UMS services. Further, there should not be any separate standalone audio conferencing service License
- II. Voice Mail/ Audiotex / UMS should be brought under the UL (Access Authorization).
- III. The scope of services under the Unified License (*in context of Audiotex license*) should be classified under two categories: A) Audio Conference Services B) IVRS.
- IV. All current licensing clauses prescribing service specific conditions / prohibitions related to Audiotex Services should be incorporated in the UL (Access Services), i.e.,
 - Should not be allowed to give point to point conferencing and calling card facility.
 - Should not be allowed Dial out facility in whatsoever manner for any illegal by pass of STD/ISD traffic of any licensed access service providers.
 - Should be mandated to adhere to call routing as per national routing plan issued by the Licensor w.r.t audio conferencing with prohibition on bridging or patching of calls under UL (Access service authorization)
- V. With respect to the OTT players providing such a service, it is critical that the principle of "same service, same rule" is adopted to ensure level playing field.
- VI. Terms and Conditions should be as per the existing UL (Access Service Authorisation)
 - Area of operation: LSA based
 - Duration of license: 20 years
 - License Fee : 8% of the AGR

VII. Migration from current Licence to the UL (Access Authorization)

- Migration of the current Voice Mail / Audiotex / Unified Messaging Services licensee to the UL (Access Authorisation) should be made mandatory.
- Same process in the form of requirement for application fee, non-refundable processing fee, non-refundable entry fee, minimum net worth and paid-up capital, performance bank guarantee, financial bank guarantee, etc. should be followed, as is being done for the UL (Access Authorization).

In view of the above, our submissions to the queries raised in the CP are as follows:

IDEA SUBMISSIONS ON ISSUES FOR CONSULTATION

Q 1. *In view of the discussion in Para 2.13, is it necessary to have a separate standalone licence for Voice Mail Service? If so, why? Please provide detailed justification?*

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Q 2. *If the answer to the Q1 is in the affirmative, whether the existing technical specifications need to be revised or redefined? What should be the revised technical specifications?*

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Q 3. *In view of Para 2.17 and present technological developments, is it necessary to have a separate standalone licence for only Audiotex Service? If so, why? Please provide detailed justification?*

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Q 4. *If the answer to the Q3 is in the affirmative, whether the existing technical specifications need to be revised or redefined? What should be the revised technical specifications?*

IDEA Comments:

- I. Please refer to our submissions in the Summary above.
- II. We submit that **a more unified regulatory practice relating to the current Licensing Regime, together with the alignment of obligations required to be fulfilled under various authorizations, would best serve the interests of telecom service providers, and also those of Indian Telecom Industry.**
- III. Standalone licenses for Voice Mail / Audiotex / Unified Messaging Services would add avoidable layers of complexity to the licensing regime and will also not be in line with the NTP-2011 that lays down as one of its strategies / objectives the following:

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

3.1.1. Convergence of services i.e. convergence of voice, data, video, Internet telephony (VoIP), value added services and broadcasting services”

Hence, we submit that no standalone licenses for Voice Mail / Audiotex / Unified Messaging Services should be introduced.

IV. Thus we submit that the Voice Mail /Audiotex /Unified Messaging Services need to be brought under the Unified License (Access Authorisation). Our submissions in this regard are as follows:

- a. As highlighted in the preamble, there have been a number of incidents involving violations of the nature of offering calling services by current Audiotex licensees.
- b. The modus operandi of these entities entailed at the first step a capture of the calling and called party numbers whenever a customer initiated a voice call through their calling app. The information so captured was then used to generate two simultaneous and distinct calls, one for the Called number and another for the Calling number, after which these calls were conferenced.
- c. These entities were thus covertly converting an outgoing call from a mobile operator network into an incoming call from a fixed line network, and therefore, resultantly depriving the access operators of their legitimate call charges as well as termination charges, wherever applicable. Such a practice ultimately translated into a huge revenue loss for the concerned access operators and more significantly a lesser payout to exchequer in the form of license fee on the curtailed operator.
- d. The Voice mail and Audiotex services are currently available to be offered under Voice Mail/Audiotex/UMS license or under UASL/UL. In this regard, it is submitted that while UASL/UL is subject to License fee, entry fee and other stringent licensing conditions, there are no such conditions applicable for the Voice Mail/Audiotex/UMS licensee. Thus, non-level playing field exists between the two types of licenses. Further, since the Audiotex licensee does not have to pay any license fee on the offered services under the current Voice Mail/Audiotex/UMS license as against a UL Licensee, there is also a lost opportunity for the exchequer to earn revenues.
- e. A matter of overwhelming concern also lies in the fact that some of these services are run from offshore locations thus creating a security hazard for the country.

V. In light of above, Idea Cellular is of the view that there should not be any standalone Voice mail / Audiotex Licenses and the same should be brought under UL (Access Authorisation). Further, all the current licensing terms and conditions on service specific conditions/ prohibitions, etc. should be incorporated in the UL (Access Authorisation).

Q 5. *Whether there is a need for standalone licence for providing Audio Conferencing Service? If yes, whether the technical specifications need to be explicitly defined? Please provide detailed justification?*

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Q 6. *If the answer to the Q5 is in the affirmative, what should be the technical specifications for providing Audio Conferencing Service?*

IDEA Comments:

- I. **We are of the firm view that there is no need for a standalone license for audio conferencing service.**
Our submissions in this regard are as below:
 - a. The Authority has itself highlighted in the past that it is pertinent to migrate to a licensing regime with service and technology neutrality. The Unified licensing Regime was envisaged with the same objective. A standalone license would go against that principle.
 - b. As submitted above, standalone license would only add avoidable layers of complexity to the existing licensing regime and would further not be in line with the strategies / objectives listed under NTP 2011.
 - c. Further, we are of the view that creating separate standalone license only creates opportunities for reselling telecom services and arbitrage opportunities of the nature pointed out above thereby leading to issues described in detail above under our Summary submissions.
 - d. Establishing a standalone license for Audio Conferencing Service will only encourage transfer of revenue from revenue sharing entities to non-revenue sharing entities. This is because as highlighted above, the Audiotex license holders do not pay any revenue share to the exchequer whereas telecom service providers do under the UAS /UL License.
- II. **In light of above, we are of the view that there should not be any standalone license for Audio Conferencing service.**
- III. **However, as highlighted earlier, we recommend that the scope of services under the Unified License (in context of Audiotex licenses) can be under two categories: A) Audio Conference Services B) IVRS. This would ensure that service context is clearly defined and no Regulatory grey areas emerge.**

Q 7. *Is it necessary to have a separate licence for Unified Messaging Service when holding an ISP licence is mandatory to provide the Unified Messaging Service and standalone ISP licensee is also allowed to provide Unified Messaging Service? If so, why? Please provide detailed justification?*

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Q 8. *If the answer to the Q7 is in the affirmative, whether the existing technical specifications need to be revised or redefined? What should be the revised technical specifications?*

IDEA Comments:

- I. As suggested in the Summary, **Idea Cellular is of the view that there should not be any standalone Voice mail / Audiotex / Unified Messaging Licenses and the same should be brought under UL (Access Authorisation). Further, all the current licensing terms and conditions on service specific conditions/ prohibitions, etc. should be incorporated in the UL (Access Authorisation).**

- II. It is also pertinent to mention here that as highlighted in the CP there are only two entities providing the UMS as on date out of the sixty License holders. It is thus not recommendable to have a standalone license for a service that has very few takers and the same should be brought under UL (Access Authorization).
- III. Further, the added complexity of taking an ISP License in addition to UMS License for the purpose of offering Unified Messaging Service would be done away with by introduction of Unified Licensing for the purpose. The UMS services can then be provided by any licensee holding Access service license including Unified License (Access or ISP authorizations).

Q 9. In case Voice Mail/Audiotex/Unified Messaging Service requires a licence should they be made a part of the Unified Licence as one of the services requiring authorisation? Please provide detailed justification?

Q 10. If the answer to the Q9 is in the affirmative, what should be Service Area? Whether Service Area may be similar to the Service Area of ISP (National Area, Telecom Circle/Metro Area, Secondary Switching Area) to bring in uniformity among the Service Areas of different services? Please provide detailed justification?

IDEA Comments:

- I. As suggested in the Summary, we are of the view that Voice Mail/Audiotex/Unified Messaging Service should be made a part of the Unified Licence through Access Authorisation. UMS services can also be provided by a licensee holding Unified License (ISP authorization)
- II. However, if TRAI still decides to have a separate authorization for offering such services under Unified Licence, then it should ensure that the terms for offering these services under different service authorizations under Unified Licence are uniform in all respects.

This would be essential to maintain a level playing field and to prevent any regulatory arbitrage while offering similar services under different Authorizations. Additionally, existing UASL/UL (AS) operators should also be allowed to hold a separate authorization for offering these services under Unified Licence.

- III. Further, we are of the view that standalone licenses/services have been rendered redundant by advances in technology and are prone to misuse. Thus, there should not be any separate authorization under Unified Licence.
- IV. We recommend that the Unified license (Access Service Authorization) should be granted, with minimum authorization for **at least one LSA.**

Q 11. If Voice Mail/Audiotex/Unified Messaging Services is made a part of the Unified Licence as one of the services requiring authorisation, then what should be the Entry Fee?

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Q 12. Whether there should be any requirement for Minimum Net worth and Minimum Equity for Voice Mail/Audiotex/Unified Messaging Services authorisation under Unified Licence?

IDEA Comments:

- I. For the reasons stated above, we recommend that the Entry Fee, Minimum Net worth and Minimum Equity should be the same as that applicable under UL (Access Service Authorisation). There can be no other dispensation.

Q 13. The annual licence fee for all the services under UL as well as for existing UASL/CMTS/Basic Service/NLD/ILD/ISP licensees have been uniformly fixed at 8% of AGR since 1st April 2013. Whether it should be made same for Voice Mail/Audiotex/Unified Messaging Services authorisation under Unified Licence? If not, why?

IDEA Comments:

- I. We strongly recommend that the annual Licence fee should be same i.e. 8 % of AGR similar to the UL and other existing UASL/CMTS/Basic Service/NLD/ILD/ISP licensees.
- II. The above is necessary to ensure level playing field among all providers of service as also to ensure that no regulatory arbitrage is available to any specific operator, providing the same service.

Q 14. In case the answer to the Q13 is in the affirmative then what should be the definition of AGR for Voice Mail/Audiotex/Unified Messaging Services authorisation under Unified Licence?

IDEA Comments:

- I. We recommend that the definition of AGR should be same for all licensees – i.e., include revenues only from licensed activities/services. We request that TRAI reiterate its Recommendations dated 6th January 2015 on “Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges”
- II. Further, all the revenues earned from subscribers vide provisioning of these services should be counted as revenue for the purpose of levy of license fee @8%.
- III. The above is necessary to ensure level playing field among all providers of service as also to ensure that no regulatory arbitrage is available to any specific operator, providing the same service.

Q 15. What should be Performance Bank Guarantee, Financial Bank Guarantee and Application Processing Fee for Voice Mail/Audiotex/Unified Messaging Services authorisation under Unified Licence?

IDEA Comments:

- I. The Performance Bank Guarantee, Financial Bank Guarantee and Application Processing Fee for Voice Mail/Audiotex/Unified Messaging Services should be the same as under Unified Licence (Access Authorisation).

- II. The above is necessary to ensure level playing field among all providers of service as also to ensure that no regulatory arbitrage is available to any specific operator, providing the same service.

Q 16. Whether the duration of the licence with Voice Mail/Audiotex/Unified Messaging Services authorisation be made 20 years as in the other licence authorisations under Unified Licence? If not, why?

IDEA Comments:

- I. The duration of the license should be 20 years.

Q 17. What should be the terms and conditions for the migration of the existing Voice Mail/Audiotex/Unified Messaging Services licensees to Unified Licence?

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Q 18. Whether the existing Voice Mail/Audiotex/Unified Messaging Services licensees may be allowed to continue or it would be mandatory to migrate to the Voice Mail/Audiotex/Unified Messaging Services authorisation under Unified Licence?

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Q 19. What should be the annual licence fee for existing Voice Mail/Audiotex/Unified Messaging Services licensees who do not migrate to the Voice Mail/Audiotex/Unified Messaging Services authorisation under Unified Licence?

IDEA Comments:

- I. Idea Cellular is of the firm view that that there needs to be mandatory migration of such licensees (Voice Mail/Audiotex/Unified Messaging Services) to UL (Access Authorisation).
- II. The above is necessary to ensure level playing field among all providers of service as also to ensure that no regulatory arbitrage is available to any specific operator, providing the same service.

Q 20. Please give your comments on any related matter, not covered above.

IDEA Comments:

Please refer to our Summary submissions.
