

## Recommendations on Mobile Virtual Network Operator (MVNO)

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1. **Do you agree with the definition of MVNO?**

The following definition may be adopted:

*“MVNO licensee is an entity that does not have assignment of spectrum for Access Services (which may include 2G/ 3G/ BWA/ CDMA) but can provide wireless (mobile) Access Services to customers by sharing the spectrum of the Access Provider (UAS/ CMTS licensee)”.*

2. **Do you think there is a need to introduce MVNO in the Indian Telecom Market? If yes, is it the right time to introduce MVNO as a distinct service provider with its own licensing and regulatory framework?**

As discussed in the consultation paper, the MVNO services not only add value to the standard voice service as provided by MNOs but will also drive up the ARPU. The decrease in ARPU, which is a major concern for all the existing MNOs, may be able to find a way to increase their revenues through increased market presence, sale of value added services like ring tones, picture/video messaging, greetings, games, Internet access or other data services including niche value added services. With the recent announcement by the Reserve Bank of India, to analyse the possibility to allow mobile phones to act as credit cards also, MVNOs may find themselves playing a niche and active role in roll-out of these and other superior value added services.

In other words, MVNO may not only provide network connectivity but will also help in developing and integrating services from various service and consumer sectors. MVNOs may make it possible for the MNOs to sell of network capacities/ bandwidth to newer marketing outfits that may have a superior understanding of customer niches along with provision of wider value added services.

In addition to the above, it may also be noted that the telecom (mobile) revolution has to an extent taken place in urban areas and rural areas still remain untouched with exponential growth in this sector. Introduction of MVNOs may enable many service sector organizations to take licenses and provide mobile services in rural areas at a much lesser OPEX and CAPEX. With so much the liberalization/ revolution taking place in many sectors especially railways, it may not be wrong to expect that some day even Indian Railways may take MVNO license to provide services within the trains and also along the wide rail network.

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Nevertheless, it is also important to analyse the MVNO success stories. Many recently launched MVNOs in the countries like United States of America have failed miserably and are continuing to suffer losses. Walt Disney's ESPN Mobile MVNO has not been able to earn much revenue as has been expected from the operations. Although, it has been analysed that MVNOs with a strong brand value with an ability to offer compelling new differentiated services have performed relatively well in the US markets. However, 'low-frills' MVNO model has done well in European market.

The other interesting facts relating to operations of MVNOs have been cited below:

*“Germany now has more than 30 such MVNOs. E-Plus, the German operator that sparked the MVNO explosion a little over a year ago, captured 41 per cent of net additions in Germany in the first quarter of 2006 compared with its overall 14 per cent share of total subscribers.*

*In Belgium, the Netherlands and Denmark, MVNOs are accounting for one-in-five new mobile subscribers.*

*Ay Yildiz, a service offered by Belgium's BASE aimed at the Turkish community in Belgium. Ay Yildiz has in the region of 40,000 customers and a 40 per cent penetration in its target market.”<sup>3</sup>*

Virgin Mobile in the UK has been very successful as a MVNO increasing penetration rates year on year, and linked to its strong brand value both in financial and media markets. Also Tesco, the food shopping giant has been successful in the MVNO sector, reselling SIMs and generating goodwill in its mobile phone brand. Key to the success of both players has been goodwill in existing brands together with innovative service plans and a highly competitive market in handsets. Based on the benefits of MVNO as cited in the consultation paper, there is a need to introduce MVNOs in India. It is expected that introduction of MVNOs would bring in more competition, variety of services (including value added services) and increased mobile penetration.

Further, it is advisable that MVNOs operate under a separate license and independent regulatory framework.

### **3. To what extent should the MVNO be permitted to set up their own infrastructure?**

MVNOs may be permitted to own and share active as well as passive infrastructure with out owning the spectrum/ bandwidth. As suggested in point 1 (definition of MVNO), MVNOs may only share spectrum i.e. be able to buy spectrum from MNOs for provisioning of services.

The grant of right to establish/ own/ share passive infrastructure may allow big corporations like Railways to utilize their own infrastructure, especially in rural and remote areas, for provisioning of mobile services.

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<sup>3</sup> ‘MVNOs and Mickey Mouse economics...’ by Mark Newman available at [www.telecoms.com](http://www.telecoms.com).

However, the MVNOs may be asked to use the mobile switching centers (MSC) of the parent MNOs.

4.(i) **What Regulatory Model should be followed for MVNO in the Indian context?**

The 'Intermediate MVNO' model may be more appropriate in the Indian telecom market context.

It may be noted that, based on the TRAI's recommendations, DoT has announced implementation of MNP (in phased manner). In order to successfully launch MNP and to regulate the costs for MVNOs, it is advisable that the MSCs may be controlled by the MNO.

MVNOs may be permitted to provide network/ application/ billing/ customer care/ distribution and marketing services including any value added services.

The above is also in tune with the regulatory framework/ TRAI recommendations for 'resale of IPLC' wherein the proposed resale license holder may rely upon ILD network operator for LIM function.

(ii) **What kind of obligations may be imposed on MNOs so that Mobile Virtual Network Operations are implemented effectively in India benefiting the customers?**

The following obligations may be imposed upon the MNO for effective implementation and operations of MVNOs:

- (a) Open interconnection/ access;
- (b) Sharing of infrastructure;
- (c) Maintain minimum standards of Quality of Service
- (d) Co-location services
- (e) Database facilities
- (f) Resale conditions;
- (g) Adequate provisioning of capacity (as set out in the 'switchless' interconnection agreement);
- (h) Restrictions on customer access; and
- (i) Roaming services.

5. **What should be the eligibility criteria for MVNO?**

- (a) In order to comply with the terms of the Sec. 4 of the Indian Telegraph Act 1885, standard conditions (such as 'a company incorporated in India' etc.) as prescribed for other telecom licenses may be made applicable for MNVNO licenses;
- (b) The eligibility criteria with respect to foreign investment in the applicant (MVNO) entity should be maintained at the existing level of foreign equity cap as in various other telecom services. Therefore, in light of the above the foreign equity in the MVNO entity should be allowed to the maximum extent of 74%;

- (c) A minimum networth requirement (for each category of circle) may be imposed;
- (d) Majority of the board of directors should be resident Indian citizens;
- (e) Key positions within the applicant entity may be taken up by foreign nationals after taking appropriate governmental clearance;
- (f) MVNO applicants may be asked to enter into commercial agreements/ memorandum of understanding with the MNOs prior to filing application for grant of MVNO license;
- (g) The period of roll-out obligations may be limited to 6 months, along with a financial and performance bank guarantee;
- (h) Payment of AGR at 6% with a minimum cap of annual AGR payment;
- (i) Minimum lock-in period of 2-3 years; and
- (j) Provision of pure voice services (as provided by MNOs) may be discouraged.

6. **Do you suggest different eligibility criteria for different MVNO models and regulatory frameworks?**

It may not be advisable to have different eligibility criteria/ regulatory framework for different MVNO models. MVNO may be given free hand as to selection and provision of services. Further, for ease of operation and regulation it is suggested that only one MVNO model may be promoted initially.

7. **Should there be any restriction on the number of MVNOs attached to an MNO?**

The number of MVNOs per MNO may be fixed depending upon the availability of spectrum with such MNO. Further, the market share of each MNO may be assessed before fixing limit of attachment of MVNOs with such MNO.

8. **What should be the commercial model/framework for spectrum sharing by MVNO; w.r.t. (i) Department of Telecom and (ii) MNO?**

As per the existing policy the Department of Telecommunications may auction/ allocate the spectrum to MNO.

Further, MNO may share the spectrum with the MVNO. The same may be based on 'per minute' model or 'bulk sale' model. However, MVNO should be provided with adequate spectrum so that the minimum QoS standards are maintained and the customers get uninterrupted service. This would include for example at the network level non-interference provisions of frequencies built into the license conditions for spectrum sharing.

9. **What should be the service obligations of MVNO?**

Apart from 3 basic activities of MVNOs, which are customer acquisition, customer management and provision of service, the MVNOs may be obliged to

- (a) allocate mobile number as per national numbering plan;
- (b) maintain QoS;
- (c) share LIM capabilities of MNO;
- (d) meet national security requirements such as subscriber verification etc.;
- (e) provide free access to emergency call numbers (services);
- (f) provision of customer care services;
- (g) directory services;
- (h) allow number portability;
- (i) put in place a proper billing system;
- (j) selection of tariff plans without any additional charges;
- (k) restrictions on anticompetitive cashback deals; and
- (l) restrictions on unfair competition in sales (slamming).

10. **What should be the method and consideration for determining the entry fee for MVNO?**

The entry fee for a circle should be based upon the number of subscribers and number of operators in that particular circle. Further, the ARPU for that circle should also be analysed before determining the entry fee.

Nevertheless, it is advisable that the entry fee for same category of circles should be kept at par.

11. **What should be the definition of AGR for MVNOs?**

The following may be followed for the purposes of computation of AGR:

*“the following will be excluded from the Gross Revenue to arrive at the adjusted gross revenue:*

- (i) *PSTN related Call charges (access charges) and/ or bandwidth charges actually paid to any (licensed) telecom service providers within India.*
- (ii) *Roaming revenues actually passed on to other telecom service providers.*
- (iii) *Service Tax on provision of service and Sales Tax actually paid to the Government; if gross revenue had included the component of Service Tax.*
- (iv) *Income from other business operations not related or incidental to MVNO license and/ or telecom operations (as may be regulated/ licensed under Section 4 of Indian Telegraph Act).*
- (v) *Any access deficit charges as a consequence of rollout in rural regions.”*

Further, in light of Telecom Disputes Settlement & Appellate Tribunal (“TDSAT”) recent judgment the following should be excluded from the AGR: income from dividend, interest income on savings, capital gains and gains from foreign exchange. Also, income earned on investment of savings made by an operator after meeting liabilities including liability on account of share of government in the gross revenue should be excluded from AGR.

12. **What is the best way to protect the subscribers both in terms of continuity of service and applicability of tariff plan:**

(i) **in case of a dispute between MVNO and MNO?**

Neither MVNO nor MNO should be allowed to discontinue the service till the dispute settled (either amicably or through legal process). It may be mandated that the same is made part of the commercial/ license agreement.

In case the MVNO shifts from one MNO to another, customers should be given an option to either continue with the MNO (under the same or any other self chosen tariff plan) or move on with the MVNO (under the same or any other self chosen tariff plan).

(ii) **in case MVNO wants to exit the business.**

In order to promote serious players there should be a minimum lock-in period of 2-3 years. However, after expiry of the said lock-in period if the MVNO wants to exist then it shall transfer all its customers to parent MNO or any other MVNO on the existing tariff plan(s). Also, the subscribers may be given an option to migrate to any other MNO/ MVNO at the cost of service provider (exiting MVNO).

Further, MNO may be mandated to provide services to customers of the exiting MVNO.

13. **Should there be any roll out obligations specified for MVNO? If yes, what should be the penal provisions for failure/ delay in fulfilling the obligations.**

In order to discourage non-serious players/ operators, roll-out obligations similar to any other MNO licensee may be imposed onto the MVNO licensees. Further, the roll-out obligation period should be lesser, as MVNOs do not have install their own LIM center etc.

In case of any default in roll out obligations, government may invoke the PBG of the MVNO.

14. **What shall be the specific guidelines on the Mergers and Acquisitions of MVNO?**

The guidelines for Merger and Acquisition (“M&A”) of MVNO should be similar to the ones being announced for UAS/ CMTS licensees.

In order to grant permission for M&A activity, it may be mandated that the market share of the merged entity in the relevant market would not be more than 25 percent either in terms of subscriber base or in terms of Adjusted Gross Revenue (“AGR”).

In tune with the existing guidelines for determination of market power, the market share of both the subscriber base and the AGR of the licensee in the MVNO market should be considered to decide the level of dominance for regulating the M&A activity. The duly audited AGR can be taken as a basis of computing the revenue based market share for operators in the MVNO market.

Post merger, if the MVNO becomes a Significant Market Power (“SMP”) then the extant rules and regulations applicable to SMP(s) should apply to the merged entity. Page: 7 Further, it is important to keep a check on the probability for operators to leverage their dominance from the wholesale sector into the retail sector

An undertaking shall be deemed to have SMP if, either individually or jointly with others, it enjoys a position of economic strength affording it power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

In order to regulate acquisitions of equity stake of one access services and or MVNO licensee company/legal person/promoter company in the enterprise of MVNO licensee in the same license area, the existing guidelines on substantial equity may be adopted i.e.

*“No single company or legal person, either directly or through its associates, shall have substantial equity holding in more than one licensee company in the same service area for the MVNO. ‘Substantial Equity’ shall be equity of 10 per cent or more. A promoter company/legal person cannot have stakes in more than one licensee company for the same service area.”*

Further, any permission for M&A should be accorded only after completion of minimum lock-in period of 2-3 years from the effective date of licenses.

The duration of the license of the merged entity in the respective service area should be equal to the remaining duration of the license of the two merging licensees, whichever is less on the date of merger.

Further, it may be ensured that the M&A does not result into substantial lessening of competition (“SLC”). Also, a close watch should be kept on the merged entity so that the same does not gets engaged into predatory pricing.

Also, MVNOs for any kind of M&A should obtain clearance from the DoT and the Competition Commission of India; thereafter intimation should be sent to TRAI.

It is also advisable to develop and establish a threshold based on (N-)firm concentration ratio for M&As in MVNOs (telecom sector).

Further, it is advisable that the commercial agreement between MVNO and MNO may have relevant clauses with respect to uninterrupted provision of services (by both MNO and MVNO) in case of any M&A in the licensee company. Also, in case the MVNO licensee is acquired by any other MNO, then the commercial agreement should provide

sufficient flexibility for transfer of consumers/ subscribers from MSC of one MNO to another MNO/ MVNO. Also, the commercial agreement(s) of interested entity(s) (licensee) should be reviewed by the DoT before giving any clearance.

Also, no restriction may be imposed on quantum of M&As of MVNOs (with MNO or MVNO) in any particular circle as long as the same does not result into SMP and/ or SLC.

There also needs to be consideration of media concentration rules for example where a network operator dominant in infrastructure services also has an established presence in the content generation market. The UK for example has stringent media concentration rules that apply to MVNOs.

15. **Should there be any restriction on cross holdings between two MVNOs and between MVNO and an MNO in a service area?**

In order to bring in uniformity in various telecom service regulations, it is advisable to have similar restrictions as imposed under various other licenses on cross holdings between two MVNOs and between MVNO and an MNO in a service area. This may also be in the benefit of new entrants. The same are discussed in point 14 above. See also media concentration rules in (14).

16. **What should be the FDI limit for MVNO?**

The FDI limit for MVNO should be capped at 74% (as in the case of MNO/ ILD/ NLD/ ISP). Further, FDI upto 49% should be through automatic route and foreign investment beyond 49% should be approved by the Foreign Investment Promotion Board.

17. **What should be the quantum of FBG and PBG for MVNO?**

It may be noted that the subscriber may not be able to differentiate between MVNO and MNO and may take services from any of the MVNO with a mindset that he is being provided services by a telecom operator. Further, the services provided by MNO and MVNO are similar in nature.

Therefore, it is advisable that the FBG and PBG for each circle should be kept at the same level as was paid by MNOs.

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