TRAI CONSULTATION PAPER ON REVIEW OF LICENSE Terms & Conditions AND CAPPING OF No of ACCESS PROVIDERS
Consultation Paper No.: 7/2007

The Consultation Paper brings out following main areas of concern.

- Mergers & Acquisitions
- Substantial Equity
- Permitting combination of technologies under the same license.
- Roll out obligations
- Determining cap on No of Access Providers

1.0 The detailed responses to the questions raised by the Authority are enclosed. Govt's policy of Nov 2003 is Consumer / Industry centric, but overlooked the spectrum issues. It is meeting those objectives (consumer industry centric) very well. In the name of spectrum constraints and financial viability of new operators, the issue is being attempted to be reopened; in order to correct an anomaly created in 2003 at the time of legitimizing the illegitimate, giving a complete goby to the proviso of need and timing of introducing new players. This time too, perhaps, pressure is from same quarters to enter into lucrative GSM market.

2.0 As per the provisions of TRAI, Act, 1997; the very first function mentioned is – to make recommendations on the NEED AND TIMING for the induction of new service providers and then the terms and conditions of the new licenses in addition to overseeing the efficient utilization / management of spectrum.

2.1 Since 1994, when the telecom sector was opened up to allow private operators to provide cellular telephony services, first set of licenses were issued for only 2 operators in each licensing area in the 1995-96 time frame. In the year 2000, third license was issued to government operator. Again, in 2001, on the recommendations of TRAI, 4th cellular operator was permitted for each licensing area and licenses were awarded through an ascending order bidding process. Each time, well defined bidding / selection process was followed, ensuring before hand the spectrum slots, whether in 900 MHz or 1800 MHz band. **Therefore, the operators, factored in, the timely and continuous allocation of spectrum in their bids.**

2.2 However, in 2003, when policy was revised, the concept of need and timing of induction of new operators or assured spectrum slot were dispensed with; that is why, there was no bidding process and fixed sum, based on 2001 bid prices, was prescribed. It was left to the operator to take a risk and obtain a license without any spectrum slot assurance. Hence, those operators who were awarded licenses in and prior to 2001 had very different connotation and business case than those who were awarded lincenses later in 2003 or afterwards. Therefore, government obligations of meeting the spectrum requirements of expanding customer base becomes different for 2001 and pre-2001 licensees vis-à-vis who came in 2003 and / or afterwards under UASL policy dispensation.

3.0 In addition, 2003 Policy of the government had a serious anomaly. In that, operators were asked to deposit license fee as that of 4th operator license fee, which also included charges for assured spectrum slot. This anomaly needs to be corrected, which will be dealt with in the subsequent para of this note.

4.0 Spectrum is a finite resource. Surely, Govt was fully aware of the situation even in Oct/Nov 2003, when the sector was opened for multipoly regime. We do not see any new element having crept in, calling for a review of this policy. Government must have worked out the roadmap in totality with regard to the ultimate spectrum bad width availability and its allotment priorities. Such a roadmap should be shared with stakeholders to help them in their planning procedures, otherwise our understanding would be as elaborated in para 2.2 above.

4.1 In UASL policy, the capping of no. of operators was left to the market forces and it was envisioned that anybody applying / meeting the eligibility criteria shall be awarded the license. It was left to the licensees to find the ways and means to meet the license obligations without any assurance of spectrum allotment. Under that conditions, government issues 22 licenses as recently as December 2006. In all fairness, remaining pending requests should also be considered under the existing policy framework including the applications of **Spice Communications** applied for in August 2006.

5.0 The aberrations in the current policy relating to matters of M&A, revision in rollout obligations, etc. can be separately addressed without necessarily touching the existing License Allocation Policy frame work.

6.0 Under the present dispensation, licenses can be categorized as follows:

1. Existing licenses, issued under the competitive bidding process and providing the services.
2. Licenses issued, in 2003 and thereafter on a fixed payment regime. This list should include all eligible pending applicants on the date of issue of new licenses, since it was open ended and no timing or sequencing was indicated in the policy document.

The government must ensure the timely spectrum allocation for the genuine expansion roadmap of the 1st category of operators in line with their bidding expectations, before meeting the requirements of 2nd category of licenses on first-cum-first-served basis.

This is all the more necessary if one looks at the illustrative example of subscriber growth trends in enclosed representative areas. By interpolating the trends of subscriber nos. expected by March 2008, it will be seen that the GSM Spectrum requirements of the above mentioned category 1 operators exceeds the maximum allocated spectrum allotment criteria as contained in the WPC order of 29th March, 2006 in majority of the circles.

7.0 As regards capping of no of Access providers, GOVT should continue to allow the play of market forces, rather than regulating the nos using flip/flop approach (which only serve the vested interests) . Instead, in view of spectrum crunch, Govt should look at forward looking innovative solutions and new policy initiatives, which will help meet the targets including those in rural / remote areas using alternate technology options.

7.1 As brought out in Para 3.0, and in the context of spectrum limitation, there is an urgent need to consider recasting the license fee into two components i.e., entry fee / registration charges and separately spectrum charges; so that new entrants can take the license and may like to provide telecom services either as MVNO or using unlicensed / delicensed spectrum bands or even fixed networks using new technologies facilitated by government's policy initiatives. These operators can subsequently apply for and get the spectrum by paying the spectrum charges, as and when spectrum is made available by the government. Such an action would mitigate the expectations of the licensees of the availability of spectrum, which is now being taken for granted, having paid the license fee.

Q1. How should the market in the access segment be defined (see ¶2.22)?

For the purpose of intra-circle M&A's the access market should be defined by combining both fixed and mobile subscriber base since most of the operators migrated to UASL regime. Even the financial market perceives the company value on total customer base. It is pointless treating the two separately when we are thinking in terms of quadruple play, and the UASL license covers all types of access provisions.

Q2. Whether subscriber base as the criteria for computing market share of a service provider in a service area be taken for determining the dominance adversely affecting competition, If yes, then should the subscriber base take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer?
YES AND NO

Yes, (except in those licensing areas where Incumbant operator continues to dominate the market due to private operators being still in the process of catching up)
Since DOT is calculating subs base as well as teledensity on mobile segment based on HLR figures and fixed segment on Exchange Data Records, it is therefore desirable to use same formula. The category of mobile subscribers shall include limited mobility subs & full mobility subs.
And No, because, we must also consider the revenues as well for determining the dominance of market power.

Q3. As per the existing guidelines, any merger/acquisition that leads to a market share of 67% or more, of the merged entity, is not permitted. Keeping in mind, our objective and the present and expected market conditions, what should be the permissible level of market share of the merged entity? Please provide justifications for your reply?

Since we have well developed industry and in 3 years we are expected to touch 500 Mil., it is better to fix the limit as per International norms (40-50%)., so that the market for mobile services remains vibrant. This is perhaps so, since already 5-6 operators are there in every licensing area.

Q4. Should the maximum spectrum limit that could be held by a merged entity be specified?

a. If yes, what should be the limit? Should this limit be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA operators? If yes, please specify the respective limits?

b. If no, give reasons in view of effective utilisation of scarce spectrum resource?

There should not be any cross technology merger. The merged entity must therefore be required to take a technology choice at the outset and licensor to give reasonable time for shifting all subscriber to a single technology. Therefore, cross technology merger must be excluded.

As regards same technology platform, even today, the Merger/ Acquisition price has 2 main elements , I,e Spectrum allocated & customer base acquired. Therefore in any deal spectrum is getting traded at the market perceived value at the time of the deal, irrespective of the fact that whether for initial tranche of spectrum (4.4/6.2 Mhz for GSM, 2.5 Mhz for CDMA) the licensee has paid thro' Bidding or otherwise.

Nonetheless, to maintain competitiveness , the Merged entity should be entitled toa spectrum based on subscriber linked criteria for combined subscriber base,subject to the prevailing cap decided by the Govt, for individual operators. The new entity should stand in queue for further expansion allotment like any other existing operator.

At best,the merged entity be given time frame of 6months to adhere to subscriber linked criteria. The vacated spectrum on mergers etc. should be used for new players, should they wish to plunge in as late entrants with some fresh thinking.

The upper limit could be set for each licensing area depending upon the total spectrum available for 2G services and the number of operators expected. In some of the European countries it is about 20 to 25 Mhz, and they are able to provide all kinds of services (voice and/or non-voice), without any fuss. Therefore, limit of 15 MHz should be revised upwards to 20 – 25 MHz.

While revisiting the subscriber linked criteria in the ever expanding customer base, Govt should specify separately for GSM & CDMA networks based on spectrum efficiencies.

The review of existing spectrum caps is also because of rapid expansion in subs , which is at differing rates in each circle category ,for example in category `C' Circles, teledensity and ARPUs are increasing at a faster pace than category `A' circles, whereas, the spectrum allotment criteria corresponds to 50% or less than 50% of what is applicable to category `A' circles. **We recommend that `C' Category subscriber base criteria should be raised upwards in line with technical requirements of GSM / CDMA technology.**

Q5. Should there be a lowe.r limit on the number of access service providers in a service area in the context of M&A activity? What should this be, and how should it be defined?

It could be 3 private players in addition to the Government player.,both for fixed & mobile services. The upper limit too, must be set, taking into account the total spectrum availability and the time frames. Currently, spectrums are being released in driplets and this can barely cater to the pending requirements of existing operators.

Q6. What are the qualitative or quantitative conditions, in terms of review of potential mergers or acquisitions and transfers of licenses, which should be in place to ensure healthy competition in the market?

Spectrum Cap of a merged entity, No of mobile Access Providers in a particular technology, Market share of the Merged entity, both in terms of subscribers and revenues, are the questions which need be addressed holistically, as these are inter-related issues. All these do have the linkages to the total available spectrum , once that is addressed , rest will fall in place.

Q7. As a regulatory philosophy, should the DoT and TRAI focus more on ex post or ex ante competition regulation, or a mix of two? How can such a balance be created?

We should continue with an ex ante approach to M&A for the present, as Industry is still to get stability and maturity. Associated are Competition and Consumer issues , which need to be squarely and holistically addressed beforehand in the Consumer interest.

The availability of spectrum remains a thorny issue.

SUBSTANTIAL EQUITY

Q8. Should the substantial equity clause (1.4 of UASL) continue to be part of the terms and conditions of the UAS/CMTS license in addition to the M&A guidelines? Justify.

We believe that this clause has been very helpful to the industry against the play of anti competitive behaviour and it must therefore be retained.

Q9. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.

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Q10. If no, should such acquisition in the same service area be treated under the M&A Guidelines (in the form of appropriate terms and conditions of license)? Suggest the limit of such acquisition above which, M&A guidelines will be applied.

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Q11. Whether a promoter company/legal person should be permitted to have stakes directly or indirectly in more than one access License Company in the same service area?

Limit of substantial holding (presently less than 10%) is a good safeguard against any form of tacit understanding in the market.

In a listed company higher level of holding will have serious implications.

Q12. Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

Yes, Promotor to be defined, along with persons acting in concert.

Q13. Whether the legal person should be defined and if so the category of persons to be included therein and if not the reasons therefor.

Legal person as per the Company Law is already defined. The present license also carries the term.

Q14. Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?

NO, all should be included.

PERMITTING COMBINATION OF TECHNOLOGY UNDER SAME LICENSE

Q15. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?

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Q16. In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chosen alternate technology;

The existing policy of making technology choice in the beginning and then sticking to that; has given very good results in terms of investments, market growth, competitive tariffs etc. Any change in policy will bring in new element of uncertainity and will not be conducive to the investment climate. **In our view, policy does not require any change.**

It should also be borne in mind that spectrum chosen for one technology cannot be used for other technology. The spectrum for both technologies is specified by ITU and enshrined in NFAP. The choice was mandated by the Govt while asking for spectrum allocation . CDMA was a conscientious choice by these operators , may be for convenience to manipulate the system to get out of turn into mobile space. In any case no other technology spectrum be assigned additionally, if at all Govt wants to oblige, it may be by way of completely fresh license, and not an extension of existing licenses. But, it should also be kept in mind that Govt will be a party to reducing the space for two competing technologies , so assiduously built so far. In addition to the paucity of spectrum in 2G GSM Band being already felt so acutely.

Any action to allow CDMA operators to start services in the GSM space and GSM spectrum, must only be taken after fully satisfying the needs of existing operators' expansion requirements and those in the queue awaiting allotment of spectrum for GSM technology.

Q17. What should be the priority in allocation of spectrum among the three categories of licensees given in ¶4.16 of the chapter?

The three categories mentioned are :

1. Existing licenses
2. New licenses awaiting spectrum
3. Existing licenses want spectrum for deploying alternative technology

a) There should be only 2 categories. 3rd category neither exist, nor it should it be considered due to paucity of spectrum.

b) The first category should cover only those licenses issued under the competitive bidding process and their roadmap of expansion should be met. The 2nd category should cover rest of the licenses issued in 2003 and thereafter as also all other eligible pending applications.. Since UASL policy did not have any binding clauses, it was purely linked to issue of licenses to those who meet the eligibility criteria, therefore, all pending eligible applications on the respective dates should also be considered and LOI released. otherwise this action of pick & choose will be considered as arbitrary and partisan approach.

While Roadmap for making available additional spectrum for 2G services should be shared with the stakeholders , there is a need to ensure spectrum availability to the operators who are in commercial service so as to continue to meet their reasonable growth plans for the next 6-9 months before requirements of operators in the 2nd category is considered. Looking at the paucity of spectrum, in fact, the consideration of allotment of any frequencies to the 2nd category of operators does not arise till requirements of 1st category of operators is satisfactorily met.

As brought out in the para 7.1 of the forwarding note, the second category of operators entered in under UASL policy, will provide telecom services either as MVNO or using unlicensed / delicensed bands or even using alternative technologies. As and when, GSM spectrum is made available, they are at liberty to pay and get the spectrum to provide GSM services.

Q18. Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?

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Q19. Lastly, as such service provider would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to him?

Since cross-over allotment of spectrum is neither permissible, nor desirable, therefore, there is no need of linking with any rollout obligations. Rollout out obligations should in any case be done away with, except for rural areas.

ROLL OUT OBLIGATIONS

Q20. Should present roll out obligations be continued in the present form and scale for the Access service providers or should roll out obligations be removed completely and market forces be allowed to decide the extent of coverage? If yes, then in case it is not met, existing provision of license specifies LD charges upto certain period and then cancellation of license. Should it continue or after a period of LD is over, enhancement of LD charges till roll out obligation is met. Please specify, in case you may have any other suggestion.

In the case of new NLD / ILD licensing policy where no rollout obligation is prescribed, competition has enhanced many folds, therefore similar approach should be followed for the existing UAS Licensees as well as new licensees. As on date, roll out is pending only in rural/remote areas where USO Fund support is provided to incentivise infrastructure sharing & the roll out. The Industry welcomes such an approach, rather than recovery of LD charges.

Let the Roll out obligations be treated in a holistic manner by providing support infrastructure from USOF, which includes backhaul for connectivity , towers, building, power etc. It is of no use and consequence to impose penalties for achieving rural penetration. Let this sector be jointly and dispassionately addressed. C

Q21. Is there a case for doing away with the performance bank guarantees as the telecom licensees are covered through the penalty provisions, which could be invoked in case of non-compliance of roll out obligations?

Since performance bank guarantees benefit neither the customer nor the Industry, it should be rather dispensed with and replaced by a single corporate bank guarantee which will ultimately benefit the customer. In any case, there is a separate case of removal of rollout obligations, Encashment of B.G.is no solution to the ultimate objective of making available telecom services to every citizen at affordable, competitive, uniform rates. For broader objective, incentivisation approach is the best approach.

Q22. Should roll out obligations be again imposed on the existing NLD licensees? If yes, then what should be the roll out obligations and the penalty provisions in case of failure to meet the same.

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Q23. What additional roll out obligations be levied on ILD operators?

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Q24. What should be the method of verification of compliance to rollout obligations?

No rollout obligations be imposed on NLD / ILD Operators, rather, the obligations on the existing Access providers be removed as all of them have already met majority of these obligations.As has already been said that backhaul must be looked at thro' USOF supportand then NLD/ILD operator should provide connectivity depending upon their business case . There is plenty of fibre and other technology options to create points of presence to connect rural India. Imposition of penalities , will only be a retrograde step. The no. of BTS is not a criteria for determining the coverage.

Q25. What indicators should be used to ensure quality of service?

Technical parameters such as call success rate, call dropout rate and voice quality are presently used for determining QOS – should continue, however, subject to timely availability of spectrum and augmentation of inter-connects. In-building coverage is not the criteria used any where, only street coverage at -95 DBM level for 90% of the area is prescribed and measured.

Q26. As the licensees are contributing 5 per cent of AGR towards the USOF, is it advisable to fix a minimum rural rollout obligation ? If yes, what should be that. If no, whether the Universality objectives may be met through only USOF or are there any other suggestions.

Instead of prescribing the rural rollout obligations, USO fund contribution should continue to be utilized in offering more & more incentives for additional rural coverage in line with the recently introduced USO subsidy support for installing passive infrastructure sharing in rural areas.

Q27. In case of rural roll out obligation, whether number of BTS in a certain area a viable criterion for verification of rollout obligation?

BTSs is not the criteria. No of BTS depends on frequency band, height of the towers, topology etc.

Q28. What should be the incentives and the penalties w.r.t. rural roll out obligations?

As mentioned above, financial incentives such as reduction in licensing fee, lower spectrum usage charge, encouraging passive & active infrastructure sharing., should be prescribed to meet the targets of rural coverage.

Q29. Should there be a limit on number of access service providers in a service area? If yes, what should be the basis for deciding the number of operators and how many operators should be permitted to operate in a service area?

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Q30. Should the issue of deciding the number of operators in each service area be left to the market forces?

The present policy of not restricting the new applicants but leaving it to market forces , (implemented in Nov 2003) is having a very salutary effect on

a) rate of expansion of services (6-7 million additions every month)
b) lowering of tariffs (2cents/min or less than Re 1/ min)
c) enough innovation in VAS on the cards
d) Apart from maintaining reasonable level of QOS despite constraints in Spectrum availability and timely provision of interconnects.

Since the availability of spectrum depends upon the success of refarming exercises undertaken by the government, therefore, cap on no. of operators be reviewed from time to time so as to continue to assure meeting the genuine

requirements of expanding customer base of existing licensees. For example, if the trajectory of growth path of the exsting 4 operators is worked out, the requirements of spectrum by March 2008 exceeds 55-60 MHz, which is the maximum government may be able to refarm by that time frame.

Prior to November 2003, there were not more than 4 mobile operators in a licensing area. After removing the restriction and making the licenses technology neutral, the numbers have moved upwards depending upon the market forces. Today, there are about 5-8 operators in every licensing area. The major limitation is that of Spectrum, and present policy recognizes it, that is why, some licensees are still awaiting spectrum allotment.

On the spectrum issue, Spice view is as follows:

a) The spectrum kitty is restricted because of lack of will on the part of the government in getting the spectrum released from other users where it is not at all optimally utilized, as is expected for such a scarce and finite natural resource.
b) The spectrum release is being effected in driblets, resulting in the inefficient utilization.
c) Deviation in November 2003 from NTP99 policy, when the sector was opened without examining the need and timing of new players, as was being done at the time of issue of licenses in the year 2001 or in the pre-2001 years.

- Rather than regulating the opening /capping of access providers adopting flip/flop approach (which only serve the vested interests), government should look at facilitating forward looking innovative solutions such as allowing MVNO, spectrum sharing, using unlicensed / delicensed spectrum bands or any other new technologies for rollout by 2nd category of operators who entered into 2003 or afterwards. Subsequently, when spectrum in regular access band of GSM / CDMA is available, then on payment of prescribed spectrum charges, the licensee / operator may be allowed to offer spectrum based GSM / CDMA services. In other words, let the market forces limit the no. of operators subject to spectrum constraints, rather than policy handicaps.