

## **NTP-99, MIGRATION KICK STARTED THE INDIAN TELECOM INDUSTRY**

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The importance of telecom and telecom infrastructure was first recognized in the **National Telecom Policy 1994** (NTP-94) which recorded that telecommunication services of world class quality were necessary to ensure the success of the Government's new economic policies. The Policy also recognized that development of telecom is both technology and capital intensive and that the rapid acceleration in the growth of telecom services would require huge resources, which were beyond the capacity of the Government. The Policy identified a resource gap of over Rs. 23,500 crores that would be necessary to meet the revised targets of the Eighth Five-Year Plan. Accordingly, to bridge this resource gap, telecom was opened up to private sector participation.

Cellular mobile was one of the first sectors to be opened up to the private sector when the Metro licenses were awarded in 1994. The method of selection was through a beauty parade. The license fees prescribed were a small fixed ascending fee for the first three years of the license, followed by a variable annual fee levied on a per subscriber basis from year 4 onwards.

This method correctly recognized the importance of a gestation period in telecom where investments were available to create infrastructure and rollout networks rather than to pay high license fees. The prescription of a very high per subscriber fee (from year 4 onwards) was an anomaly in this approach, which was fortunately redressed subsequently under National Telecom Policy 1999 (NTP-99) when the industry moved to a revenue share regime.

However, the above correct approach of the Government took an about turn in the next round of licensing in early January 1995, when tenders invited for cellular services in 19 Telecom circles and also for fixed services. The selection of the company in this instance was to be through a single-stage bidding process.

34 licenses in 18 Circles fetched Rs. 20,038 crores for a 10-year cellular mobile license. The fixed service license bidding was even more wayward as a total of Rs. 27,408 crores was bid for fixed licenses in only six circles for a 15-year license.

The consequences of the huge license fee bids were manifested in several ways - limited rollout, high tariffs, not enough subscribers, default in rollout obligations, inability to meet huge fixed license fee obligations, etc. Cellular mobile tariffs prevailing during this period were

around Rs. 10 per minute for both incoming as well as outgoing calls, thus ensuring that there were not many takers for the service. Consequently, the cellular market remained a niche premium market and subscriber growth inched forward at a snail's pace especially in the Circles.

The auction approach adopted by the Government in 1995 was one of the key factors responsible for the sluggish growth of the sector and one of the biggest bottlenecks in infrastructure creation. During the period, the national objectives of affordability, access, coverage and associated consumer benefits enunciated in NTP-94 were disregarded and the telecom sector was viewed as a cash cow for the Government exchequer.

As a result of the above problems - high cost structure, un-affordable tariffs and lower growth of the market, etc., as also unresolved and unending litigation, by the end of 1998, most of the circle cellular licensees were on the brink of bankruptcy and it was looking as if India's telecom dream would soon turn into a nightmare.

It was under the above circumstances that the Government undertook a review of Telecom Policy as well as the role of the Regulatory Authority. In pursuance of the directions of the Hon'ble Prime Minister, a Group on Telecommunications (GoT) was constituted on 20th November 1998 under the Chairmanship of Shri Jaswant Singh, the then Deputy Chairman, Planning Commission. GoT was to make recommendations on the following:

- a. Proposed New Telecom Policy;
- b. Issues relating to existing licensees of basic and cellular services and suggest appropriate remedial measures within the framework of the New Telecom Policy
- c. Issues relating to the TRAI.

The result of the above initiative was NTP 99, which was announced in March 1999 (effective April 1, 1999), migration of existing operators to the new regime in August 1999 & the amendment of the TRAI Act in January 2000.

**NTP 99** was formulated in an extremely open, transparent and consultative manner. A draft discussion paper on the Policy was placed on the Internet receiving over 17,000 responses from a cross-section of stakeholders. The result was an extremely forward-looking policy. NTP-99 sought to significantly change the dynamics of the Indian telecom industry as it not only replaced the high cost fixed licensing regime with a lower cost licensing structure through an entry fee + revenue sharing mechanism, but also provided for greater degree of competition

and more flexibility in choice of technologies. BSNL and MTNL were deemed to be the third cellular mobile operator in ever service area and introduction of further competition was envisaged based on need, timing and the recommendations of the TRAI.

The preamble to NTP-99 recorded the importance of telecommunications stating, "The Government of India (Government) recognises that provision of world class telecommunications infrastructure and information is the key to rapid economic and social development of the country. It is critical not only for the development of the Information Technology industry, but also has widespread ramifications on the entire economy of the country. .... Accordingly, it is of vital importance to the country that there be a comprehensive and forward looking telecommunications policy which creates an enabling framework for development of this industry."

The key objectives enunciated by the Policy included provision of access, availability of affordable services, creation of a modern and efficient telecommunications; increased competition, level playing field, etc.

Para 3.11 of the Policy also announced the intention of the Government to satisfactorily resolve the problems being faced by existing operators. Further, while approving the Policy, the Union Cabinet had opined that it would be in public interest for the New Telecom Policy to be uniformly applicable all over the country.

It was pursuant to the above that the Government sought the **opinion of the Attorney General** as to whether it was legally possible to bring the existing licensees under the New Policy regime. The Attorney General in his opinion noted that the working of the 1994 Telecom Policy had failed to achieve its objectives and that the expected network expansion had not materialized. He also noted that large capital resources had been invested by the private licensees and that their unviability was not only affecting the domestic and foreign financial institutions who were funding these projects, but also the viability of the telecom service industry itself. Thus the Attorney General opined that in light of the objectives of NTP-99 and having regard to the ground realities and the prevailing situation engulfing the telecom industry, migration of licensees from the 1994 Telecom Policy to NTP-99 was warranted. Attorney General also opined that the transition to the new policy should be from a prospective date while fully realizing past dues and arrears.

Accordingly, the existing cellular and fixed operators were offered a **migration package** on July 22, 1999 whereunder license fees dues upto July 1, 1999 were to be paid and deemed to be

the entry fee under the new regime and annual license fee to be collected on a revenue share basis thereafter. All existing cellular and fixed operators accepted the migration package and migrated to the new regime with effect from August 1, 1999.

The rationale, merits and urgency for migration included several considerations. Financial Institutions had a huge exposure to the sector of almost around Rs.10, 000 crores. In the absence of the migration package, there was a very real danger of the bulk of this exposure becoming non-performing assets. Without migration, several companies would have been unable to secure financial closure, which in turn, would lead to abortion of projects, large-scale bankruptcy and failures. The Government also perhaps realized that efforts to mechanically enforce contracts, terminate licenses, encash bank guarantees, take over assets, etc could lead to multiple & prolonged litigation. In addition, there was bound to be dislocation of services and serious inconvenience to consumers. It was felt that a shift to revenue sharing would promote the interest of telecom sector, improve tele-density, lower tariffs and improve both reliability and quality services to the consumers. It was also felt that since migration would be from a prospective date and that there would be no write-off or waiver of past dues or liabilities, this solution would also be legally tenable. Also since NTP-99 envisaged open competition, existing licensees would be giving up their duopoly rights in exchange for migration to the new regime.

Migration was one of the most groundbreaking and landmark decisions of the Government with no parallel either in any other sector in India or for that matter anywhere else in the world. There have been comparable situations in other telecom regimes where licensees have bid exorbitantly and have been unable to meet their contractual obligations. And an unwillingness of the Governments to renegotiate contracts has led to the collapse of the sector. But the timely and responsive intervention of the Government showed tremendous vision and foresight and clearly demonstrated the commitment of the Government to the reforms process. Migration was not an easy decision, but the Government did not hesitate to take this bold step. In fact, it can safely be stated that migration was one of the key factors that was responsible for the complete transformation of the Indian telecom, especially the cellular mobile sector, which is now widely looked up to as the flag bearer of the Indian liberalization process.

The above policy initiative of migration to NTP'99 marked the turning point in the history of telecom sector. Migration saved the cellular sector from certain bankruptcy and restored its viability. The beneficial impact of the new regime could be seen almost immediately in the lower tariffs, increased coverage and growing subscriber base. NTP-99 and migration definitely

provided the kickstart that the cellular sector needed. In fact, it can thus truly be said that India's real telecom liberalization started in 1999.

The number of cellular mobile subscribers has grown from a miniscule 1.24 million in March 1999 to cross 50 million in March 2005, growing at a compound annual growth rate (CAGR) of 85%. The cellular mobile sector continues to grow at an average rate of around 1.5 million. In October 2004, mobile fixed cross over took place and the number of mobile phones exceeded the total number of fixed phones in the country.

Cellular mobile now forms an integral component of the Indian telecom pie. At the time when NTP-94 was announced, the total tele density of the country was 0.8 per hundred persons. (all fixed lines and no mobiles). By early 2005, the tele-density has increased eleven-fold to reach 9 per hundred persons. The contribution of mobile to this performance is significant as it contributes around 5% of national tele density and accounts for over 50% of all the phones (fixed + mobile) in the country.