

**COAI Response to TRAI Consultation Paper No. 6/2004 dated March 13, 2004 on
Unified Licensing Regime**

ISSUE-WISE RESPONSE

ISSUES FOR CONSIDERATION

Framework of Unified Licensing Regime

1. Based on the key objectives of Unified Licensing, International practices in this regard, the proposed models of Unified license in this paper and the current status of Indian Telecom sector, please give your views on the Unified Licensing Model which should be followed in India? You may also suggest any extra Unified licensing model, if not covered in the proposed models. Please also comment whether IP-I, IP-II, VSAT and GMPACS services should be part of Unified Licensing Model or they should be licensed separately? Should IP-I and IP-II services be licensed at all?
 - a. Looking at the various Models and their variants proposed by the Authority, **we broadly believe that the approach mooted by the Authority under Model I Category IV** would be most appropriate model for India to adopt while moving to a holistic unified licensing regime.
 - b. Under this approach, the Authority has classified the licensing regime as follows :

Unified License	Class License	Exempt Services
<ul style="list-style-type: none"> ▪ ▪ ▪ Services ▪ Distance ▪ Distance ▪ ▪ (only service aspects) 	<ul style="list-style-type: none"> ▪ ▪ ▪ ISP ▪ ▪ IP-II ▪ based application service 	

- c. In consonance with the concept of unification, it is our **understanding that a Unified License also includes a Class License** i.e. a Unified Licensee can automatically offer all services and facilities that are listed under a Class License. A Class Licensee will however have to take a Unified License in case he wants to offer any services listed under the Unified License.
- d. Further, we believe that **within this framework / model, all types of telecom services** including the services listed by the Authority as also related value added services should be **permitted under a Unified License**. In fact, as a general rule, all voice telephony services, except maybe for services offered by Niche operators in Rural SDCAs, should only be permitted under a Unified License. **Broadband services** (both fixed and mobile) **should also specifically form a part of the Unified license**.
- e. We agree with the Authority that only the service aspects of GMPCS should be included under the unified license, while additional conditions pertaining to issues of security, etc should be linked with the licensing of satellite services and frequencies involved.
- f. We also agree with the Authority that services such as Radio Paging, PMRTS, I, IP-I & IP-II, etc because of their lower competitiveness insofar as their application and revenue potential is concerned should be classified under a Class License as long as they do not have both-way PSTN connectivity.
- g. We have also noted the Authority's clarification that the **services listed under the Class License are as per their existing terms and conditions** and that any change in the existing licensing terms and conditions to cover services such as voice telephony (where feasible on existing infrastructure), etc would require a unified license. We understand this to mean **that if an ISP chooses to provide Internet telephony he can do so only after taking a unified license**.
- h. We **support the introduction of Internet Telephony as long as it is on the same terms and conditions** as other operators so as to ensure level playing field. In this context, we submit that **if Internet Telephony is to be allowed**, it may be both desirable as well as necessary to **move ISPs from the Class License category to the Unified License category, so as to prevent issues of enforcement** that could arise if any ISPs offer Internet telephony without acquiring a Unified License.

i. The Authority has not clearly stated in Model I, which services if any, would qualify for exemption from licensing.

2. In case concept of Class License is followed, then what should be the criterion for classifying the services under this category of license?

a. As already submitted above, we are in broad agreement with the principles outlined by the Authority for classification of services under a Class License.

3. What should be the simplified procedure for granting the licenses based upon the recommended licensing model?

a. We are in agreement with the Authority's view given in Para 1(a) of Chapter 2 that **Unified Licensing regime would be implemented through automatic Licensing / Authorization subject to notification to Regulatory Authority and compliance with published guidelines**

4. Should we consider implementation of Unified Licensing framework through a multi stage process or a single stage process? What are the pros and cons of each suggestion? If the process is envisaged to be completed in phases, what should be the milestones and time frames for each step?

a. It is submitted that the **Authority has already adopted a phased approach in the introduction of unified licensing** and full unified licensing as per the present consultations is already Phase 2 of the 2-Step approach adopted by the Authority. As Step 1, the Authority had recommended the unification of Access Services on October 27, 2003. In these recommendations the Authority had opined that "...the ultimate objective of the Unified Licensing/Authorisation regime be achieved in a two-stage process..... unification of access services at circle level be taken up immediately .. followed up with steps to define the guidelines and rules for fully unified license/Authorisation regime..." (para 7.6) and that "...it is recommended that within six months "Unified Licensing" regime should be initiated for all services covering all geographical areas using any technology. " (para 7.1)

b. We **submit most emphatically the 2nd step must be completed at one-go. Further fragmentation** of the holistic licensing process will not only **lead to ambiguity and confusion** on the policy & licensing regime, but will also **give rise to contentious and**

complex issues of migration at every stage. Further, it will be virtually impossible to ascribe a rationale or logic for choosing / prescribing a particular time-frame / milestone. A phased process will also be **contrary to the Authority's objective of simplifying entry, lowering entry barriers, increasing competition, leveraging technology**, etc. Most importantly a phased introduction of unified licensing will **adversely affect the inflow of investment into telecom** as a flux in the policy and licensing regime would considerably dampen investor interest. We believe that in a scenario when India is looking at a very aggressive growth in the telecom sector, any indication that introduction of unified licensing would be further fragmented into phases will only serve to discourage investors and adversely affect and tele density & growth objectives.

5. Should migration to Unified Licensing Regime be optional or compulsory?

a. Existing licensees must have the option to continue under the existing licensing regime or migrate to new Unified Regime.

b. However, it is **imperative to ensure that the existing licensees are "no-worse off" under the new regime** vis-à-vis the new licensees. The principle of "No-worse off" has also been enunciated by the Authority in the section on Key Objectives of Unified Licensing in Chapter 2, Para 2 of its Consultation Paper. Thus, it is important for the Authority to consider how the financial health and viability of the existing licensees will be impacted by the introduction of the new licensing regime, and appropriate measures must be recommended to ameliorate the same. In some cases compensation may have to be paid / adjustments may have to be made by the Government.

6. How should Internet telephony be treated in Unified Licensing Regime? Should Internet telephony without any restriction, be permitted under Unified License regime? If yes, how should it be permitted?

a. The Authority has itself recorded (on Page 14 of the Consultation Paper) that "Access and Long Distance licensees are now using the IP technology for provision of voice services. In countries where there is little distinction between the two services in terms of regulatory environment, the two forms of IP Telephony (using managed IP and Public Internet) are interchangeable. The Authority has also noted that "IP Telephony services,are increasingly becoming a part of normal voice telephony and may perhaps be regulated similarly."

b. We also believe that **once a unified telecom license has been issued, then the licensee should be free to offer any or all types of services / facilities under that license using the technology / media of his choice.** Under these circumstances there should be no prohibition on Internet Telephony as long as it is offered under a Unified Telecom License with same terms and conditions so as to ensure level playing field.

c. In this context, we believe that **if Internet Telephony is to be allowed,** it may be both desirable as well as necessary to **move ISPs from the Class License category to the Unified License category, so as to prevent issues of enforcement** that could arise if any ISPs offer Internet Telephony without acquiring a unified license.

7. How the migration from service specific license to Unified Licensing Regime including surrender of any in-fructuous license, if any, should be handled?

a. The Authority has rightly noted that **with the introduction of a unified licensing** regime there will definitely **be cases where operators** who have acquired separate licenses for different telecom services **would end up with surplus / redundant / in-fructuous licenses** as provision of all telecom services would then be possible under a single license.

b. The Authority must take note of the fact that **these licenses have been acquired by the service providers at a significant value and for a particular period of time.** We believe that Authority must ensure that **such operators are no-worse-off as a result of a midway change in the policy & licensing regime.** The principle / objective of No-worse off has also been enunciated by the Authority in this Consultation Paper. It is therefore important for the **Authority to propose a suitable mechanism through which such operators can surrender their in-fructuous licenses**

c. The Authority has made some suggestions in this regard in Para 8.3 wherein the Authority has stated that compensation for entry fee paid should not be seen in isolation as under the unified licensing regime, the licensee may get relief in terms of lower annual license fee, easier rollout obligations, total freedom to offer any type of service, etc.

d. In this context, we would also like to **draw the attention of the Authority to the approach taken by the United Kingdom** upon the introduction of the Communications Act 2003, which abolished licensing and introduced a simple authorization regime. Clause 147 of the

Communications Act provides for repeal of certain provisions of the Telecommunications Act 1984. The Explanatory Notes prepared by the Department of Trade & Industry clarify that as a result of the abolition of telecommunications licensing it is necessary to make certain savings and transitional provisions which are contained in Schedule 18 of the Act. Para 12 of **Schedule 18 – (Transitional Provisions) on** Charges under Telecommunications Act licences reads as below :

“12 (1) Where any amount is required by a licence under section 7 of the 1984 Act to be paid to the Director in respect of a period beginning before the abolition of licensing, that liability is to have effect after the abolition of licensing **as a liability to pay to OFCOM so much of that amount as does not relate to times after the abolition of licensing.**

(2) For the purpose of determining how much of an amount payable to the Director relates to times after the abolition of licensing, **an apportionment is to be made according to how much of that period had expired** before the abolition of licensing.”(emphasis supplied)

- e. The above clause clearly provides that the liability of the licensee is to pay the Director only that amount that relates to the period prior to abolition of abolition of licensing and that this amount would be determined on the basis of the period that has elapsed before the abolition of licensing.
- f. **Fitting the above provision to the Indian environment**, it would imply that if a licensee has paid say Rs. 100 crores for a 20-year license and that license becomes in-fructuous after say 10 years, then the pro-rata entry fee for the period of 10 years should be refunded / adjusted against the future dues of the licensee. In line with the above, we would therefore like to suggest that **the entry fee paid by the service provider could be refunded / adjusted on a pro-rata basis for the un-expired duration of the license.**
- g. It is also proposed that **a similar approach could be adopted for adjustment of excess entry fees paid by service providers under the existing licensing regime.**

Registration Charges/Entry Fee/Authorisation Charges

8. Should the Registration Charge be one time charge or recurring annual charge?

- a. **Registration**, as the very name suggests is a one-time process and **should therefore attract only a single one-time charge.** The annual recurring charges have been

separately specified by the Authority and will include a contribution towards USO and the cost of administrating & regulating the sector.

9. What should be the basis of deciding the Registration Charges?

- a. **Registration charges** under a unified licensing regime **must be only a nominal fee for recovering the charges / costs involved in processing / issuing the unified telecom license**. The Registration Charges **should also include the charges for number allocation**.

10. Whether Registration Charges should be dependent on the extent of geographical coverage?

- a. **The principle for computing the Registration charges has been submitted above** as a nominal fee for recovering the costs involved in processing / issuing the unified telecom license. **This principle should be adhered to irrespective of the number of service areas for which the license is being issued**. Based on the above principles, it may be that the Registration Charges for a larger footprint (greater number of service areas) are nominally higher than that applicable for a single / fewer number of service areas.

11. Whether Registration Charge should be dependent on the number and type of services being proposed to be provided by the service provider?

- a. **Registration charges** should only cover the cost of processing / issuing the unified telecom. This charge **should be identical irrespective of the number / categories of services / facilities being offered** by a telecom operator in a geographical area. **Having additive registration charges** for each individual service/facility **defeats the raison d'être of a unified telecom license** and would in fact be no different from the present regime where each additional service / facility is separately priced.

12. Whether the Registration Charges should be a function of entry fees paid by the existing operators. If yes, then how should these charges be calculated?

- a. We most emphatically submit that **Registration charges should not be a function of the huge and varied entry fees paid** by the existing service providers. **These should be separately and independently calculated as per the principles outlined above** i.e. a

nominal fee for recovering the charges / costs involved in processing / issuing the unified telecom license.

- b. However, **for the sake of level playing field** between the licensees under old and new regimes, the **entry fees paid under the existing / old regime may need to be adjusted through an appropriate mechanism**. Some views / proposals in this regard have been given under Para 7 above.

13. Should the Registration Charges be cumulative charges of the existing services and service area and be reduced to a nominal value say after a period of 3-5 years? If yes, what should be the level/basis of calculating this nominal fee and what should be the time period after which the Registration Charges reduces to nominal fee?

- a. As submitted in pre-paras, the **2nd phase of the move towards unified telecom licensing should be completed at one go and not be split into further phases**. The drawbacks of further fragmentation of the process to introduce unified licensing have already been given in Para 4 above.
- b. Further, the **suggestion of levying high cumulative charges is not desirable** because it would **make this entire consultation process irrelevant**, as even today, an operator can acquire any license by paying the prescribed fee. Costing a unified telecom license at the cumulative price would not serve any purpose but would in fact **actively discourage any operator from moving to the new regime**. This would **also be against the principles and key objectives of ease of entry, nominal fees, etc., enunciated by the Authority** in Chapter 2 of its Consultation Paper.

14. If Class Licensing is adopted what should be the level of Registration Charges for these Licensees?

- a. Because of the minimal regulation involved in the services classified under the Class License it is expected and submitted that the Registration Charges to **cover the cost of processing and issuing this license should be very nominal**. In this context it may be noted that the Registration Charges / Processing Fees prescribed for IP-I & IP-II categories are fixed at Rs. 5,000 and Rs. 10,000 respectively.

15. If niche operators especially for Rural, Remote and Less developed service areas are licensed say at LDCA/SDCA level, in that case what should be the registration charges for such operators. How should rural service area be defined? Whether niche operators should be allowed to roll out its services in LDCC's/SDCC's which are urban?

- a. We believe that the **provision of services in rural, remote and less developed areas is an important policy objective that must be addressed under the new regime.**
- b. The introduction of **Niche Operators may be considered, but only for Rural SDCAs as defined under the Census.** Unless this is done, it is quite likely that operators may designate themselves as niche operators and focus on the lucrative SDCAs in high potential urban areas.
- c. **Niche Operators may provide Fixed & Internet Telephony services under a separate Class License.** However **wireless services should only be provided through a franchise from a unified licensee because of issues related to enforcement and optimal utilization of spectrum.**
- d. **By virtue of operating in rural areas, niche operators would also be entitled to reimbursements from USO Fund.**
- e. As already submitted in pre-paras, because of the minimal regulation involved in the services classified under the Class License, the **Registration Charges to cover the cost of processing and issuing this license should be very nominal.**

16. In Model II (Convergence bill Model) and Model III (FBO and SBO based Licenses), what should be the level of Registration Charges for different categories. Whether this Registration Charge should be dependent on the type and number of services offered by licensee?

- a. **In view of the legacy service-specific licensing framework that has been followed for Indian Telecom sector till date, we are not in favour of the above Convergence Bill Model as we believe that this would entail a complete reclassification of licensing categories, which would tantamount to a complete unbundling of the communication sector leading in fact to over-licensing.** This would be because given the way that the

licenses have been awarded (on a service-specific basis), to reclassify the license segments under network infrastructure facilities, networking services, network application services & value added network application services would result in a situation where each existing service provider would be required to have all or at least multiple categories of licenses. This would put the sector at risk of over-regulation which would be contrary to the Authority's objective of putting a simplified authorization / registration scheme in place.

Service Area in Unified Licensing regime

17. Whether the choice of service area should be left to the operator as envisaged in our recommendations or choice should be limited to the existing licensed service areas, viz. circle, nationwide?

- a. As submitted in our earlier response to the Pre-Consultation Paper, the Authority may **adopt a two-tier service area classification – one, circle-wise licensing** as applicable to the cellular operators, unified access licensees, etc **and secondly an All India Unified Telecom License**. Within this categorization, the operator should be free to operate in his choice of service areas.
- b. The Authority has itself noted (Page 31 of the Consultation Paper) that **having unified licenses at the SDCA level may create problems** of interconnection, regulation, spectrum allocation, monitoring, etc.

18. What should be the service area for Class licenses? Should SDCA level license be granted for Class Categories?

- a. We believe that a **SDCA based license may be considered for services offered under a Class License as this would result in better penetration of un-served areas.**

19. How to prevent 'Cherry Picking' while leaving the choice of service areas to the service providers.

- a. It is submitted that **once the Authority has decided to adopt a market-led approach, then the choice of services and service areas by operators must be left to market forces** and the business potential of the respective service areas will determine the degree and extent competition in each service / service area.

- b. In this context, we would however like to point out that under the existing / old regime the costs of service provisions were high because of the high levies associated with the license. As a result of this, operators were compelled to focus on the more lucrative areas on the basis of commercial considerations. However under the new proposed regime it is expected that the entry barriers and associated costs will be lowered drastically. This **lower cost coupled with the increased competition will drive operators to seek out newer areas with untapped business potential.**

20. Whether we may define service area below circle level say LDCA/SDCA for niche operators in Unified License?

- a. As already stated in pre-paras, **niche operators may be allowed to operate under a Class License in Rural SDCAs only.**

License Fee

21. What should be the level of license fee for different services in the suggested licensing model ?

- a. There should be **one single license fee for a unified telecom license**, which will cover all the services that can be offered under the single license. By **prescribing separate fees for different services** under the Unified License, the **very raison d'être of introducing a unified licensing regime will be defeated.**
- b. However **spectrum**, as also recorded by the Authority, will be **priced and allocated separately**. We understand that the Authority would soon be initiating a consultation process to deal with all spectrum related issues.
- c. In this context, it may kindly be noted that the **entry fees paid by the existing wireless operators is essentially the entry fee for spectrum**. The Authority too has recognized this in its Preliminary Consultation Paper on Unified Licensing issued on November 15, 2003 wherein the Authority has recorded that “ For the existing service providers who use spectrum for providing telecom services, entry fee paid includes spectrum charges....”
- d. The **DoT Committee on the Efficient Use of Spectrum by Cellular Services** has **recognized the importance of this resource** for wireless operators and has accordingly

recommended a roadmap for allocation of upto 2X15 MHz per operator based on achievement of certain pre-defined milestones. It is submitted that **existing operators must at least be entitled to additional spectrum upto this cap without payment of any additional charges.**

22. Should minimum amount of the license fee be specified irrespective of the Adjusted Gross Revenue (AGR)?

- a. **With the drastic lowering of entry barriers and the introduction of a simple authorization process with a nominal registration fee, a minimum annual fee as proposed by the Authority may be desirable to prevent non-serious players from entering the market. It is suggested that this objective may be achieved by prescribing an annual license fee revenue share subject to payment of a minimum fixed amount.**

23. Should there be uniform annual license fee say 6% (5% USO+1% administrative cost) of AGR for all telecom services in all service areas or should license fee vary from service to service and service area to service area?

- a. **We would like to endorse the annual license fee revenue share of 6% of AGR as proposed by the Authority.**
- b. **However, it is submitted that the 1st & 2nd Circle Cellular licensees who have been granted an 2% waiver / reduction in revenue share license fee for a period of 4 years starting April 1, 2004, must continue to be entitled to a lower revenue share license fee for the stipulated 4 year period, even under the new regime.**
- c. **We believe that once the license fee is applied as a percentage of revenues; there is no logic to prescribing differential slabs for different services / service area categories. The varying potential of the different services / service areas will be reflected in the revenues that will accrue from these services / areas and accordingly the annual fee that is recovered from the same.**
- d. **Accordingly we believe that as per the above principles, the categorization of service areas as “Metro”, “A”, “B” or “C” would become irrelevant for the purpose of levying an annual license fee based on revenues.**

24. What should be the level of license fee for Class licensees and niche service providers?

- a. We believe that the **annual license fee revenue share should be identical for all categories of licensees including Class Licensees and Niche Operators**. This will include the contribution to USO as well as a levy for the cost of administration & regulation of the sector.
- b. However, as pointed out above, **Niche Operators by virtue of operating exclusively in Rural SDCAs should be entitled to reimbursements from the USO Fund**.

Bank Guarantees:

25. What should be the level of Bank Guarantees fee for different services in the suggested licensing model ?

- a. Under the present regime, Bank Guarantees have been prescribed for payment of license fee revenue share (Financial Bank Guarantee) and for ensuring fulfillment of rollout obligations (Performance Bank Guarantee).
- b. It is submitted that **the concept of Financial Bank Guarantees should be reviewed and done away with** under the new unified licensing regime as they **only add to the costs of end-consumers**. It is verily believed that the imposition of Financial Bank Guarantees is not a prevalent practice in other telecom regimes.
- c. As regards the level of PBG, this is linked to the rollout obligations of the licensee. The Authority has opined in this Consultation Paper that the level of PBG should be reduced to zero, once the rollout obligations, if any, have been met.
- d. We are of the view that **once the Government moves to a market led policy & licensing regime** and facilitates the introduction of competition, the **objective of coverage and reach will be automatically achieved** as players will continue to venture into newer areas to seek business. In such a case, it **may be unnecessary to actually stipulate a specific rollout obligation in the licenses**. Further, past performance has clearly demonstrated that the stipulation of rollout obligations and the imposition of stiff penalties for non-performance, does not necessarily lead to achievement of rollout in rural & remote areas.

We therefore believe that **rollout should not be stipulated in the license, but rather left to market forces**. Under these circumstances, there would be **no requirement for a Performance Bank Guarantee for unified licensees**.

26. Should the Bank Guarantees (PBG & FBG) be same for all the services in the Unified Licensing Regime or should the existing framework of Bank Guarantees be continued in the new licensing Regime?

a. As already submitted above, **the requirements of FBG and PBG should be done away with under unified licensing**.

27. What should be the level of Bank Guarantees for Class Licensees and niche service providers, if such classes are considered?

a. There should be **no Bank Guarantees imposed on Class Licensees and Niche operators**.

Roll Out Obligations

28. What should be the roll-out obligations for different services in the licensing model that you suggest? Should we continue with service specific roll out conditions?

a. As already stated in pre-paras, stipulation of rollout obligations in the license does not necessarily ensure achievement of this objective. In a market-based policy & licensing regime, **rollout should be left to market forces and not stipulated under the license**. In an environment of healthy and intense competition, the objective of coverage and reach will be automatically achieved, as players will continue to venture into newer areas to seek business.

b. **If despite the state of hyper competition, operators do not rollout** into certain areas, then it would be **due to insuperable factors** and some genuine problems, which would have to be **separately examined and addressed by the Authority**.

c. **In such cases**, it may be **practical as well as desirable for coverage of such difficult areas to be achieved through BSNL** as it would be **far easier as well as more cost-effective for BSNL to use its existing nationwide telecom infrastructure** to reach rural /

remote areas. For this purpose, **BSNL would have access to the USO Fund** and may **also be extended some special privileges for undertaking this social responsibility.**

- d. We further believe that **non-specification of a rollout obligation would also help in optimal utilization of infrastructure** since the operators could then rollout services on the basis of the demand for their services and thus have a reasonable chance of achieving a good utilization.

29. Should we consider imposing roll out conditions of UASLs on all Unified Licensees?

- a. As also noted by the Authority in its final Consultation Paper, different service licenses have different rollout obligations attached to them. To unify the rollout obligations at the UASL level as suggested above would result in easing the rollout obligations of the NLDOs while increasing the rollout obligations of the ILDOs. As we are firmly of the view that the existing licensees should be no worse-off under the new regime, it would **not be appropriate to prescribe UASLs rollout on all Unified Licensees** as this would be **in conflict with the principle of no-worse off** and could also prove to **be a deterrent to existing operators to migrate to the new regime.**
- b. Further as already submitted by us, **rollout should be left to market forces** rather than be mandated under license.

30. What type of roll out obligations be imposed on Class licencees and niche (for rural, remote and under developed areas) Service Providers?

- a. **Rollout obligations should not be mandated / imposed on Class Licensees or Niche Operators** for the same reasons as given in pre-paras

Interconnection

31. What should be the interconnection regime in the suggested Licensing model for ULR?

- a. Interconnection should be **non-discriminatory and uniform for all access services** under a unified license.

- b. Further, **special rules** as well as commercial and technical obligations, including regulation of tariffs **must be applied to operators with significant market power (SMP), especially in infrastructure.**
- c. **Except under extraordinary circumstances, direct interconnection between various service providers should be mandatory** under unified licensing
- d. **Publication of RIO** by all operators including the incumbent **must also be made mandatory** as this will **safeguard consumer interest** as well as **take care of the concerns of smaller / pure-play/ new operators.**

32. Should service specific interconnection regime be continued in ULR?

- a. The concept of **service-specific interconnection should be done away with for access services** under unified licensing regime. Prevalent service specific interconnection regime has resulted in sub-optimal routing and higher costs for both the consumers and the operators for some services. Continuation of such **anomalous interconnection arrangements would be undesirable in the light of technology neutrality and unified licensing.** Interconnection should be **non-discriminatory and uniform for all access services** under a unified license.

33. Should the carrier pre-selection /call-by-call selection be implemented in Unified Licensing Regime for all types of calls other than local calls?

- a. The Authority must separately **examine the costs and benefits of introducing CAC / carrier pre-selection** before taking a decision in this regard. **If carrier pre-selection is to be introduced, then the cost of implementation must be borne by each individual operator (including BSNL / MTNL) for their own networks.**

34. What should be the approach to interconnection for niche operators?

- a. Unable to comment at this stage.

Numbering

35. Is there a direct linkage of Numbering Plan vis-a-vis implementation of Unified Licensing regime?

- a. **Existing numbering plan for each service may be continued** even under the new regime.
- b. **All competing operators must have comparable numbering plans** including the number of digits that a customer has to dial to access a competing service.
- c. As already submitted, the **registration charges should include the charges for number allocation.**

36. If yes, what are the specific unavoidable changes required in the present Numbering Plan keeping in view the fact that frequent changes in the consumer numbers is highly undesirable?

- a. Not applicable.

Inter-Circle connectivity and Infrastructure Sharing: licensing aspects

37. Should inter circle connectivity be permitted to Access providers (Basic, Cellular and UASL)?

- a. The very **rationale enunciated by the Authority in introducing unified licensing** i.e. **removing artificial barriers** imposed on operators, **blurring of boundaries** and **ability of operators to offer services using a particular technology**, etc, **requires that direct inter-circle connectivity should be permitted.**
- b. Permitting direct inter-circle connectivity would **also help in addressing an existing anomaly** wherein **BSNL by virtue of its all India license is interconnecting across borders**, thus **offering a facility** that is **presently denied to private operators**. In this context, attention may be drawn to BSNL mobile offering local call tariffs between Tamil Nadu and Chennai.
- c. Permitting direct inter-circle connectivity would **also be in the best interests of consumers** as it would ensure :

- i. **Increased competition** and a further **lowering of long distance tariffs** and **growth of services**, which will benefit the end-consumer.
 - ii. **Serving communities of interest across borders.**
 - iii. **Optimal utilization of the existing infrastructure** of all operators who have made significant capital investments in putting up their networks.
 - iv. **Creation of a back up network**, which could be useful in the event of natural or man-made calamities.
 - v. **Lessening of the load on infrastructure of the incumbent operator** who is presently coping with large traffic volumes leading to congestion of its networks and poor call quality.
- d. **Under unified licensing**, an operator should be permitted to **directly interconnect across adjacent and non-contiguous areas (anywhere to anywhere)**, as the **right to offer long distance services is part of a unified license.**
- e. A circle based service provider with a unified license for his service area **will get the following rights :**
- i. **Access**
 - Right to offer **all types of access services within his service area.**
 - ii. **National Long Distance**
 - Right to **carry long distance traffic of any subscriber within his licensed service area (including subscribers of other operators)**
 - Right to **carry national long distance traffic outside his service area (upon entering into appropriate agreements / arrangements with other service providers)** for his own subscribers as well as for subscribers of other operators.
 - iii. **International Long Distance**
 - **Right to set up an International gateway in his licensed service area for catering to ILD calls to & from his licensed service area**
- f. An **all India unified telecom licensee** on the other hand will be able to **provide access services throughout the country.** Further, he will be able to **pick up the NLD traffic of any subscriber anywhere in the country and carry it to any national or international destination.**
- g. This approach would also **help develop the plurality of players in long distance** and **ensure widespread and ample competition in this segment.** Under these circumstances

as also for reasons stated in pre-paras, it again may not be necessary to stipulate rollout obligations for NLD / ILD.

- h. For **Fixed, Mobile and UASL operators who choose to stay under the existing regime**, this **inter-connectivity should be confined to adjacent / adjoining circle connectivity** and these service providers **should only be allowed to terminate their own subscriber traffic** in the Fixed, Mobile or UASL operators' network **in adjoining / adjacent circles only**. We believe that **this approach is provided for under NTP-99** which considered direct inter-circle connectivity as 'a part of the structure of opening up of the national long distance sector' and not as a full-fledged NLD operation.

38. Should direct interconnectivity be also permitted across non-contiguous service areas?

- a. As stated above, a **unified telecom licensee**, by virtue of having the right to offer long distance services under the unified telecom license, **must also be allowed to interconnect across non-contiguous service areas**.

39. In case migration to Unified Licensing Regime is optional, then should the inter-circle connectivity be permitted to those Access providers who do not migrate to Unified Licensing Regime.

- a. As already submitted, **existing operators must have the option to migrate to the new regime or stay under the existing regime**. If any **Access Service Provider chooses to stay under the Unified Access Licensing regime**, we believe that direct inter-circle connectivity for the operators must be limited to **termination of own subscriber traffic in the network of the Access Providers' in adjacent / adjoining service area only**.

40. Should Infrastructure sharing amongst different service areas be permitted?

- a. As already submitted earlier, **infrastructure sharing must be both permitted as well as encouraged** both :-
- **Between different operators in the same service area and**
 - **By the Same Operator in different service areas**

b. In fact, the Authority may like to consider making it **mandatory for the incumbent PTT to share all passive infrastructures with the private operators**. This infrastructure has been **built up over decades through revenues from a monopolistic regime** and thus **through public funds**. Further, mandated sharing will also help speed up the growth process.

41. Under Unified Licensing Regime, licensee may offer the services through out the country. In that situation the concept of NLD operator as such may be no more relevant. Under such circumstances, how would the requirement of national long distance carriage for standalone operators be met?

a. Under the unified licensing regime **standalone operators migrating to a unified licensing regime, will also become NLD operators** as the unified license also includes the right to offer long distance services. As for such **standalone operators who choose not to migrate to unified licensing**, their **national long distance carriage requirements can be met through any unified telecom licensee who will also be offering long distance services**.

42. Whether there is a need to redefine national long distance traffic for the purposes of interconnection?

a. Unable to comment at this stage.

43. Under the Unified License, a service provider may have whole country or some contiguous circles as his service area. Under this situation, it may not be necessary for him to route his inter-circle traffic through an NLD operator as he may carry the traffic on his own network in his service area which may be different for different service providers. In such a case, how should the traffic handover principles between different service providers (present in one/more circles or nationwide) be framed in the Unified License regime?

a. **Traffic handover principles** should be framed on **the basis of agreements between operators**. With technological advancements available today, **operators should not be compelled to follow any legacy hierarchical structure that limits flexibility and increases costs**. In fact the traffic handover principles should be **based on the least cost routing and consequent maximization of benefits to the end-users**.

44. Whether any change is required in the location of POI and level of interconnection?

- a. **As per the WTO principles, which have also been enunciated by the Authority in its directive of April 25, 1997, Points of Interconnection should be available at every technically feasible point subject to network integrity.**

Reselling

45. Should reselling be permitted? If yes, how? What are the implications of permitting resale in the industry at this stage?

- a. If the Authority considers it desirable, **reselling may be permitted.**

46. What are the implications of having additional players in form of resellers for various telecom services such as NLD, ILD etc. purely on the basis of commercial agreements?

- a. We believe that resellers are purely a function of the market dynamics as resellers will only come into play if the market can support these operators.

Other Issues

47. Under the Unified Licensing Regime what changes, if any, are required to be made in the existing Merger & Acquisition Policy?

- a. Unable to comment at this stage.

48. In addition to the issues mentioned above, comments of stakeholders are invited on any other related matter that should be considered while finalizing Unified Licensing Regime.

a. Special Provisions for Operators with Significant Market Power (SMP)

- i. In its pre-consultations, the Authority had raised the issue whether under unified licensing there should be special provisions for SMP operators. We note that this issue has not been referred to in the final consultations.

- ii. We believe that the issue of ensuring fair competition becomes even more important / crucial in a unified licensing regime.
- iii. In our earlier submission we had emphasized that the introduction of a unified licensing regime must be accompanied by a rigorous enforcement of a strong and robust telecom specific competition framework that will be equipped to take into account the diversities that will exist amongst the unified licensees in terms of area of operation, types of operation and level of integration, market power, transparency in operations, access to key resources required for operations etc. We had submitted that such a competition framework must facilitate the creation of a telecom market that does not disadvantage an otherwise efficient telecom operator on the basis of its scale/area/nature of operation.
- iv. We had emphasized that unifying licenses does not unify markets or relieve the Authority from regulating separate service segments and imposing specific conditions on operators to control anti competitive practices especially by vertically integrated players / players having Significant Market Power (SMP). In fact, unifying licenses increases the burden of regulatory oversight as the possibilities for vertical price squeezing, predatory pricing and cross subsidization increase with the number of market segments in which an operator may participate.
- v. We had thus pointed out that understand these circumstances, it is crucial for the Authorities to prescribe and enforce specific conditions on operators with significant market power in order to ensure that SMP operators do not abuse that power to the detriment, or survival of an otherwise efficient and competitive pure-play operator. This risk will need to be controlled through accounting separation, competitive safeguards like price controls, interconnection, equitable, cost based and non-discriminatory access and carriage charges, transparent, non-discriminatory and cost-based transfer pricing arrangements, etc.
- vi. We had noted that accounting separation and price regulation are the principal regulatory tools that have been used to control the abuse of SMP, prevent cross-subsidy and encourage competitive behaviour.

vii. We note that the Authority has recently notified the Reporting System on Accounting Separation Regulation, 2004 (4 of 2004) which will facilitate the availability of more detailed and disaggregated information on revenues and costs on regular basis with a view to :

- Measuring financial performance of products;
- Monitoring return on products and services regulated with price ceilings;
- Identifying cross subsidizing, Investigating predatory pricing, discrimination and other anti-competitive conduct;
- Understanding the inter-operator arrangements in terms of price and cost, and
- Monitoring adequacy of access deficit etc.

viii. We welcome this development and we believe that **an expeditious implementation and enforcement of the above regulation, especially for SMP / Vertically integrated operators will go a long way towards addressing the concerns of smaller / pure-play / new operators in the unified licensing regime.**

b. Foreign Direct Investment Limit

- i. The issue of FDI limit under the unified licensing regime too was raised in the pre-consultations but has not been mentioned in the final consultation paper.
- ii. In this context too, we would like to reiterate our submission that **under unified licensing, the FDI limit should be unified / made uniform / same for all telecom services/ infrastructure. We had recommended that it should fixed at 74%. We had also suggested that special care be taken in case of ISPs (without gateways) and Category I Infrastructure Providers, who presently have an FDI limit of 100% in order to address the equities that may have been created as a result of the higher FDI limit.**
- iii. We had also pointed out that **in the case of wireless services, this hike in the FDI limit was both necessary as well as desirable.** This was on account of the fact that it has been estimated that the wireless sector would achieve 100 million subscribers over the next 18 months requiring investments of around Rs. 50,000 crores. We believe that this growth would need to be primarily funded by foreign Investors and would thus warrant raising the FDI limits.