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TRAI RECOMMENDATIONS TO TERMS AND CONDITIONS FOR UNIFIED LICENSE (ACCESS SERVICES)

The DoT has recently finalized the draft unified license (access services) (**UL (AS)**) and requested the TRAI to provide its recommendation on the terms and conditions of the draft UL(AS). The TRAI released its recommendations on 'Terms and Conditions of Unified License (Access Services)' on 2 January 2013 (**UL Recommendations**).

The key recommendations of the TRAI have been analyzed below.

Delinking Spectrum From License

TRAI has highlighted the change in the Government's policy with respect to the previous regime where spectrum was linked to the Unified Access Service Licence (**UASL**). In the new regime since spectrum has been delinked from the license and has to be obtained independently, TRAI recommends that the terms and conditions relating to various spectrum bands should not be a part of the UL (AS). Accordingly, for different bands of spectrum assigned, a separate Wireless Operating License (**WOL**) should be entered into with the licensee. This means that there would be two different licenses i.e. National level/Service Area level UL(AS) and WOL. This would avoid the need of amending the license each time an operator gets spectrum in different bands.

Substantial Equity/Cross-Holding Requirement

The draft of the UL (AS) makes reference to the cross-holding restriction that prohibited any shareholder from holding no more than 10% of the equity of any two telecom licensees in the same telecom circle. TRAI has pointed out that under the new regime it would be possible for a group company with national level licenses such as National Long Distance/International Long Distance/Internet Service Provider licence to overlap with the service area UASL licenses of its other group entities. The TRAI, had, in April 2012, recommended that restrictions on cross-holding in more than one licensee company in the same service area should be applicable only if they have been allocated spectrum. Since in the new regime, spectrum is delinked from the license, TRAI recommends that substantial equity or cross-holding requirement should only be linked to spectrum holding and should only be stated in the WOL agreement.

Promoter Lock-in

On a similar point, in relation to the condition that requires the licensee to obtain prior permission of the DoT for the sale of equity within the lock in period, TRAI recommends that this condition should be included in the WOL agreement, since the lock-in period requirement aims to prevent promoters from making quick financial gains on the basis of spectrum. While this clause may have been relevant in the context of spectrum bundled with the license, its inclusion is no longer relevant in the license now that spectrum is separately auctioned and delinked from the license. Since the value of spectrum is determined by way of a market driven process, the M&A activities should not be deterred by way of lock-in restrictions, which substantially hinders acquisitions in this sector.

Value Added Services

The UL Recommendations state that the licensee must be allowed to provide voice mail services, audiotex services, videoconferencing, unified messaging services and other 'value added services' over its network for subscribers in its service area, on a non-discriminatory basis. The TRAI notes that the current scope of value added services is limited and seeks to expand it in line with its recommendation issued previously. TRAI had in May 2012, defined 'value added services' to mean enhanced no-core services, which either add value to basic tele services (such as standard voice calls, voice/non-voice messages, fax and data transmission) or those that can be provided as standalone application services through telecommunication network.

Tripartite agreement

The TRAI has recommended that the tripartite agreement which must be executed between licensor, licensee and lenders (as one of the conditions for transfer or assignment of licence), should be modified to include 'spectrum' and that this requirement be prescribed in the WOL agreement.

Performance Guarantee

TRAI has made specific recommendations on the performance bank guarantee (**PBG**) for (i) compliance with conditions of the license agreement and (ii) PBG for roll-out obligations. With respect to PBG of Rs. 10 (ten) Crores for compliance with conditions of the license agreement and instructions of the DoT, the TRAI recommends that the condition must be deleted from the license agreement and instead must be retained as a part of the WOL. With respect to PBG for roll-out obligations, the TRAI recommends:

(a) In respect of each of the service areas, except Delhi, Mumbai and Kolkata, PBG shall be submitted for an amount of Rs. 14 (fourteen) Crores per service area. This PBG would be valid for a minimum period of six (6) years, further extendable by two (2) years.

(b) In case of Delhi, Mumbai and Kolkata PBG shall be submitted for an amount of Rs. 7 (seven) Crores per service area valid for a minimum period of two (2) years, further extendable by two (2) years.

Penalties

The UL Recommendations state that the maximum financial penalty for major violations of license terms and conditions should be reduced from Rs. 50 (fifty) Crores to Rs. 10 (ten) Crores, a figure in proportion to the entry free, paid-up capital and net worth criteria of a licensee in each service area. Currently, there are no stipulated guidelines on how the penalty should be imposed and the DoT usually imposes with maximum penalties, even for minor violations.

TRAI has recommended that the penalty be levied on the basis of whether a violation is minor or major and the recurrence of the violation. While the penalty prescribed is exclusive of the liquidated damages prescribed in the license agreement, the UL Recommendations recommend that the DoT must be given the right to cancel the license if a major violation is committed after the fourth time.

Other Recommendations

The UL Recommendations have also suggested changes to the definition of Adjusted Gross Revenue (**AGR**), in that intra-service area roaming revenues should not be excluded from Gross Revenue for

calculating the AGR of the service provider. Further, for levying spectrum charges, it recommends that only the revenue from the wireless services must count towards AGR calculation.

The TRAI has also suggested inclusion of two new clauses to the draft UL(AS). First clause enables the TRAI to undertake regular spectrum audit for overlooking its efficient management. The licensee will be required to provide relevant data, reports, test, equipment and other accessories and permit inspection of its sites by TRAI personnel.

The second and the more important one suggests that the WOL must include a condition that operators whose entire spectrum holding in a particular band (900MHz/ 1800MHz and 800MHz) has been liberalized and must be permitted to share spectrum without any additional one-time spectrum charge, subject to the guidelines issued by the DoT from time to time. However, spectrum trading is not permitted at present.

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