

## The unified license has revamped the regulatory framework governing the provision of telecom services in India. But will it provide the clarity it so desperately requires?

### Summary

The unified licensing regime allows operators to offer several services under the same license and has been introduced keeping in mind the evolution and convergence of different communication technologies. Besides de-linking spectrum from the license and making it technology-neutral, the regime has ushered in significant changes for the provision of global data services. Key changes include revised financial terms and specifications for routing of international traffic. The license permits installation of cable landing stations and sharing of infrastructure, but at the same time has introduced onerous interception and monitoring obligations. The Department of Telecom has also addressed contentious issues such as the resale of telecom services, which is likely to impact foreign telecom companies providing managed data services to enterprise customers in India under the one-stop shop model. Besides this, the regulations governing internet telephony services have also received a facelift.

### BACKGROUND

The introduction of the new unified license (**UL**) has introduced significant changes to the managed data services business of telecom operators. Before the introduction of the new regime, telecom companies that provided managed data services to global corporations seeking to link their offices around the world through MPLS networks were obliged to obtain an international long distance (**ILD**) license as well as a national long distance (**NLD**) license in order to provide their global services to the Indian subcontinent. With the introduction

of the UL, a slew of changes have been made to the regulatory regime, including new technical standards for the provision of voice and data services, additional security and monitoring conditions, revised financial terms for obtaining the unified license along with separate service authorizations and a relaxation of limits on foreign direct investments for the provision of telecom services.

This paper attempts to highlight some of the key changes to the applicable regulations under the new license regime.

## Financial Conditions

There have been several changes in the applicable financial conditions under the UL. Some of these will have a bearing on the operations of telecom companies that have, or plan to have, operations in India.

All applicants have to pay a one-time non-refundable 'entry fee' at the time of obtaining their license. For licensees under the ILD and NLD licenses, the entry fee was INR 25,000,000. This amount remains unchanged under the UL. There is also no change to the minimum net worth and paid up capital requirements for applicant companies. However, the processing fee for applications for the UL (NLD Services) license has increased from INR 15,000 to INR 50,000.

One of the conditions of the ILD license was the provision of a performance bank guarantee (**PBG**) of INR 25,000,000 (there was no corresponding obligation under the NLD license). Under the UL, applicants for both the UL (ILD Services) and UL (NLD Services) are required to provide a performance bank guarantee of INR 25,000,000.

Under the ILD and NLD licenses, a separate financial bank guarantee (**FBG**) of INR 200,000,000 had to be provided. This has been changed, under the UL, to INR 5,000,000. The FBG was valid for a period of one year under the ILD and NLD licenses and was subject to renewal based on the directions of the DoT, while the PBG did not have a validity period. Under the UL (ILD Services) and UL (NLD Services), the PBG and FBG are valid for a period of one year each and subject to periodic review.

The revised financial conditions for ILD and NLD licensees are summarized below:

	ILD License Agreement (Million INR)	NLD License Agreement (Million INR)	Unified License – (ILD/NLD Service) (Million INR)
Entry Fee	25	25	25
Minimum Net Worth	25	25	25
Minimum Paid up Capital	25	25	25
Performance Bank Guarantee	25	N.A.	25 (National Area service)
Financial Bank Guarantee	20	20	5 (National Area service)

## Resale of Services

The UL has introduced a specific clause that imposes restrictions on how Indian customers can be billed for services provided on a global basis to that customer and its group companies around the world.

Clause 5.4 of the license states as follows:

*While entering into an agreement/arrangement with foreign carriers, for provision of end-to-end ILD services including IPLC service, the licensee shall ensure that the foreign carrier does not acquire customers in India and does not raise bills/collect revenue to/from any user of the ILD services in India.*

This clause appears to have been introduced specifically to deal with foreign telecom companies who are looking to extend their services to cover the Indian offices of global customers. At present, most global telecom companies follow the International Telecommunication Union endorsed 'one-stop-shop model', under which the telecom service providers provide an integrated service across all their global locations. In particular, customers expect telecom service providers to raise a single consolidated invoice for telecom services no matter where these services are provided.

In order to deliver on that obligation, global telecom companies that do not have a license to operate in India, enter into arrangements with licensed operators in India to provide local connectivity within the country. These licensed operators invoice the global telecom company for the services provided who then mark-up the invoices and raise a consolidated invoice on the customer.

Over the years, this model has been subjected to considerable scrutiny. The Department of Telecom (**DoT**) has argued that these arrangements tantamount to the foreign telecom companies reselling Indian telecom services. Much has been made of the markup charged by these international telecom companies, since they do not pay license fee to the DoT on this markup. As a result, most telecom companies providing these services have put in place complicated agency arrangements under which they do not contract directly with the local licensed telecom companies, but ostensibly procure telecom services on behalf of the end customer.

It appears that clause 5.4 of the UL has been specifically introduced with the objective of preventing such resale of services in India. Of particular relevance is the obligation to ensure that the foreign carrier does not acquire customers in India and does not raise bills or collect revenue to/from any user of the ILD services in India. It appears to have been introduced specifically to restrict the one-stop-shop model offered by foreign telecom operators.

## Sharing Of Infrastructure

The UL states that an ILD licensee 'shall establish its own international long distance gateway station'. The UL (ILD Services) also authorizes licensees to establish cable landing stations, after submitting the required application form and obtaining prior permission of the government. It further provides that issues of access and co-location shall be governed by regulations issued from time to time, such as the existent International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulation, 2007.

Passive infrastructure can be shared between licensees and the various types of infrastructure that may be shared, such as buildings, towers, dark fibre, duct space, right of way etc., have been specifically enumerated in the license. The facility for sharing of passive infrastructure between licensees has been made specifically applicable to both ILD and NLD licensees.

## Security Conditions

One of the more significant changes introduced by the new UL regime has to do with the additional security obligations imposed on licensees. As part of the government's new mass surveillance program – the 'Centralized Monitoring System' – licensees are now required to install the various bandwidth and hardware components as specified in order to facilitate the monitoring of all communications over their respective networks.

Under the UL (ILD Services), licensees are required to establish 'connectivity to the Centralized Monitoring System' and ensure that hardware and dark fibre of appropriate dimensions are provided up to a point determined by the government authorities, at the licensees' cost. The government will bear the cost of hardware and leased line circuits from this designated point to the central monitoring center. At present, the ILD license requires the licensee to make arrangements for the simultaneous monitoring of at least 210 channels of communication traffic. Under the UL (ILD Services), the licensee is now required to ensure seamless simultaneous monitoring of at least 480 calls, with at least 30 calls apportioned for each of the ten designated security and law enforcement agencies. Besides this, each ILD gateway must now ensure that it has adequate capacity to monitor at least 5000 calls, an obligation that is not contained in the current regulatory regime. New interface requirements prescribed by the Telecom Engineering Centre (TEC) of the DoT, will have to be followed for both data and voice communications carried over the network.

## Transfer of Subscriber Information

The ILD and NLD licenses currently prohibit the transfer of user and accounting information to locations outside India, except in certain specified cases.

The provisions governing the transfer of user and accounting information and confidentiality of information have been reproduced in the UL as general conditions applicable to all licensees. The only difference in the language is that the provision restricting transfer of information to any person or place outside India has been extended to specifically include user information relating to IPLC subscribers. This is a much-needed clarification since most global telecom companies providing IPLC one-stop shop services control their network from a global network operation center located abroad, which necessitated transfer of user and accounting information outside India.

Though the original intent of the provision was to prevent the transfer of call data records and similar information from the perspective of security and privacy, most telecom companies take a conservative approach and interpret the term 'user information' to include any information pertaining to the user. This not only affects the ability of telecom companies to provide a one-stop shop global solution around functions such as billing and ERP, but also restricts the implementation of efficient convergent models managed from a single global location, which would require the transfer of real time user information abroad.

## IPLC & VPN

The term international private leased circuit (**IPLC**) was never defined in the ILD or NLD license agreement. The UL now specifically defines the term to mean:

*'Point to point non-switched physical connections/ transmission bandwidth including virtual private network (VPN) using circuit or packet switched technology between a user in India and another user abroad'.*

This definition provides some clarity as to the provision of international bandwidth on lease to other operators. The UL has also imposed a few additional conditions on the provision of such services. It states that an ILD licensee can only offer international bandwidth on lease to other licensees who are permitted to have international connectivity. It goes on to state that the "domestic leg of the IPLC shall be through NLD service provider or access service provider or both as the case may be". Under the UL (NLD Services) operators have been explicitly granted permission to provide leased line services – a service that licensees under UL (Internet Services) cannot.

Under the NLD and ILD licenses, operators were under an obligation to obtain prior approval of the DoT in the event of any "*change in location details of gateways, switching centers, transmission centers, servers and routers*". The UL appears to have slightly expanded this obligation by requiring licensees providing IPLC and VPN services, to submit to the DoT location details of all "bandwidth/leased line/VPN either owned or taken on lease/ hire" as part of the network, as well as intimate the DoT of any change in these details.

### **Internet Telephony**

In India, internet telephony can only be offered by access and internet service providers.

The UL has permitted a licensee with access service authorization to "interconnect internet telephony network with PSTN/PLMN/GMPCS network". While this was always assumed to be the case (since the access license is recognized as the highest category of telecom license) in light of this specific provision, it has now been made clear that access service providers can intermingle voice and data calls by connecting IP addresses to the PSTN, and *vice versa*. Internet service providers are prohibited from carrying out this type of interconnection. The interconnection of leased circuits, whether point to point or closed user group services, with the internet telephony network is strictly prohibited under the UL.