



Cellular Operators Association of India

RSM/COAI/056
3rd April 2012

The Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi-110002

Dear Sirs/Madam,

Adv (BBX PA)

Sub: COAI response to the Consultation Paper dated 15 March 2012 on Amendment in the ISP License Agreement for incorporating the terms and conditions mentioned in the NIA dated 25.02.2010 for use of BWA spectrum

1. This is with reference to TRAI's Consultation Paper on the subject matter.
2. It is submitted that DoT's NIA dated 25.2.2010 laid down the condition that the 'effective date' in context of roll-out obligation and the duration of awarded spectrum would be applicable, 'later of the date when the rights to commercially use the spectrum commences and the date when the relevant service licence, if applicable is granted to the operator'.
3. Subsequently on Sep 01, 2010, DoT made the amendment in the UAS licence agreement to use the BWA spectrum with the 'effective date' started from the date of issue of this letter.

Clause 23.8 of UASL:

"The Licensee is also authorized to use the BWA spectrum block for provisioning of Telecom Access Services as defined in the 'Scope of the licence' in the schedule Condition 2 of the UAS License agreement from the date of award of right to commercially use the BWA spectrum i.e. the date of issue of this amendment letter till the validity of the UAS licence agreement or for a period of 20 years from the date of issue of this amendment letter, whichever is earlier".

4. Therefore, the validity period for the use of BWA spectrum or the roll out obligations for the licensees providing BWA services under UAS licence are applicable from Sep 01, 2010.
5. We would also like to submit that no recommendations were sought by DoT for amendments in the UAS License or ISP License due to 3G/BWA spectrum allocations by auction either before or post auctions.
6. It is further submitted that the only aspect mentioned by DoT in its letter dated 27 December 2011 is that the definition of AGR differs in the case of ISP licenses and UAS licences. We respectfully submit that this is neither a new fact nor a new reason to trigger the consultation because the provisions of respective service license were known to all stakeholders before the bids.

Chairman, TRAI
Dy. No. 883
Date 4/4



7. In this regard, it may be noted that the DoT itself had specifically responded to this issue in the Q&A of the 3G & BWA NIA dated 25.02.2010 in Q no. 227, which is reproduced below:

No.	Query	DoT Response
227	As per prevailing ISP licence, pure Internet revenue is exempted from Gross revenue for determining the AGR & payment of licence fee and spectrum fee. Will the DoT allow pure UAS licence to also avail similar exemption in case it wins BWA spectrum, so as to maintain parity?	Licence fee is governed by the licence conditions. The services allowed under a UAS licence are much wider in scope than those allowed under an ISP licence.

8. Thus, DoT had already decided and given a confirmation to all the stakeholders on this subject and there was no need to raise the said issue in December 2011.
9. We believe that such consultation and subsequent amendment in the ISP license will not result in effective date for the purpose of duration and roll out obligation for BWA spectrum being extended. If the said effective date gets extended and is different from effective date of other successful bidders of 3G/BWA spectrum then it will result in discrimination against other bidders and will not be in line with the terms of NIA.
10. Since the rollout obligation, payment of spectrum usage charges and moratorium thereof are also linked to the starting date of the validity period, therefore a different date will lead different rollout obligation and amount of spectrum usage charges for BWA spectrum held by ISPs and UASL. Thus, there is a need that the Government should ensure that level playing field is maintained between UAS & ISP licensees.
11. Further, this issue has been brought up after more than 20 months of auction. By now the winners had sufficient time to do techno-economic evaluation and planning and any extension will, therefore, result in an undue advantage at the cost of public good being extended to such successful bidders having ISP license.
12. Therefore, in light of above, the Government should ensure the parity /level playing field between UAS & ISP licensees and should ensure that;
- The validity period for BWA spectrum remains same for both UASL and ISP.
 - The period for meeting the rollout obligation by UASL and ISP remains exactly same.
 - The one year moratorium period (i.e. no annual spectrum usage charge payable in the first year) for ISPs and UASL should remain same to ensure level playing field between two set of operators who have paid same entry fee for BWA spectrum.



13. In conclusion, we respectfully reiterate, that there should be no special advantage accruing to the BWA spectrum auction winners vis-à-vis the 3G spectrum auction winners by virtue of such a special consultation, that too 21 months after the auction.

We believe that our submission will be taken into consideration by the Authority while finalizing its recommendation to the Government.

Kind regards,

Sincerely yours,

Rajan S. Mathews
Director General

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