

Review of License Terms and Conditions and Capping of Number of Access Providers

VSNL RESPONSE TO CONSULTATION PAPER

Merger and Acquisition

Q1. How should the market in the access segment be defined (see para 2.2)?

The licensed area / circle should continue to be the basic entity for market definition.

Furthermore, we propose that within every circle, Wireline (Fixed services) and Wireless (Mobile services) be defined as different access markets for the following reasons:

- As explained subsequently, the spectrum available to a merged entity will be the principal catalyst for mergers. It will be a key determinant for valuations, and also by way of the subscriber base and services that it can support, will impact the extent of market dominance by merged entities. Hence, it makes sense to make 'Wireless' as one category.
- Wireline growth is expected to be marginal in the coming years, and limited M&A activity is likely to happen in the Wireline area. However, one can expect developments in fixed-mobile convergence during the next year or two. We therefore propose that the categorization be reviewed for any anomalies/ changes that may be created/ take place in the market structure due to those developments.

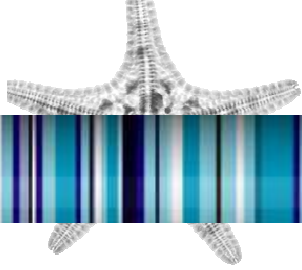
Q2. Whether subscriber base as the criteria for computing market share of a service provider in a service area be taken for determining the dominance adversely affecting competition, If yes, then should the subscriber base take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer?

We recommend the following two criteria to be applied for computing market share of a service provider in a service area, for determining market share:

1. Subscriber base in the VLR.

AND

2. Audited AGR as submitted to DoT.



The subscriber base and revenues are both widely used for determining the valuation of telecom businesses and, therefore, are natural choices. Since VLR is a more accurate representative of active subscribers than HLR, the VLR count is recommended.

In a merger/ acquisition situation in a particular service area, each of the above two criteria should be applied separately to define the market share of each access business i.e., wireless and wireline, of the operators in question. Hence, the merger/ acquisition would need to satisfy the market share conditions using **each** of four parameters, namely, Wireless VLR subscriber base, Wireline subscriber base from Exchange Data Records, Wireless AGR and Wireline AGR.

Q3. As per the existing guidelines, any merger/acquisition that leads to a market share of 67% or more, of the merged entity, is not permitted. Keeping in mind, our objective and the present and expected market conditions, what should be the permissible level of market share of the merged entity? Please provide justifications for your reply?

As per international practice, a market share of 40 % to 50% is indicative of dominance. In the European Union (EU), the presumption of market dominance is if a firm has a market share consistently above 50%. In the United States, markets in which an HHI above 1800 points that translates to 45% market share, are considered to be concentrated. **We recommend a maximum market share of 45 % for the merged entity** in the context of permitting M&A.

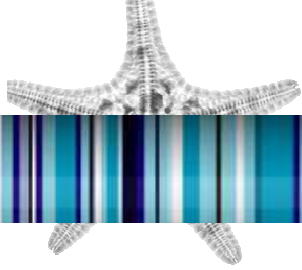
TRAI's M&A recommendations dated 30th January 2004 had proposed a threshold of Concentration Ratio – 2 (CR2) of 75%; this was not adopted in DOT's final recommendations. In the public interest, to avoid formation of virtual duopolies, it would be advisable to cap the CR2. **We propose a CR2 cap of 75%.**

Q4. Should the maximum spectrum limit that could be held by a merged entity be specified?

a. If yes, what should be the limit? Should this limit be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA operators? If yes, please specify the respective limits?

Yes, there should be a limit on the spectrum that could be held by a merged entity.

The case of GSM and CDMA merger is complex, and with the advent of new technologies, it will become even more so. In the near future, more spectrally efficient technologies will also be available to operators within their existing assigned bands.



Assigning spectrum on the basis of spectral efficiency will therefore become an increasingly impossible task. Recognizing this, Tata Teleservices had made various representations to the Department of Telecom to suggest a spectrum allocation policy that addresses the issue. TRAI's recommendation of 27.09.2006 on Allocation and pricing of spectrum for 3G and broadband wireless access (BWA) services established 3 fundamental principles:

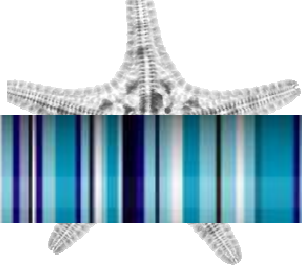
- Upfront allotment of adequate spectrum
- Technology neutrality
- Pricing of Spectrum

Extending the principles to 2G, 3G or "Any G" spectrum, Tata Teleservices had mooted that:

1. Subscriber base as a criterion for allocating additional spectrum be done away with. This flows naturally from the two principles that, (a) adequate spectrum be allocated upfront, (b) without considerations of the technology being used (and therefore without considerations of perceived spectral efficiency / subscriber capacity).
2. The contracted spectrum be given to operators upfront.
3. Any allocations beyond the contracted amount be paid for.

If the above recommendations are accepted, most of the issues arising from cross technology holdings would be resolved. We propose as follows:

- Annexure IX of the consultation paper confirms that the current contracted spectrum of GSM and CDMA operators is 6.2 MHz and 5 MHz respectively. The UASL license agreement presently does not provide for spectrum allocations beyond those amounts. However, unlike the CDMA operators, GSM operators have already been assigned spectrum beyond their contracted amount to upto 10 MHz in many circles, without the payment of any additional fee.
- Therefore, in the interest of a level playing field, and keeping the technology neutrality principle in mind, CDMA and GSM operators who hold less than 10 MHz should also be upfront assigned 10 MHz each immediately. In the event that adequate spectrum is not available for CDMA operators in the existing 800 MHz band, the additional spectrum should be provided in the globally aligned 1900 MHz band. Such a natural progression was done for the GSM operators when the spectrum in the 900 MHz band ran out, and they were given additional spectrum in the 1800 MHz band.
- The spectrum beyond 6.2 MHz and 5 MHz for GSM and CDMA operators respectively should be charged for at a pro-rata rate derived from the entry fee under the current UASL guidelines. **The rate per MHz should be identical for CDMA and GSM spectrum.** In the event of there being more buyers than the spectrum available, the buyers may be asked to bid on the revenue share percentage in



- addition to the payment above. Those GSM operators, who already hold more than 6.2 MHz, should be asked to pay retrospectively for the differential amount.
- **Alternatively**, in the event that the Government feels that it may not be possible to make the said GSM operators pay for the additional spectrum retrospectively, the spectrum beyond 6.2 MHz/ 5 MHz, upto 10 MHz, should be given to the other GSM/ CDMA operators without payment of any additional fee.
 - Any further spectrum beyond 10 MHz for either GSM or CDMA operators may also be assigned, but after payment of additional fee.

As on date, combined CDMA / GSM spectrum can be held in 800/900/1800 MHz bands. We have proposed above that any shortfall in spectrum availability in the 800 MHz band for CDMA operators be met out of the 1900 MHz band. We propose that the cap in the current M&A guidelines on the spectrum of the merged entity of 15 MHz be retained for the above bands. Caps on other spectrum outside these bands, such as the so-called "3G" bands of 450 MHz, 1900 MHz (to the extent not allocated for making up the 10 MHz requirement for CDMA operators), and 2100 MHz, should be defined in a comprehensive, transparent and technology neutral spectrum policy, and the M&A guidelines should be revisited after such a new spectrum policy is put in place.

b. If no, give reasons in view of effective utilisation of scarce spectrum resource?

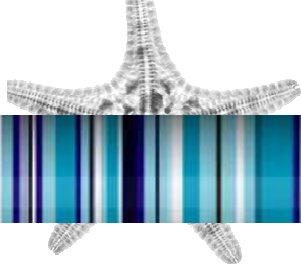
Not applicable in view of the above.

Q5. Should there be a lower limit on the number of access service providers in a service area in the context of M&A activity? What should this be, and how should it be defined?

It is essential that virtual duopolies are not created subsequent to mergers. At the same time for deriving maximum operational efficiencies through a free market, mergers should be encouraged. We feel that the current lower limit of three operators reasonably addresses both the issues, and should therefore continue. This should be accompanied by the requirement that CR2 be defined as being capped at 75%.

Q6. What are the qualitative or quantitative conditions, in terms of review of potential mergers or acquisitions and transfers of licenses, which should be in place to ensure healthy competition in the market?

The caps on Market Share, CR2 and Spectrum should be adequate to ensure that M&A does not lead to concentration beyond permissible limits. At the same time, it must be recognized that the telecom sector worldwide is undergoing consolidation. Therefore, it is necessary that natural economic factors and market forces be allowed to operate, without excessive restrictions on M&A.



Q7. As a regulatory philosophy, should the DoT and TRAI focus more on ex post or ex ante competition regulation, or a mix of two? How can such a balance be created?

It should be primarily ex ante competition regulation with some ex post regulation to the extent that it is necessary. Ex ante regulations, which include obtaining prior approval of Licensor, are required as Indian markets are not mature to the extent where only ex post regulations may work.

Furthermore, with the continuing dominant market power of the incumbents in the Wireline segment, there is an urgent need for TRAI to consider the imposition of ex post, asymmetric regulations.

Substantial Equity

Q8. Should the substantial equity clause (1.4 of UASL) continue to be part of the terms and conditions of the UAS/CMTS license in addition to the M & A guidelines? Justify.

Yes, the substantial equity clause (1.4 of UASL) should continue to be part of the terms and conditions of the UAS/CMTS license. The limit should remain at 10% to dissuade collusive conduct through cross ownership in more than one licensee in the same service area.

Q9. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.

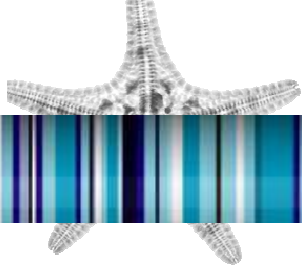
The present limit of substantial equity of 10% should continue, based on the reasons given in answer to question no.8 as above.

Q10. If no, should such acquisition in the same service area be treated under the M&A Guidelines (in the form of appropriate terms and conditions of license)? Suggest the limit of such acquisition above which, M&A guidelines will be applied.

Not Applicable.

Q11. Whether a promoter company/legal person should be permitted to have stakes directly or indirectly in more than one access License Company in the same service area?

Currently, a promoter of a licensee company in a service area cannot hold any equity in any other licensee company in the same service area. Other entities may hold upto 10%



equity (directly or indirectly) in more than one licensee company. The same should continue.

It is acknowledged that when the access providers existing in November 2003 migrated to UASLs, a special dispensation, allowing more than one company from the same Group to hold separate access licenses in the same service area, was made. The advantage of the dispensation continues to be available today to one such Group. **It is proposed that with respect to all conditions pertaining to merger/ acquisition, like market share and spectrum caps, such companies belonging to a single Group, be treated as a single entity.**

Q12. Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

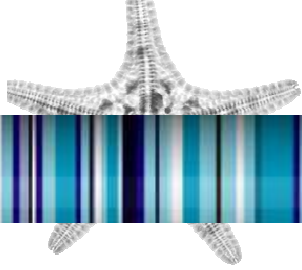
At present there is no clear definition of the promoter in the License Agreement. However, we suggest the following definition be considered:-

Promoter includes:

- (i) persons in control of the company, directly or indirectly; or
- (ii) persons identified as promoter / promoters in the offer document at listing or in the statement in lieu of the prospectus filed with the RoC, in case of an unlisted Indian public company; or
- (iii) Such persons directly or in combination with a group, or persons acting in concert, hold 25% or more of the voting shares of the company;

Provided further that the promoter or a group identified as the promoter group shall not be inter-locked through shareholding or management control to the extent of 25% or more of the board of directors, or through key executive management positions, or 25% or more of the shareholding in one or more licensee companies operating in the same telecom circle

(Note: the interlocking of shareholding and control in excess of 25% is intended to prevent dominance over spectrum allocations in the same telecom circle); and shall include a group acting in concert with the immediate promoter shareholders or person in control of management (group as defined under the MRTP Act, 1970).



Explanation: “Change in promoter” with reference to any telecom license shall exclude changes of indirect nature in tiered, layered, upstream, holding or operating companies above the great grand father tier from the shareholder having an interest in a licensee company, *except* where changes in shareholding at the tiered, layered, upstream, holding or operating companies at any level is subject to any arrangement, whether as a voting arrangement or otherwise, providing affirmative voting rights being granted in favour of new shareholders or minority shareholders of indirect holding or operating companies or reservation or nomination rights for such new or minority shareholders for directors in downstream investee companies, including the licensee company, or any rights of first refusal in relation to any share sale for such new or minority shareholders in any tiered, layered, upstream, holding or operating company or downstream investee company including the licensee company.

Q13. Whether the legal person should be defined and if so the category of persons to be included therein and if not the reasons therefor.

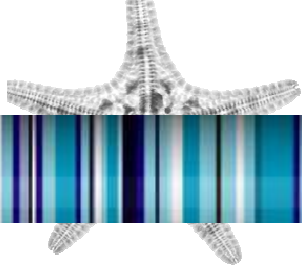
There is no need to define.

Q14. Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?

In a liberalized and free market, the Central government, State governments and public undertakings **should not be** taken out of the definition for the purpose of calculating the substantial equity shareholding, and they should be treated at par with other stake / share holders.

Permitting combination of technology under same license

Q15. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?



Yes, a licensee using one technology may be assigned, on request, additional spectrum meant for the other technology under the same license. For the spectrum so assigned, the licensee should pay the charges applicable for the additional spectrum as per the current UASL norms. For any GSM/ CDMA spectrum allocated thereafter beyond 6.2 MHz/ 5 MHz, a further fee may be charged as described in our reply to question 4. (If the Government adopts the alternate option discussed in our reply to question 4, then these figures would be amended to 10 MHz each for CDMA/ GSM technologies).

Companies belonging to the same group holding different access service licenses in the same circle should be treated as a single entity for the above purpose.

Q16. In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chosen alternate technology;

The additional spectrum beyond 10 MHz may be given to the existing operator. It should be charged as explained in our reply to question 4.

Q17. What should be the priority in allocation of spectrum among the three categories of licensees given in ¶4.16 of the chapter?

Ideally, enough spectrum should be made available after getting it vacated from other users (non telecom operators) to meet the requirements of the existing operators.

We suggest that the priority in terms of allocation of spectrum should be in the following order:

Priority – 1

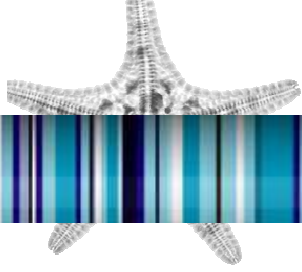
Priority should be given to the existing operators in the circle in question. They should be guaranteed spectrum upto 10 MHz.

Priority – 2

Existing licensees who already hold UASLs in more than 50% of the country's 23 telecom circles, wanting spectrum in the same/ alternate technology in another circle. These are the operators that have already made heavy investments on the ground and are seeking to increase their footprint across the country.

Priority - 3

Existing licensees wanting spectrum in an alternate technology in the same circle. These are operators who have already made significant investments on the ground.



Priority – 4

All other applicants / operators, who have submitted their applications for UASLs, in accordance with their date of application.

Q18. Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?

No, there should be no roll out obligations specifically linked to the alternate technology which the existing service provider has decided to use. Keeping in view of the changing pace of technological innovations and developments, no roll out obligations are called for which are linked to alternate technologies. In fact, roll out obligations have hardly been successful, and become even more redundant when viewed in the light of the intense competition in the market which is leading service providers to rapidly expand their networks to remote areas.

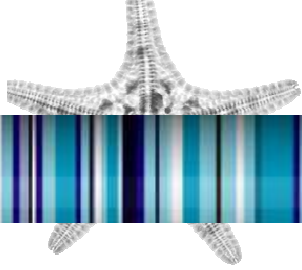
Q19. Lastly, as such service provider would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to him?

Answers provided in our replies to questions 4 and 15.

Roll out obligations

Q20. Should present roll out obligations be continued in the present form and scale for the Access service providers or should roll out obligations be removed completely and market forces be allowed to decide the extent of coverage? If yes, then in case it is not met, existing provision of license specifies LD charges upto certain period and then cancellation of license. Should it continue or after a period of LD is over, enhancement of LD charges till roll out obligation is met. Please specify, in case you may have any other suggestion.

- The mandatory requirement in terms of roll out was justified in the initial years when the Access sector was opening up. There were ambitious targets to be achieved and it was to be ensured that the sector grew in the right direction.
- Today, nearly 13 years after the first cellular license was issued, the telecom scenario has completely changed. The urban markets are becoming saturated. Operators are perforce finding / exploring new markets / niche areas, including rural areas, for growth.



- The Government's offer of subsidies to service providers to extend their networks to remote areas was greeted, in many instances, by offers from the service providers to instead pay the Government to undertake such responsibilities.

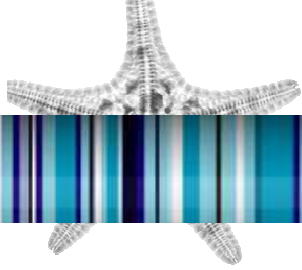
Q21. Is there a case for doing away with the performance bank guarantees as the telecom licensees are covered through the penalty provisions, which could be invoked in case of non-compliance of roll out obligations?

Yes, there is a case for doing away with the performance bank guarantees because they place an upfront financial burden on the operator which is a deterrent to entry.

Q22. Should roll out obligations be again imposed on the existing NLD licensees? If yes, then what should be the roll out obligations and the penalty provisions in case of failure to meet the same.

Earlier, NLD licensees were required to create a point of presence in all the LDCAs over a period of time. A Rs 400 crore bank guarantee was required to be furnished by the licensees against the obligation. In contrast to the stringent obligations imposed on the operators who entered the sector early and created the much-needed infrastructure for the country, the revised NLD license conditions have done away with the obligations completely; the entry fee was further reduced by 97.5%. It is unfair to those who entered originally and made significant investments in the sector that the new entrants not only have a much lower entry fee but also have no roll-out requirements. This is particularly accentuated by the non-implementation of CAC / Pre-selection / Calling Cards / IN / Toll-free numbers (in spite of a TRAI Directive in this regard) which has considerably limited the addressable market for the NLD operators. It is clearly an un-level playing field between the two categories of NLD operators.

The earlier roll-out obligations must be re-imposed since the dual act of reducing entry fee and waiver of obligations has led to several new operators who will cherry pick metro routes and only provide services to high-margin customers without adding any major investment or value to the NLD sector. Since the entry fee was reduced to encourage new entrants, there is no merit in imposing a stiff performance bank guarantee. In case a licensed operator fails to meet roll-out obligations, its license can be suspended and ultimately canceled (and no new telecom licenses given to that company for a period of 3-5 years). The potential loss of the license and therefore, the business opportunity, would be a sufficient "incentive" for the licensees to meet the roll-out obligations. NLD licensees may however be permitted to share active and passive infrastructure with other licensees; this would ensure that there is no duplication of available infrastructure and investments are channeled towards areas / regions that require infrastructure build.

**Q23. What additional roll out obligations be levied on ILD operators?**

Similar to our response in Q.22, we believe that the roll-out obligations be re-imposed on ILD licensees. The entry fee has been reduced by 90% in the case of ILD license, thereby reducing the entry barrier. The ILD obligations are minimal and designed to ensure that the licensee has sufficient infrastructure to serve customer requirements. Further, a new category of IPLC resellers has been created for such operators that desire a lower entry fee and minimal obligations for a license to sell International data services.

Q24. What should be the method of verification of compliance to rollout obligations?

Wherever roll-out obligations are applicable, compliance should be based on self-certification, to be verified further by DoT.

Q25. What indicators should be used to ensure quality of service?

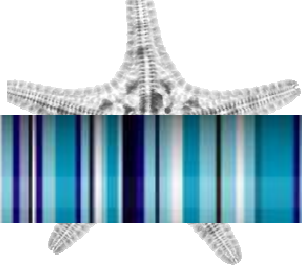
We are comfortable with TRAI's present QoS regulations except that pertaining to in-building coverage.

We recommend that the indicator for coverage measurement be amended to account for different sensitivities and interference margins of different technologies. The present criterion measures the "Mobile receive power". The In-building coverage for both GSM and CDMA networks is measured at the street level and is required to be better or equal -75 dbm of " Mobile Receive Power". This does not account for the processing gain / (Ec/Io) advantages of CDMA. CDMA networks are designed for "Mobile Transmit Power". We recommend, therefore, that the CDMA MS transmit power (instead of receive power) be considered for measuring coverage for CDMA networks. The In-building coverage measured at the street level should be less than or equal to 3dBm of mobile transmit power (for a typical mobile with max transmit power of 23 dBm).

The TRAI QoS regulations, duly amended for the in-building coverage parameter, should continue to be made applicable. Besides, the view point of the industry should be kept in mind that TRAI benchmarks on QOS cannot be fully complied with unless timely allocation of desired spectrum and interconnection are made available equally to all operators.

Q26. As the licensees are contributing 5 per cent of AGR towards the USOF, is it advisable to fix a minimum rural rollout obligation? If yes, what should be that? If no, whether the Universality objectives may be met through only USOF or any other suggestions.

No, it is not advisable to fix a minimum rural roll out obligation for the UAS license. TRAI has itself noted that the past experience shows that specifying rural obligations did not



meet the objective in a major way for providing telecommunication facilities in rural areas. Furthermore, it may be noted that the slow pace of rural roll out is attributable largely to the fact that the USOF has so far been unable to adequately utilized the huge funding available with it.

The universal service objectives can be met entirely with incentives from the USOF instead by imposition of roll out obligations.

- The RDEL tender resulted in an increase in teledensity by 1.6% in the SDCAs served by Tata Teleservices. This percentage could further increase if the RDEL scheme is extended by another two years as requested by the industry.
- As per TRAI, the present geographic coverage of mobile networks is around 39% and population coverage is around 60%. The recently concluded Phase – I of infrastructure sharing project by USO aims at setting up of 7,871 infrastructure sites in 500 districts all over India and through which coverage to 2.12 lakh villages, 4.98 crore households and 26.93 crore population will be achieved. This will increase the population coverage to 83%.
- USO is planning to come out with Phase – II of infrastructure sharing tender for setting up additional 10,000 sites. This will entail that the population coverage of 83% will increase to more than 95%.

Considering that the USOF is making plans (like a Phase – II of its rural infrastructure sharing project) for utilizing its cache of Rs. 9000 crores, we believe that with incentives from the USOF, there will be no need for fixing any roll out obligations for meeting India's rural roll out objectives.

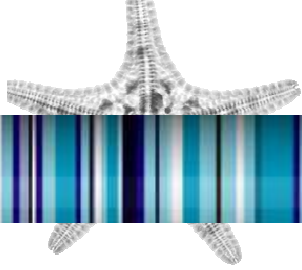
Q27. In case of rural roll out obligation, whether number of BTS in a certain area a viable criterion for verification of rollout obligation?

There should be no roll out obligations.

Q28. What should be the incentives and the penalties w.r.t. rural roll out obligations?

Incentives should be given in the form of:

- Judicious use of USO funds to encourage the operators to provide services in the rural areas as per TRAI's recent recommendations on Infrastructure Sharing including:
 - Subsidies from USO fund equal to 80% of the amount decided under USO Phase 1 scheme.
 - Backhaul sharing.
- Reduction in customs duty on equipments imported for rural coverage.
- Restoration of 80IA benefit



- Reduction in license fee once the network is completely rolled out in the rural areas.

Determining a cap on number of Access provider in each service area

Q29. Should there be a limit on number of access service providers in a service area? If yes, what should be the basis for deciding the number of operators and how many operators should be permitted to operate in a service area?

and

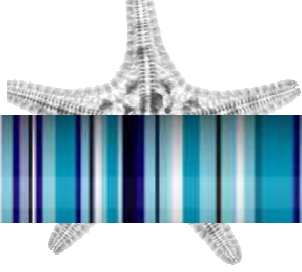
Q30. Should the issue of deciding the number of operators in each service area be left to the market forces?

TRAI has cited the following key considerations for the licensor while determining the new licenses to mobile telephony service providers: Competitive Scenario, Financial Sustainability and Availability of Spectrum.

Competitive Scenario and Financial Sustainability are issues best left to market forces. However, spectrum availability will clearly determine the decision on number of players that may be allowed to be licensed in a circle.

As discussed earlier, existing licensees should be immediately allocated 10 MHz, and in the event of lack of immediate availability be provided with an assured road map to the same. Thereafter, spectrum should be allocated to new UASL applicants who already operate access services in more than 50% of country's 23 telecom circles. All the above mentioned licensees should be assured a growth path upto 15+15 MHz in each service area as per international standards. Subsequently, all other applicants should be considered for spectrum allocation based on its availability.

An important aspect that TRAI must take into consideration is the road-map for ISPs and other operators (e.g. cable operators). In earlier recommendations, the TRAI had proposed a new license category as a Access services migration road-map for ISPs. The current set of UAS licensees have not focused on Broadband and Internet services, or on Internet Telephony. However, the ISPs who have been investing in increasing Broadband and Internet penetration are not permitted to offer Access services, and are not permitted to interconnect with the domestic PSTN. **It is necessary that a new license category be created – similar to the earlier Basic License – with a low entry fee, and no 2G or 3G spectrum that would provide ISPs with a migration path towards access services.** Such ISPs or new licensees should however be permitted to obtain Broadband Wireless Access spectrum, as per the TRAI spectrum policy recommendations.



An important outcome of the above would be that the growth in Broadband subscribers, on wireline (cable, fiber, DSL, etc.) and wireless, would add to the country's teledensity. This would also increase competition in the Fixed line segment and provide customers with greater choice, beyond the incumbents. There should be no cap on the number of such "new" licensees.

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