

Bharti Airtel's Response to the Consultation Paper on Amendment in the ISP Licence for use of Broadband Wireless Access (BWA) spectrum

This is with reference to TRAI's Consultation Paper on the subject matter. In this regard, we would like to furnish our comments as under:

1. Definition of AGR:

DoT vide its 3G/BWA " NIA" dated 25.2.2010 and subsequent amendment in the UAS licence dated Sep 01, 2010, has mandated licencees using BWA spectrum to pay 1% of applicable AGR as annual spectrum usage charges irrespective of the licence held by them (**UASL or ISP**).

In this regard, it may be noted that the DoT had acknowledged the different methodologies of computation of AGR under UASL and ISP License which is reflected from its response to Q. No. 227 in the Q&A of the 3G & BWA NIA dated 25.02.2010, 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.

However, the current definition of AGR in ISP licence, allows a benefit of pass through on the revenue earned on account of provision of pure internet services, whereas such a deduction is not allowed to a UASL, thereby, creating competitive distortion between UAS and ISP licensee for the provision of Internet Services using BWA spectrum. Therefore;

In order to have level a playing field, we would request the Authority to allow the exemption/deduction of the revenue from Pure Internet Services from the AGR of UASL.

2. Validity of BWA spectrum and Roll-out obligation:

DoT vide its 3G/BWA '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'.

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 the amendment letter. Therefore, the validity period for the use of BWA spectrum and also the roll out obligations for the licencees providing BWA services under UAS licence are applicable from Sep 01, 2010.

However, the amendment in the ISP licence for the use of BWA spectrum had not been done and is still pending with DoT for which the present consultation process has been started. Since, the date of amendment to the ISP licenses for the use of BWA spectrum will be post this consultation process, therefore if the validity of BWA spectrum for an ISP licensee is calculated from that date of amendment of their license, then it will provide the ISPs an undue advantage against the UAS licensees. Needless to mention that both UAS Licensee and ISPs have paid the same entry fee determined through auction of BWA spectrum, therefore any different validity period for two set of licensee will lead to a serious non level playing field and hence need to be avoided. Presuming that the amendment will happen within next one month, the ISP licencees will get an undue benefit of at least 1.5 years of additional period of validity of the BWA spectrum.

The rollout obligation, payment of spectrum usage charges and moratorium period are also linked to the effective date, therefore a different effective date will lead different rollout obligation, spectrum usage charges for BWA spectrum held by ISPs and UASL etc. leading to a serious non level playing field between the operators paying same price of BWA spectrum derived through auction.

Therefore, we would suggest that the Government should maintain the parity/level playing field between UAS & ISP licensees on following accounts:-

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| <ul style="list-style-type: none">a) The validity period for BWA spectrum remains same for both UASL and ISP.b) The period for meeting the rollout obligation by UASL and ISP remains same. |
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3. Correction in Amendment done in UASL for BWA:

Further, COAI vide its letter dated Dec 3, 2010 (copy enclosed) to DoT had highlighted various anomalies in the amendment of UAS/CMTS licence to use 3G/BWA spectrum for provision of telecom access services. We request the Authority to provide clarity on the issues raised by the industry in this regard.

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