

TELECOM REGULATORY AUTHORITY OF INDIA

RECOMMENDATIONS OF THE TRAI ON LICENSE FEE AND TERMS & CONDITIONS OF THE LICENSE AGREEMENT FOR GMPCS SERVICE

CONTEXT

1. The Department of Telecommunications (DOT) issued a Provisional License to Iridium India Telecom Ltd. (Iridium) in October 1998 for setting up and operating Global Mobile Personal Communications by Satellite (GMPCS) Service in the country on a non-exclusive basis. While delineating the terms and conditions of the Provisional License Agreement, the Government decided that the final license shall be issued after obtaining recommendations of the Telecom Regulatory Authority of India (TRAI) on the license fee, and other terms and conditions of the license. A reference was accordingly received from the DOT seeking TRAI's recommendations in the matter.

2. With a view to undertaking public consultations, a Consultation Paper was released on July 27, 1999 (Attachment 1), which provided information on technical and operational aspects of GMPCS service apart from dealing with the policy and regulatory issues. The Paper contained a clause-by- clause analysis of the Provisional License Agreement entered into with Iridium, which formed the basis for initiating the debate on the license fee structure, and other terms and conditions of license agreement for the GMPCS service providers. The TRAI also presented in this Paper a draft re-structured License Agreement for the GMPCS service to facilitate the public debate.

3. The reference made by the DOT was specific in regard to the Provisional License Agreement entered into with Iridium. The Authority has, however, dealt with the relevant issues in a generic manner in respect of licensing of GMPCS services. Recommendations contained herein have been formulated on the basis of this consultative process.

RECOMMENDATIONS OF THE AUTHORITY

4. On the basis of extensive deliberations in the Authority and for reasons spelt out in detail in the attached **Explanatory Note**, TRAI makes the following recommendations to the Government on the license fee structure, and other terms and conditions of the License Agreement for the provision of GMPCS Service:

- a) The Entry Fee shall be Rs. 10 million.
- b) The Licensee shall be required to commission its Applicable Systems and provide GMPCS Service within a

period of one year of the effective date of the License Agreement. In case of delay(s) in the commissioning of Service, an additional Entry Fee shall be payable as below:

- o Delay upto 1 year : Rs. 0.5 Million.
- o Delay of more than 1 year but less than 2 years: Rs. 1 Million.
- o Delay of more than 2 years: Rs. 1.5 Million.

c) The annual license fee as a percentage of Revenue Sharing shall normally be restricted to cover only the administrative costs incurred in the management, control, enforcement and regulation of licenses for GMPCS service as well as for contribution to sector development through research and studies. However, keeping in view the need to strengthen the organisations dealing with licensing related functions and sector specific Research and Development, the Authority recognizes the need to collect revenue share as annual fee in excess of the current indicative costs of the DOT secretariat and TRAI. **The Authority recommends that the revenue sharing percentage should not exceed five percent of the "Adjusted Gross Revenue"(AGR).** This may be reviewed after every five years (subject to the ceiling of five percent) to bring it in line with the actual costs incurred in administering the licenses and for R&D purposes. In case it is felt that review should not be constrained by the requirement not to raise the percentage share, it should take place only after 10 years based on public consultations. Having stated so, the Authority is of the view that the Government, keeping in view the overall national requirement, may consider levy of a differential Service tax on GMPCS service in addition to the annual license fee.

The above recommendation is based on the majority view of Justice S.S. Sodhi, Mr. B.K. Zutshi, Mr. N.S. Ramachandran and Mr. M. Ravindra for the reasons given in the Explanatory Note. However, the remaining Members comprising of Mr. U. P. Singh, Mr. Arun Sinha and Mr. R.R. N. Prasad hold the view that the License fee incidence as a revenue share should not be less than 16% of the adjusted Gross Revenue. Their view is contained in Appendix 1. The reasons of the majority for not accepting this view are contained in Appendix 2.

d) The aforementioned revenue sharing percentage is exclusive of any contribution towards access deficit or universal service fund that the licensee may be required to pay as prescribed by the competent Authority.

e) **"Adjusted Gross Revenue"** for the purpose of levying license fee as a percentage of Revenue Share shall mean the **"Gross Revenue"** accruing to the Licensee by way of operations of the GMPCS service mandated under the license (inclusive of revenue on account of value-added services, supplementary services and/ or leasing of infrastructure) as reduced by the following items:

- i. Interconnection/ Access charges payable to other Service Providers within India to whose Networks the GMPCS- Network of the Licensee is interconnected for carriage of calls;
- ii. Roaming revenues collected on behalf of other Cellular Mobile Telephone Service (CMTS) providers and passed on to them;
- iii. Payment to VSNL for bypass;
- iv. Revenues through sale of user terminals. In case the service provider subsidizes the sale of user terminal by giving rebate on the airtime/ rental tariff, the revenue thus "foregone" will be added to arrive at the Adjusted Gross Revenue. Revenue "foregone" will be the difference between the purchase price of the user terminal by the GMPCS service provider and its sale price to the subscriber. Purchase price will be inclusive of taxes/ duties, if any;
- v. taxes such as service tax, sales tax etc. (levied on the provision of service);
- vi. Actual payments made by the Licensee towards access deficit/ universal service fund or any other levy as may be prescribed for meeting the universal service obligation;
- vii. Amounts received as Security Deposits from the consumers/ subscribers for the provision of GMPCS Service.

f) The license will be issued for an initial period of 20 years and would be extendable by additional periods of 10 years thereafter.

g) The modalities for payment of license fee shall be as under:

- i. Entry Fee shall be paid in advance before signing the License Agreement.

- ii. Additional Entry Fee on account of delay in commissioning of Service shall be paid, as prescribed, within 15 days of the commencement of extended year.
- iii. Annual license fee under the Revenue Sharing arrangement shall be payable in four quarterly installments during the financial year. Each quarterly installment shall be paid in advance within 15 days of the commencement of the first calendar month of that quarter. The year for the purpose of license fee shall be the financial year ending 31st March. License fee for each quarter shall be paid provisionally by the Licensee on self-estimation of the Adjusted Gross Revenue for that quarter. Final adjustment of the license fee for the financial year shall be made on or before 30th June of the following year based on revenue figures duly certified by the Chartered Accountant engaged by the Licensee for auditing the Annual Accounts of the Licensee company.
- iv. Licensor/ TRAI may prescribe formats for the Maintenance of Accounts and furnishing of periodic accounting statements that enable the verification of declared Adjusted Gross Revenue.
- v. Licensor shall have the right to scrutinize the books of accounts of the Licensee for verifying the correctness of the reported revenue, and to seek verification statements through an independent Auditor on the declared Adjusted Gross Revenue and its conformity with the prescribed revenue concept.
- vi. Any delay in payment of license fee beyond the stipulated period will attract interest at the Prime Lending Rate (PLR) of State Bank of India as notified from time to time and further increased by two percent per annum. The interest shall be compounded monthly at the rate (s) applicable for the period (s) of default. A part of the month shall be reckoned as a full month for the purposes of calculation of interest.
- vii. While progressive quarterly payments are likely to be at variance with reference to the final liability based on audited accounts, these payments should be as accurate as possible. Any under statement of interim quarterly payments beyond twenty- percent of the final calculation may attract a penalty (not exceeding the amount of short payment) in case the Licensee fails to show that the under statement was not deliberate and that the projections were reasonable as per the then obtaining circumstances.

h) Other terms and conditions of the License Agreement should be in accordance with the restructured License Agreement enclosed as per Appendix 3 to this Explanatory Note.

i) In the context of expeditious, cost effective and independent dispute resolution on issues arising from or in connection with the terms and conditions of a license, this Authority recommends an amendment to the TRAI Act to categorically confer on the TRAI powers of dispute settlement on such issues.

j) During the consultations, some important issues connected with the matter also came up for consideration of the Authority. The Authority's viewpoint on these issues is contained in paragraphs 53-54 of the Explanatory Note

EXPLANATORY NOTE

INTRODUCTION

1. The Central Government recently opened up the GMPCS market in India. GMPCS policy envisages licensing of this service on first-come first-served basis, subject to availability of spectrum. The first license (on provisional basis) was issued to Iridium on a non-exclusive basis. Iridium commissioned its GMPCS service in India in February 1999. Other satellite systems such as ICO- Global, Agrani, Globalstar etc. are pursuing efforts to launch the GMPCS services in India.

2. It is expected that GMPCS service providers (licensees) would be setting up networks with related ground segments affiliated to satellite space segment of their parent overseas agencies, if any; and Indian based companies establishing and launching their own satellite infrastructure for the provision of GMPCS Service. Since the GMPCS Service enhances the mobility offered today through CMTS, it is likely that GMPCS Service Providers will be supported mainly by Cellular Mobile Service Providers (CMSPs), who will provide the GMPCS service as an extended Cellular Service.

3. GMPCS networks offer immense potential in terms of augmenting the local telecommunications infrastructure by providing instant connectivity throughout the country. Apart from offering global roaming service to the potential subscribers who need mobility but are in areas outside the terrestrial cellular coverage, GMPCS service will have a niche market in the aerospace, maritime, defence agencies, long distance land transport operators and subscribers in far flung areas lacking telecom infrastructure. This connectivity to provide telecommunication services in rural, remote and other hard-to-reach areas is relevant from the point of providing universal access, and integrating the local and rural economies into the global economy. GMPCS Service should not, therefore, be looked at as a "premium" or "elitist" service on account of its huge project outlay, and high cost of user terminal and airtime. Taking cognizance of the poor uptake in subscriber base on these counts, companies like Iridium, which had run into rough weather, have already initiated steps aimed at their financial restructuring even at this early stage. Satellite systems for mobile telephony are now being developed at reduced costs with companies like ASC (Agrani) planning to introduce GMPCS Service at much lower airtime and with cheaper user terminals.

4. GMPCS Service uses a technology which has the capability of bridging vast areas. As a result of ongoing efforts to bring down its capital and operating costs, GMPCS technology may soon be more cost effective for network expansion in developing countries with per-line telephony cost in rural/ remote areas competing with that of Public Switched Telephone Network (PSTN) and Public Land Mobile Network (PLMN). In addition, GMPCS network roll out avoids costly disruption to public "rights-of-way" (ROW) in terms of digging up roads etc. ITU studies have highlighted that GMPCS services can assist Administrations in achieving national objectives in education, health, urban/ rural population distribution, universal service, disaster relief and international relations.

5. The aforementioned factors are relevant while developing a licensing framework for regulating GMPCS service so as to ensure that the economic and social advantages, which this service is capable of providing, are not lost sight of.

THE NEW TELECOM POLICY, 1999

6. The New Telecom Policy (NTP), 1999 contemplates the creation of an environment that brings in continued investment in the telecom sector for speedy augmentation of the communication infrastructure. The key objectives of NTP 1999 include:

- Access to telecommunications for achievement of the country's social and economic goals;
- A balance between the provision of universal service to all uncovered areas, including the rural areas, and the provision of high-level services capable of meeting the needs of the country's economy;
- Encourage development of telecommunication facilities in remote, hilly and tribal areas of the country;
- Create a modern and efficient telecommunications infrastructure taking into account the convergence of IT, media, telecom and consumer electronics and thereby propel India into becoming an IT superpower;
- Transform in a time bound manner, the telecommunications sector to a greater competitive environment in both urban and rural areas providing equal opportunities and level playing field for all players.

7. The policy parameters for GMPACS service in NTP 1999 envisage the following:

- All the calls originating or terminating in India shall pass through VSNL Gateway.
- Gateways will have the facility of monitoring these calls in case of bypass.
- VSNL is to be compensated in case gateway is bypassed, until the international long distance for voice remains a monopoly of VSNL.
- GMPACS operator shall be free to provide voice and non-voice messages, data service and information services utilizing any type of network equipment, including circuit and/or packet switches that meet the relevant International Telecommunication Union (ITU) / Telecommunication Engineering Center (TEC) standards.
- Government will scrutinize the proposals from the security angle before the licenses are awarded.
- Appropriate entry fee/ revenue sharing structure would be recommended by TRAI, keeping in view the objectives of the NTP 1999.
- Terms and conditions of the license will be finalized in consultation with TRAI.

LICENSE FEE STRUCTURE

8. A license fee structure is normally linked to the policy objectives that the licensing system intends to sub-serve. The recent shift from up-front license fee regime to that of revenue sharing is an important policy change for achieving the objectives envisaged in the NTP 1999. The new policy has not prescribed any guideline for quantification of the entry fee or revenue sharing percentage. In order to formulate an appropriate license fee structure it was, therefore, essential to consult on various issues relevant to the rationale of licensing-framework. Accordingly, the Consultation Paper released by TRAI on July 27, 1999 dealt with substantive issues having a bearing on the approach to the levy of license fee and its structure for the provision of GMPACS service. Following specific questions were posed while seeking comments to facilitate a focussed debate during the public consultations:

- a) NTP 1999 envisages one-time entry fee and annual license fee as a percentage of revenue sharing for the GMPACS Service. However, the policy does not lay down any guideline for its quantification. What should be the basis of license fee structure (in terms of fixed and/ or variable components) for the GMPACS service?
- b) What should be the definition of Gross Revenue?
- c) What items of receipts appearing in the total turnover have to be excluded in arriving at the Gross Revenue?

d) What mechanism should be prescribed for independent verification of the declared Gross Revenue?

e) Since mobile handset would be sold as a proprietary item in the initial years and its usage would be specific to a particular GMPCS network, should the sales proceeds thereof be included as an integral part of the network revenue?

f) What should be the modalities for payment of License fee?

9. A "Summary of Comments" received was compiled and made public in print form (Attachment 2) apart from posting it on TRAI's web site. Open House Sessions were thereafter conducted by the Authority at New Delhi and Mumbai on September 13 and 16, 1999, respectively for consultations with stakeholders on the subject.

RATIONALE OF LICENSE FEE

10. Comments received on the Consultation Paper, response during public debates and other inputs have been analyzed to evaluate emerging options on the subject. The feedback as per the consultations has led to an overwhelming opinion on the relevant issues, as detailed in the following paragraphs, which forms the basis of Authority's Recommendations in the matter.

11. In the past, Governments have considered grant of license, as conferring of a concession which required to be compensated through a payment of a fee. Apart from using license fee as a mode of selection (award of license to the highest bidder), license fee has been seen as a means for augmenting State's budgetary resources. NTP 1999 having introduced a paradigm shift, augmentation of resources for the exchequer does not appear to be one of its objectives.

12. Telecommunications is no longer a natural monopoly that needs to be compensated for loss of revenue. In a market where competition is limited, there is perhaps some scope for rental gains to the service providers. Imposition of license fee in such situations may be justified for the purpose of mopping up rents. License fee may also be used for selection purposes in a limited competition situation. GMPCS licensing policy of the Government envisages open competition. Market scenario indicates several players, some of these in the pipeline.

13. In the policy framework of open entry, there will be no rent in the market, nor is there any need to use the license fee regime for selection purposes. Any significant burden on license fee account, even through the revenue sharing mechanism will only be a tax, which will render the service costly and, more importantly, it will be distortionary. This service, apart from being an input in the trade and industry sector, can provide connectivity in rural/ remote areas as well as in emergencies, and keeping its cost low will promote India's global competitiveness and serve the social objective of connecting remote and backward areas. Any revenue from the service for the exchequer should be raised through the medium of the service tax. In case this is considered an elitist or premium service, differential service tax can be levied on the GMPCS service. This will promote both transparency as well as efficiency in the deployment of resources.

14. What then should be the purpose of levying a license fee as a revenue share: for one thing, the incidence should not be so high as to become a deterrent to market entry. Since the fee will inevitably get reflected in

the cost of providing service to the consumer, high license fee would defeat the objective of making the telecom services widespread and for being used for the overall development of the country. Higher the license-fee, the greater would be its adverse impact upon the end-user and upon accessibility of telecommunications services. Being an important means for global integration of economy, GMPCS Service becomes a crucial resource for trade and business, which needs to be provided at an affordable cost. In fact, both NTP 1994 and NTP 1999 have envisaged provision of widely accessible world class telecom services of good quality at affordable prices to Indian consumers in public interest.

15. Levy of high license fee may be relevant if the policy objective is to regulate scarce resources. GMPCS service providers are separately liable to pay charges related to spectrum, which is the only common public resource used. It has to be ensured that undue financial costs are not imposed on operators, which will inhibit the deployment of service. This would in turn defeat the objective of harnessing economic advantages, which the country would have exploited through GMPCS networks.

16. In most of the countries the idea behind low entry/license fee is to recover the cost of administering a license and keeping out fly-by-night operators. Such fee should be proportionate to the work involved in the issue, management, control and enforcement of the individual license. This is in consonance with the worldwide economic environment of lowering the entry cost in telecom service. The license fee structure in other countries is depicted in Appendix VI of the Consultation Paper (Attachment 1). Licensing guidelines in various other regimes also propose a set of principles, which outline that if license fee is levied, it should be purely to recover administrative costs; and that fee should not be treated as a source of revenue for the State, but as a method to recover costs specific to the provision of that service.

17. The License Fee structure for Iridium Systems in other countries, is reportedly as under:

COUNTRY	ENTRY FEE (US \$)	ANNUAL FEE (US \$ p.a)
ITALY	--	13200
USA	8930	330
THAILAND	--	8400
RUSSIA	--	79000
JAPAN	1262	103
CHINA	--	0.74 per call
SAUDI ARABIA	800,000	--
INDIA	240,000	16% of Gross Revenue

18. It is significant to have a reasonable license fee as entry fee or revenue share in the Indian context, where tele-density is among the lowest in the world and there is the urgent need to foster large investment to build up the telecom infrastructure. High regulatory and economic cost of entry would deter international players from focussing on the Indian telecommunications market as a priority market for deployment.

19. Eliminating non-serious players through high entry costs is not relevant for this, since GMPCS is a capital-intensive and high-risk business, which is a natural deterrent to non-serious players from entering the field. The entry fee should not be so high that it tends to become a barrier even for the serious player desirous of entering the market. It should not impose undue financial burden on the operator, which tends to retard the network expansion. 'Due diligence' measures could be introduced to detect licenses, which continue to remain 'paper' systems for inordinately long periods thereby blocking the allocated spectrum.

20. Rapid technological advancements in telecommunications sector are responsible for high rate of obsolescence and unpredictability in market behavior. With dynamically shrinking margins due to increasing competition, it is difficult to estimate profitability levels that may sustain a specified revenue sharing percentage as license fee on a long-term basis without any adverse impact on overall viability of service provider. The quantification of license fee linked to 'viability study' for a new service of this nature with insufficient data base and volatile projections would, therefore, not lead to very reliable results.

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ENTRY FEE

21. Apart from the policy objectives, the determination of level and modality of Entry Fee is also linked to the competition strategy. In case of limited competition, entry fee is the key evaluation criterion due to the bidding approach. In such cases, licenses are awarded to the highest bidder, whose bid is considered as the Entry Fee. In contrast, in the competitive scenario where licenses are available on demand (like for the provision of GMPCS service), Entry Fee should be a nominal pre-fixed amount to be paid by all licensees.

22. Based on the above analysis of policy parameters, and in the interest of encouraging the development of a modern and efficient telecommunications infrastructure in the country through a new technology (like GMPCS), which also promises connectivity with high level services in remote and rural areas, the Authority has come to the unanimous decision that the quantum of Entry Fee should normally be based on costs related to the issue of license. However, in order to ensure seriousness of intent of an applicant, Entry Fee may be fixed at an ad hoc sum of Rs Ten Million. Incidentally, this level of entry fee was also found acceptable to most of the stakeholders during public consultations. There should, however, be a stipulation that the Service shall be commissioned within 12 months of the effective date of License. For delays in commissioning of service, the licensee will be obliged to pay an additional entry fee of Rs. 0.5 million (for delay upto 1 year), Rs. 1 million (for delays of 1-2 years) and Rs. 1.5 million (for delay of more than 2 years). This additional entry fee would also be payable by an applicant who seeks additional time for commissioning the service at the stage of grant of license, and such additional time is agreed to by the Licensor.

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REVENUE SHARING PERCENTAGE

23. As regards annual fee as a percentage of revenue share, the open competition for the provision of GMPCS service does not offer any scope for rental gains (as pointed out earlier), which may justify a higher revenue sharing percentage in order to mop up the likely rents. Similarly, for the reasons given in paragraph 20 above, it is difficult to predict a percentage of revenue share (based on normative operating conditions) which can be loaded on this service segment without adversely impacting the overall viability. **The Authority, therefore, recommends, by a majority of 4:3, that the revenue share should be restricted to cover only the annual administrative costs in the management, control, enforcement and regulation of licenses for GMPCS service, and as a contribution to sector development through Research & Development and/or specialized studies.** Details of expenses attributable to such sector specific administrative functions will have to be segregated. Based on current administrative costs of DOT Secretariat and TRAI, revenue share would be well below 1% of the Adjusted Gross Revenue. However, for strengthening the various organisations dealing with such licensing related functions and sector specific Research & Development, the

Authority recognizes the need to collect revenue share as annual fee in excess of the current indicative figures. **The Authority further recommends that the revenue sharing percentage shall not exceed five percent of the Adjusted Gross Revenues.**

24. The aforementioned recommendation of the Authority is based on a majority decision (4:3) supported by Justice S.S. Sodhi, Mr. B.K. Zutshi, Mr. N.S. Ramachandran and Mr. M. Ravindra. The other three Members, Mr. U.P.Singh, Mr. Arun Sinha and Mr. R.R.N.Prasad were, however, not in agreement with the same. In support of their view that the revenue sharing percentage for a service like GMPCS should not be fixed at below 16 percent of the Adjusted Gross Revenue, they have given their 'Dissent Note', a copy of which is enclosed at Appendix 1. Basically the 'dissent note' revolves around the following main issues:

- Revenue share as license fee is to be used for augmenting resources for the state. Opening up of market has created considerable revenue earning opportunities for telecom operators and, therefore, they should contribute significantly to the country's development.
- Developing economies like that of China and Thailand have made their private sector contribute a reasonable sum as license fee, which should not be limited to mere regulatory expense, R&D etc.
- Higher contribution to the exchequer is required to make good the opportunity foregone by the Government on account of entry of private operators. A low license fee would result in super normal profits to the private business, which is able to afford a higher license fee.
- The provision of GMPCS service is expected to provide adequate returns to the operator with its viability even better than that of CMTS.

25. Detailed para-wise comments, containing the majority views of the Authority on the points mentioned in the 'dissent note', are enclosed at Appendix 2. The Members of the Authority in favour of the recommendations as per paragraph 23 strongly feel that the purpose of telecommunication reform is not to collect revenues for Government but to provide widely accessible services of good quality at reasonable prices. Telecommunications is no longer a natural monopoly, which may call for compensation to the monopoly holder for any loss of revenue. The arguments such as grant of license as conferring a concession by the Government, which needs to be compensated through the payment of a fee is no longer valid in the context of open competition in services such as GMPCS service. In fact open competition limits scope for rental gains to service providers, which may otherwise justify a higher license fee. The ideology of high license fee was also debated extensively during the public consultations, which led to an overwhelming opinion that annual license fee as a percentage of revenue sharing should be restricted to cover only the administrative costs and expenses towards R&D, special studies etc.

26. There is a distinction between the competition in GMPCS and CMT services, which needs to be appreciated. GMPCS service has open entry unlike CMTS with limited competition and controlled entry. The existing CMT service providers still have duopoly in most of the service areas with DOT/ MTNL now being introduced as the third operator. It is, therefore, not prudent to draw conclusions linked to the data based on some interim analysis undertaken in respect of CMTS study, and assume better viability of GMPCS service with in turn capacity to pay a higher license fee.

27. The license fee gets reflected in the cost of service to consumers, which is against the objectives envisaged by NTP 1999 of making the services affordable. Lower license fee would result in lower tariffs and facilitate expansion of service, which is a better win-win situation for all stake-holders including the Government as greater use of this service will provide higher revenues in the long run. In an open competitive market, there is limited scope for earning super profits. Any such situation arising in future could always be corrected through tariff adjustment by passing on benefits to consumers.

28. It is to clarify that the aforementioned revenue share is exclusive of the contribution that the GMPCS service provider will be called upon to make separately towards Access Deficit or Universal Service Fund as may be prescribed by the competent Authority for meeting the universal service obligation.

29. One of the most important elements in investor confidence is the security and predictability in policy parameters particularly in areas, which have a bearing on the cost of providing a service. Ideally, there should be no change in the revenue sharing percentage for license fee during the duration of the license. In case there is any compelling need to make a change in this element, the parameters for such change should be clearly spelt out at the beginning itself instead of leaving it as an open ended affair. If a review has to take place within that period then it should also be subject to the percentage of revenue sharing not increasing.

30. Since GMPCS is a new service, which would evolve over a period of time, and in view of dynamics of technology and market in the telecommunications sector, the Authority recommends a review of the revenue share every five years subject to the ceiling of five percent of Adjusted Gross Revenue. This would provide an opportunity of fine tuning the revenue share in line with the actual administrative costs to pass on the benefit to consumers as any license fee ultimately gets recovered as a cost of service (as explained earlier in this note). In case the Government feels the need to prescribe a higher percentage of revenue sharing in future on account of some contingencies, the same must follow a public consultative process. However, no such increase shall take place before the end of first ten years of the license period.

GROSS REVENUE

31. The term "Gross Revenue" has been used by the DOT (without defining the same) in the Provisional License Agreement with Iridium to link to it the variable component of the license fee as a percentage of revenue sharing. Normally the word "gross" indicates that it includes something, which could have been subtracted. "Gross Revenue" of the service provider would, therefore, consist of all revenues accruing to the Licensee by way of operations of providing GMPCS Service mandated under the License. All of this may not constitute Licensee's own income as it would contain components, such as revenue collected from a subscriber to deliver a call to another Network, which will have to be shared with the terminating network. It would also include revenue generated from sale of user terminals/ accessories and sale of airtime for services provided in other countries where also the licensee has the franchise to provide GMPCS service. Similarly interconnection revenues accruing from other service providers will have to be accounted for as per the revenue sharing formula. It was argued during the consultations that the service providers should not be forced to "share" revenues that they do not retain. Revenues generated from the sale of airtime services provided to home and visiting subscribers in India should only be relevant. License fee as a percentage of revenue sharing should, therefore, be based on "**Adjusted Gross Revenue**" to be derived from "Gross Revenue". Its definition should be simple and easily auditable to minimize manipulations.

32. The airtime revenue also includes the charges towards cost of airtime procured from the GMPCS System Provider (Space Constellation Owner). The payment for the same is made under the back-to-back arrangement that a GMPCS service provider executes with his associate/ parent company overseas, which is the space segment provider. It was mentioned during the consultations that receipt on this count from the subscribers would not constitute revenue accruing to the Licensee unless he is also the space constellation owner. Such payments for the use of space segment may not arise in case of companies operating their own Satellite System/ Infrastructure for providing GMPCS service in India in comparison to those engaged only in Gateway operation and local service provision using foreign satellite systems. **Since it is difficult to verify**

the basis of these payments, which are in the nature of royalty payments, and there is possibility of manipulating the revenue through transfer pricing, the Authority does not recommend exclusion of such payments for the purposes of arriving at Adjusted Gross Revenue. The compensation for not excluding such revenues, which may otherwise constitute a direct charge on the service provider, could perhaps be in terms of lower incidence of revenue sharing percentage.

33. Similarly, sale of user terminals is an activity adjunct to the provision of GMPCS service and is not the main business of the licensee. Revenue from sale of equipment may represent a small part of an operator's revenue. Even if user terminals are currently proprietary to a specific GMPCS network, the manufacturing/ marketing there of is not restricted and it does not require any license. Manufacturers are already selling GMPCS handsets/ user terminals directly to consumers, except over a short period of time, these would no longer be proprietary to a network. Dual mode user terminals for being used on GSM and satellite modes have already entered the market. Such terminals are in many instances manufactured by third party vendors who distribute the same in markets through various distribution channels. Sale of user terminals will separately attract incidental taxes that would be passed on to the Government.

34. In the above background, the Authority recommends that Adjusted Gross Revenue for the purpose of levy of license fee shall mean the "Gross Revenue" accruing to the licensee by way of operations of providing GMPCS service mandated under the license (including the revenue on account of supplementary/ value-added services and leasing of infrastructure), as reduced by the charges payable to other service providers to whose networks the GMPCS network is interconnected within India for carriage of calls. On this principle there would be no double counting of telecommunication service- related turn over for the purposes of license fee under revenue sharing arrangement in the hands of different service providers. In addition, revenues arising on account of sale of user terminal, taxes on the provision of service and payments towards universal service fund etc. shall also be excluded. Charges such as monthly rentals, activation fee, access charges etc. would form a part of this revenue.

35. Sale of airtime is a substantive source of revenue for the Licensee. Service providers often resort to packaging of airtime with sale of handsets in order to enlarge their subscriber base. Lower airtime in tariff package aims at reducing the entry costs for increasing the subscriber base and network capacity utilization. **In case a service provider subsidises the sale of user terminals by giving rebate on the airtime/ rental tariff, the revenue thus "foregone" will be added to arrive at the Adjusted Gross Revenue.** Revenue "foregone" will be the difference between the purchase price of the user terminal in the hands of the Licensee and its sale price to the subscriber. Purchase price will be inclusive of the taxes, if any.

36. Adjusted Gross Revenue is to be based on Licensee's audited financial statements. It should be possible to cross verify the declared Adjusted Gross Revenue with reference to the books of accounts of the Licensee in terms of the physical volume of traffic carried through the Licensee's Network during the relevant period. Since all calls, originating or terminating or transiting from user terminals in India shall pass through GMPCS Gateway located in India, data available in the Gateway will also provide an accurate figure of traffic for cross verification.

LICENSE PERIOD

37. NTP 1999 stipulates award of licenses for an initial period of 20 years with extension by additional periods of 10 years thereafter for various terrestrial services. No license period has, however, been stipulated in the policy document in respect of GMPCS service.

38. Satellite systems have different life spans, for example GEO satellite (12 years), MEO satellite (8 years), and LEO satellite (5 to 6 years). The planning for launching of replacement satellites as well as second generation satellite may need a lead-time of 3 to 5 years. Indian based companies establishing their own satellite infrastructure for GMPCS system may need extra time to build, launch and commission the satellite for providing the GMPCS service in comparison to an applicant seeking license for the provision of GMPCS service in India based on the satellite infrastructure already set up by an overseas company. These are some of the relevant parameters in determining the reasonable period for a GMPCS service license.

39. Considering the level of investment involved in establishing a GMPCS network, the gestation period associated with it and taking into account the license period for various terrestrial services that the NTP 1999 permits, **TRAI recommends the license period for GMPCS service as 20 years from the effective date, with the facility of extension by another 10 years.** The extension of license after 20 years also affords an opportunity to review the prevalent arrangement.

TERMS AND CONDITIONS OF LICENSE

40. The contents of the Provisional License Agreement for GMPCS service have been analyzed and debated during the public consultation. The provisional Agreement contains duplication of clauses with many conditions re-appearing at different places of the license format. In addition, some of the clauses/ conditions are highly discretionary, one sided, inconsistent and against the principles of level playing field; tending even to ignore the provisions of other legislation, such as the TRAI Act, 1997.

41. A few comments on the clause-by- clause analysis of the provisional License Agreement are as under:

- i) A terminology such as the term "installation, operation and maintenance" appears preferable to "set up and operate".
- ii) Regulator's role in matters pertaining to tariffs, interconnection, quality of service, consumer protection and dispute resolution has not been reflected appropriately in the light of functions mandated to TRAI under the TRAI Act, 1997.
- iii) Highly discretionary clauses such as Clause 5, which makes no distinction between breach of minor and/ or major license conditions for revocation of the license.
- iv) One-sided clauses such as Clause 11, which give unfettered powers to the Licensor to impose any penalty as it may deem fit in case of a default of any of the terms and conditions, without linkage to the gravity of the default and after affording opportunity to the Licensee.
- v) Clauses such as Clause 12, which give absolute and unfettered discretion to the Licensor to modify the license conditions ignoring the recommendatory role that the Regulator can play under the TRAI Act, which would in turn generate investor confidence.

42. The TRAI has restructured the provisional License Agreement and prepared an alternate draft, which takes into account the comments received from the stakeholders during the public consultations. The

Authority recommends that terms and conditions of the License Agreement for GMPCS service should be in accordance with the restructured draft, as per Appendix 3 to this Explanatory Note.

DISPUTE RESOLUTION

43. It is to be appreciated that all service providers are in the telecom sector by virtue of a license granted to them by the licensor. Most, if not all, disputes whether between licensor and licensee or between service providers, would in all likelihood arise from or in connection with the terms and conditions of a license. The High Court of Delhi has clearly denied TRAI any jurisdiction to adjudicate on a dispute, which involves the enforcement of the terms and conditions of the license.

44. As regards, Dispute Resolution there are three possible forums for settlement of disputes namely, Courts; Arbitration; and TRAI (under the TRAI Act). What needs to be appreciated is that players in the telecom sector seek a dispute resolution mechanism that is expeditious, cost effective, and most importantly independent. The mechanism should also have the requisite competence to deal with the highly complex techno-economic issues that may arise in this sector.

45. The judiciary in India is no doubt independent and much respected but delays in Courts are proverbial and what is more litigation in court is not inexpensive. Courts also do not have many occasions to deal with the complex techno-economic issues.

46. Turning to Arbitration, it again involves hearings in Court - and at various stages of the proceedings. To obtain interim relief before or during arbitral proceedings, a party is, under Section 9 of the Arbitration and Conciliation Act, 1996, required to apply to the Court. It is again the Civil Court of original jurisdiction that has to be moved, whether for setting aside or enforcing the Award (Sections 34 and 36 of the Arbitration Act). There is also under Section 37 of the Arbitration Act, an appeal provided against any order passed by the court in Arbitration proceedings. It would be pertinent to note that there is a special procedure prescribed for proceedings under the Arbitration Act (Section 23 to 27) unlike under the TRAI Act where all that is said that "the Authority shall be guided by the principles of natural justice"(Section 16 of the TRAI Act)".

47. As regards the competence and standing of TRAI for being the dispute settlement forum, it will be seen that the Chairperson can only be a Judge of the Supreme Court or Chief Justice of High Court, whether serving or retired, while the other Members must be persons having special knowledge and professional experience in telecommunications, industry, finance, accountancy, law, management and consumer affairs (Section 4 of TRAI Act). In other words, TRAI is eminently qualified to discharge the functions of a dispute settlement body.

48. Further, unlike an Arbitrator, TRAI can on its own grant interim relief and whereas the jurisdiction of an Arbitrator is confined to the terms of reference. TRAI can, not only adjudicate upon the points in issue but it can also issue further directions as may be necessary in the interest of justice. What is more, TRAI's orders are enforceable as such. No recourse to Court is required to confer the mandate of enforceability upon them. Not only this, violation of any directions of TRAI can render the persons concerned liable to penalties as prescribed in Section 29, 30 and 31 of the TRAI Act, as the case may be.

49. An order passed by TRAI is amenable to appeal to the High Court, unlike a challenge to the Arbitration award, which lies to the Civil Court. There is a marked difference in procedure of the Appellate Court from that of the Civil Court, even if they both happen to be the High Court, as may be the case in Delhi. The suggestions emanating from DOT in the past that recourse will not be taken to lower Courts is legally untenable, as it cannot change the law of the land.

50. Finally, it needs to be appreciated that structure of the existing licenses is such that it does not make any distinction between Government's role as Licensor and that as service provider. The two are so inter-linked and inter-mingled that it is impossible to separate them.

51. At the heart of this debate is the issue of investor confidence. In the existing circumstances in India, TRAI is the forum that can best promote this confidence.

52. What it comes to, therefore, is that the TRAI Act must clearly state that the TRAI will settle all disputes arising out of or in connection with the license granted to a service provider and also those pertaining to its functions as set out in Section 11 of the Act. In view of recent judgement of the High Court of Delhi, it would require amendment of the TRAI Act, and this Authority recommends to the Government accordingly.

OTHER ISSUES

53. GMPCS service providers shall be required to contribute towards access deficit charge or universal service fund as may be determined by the TRAI.

54. As per its characteristics, GMPCS network can provide coverage all over the country so that telecommunication services can be availed of from anywhere within the country. GMPCS service should, therefore, be granted "infrastructure status" with reduction in custom duty on import of hardware/ software required for Gateway equipment and user terminals to bring down the cost of service to the end consumer

Appendix-1

Dissent Note on Revenue Sharing Percentage

Dear Justice Sodhi,

Kindly recall the discussions we have had in the Authority meeting on 2nd November relating to the percentage of revenue to be shared by the GMPCS operators with the licensor. The case has been referred to the Authority by the DOT in the context of Iridium who were given the provisional licence to operate GMPCS service in the country for one year based on a licence fee consisting of two components i.e. i). Fixed amount of Rupees one crore and ii) a variable amount equal to 16% of their gross revenue.

The majority view, which emerged from the discussions, was that the licence fee should be 5% of the network operating revenue, which is to be computed by subtracting a number of cash outflows from the gross revenues. This amount was tentatively estimated to be the cost of administering the licence by the licensor.

We are not in agreement with this view because of the following reasons:

(a) At the outset it needs to be stressed that had the NTP envisaged charging of only the cost to administer the license, the same could have been stated as such. In any case, a percentage of revenue can not be equated to a fixed cost.

(b) The GMPCS services both tele/bearer are quite identical to that of CMTS with similar handset and inter-roaming facility. The only difference being the much larger coverage area of the former. Therefore, the licence fee should at least be equal to that of CMTS. This view was also expressed in the public hearing conducted by us.

(c) The on going study undertaken by TRAI since the last 9/10 months to determine the revenue percentage for CMTS has adopted an analysis of the project's financial viability as the basis. The method employed is to ensure at least a reasonable internal rate of return (say 18%) for the service providers after giving a percentage (say x) of the revenue to the licensor as license fee. This modus operandi has been described in some details in our latest Consultation Paper 99/4, which was made public on 31.8.99. A reference is invited to the Annexure of the Consultation Paper as well as Tables 2 & 3, based on which it would appear that 16% revenue share will give an IRR in excess of 18% to the majority of the operators, whose data were subjected to a detailed analysis. Since the trend of growth of GMPCS is closely linked to that of CMTS, being a complementary/substitutable service, we have reasons to believe that 16% of revenue sharing will ensure the viability of GMPCS operators also. We would therefore like to endorse the recommendations of the inter-ministerial committee in regard to the percentage of revenue to be shared with the licensor, with significant change in the definition of revenue, which should be the adjusted gross revenue as defined in the draft license Agreement.

(d) Since the fixed component of the licence fee is being waived and the duration of the licences being extended from 10 to 20 years and with considerable dilution of definition of gross revenue, we have reasons to believe that 16% of the adjusted gross revenue is quite a reasonable percentage and will create a win-win situation for both licensor and the licensee.

(e) As pointed out during the discussions, one of the most spectacular growth rates in the telecom has been achieved in the People's Republic of China. If at all we have to emulate the example of another country, it should be that of a developing country like China whose tele-density is comparable to that of India, rather than that of European/North American countries. Based on a rough calculation, the licence fee for GMPCS works out to 25% of the gross revenue in China. In Thailand also a significant percentage (25%) of revenue is shared with the licensor for mobile services. A reasonable percentage of gross revenue sharing has not come in the way of telecom development in these countries. Regulator acts as an Economic Policeman in these countries and carries out some kind of rate of return regulations, so as to ensure normal profits for the operators and a reasonable revenue to the state. Opening up of market has created considerable revenue earning opportunities for Telecom operators and they must also contribute significantly to the country's development, after getting a reasonable IRR.

(f) Considering the fact that for Radio Paging service also, we adopted financial viability criteria and recommended a percentage of gross revenue to ensure profitability of the service providers, it will not be logical on our part to adopt the criteria of determining the cost of administering the licence, as the basis for levying the licence fee from the GMPCS operators. It should be noted that GMPCS operators are multi-nationals, whose constellation of satellite is shared by a very large number of countries, and the national service provider is able to cover the whole country with relatively small investment in the ground segment. Therefore, their financial viability should work out more favourably, compared to that of CMTS. For premium services like GMPCS, levying of a higher tariff to recover costs is considered quite normal.

(g) In a developing economy like that of India, China, Thailand etc., where there are too many demands on the limited resources of the government exchequer, and where countries are facing financial deficits, it will not be appropriate to make the licence fee regime too soft. The Private sector should contribute a reasonable sum as licence fee. This contribution should not be limited to mere regulatory expense, R&D, etc. The contribution is required to make good the opportunity foregone by the Government on account of entry of private operators. By suggesting a very low license fee, in effect the exchequer would be contributing to the super normal profits of a private business, which is well able to afford a higher license fee.

Our views as stated above may be recorded in the Minutes of the meeting. You may also consider forwarding this to the DOT as an alternative .

With kind regards,

Yours sincerely

Justice S.S.Sodhi,
Chairperson, TRAI,
New Delhi

(U.P.SINGH)

(ARUN SINHA)

(R.R.N. PRASAD)

Appendix 2**MAJORITY VIEW ON THE DISSENT NOTE
– PARAWISE COMMENTS**

The three Members (Mr. U.P. Singh, Mr. Arun Sinha and Mr. R.R.N. Prasad) have dissented with the majority view on the revenue sharing percentage. A copy of their "dissent note" is enclosed at Appendix 1. Points mentioned in their Note and comments thereon, which have led to the majority view in the Authority, are as under:

a) At the outset it needs to be stressed that had the NTP envisaged charging of only the cost to administer the license, the same could have been stated as such. In any case, a percentage of revenue can not be equated to a fixed cost.

Comments:

- i. NTP 1999 has not laid down any guidelines whatsoever for fixing the one time entry- fee or revenue sharing percentage; in other words, neither does the policy state that the license fee, to be collected as a percentage of the revenue, be based on the potential for rents. The issues pertaining to the rationale for levy of license fee, structure of license fee and its quantum were, therefore, publicly debated during the consultations so as to arrive at a basis for fixing the license fee.
- ii. An overwhelming opinion has emerged during the consultative process that annual license fee as a percentage of revenue sharing should be restricted to cover only the administrative costs in the management, control, enforcement and regulation of licenses for GMPCS service as well as for contribution to sector development through research and studies.
- iii. Even such costs would vary from year to year; they cannot be considered a fixed cost. Accordingly, a review has been proposed every five years to reduce the revenue sharing percentage by adjusting it to the actual of aforementioned costs. In case of a contingency if the Government feels the need for an upward review of revenue share, the same may be effected through public consultations after the expiry of first ten years.

b) The GMPCS services both tele/bearer are quite identical to that of CMTS with similar handset and inter-roaming facility. The only difference being the much larger coverage area of the former. Therefore, the license fee should at least be equal to that of CMTS. This view was also expressed in the public hearing conducted by us:

Comments:

- i. There was a solitary view expressed by one of the CMTS providers suggesting that the license fee for GMPCS service be kept at slightly higher level than being set for CMSPs. All other comments received during public consultations have by and large proposed that revenue sharing percentage should be restricted to the administrative cost of licensing and regulation, and it should not exceed 5% of gross revenue.
- ii. No recommendation has yet been made by the Authority in regard to license fee for CMSPs, which is being dealt with separately under an extensive exercise. Public consultations have yet to take place. The view expressed, therefore, is premature.
- iii. Unlike GMPCS service, where there is open competition with free entry, service like CMTS has limited competition with controlled entry, where duopoly of existing service providers is now being dismantled by introducing DOT/ MTNL as the third operator. Entry of more operators may also be permitted, if

considered necessary. This distinction between GMPCS and CMT service is relevant in this context.

c) The on going study undertaken by TRAI since the last 9/10 months to determine the revenue percentage for CMTS has adopted an analysis of the project's financial viability as the basis. The method employed is to ensure at least a reasonable internal rate of return (say 18%) for the service providers after giving a percentage (say x) of the revenue to the licensor as license fee. This modus operandi has been described in some details in our latest Consultation Paper 99/4, which was made public on 31.8.99. A reference is invited to the Annexure of the Consultation Paper as well as Tables 2 & 3, based on which it would appear that 16% revenue share will give an IRR in excess of 18% to the majority of the operators, whose data were subjected to a detailed analysis. Since the trend of growth of GMPCS is closely linked to that of CMTS, being a complementary/substitutable service, we have reasons to believe that 16% of revenue sharing will ensure the viability of GMPCS operators also. We would therefore like to endorse the recommendations of the inter-ministerial committee in regard to the percentage of revenue to be shared with the licensor, with significant change in the definition of revenue, which should be the adjusted gross revenue as defined in the draft license Agreement.

Comments

- i. Consultation Paper No. 99/4 dealt with ad-interim review of CMTS tariffs following migration to an interim revenue share of 15% fixed by the Government, and introduction of Calling Party Pays (CPP) regime. The analysis given therein (culled out of the separate analysis being undertaken in the TRAI on license fee structure for CMSPs) was meant to quantify on an ad-interim basis the benefits to the CMTS operators by way of reduced payment liability to the Government, which could be passed on to the consumers through a reduction in tariffs. Detailed consultations on the larger study for CMSPs have yet to take place. In this connection the comments made above against Item (b) may be seen.
- ii. In respect of GMPCS service, the Authority had in the Consultation Paper pointed out the difficulties and inherent problems in conducting a meaningful viability study of GMPCS sector at this point of time. This aspect has been covered in the Explanatory Note as well. It is reiterated that for a service based on the use of satellites serving many countries, fixing license fee as a percentage of revenue and ensuring that it makes the operations viable is an impossible task.
- iii. It appears that the fixed and variable components in the provisional license agreement were adopted on an ad-hoc basis, as the DOT did not provide any rationale for adoption of these figures. In other words, the basis for fixing Rs. 10 Million as the fixed component and 16 percent revenue sharing as the variable component of annual license fee is not available.
- iv. It is reasonable to conclude from the Provisional License Agreement that there was no separate obligation on the licensee for contribution towards access deficit or universal service fund. The Authority's recommendation, however, stipulates that in addition to the revenue sharing percentage (not exceeding 5% of Adjusted Gross Revenue), the licensee would separately contribute towards access deficit or universal service fund as may be specified by the competent authority. This additional expenditure by a licensee needs to be kept in mind.

d) Since the fixed component of the license fee is being waived and the duration of the licenses being extended from 10 to 20 years and with considerable dilution of definition of gross revenue, we have reasons to believe that 16% of the adjusted gross revenue is quite a reasonable percentage and will create a win-win situation for both licensor and the licensee:

Comments

- i. NTP 1999 has stipulated award of licenses for an initial period of 20 years for various terrestrial services. Keeping in view the level of investment involved in establishing GMPCS network and the gestation period associated with it, 20 years license period would be a reasonable proposition (as against 10 years as proposed in the provisional license agreement). The observation about the effects is not supported by any data and is, therefore, conjectural.
- ii. There is no dilution in the definition of gross revenue. All that the Authority has proposed is a specific definition that avoids the same revenue being "shared" more than once for license fee purposes in

multiple hands.

- iii. It is an accepted fact that any license fee gets reflected in the cost of service to consumers. Lower license fee would result in lower tariffs and facilitate expansion of service, which is a better win-win situation for all stakeholders, including the Government as greater use of this service will provide in the long run higher revenues.

e) As pointed out during the discussions, one of the most spectacular growth rates in the telecom has been achieved in the People's Republic of China. If at all we have to emulate the example of another country, it should be that of a developing country like China whose tele-density is comparable to that of India, rather than that of European/North American countries. Based on a rough calculation, the license fee for GMPCS works out to 25% of the gross revenue in China. In Thailand also a significant percentage (25%) of revenue is shared with the licensor for mobile services. A reasonable percentage of gross revenue sharing has not come in the way of telecom development in these countries. Regulator acts as an Economic Policeman in these countries and carries out some kind of rate of return regulations, so as to ensure normal profits for the operators and reasonable revenue to the state. Opening up of market has created considerable revenue earning opportunities for Telecom operators and they must also contribute significantly to the country's development, after getting a reasonable IRR:

Comments

- i. Two examples of China and Thailand have been quoted on a selective basis to justify the higher percentage of revenue share whereas various other countries such as Malaysia, Italy, USA, Japan, Russia, Indonesia etc., which have much lower license fee for GMPCS service (refer Appendix VI of the Consultation Paper), have not been mentioned. In fact, even the license fee for Iridium in Thailand is reported at US \$ 8412 per annum, which is much lower than the suggested percentage.
- ii. Iridium had reported per call charge as the basis of license fee in China, which has been applied to arrive at the revenue share of about 25% of gross revenue. Iridium tariff all over the world, including in China, has undergone changes, complete details of that are not yet available. In the absence of complete information on the related aspects of provision of GMPCS service in China, this is not a dependable basis for drawing any conclusion.
- iii. There was an overwhelming view during the consultation that the license fee should not be used as a source of revenue for augmentation of resources for the exchequer.
- iv. Reduction in cost of service through lower license fee results in consumer benefits as any burden of license fee ultimately devolves on the consumer.
- v. In case market opportunities enable the GMPCS service providers to sustain themselves and flourish, the benefits thereof could be passed on to consumers in terms of lower tariffs. This would help in affordability of the service and in turn its widespread access for achievement of social and economic goals.
- vi. Long gestation and capital intensive projects of this nature need to be viewed over a sufficient timeframe to evaluate returns meaningfully. In fact, the revenue-sharing regime has in-built provision of much greater build up over time with lower prices.
- vii. It is not the purpose of licensing to generate revenues for the Government. Revenue generation for the state has to be done through direct means such as an efficient and equitable tax system. Government is at liberty to levy a differential service tax on GMPCS service.
- viii. It has been reported that operators in Thailand were unable to meet their debt service obligation (with the depreciation of Baht) due to onerous "revenue share" requirements threatening the collapse of Thailand's competitive telecom landscape. The Thai Government was reportedly reviewing structures by which to abolish the current levels of revenue sharing arrangements and replacing them with some combination of interconnection charges, license fee and other compensation to the licensee (such as taking the form of equity in the concessionaire). (Source: Morgan Stanley India)

f) Considering the fact that for Radio Paging service also, we adopted financial viability criteria and recommended a percentage of gross revenue to ensure profitability of the service providers, it will not be logical on our part to adopt the criteria of determining the cost of administering the licence as the basis for levying the license fee from the GMPCS operators. It should be noted that GMPCS operators are mult-nationals, whose constellation of satellite is shared by a very large number of countries, and

the national service provider is able to cover the whole country with relatively small investment in the ground segment. Therefore, their financial viability should work out more favourably, compared to that of CMTS. For premium services like GMPCS, levying of a higher tariff to recover costs is considered quite normal :

Comments:

- i. Establishment of the regulatory framework on licensing matter is an evolutionary process. In the case of radio paging service in cities for which recommendation was made by TRAI on 15.7.99, reference made by the DOT to the TRAI was prior to enunciation of NTP 1999. The approach of viability analysis was, therefore, adopted to quantify the level of license fee, which could be loaded on the licensees without adversely affecting their viability. The service operators had been in operation for about 3 to 4 years and data was available for undertaking such an analysis. In respect of GMPCS service, the Authority had proposed not to look at the viability study methodology for the reasons explained in the Consultation Paper as well as in the Explanatory Note.
- ii. As a result of rapid technological and market changes in the telecommunication sector, it is not possible to work out profitability projections on a set of normative operating conditions to arrive at reasonably dependable cash flow projections. It is extremely difficult under such circumstances to project the factors, which are likely to make the service viable. This is of greater relevance in case of a newly introduced service like GMPCS service.
- iii. GMPCS as a service is not comparable with CMTS on different counts. On the investment platform, GMPCS has a much higher level of investment and a limited pre-determined life span as against CMTS, which has no such limitation of equipment life. On the market front, GMPCS will have a diminishing share of the market of mobile telephony as against that of CMTS, which has a growing market for a number of years to come. GMPCS and CMTS can not, therefore, be compared in any manner except that both of them provide a mobile service. In fact, GMPCS service providers are dependent on CMSPs, who would be providing GMPCS service as an extended cellular service.
- iv. Investment in ground segment can not be taken in isolation ignoring the high investments required for the space segment, which make it feasible to provide the GMPCS service.
- v. Since levy of higher license fee would make the service costlier, it would go against the objectives envisaged by NTP 1999.

g) In a developing economy like that of India, China, Thailand etc., where there are too many demands on the limited resources of the government exchequer, and where countries are facing financial deficits, it will not be appropriate to make the licence fee regime too soft. The Private sector should contribute a reasonable sum as licence fee. This contribution should not be limited to mere regulatory expense, R&D, etc. The contribution is required to make good the opportunity foregone by the Government on account of entry of private operators. By suggesting a very low license fee, in effect the exchequer would be contributing to the super normal profits of a private business, which is well able to afford a higher license fee:

Comments:

- i. The purpose of telecommunication reform is not to collect revenues for Government but to provide widely accessible services of good quality at reasonable prices.
- ii. The ideology of high license fee was extensively debated during the public consultations. The arguments such as grant of license as conferring a concession by the Government, which needs to be compensated through a payment of a fee, or using license fee as a mode of selection are no longer valid in the context of open competition in services such as GMPCS service.
- iii. Telecommunications is no longer a natural monopoly, which may call for compensation to the monopoly holder for any loss of revenue.
- iv. Open competition limits any scope for rental gains to service providers, which may otherwise justify a higher license fee.
- v. Open market competition may also not result in super profits. However, any such situation arising in

- future could always be corrected through tariff adjustment by passing on benefits to consumers.
- vi. Any revenue from the service for the exchequer should be raised through the medium of service tax. This will provide transparency as well as efficiency in the deployment of resources

Appendix 3

RE-STRUCTURED FORMAT
OF
LICENSE AGREEMENT FOR GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE
SERVICE

This Appendix contains the re-structured draft of the License Agreement for the provision of Global Mobile Personal Communications by Satellite (GMPCS) Service, which has been finalised on the basis of the open consultative process.

LICENSE AGREEMENT

This AGREEMENT is made on the ____th day of (month) (year) between the **President of India** acting through Director (VAS-III), Department of Telecommunications (DOT), Sanchar Bhavan, 20– Ashok Road, New Delhi – 110 001 (**hereinafter called the LICENSOR**) of the ONE PART

and

M/s XYZ Ltd., a company registered under the Companies Act 1956, having its registered office at _____ (**hereinafter called the LICENSEE** which expression shall, unless repugnant to the context, include its successor in business, administrators, liquidators and assigns or legal representatives) of the OTHER PART.

WHEARAS in exercise of the powers under Sub-Section (2) of Section 4 of the Indian Telegraph Act, 1885, the Central Government delegated its powers to 'Telecom Authority' (hereinafter referred to as "Authority") by GSR 806 Gazette of India, Part II, Section 3 (i) dated 24th August, 1985; and

WHEREAS pursuant to the request of the LICENSEE, the LICENSOR has agreed to grant this License to install, operate and maintain GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE (GMPCS) NETWORK and to provide GMPCS SERVICE in India. This License is valid for a period of 20 years from the date of issue on the terms and conditions appearing hereinafter unless revoked earlier by the Licensor under the procedures prescribed elsewhere in this License. Having agreed to accept the same, the LICENSEE shall abide by the terms and conditions set out in this license agreement and ensure compliance thereof including payment of licence fee retrospectively from the date of issuance of the provisional licence.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

In consideration of observance of mutual covenant, the payment of licence fee, and due performance of all the terms and conditions on the part of the LICENSEE, the LICENSOR does, hereby grant, on a non-exclusive basis, the licence to establish and operate the GMPCS Network and provide Service, on the terms and conditions mentioned in this license agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed through their respective authorised representatives on the (day) (month), (year).

The Licensee hereby agrees and undertakes to fully comply with all terms and conditions stipulated in this License Agreement without any deviation and reservation.

Signed and Delivered for and on behalf of President of India

By

Director (VAS-III), DoT

Signed on behalf of M/S XYZ Ltd. by Mr. _____, Managing Director, holder of General Power of Attorney dated xxx, executed in accordance with the Resolution No. ____ dated _____ passed by the Board of Directors of M/S XYZ Ltd.

In the presence of:

Witnesses:

TERMS AND CONDITIONS

1. Ownership of the Licensee Company

1.1 The LICENSEE shall ensure that the total foreign equity in the LICENSEE Company does not, at any time, exceed 49% of the total paid up equity. The details of the Indian & Foreign partners/promoters with their respective equity holdings in the LICENSEE Company (as on the date of the signing of the license agreement are given in the Appendix ____). Any change in the Indian and Foreign partner(s) or their equity participation, which has the effect of changing the management control over the LICENSEE company or a shift in its legal entity shall not be made without the prior approval of the LICENSOR.

Provided that the change in equity, as referred to above, shall not mean or include any change resulting from transfer of shares held by the public, whether comprising of natural or artificial persons, and shall mean and include only such change as would result in change in the effective management and control of the Licensee company.

Note: Format of the details to be furnished in the Appendix:

Sr.No	Name of Promoters/Technology Providers/Equity Holders	Indian/ Foreign	Value of Shares	No. of Shares	Equity % age
1					
2					
3					
4					

1.2 The Licensee shall disclose complete details of terms and conditions, and obligations under all contracts/licenses entered into with its parent/ associate company and/ or space-segment/ satellite-system owner/operator including those contained in contracts/ licenses issued by the Governments/ Authorities of the country where the parent/ associate company is registered and/or carries on its business. This information shall be furnished to the Licensor along with authenticated copies of all such contracts/ licenses prior to commencement of operations in India. The information shall be regularly updated during the validity of the license.

2. Scope of the License

2.1 The Licence is issued to provide **Service** as defined in the Annex to this License Agreement on a non-exclusive basis i.e. other companies may also be granted licence for the same service at the discretion of the Licensor. DOT on its own or through a designated Public Authority has the right to operate the service in any part/ whole of the country on similar terms and conditions to ensure level playing field.

2.2 The LICENSEE shall clearly define the scope of **Service** to the subscriber(s) at the time of entering into contract with such subscriber(s). Any dispute with regard to the service shall be a matter between the subscriber and the licensee only. The licensee shall suitably notify the above to all his subscriber(s) before provisioning of the service.

3. Delivery of Service

3.1 The LICENSEE shall commission the Applicable Systems within one year from the effective date of the License; and offer the service on demand to its customers unless any extension in time for commissioning of service has been duly approved by Telecom Authority for reasons to be recorded in writing. Commissioning of service shall mean providing commercial service to customers. The extension of time, if granted, shall not have any effect on the due date for payment of licence fee.

4. Network

4.1 The Licensee shall furnish an authenticated copy of the complete satellite system configuration with information on the type of the Satellite System (using the constellation of GEO or MEO or LEO satellites) and the type of the GMPCS service (Global or Regional) to be provided through its Network. The launch schedule of the Satellite System is _____(TO BE SPECIFIED FOR EACH SYSTEM).

4.2 The LICENSEE shall be responsible and is authorised to install, test and commission all the equipment to provide the GMPCS service.

4.3 The Licensee is also authorised to own, install and commission GMPCS Gateway(s) that shall be operated and maintained by Videsh Sanchar Nigam Limited (VSNL) or an agency authorised by the Government. The Gateways will provide ground infrastructure comprising of satellite earth stations, switching centre and other equipment. The LICENSEE will be free to commission any number of Gateways based on his system engineering.

4.4 The LICENSEE shall endeavour to cover the entire Service Area at an early date and notify from time to time the areas not covered by Licensee's System.

5. Duration of License

5.1 The licence for operation of the GMPCS service shall be for a period of 20 years reckoned retrospectively from the effective date of the Licence, unless terminated for default or for insolvency or for convenience or for transfer of the Licence in accordance with Condition(s) stipulated in this License Agreement.

6. Extension of License

6.1 The period of licence can suitably be extended if requested by the LICENSEE latest by the end of 19th year from the effective date. The extension in the Licence period will be granted by the LICENSOR for a period of 10 years at one time on the existing terms and conditions. In case of any change in the proposed terms and conditions of License for the extended period, TRAI's recommendations will be taken.

7. License Fee

7.1 Entry Fee

One-time **Entry Fee** of Rs. 1 Crore is payable by the LICENSEE in consideration for the grant of this License for the complete duration for which this License is in existence.

7.2 Revenue Sharing

In addition, the Licensee shall also pay annually @ 5% of the **Adjusted Gross Revenue** generated from the Service as **Revenue Share** in accordance with the procedure prescribed in this License.

7.3 This fee has no relation to other mutual obligation(s) between the licensee and any other service provider (including DOT, MTNL or VSNL), Central or State Government, Local or statutory body.

8. Modalities for Payment of Licence Fee

8.1 The **Entry Fee** of Rs. one Crore shall be paid in advance before signing the Licence Agreement.

8.2 Since the Licensee is required to commission its Applicable- Systems and provide GMPCS Service within a period of one year from the effective date of the License Agreement, delay(s) in the commissioning of Service shall attract payment of additional Entry Fee as below :

- a) Delay upto 1 year: Rs. 5 Lakh.
- b) Delay of more than 1 year but less than 2 years: Rs.10 Lakh.
- c) Delay of more than 2 years: Rs. 15 Lakh.

8.3 The component of annual fee payable as a percentage of Adjusted Gross Revenue, as specified in Condition 7.2, shall be paid in four advance quarterly instalments. The year for the purpose of levy of variable component shall be the financial year ending 31st March. The first year may, therefore, be less than 12 months in some cases. However, from the second year onwards, the year will be reckoned as the financial year with effect from 1st April to 31st March of the next calendar year.

8.4 The quarterly instalments shall be paid in advance within 15 days of the commencement of the first calendar month of that quarter, i.e. the quarterly instalments shall fall due on 15th April, 15th July, 15th October, and 15th January.

8.5 The quarterly instalments of License fee shall be quantified by the Licensee and paid provisionally based on self assessment of the Adjusted Gross Revenue for the relevant quarter. Final adjustment of the License fee for all the four quarters of the financial year shall be made on or before 30th June of the following year. Adjusted Gross Revenue figures shall be certified by the Chartered Accountant engaged by the Licensee for auditing the Annual Accounts of the Licensee.

8.6 Licensor/ TRAI may prescribe any formats for the maintenance of accounts and for furnishing of periodic accounting statements that would enable the verification of declared Adjusted Gross Revenue.

8.7 Licensor shall have the right to scrutinise the books of accounts of the Licensee for verifying the correctness of the reported Adjusted Gross Revenue and to seek verifications statements through an independent auditor on the declared Adjusted Gross Revenue and its conformity with the prescribed revenue concept.

8.8 Any delay in payment beyond the time stipulated in Condition 8.4 will attract interest at the Prime Lending Rate (PLR) of State Bank of India, as notified from time to time as further increased by 2% per annum. The interest shall be compounded at the rate(s) applicable for the period(s) of default. A part of the month shall be reckoned as a full month for the purposes of calculation of interest.

8.9 Any understatement of interim quarterly payments beyond 20% of the final calculation may attract a penalty, not exceeding the amount of short payment, in case the Licensee fails to show that the under statement was not deliberate and that the projections were reasonable as per the then obtaining circumstances.

8.10 Payments of licence fee becoming due and payable as mentioned in this License Agreement shall be paid by the LICENSEE through a demand draft drawn on any Scheduled Bank in New Delhi in favour of the Pay & Accounts Officer (HQ), DOT or any other Authority as may be designated by DOT from time to time.

8.11 If due payment is not received within the stipulated time, the outstanding license fee shall be recovered by adjustment of such unpaid amounts through the Bank Guarantee, after affording an opportunity to the Licensee. In addition, the LICENSOR may also initiate steps for termination of the licence in accordance with the provisions of this license after affording an opportunity to the LICENSEE and after obtaining the recommendations of the TRAI. This is without prejudice to any other remedy that the LICENSOR may decide to resort to for realisation of the annual fee under the revenue sharing percentage.

8.12 The LICENSEE, in addition to paying the Licence Fee, will separately pay the full access charges for carriage of calls originating in his network but carried and terminated in the DOT/MTNL/VSNL/ Other Service Providers' networks at applicable rates from time to time. The LICENSEE shall also separately pay charges for network resources provided to the licensee on licensee's request by the DOT/ MTNL/ VSNL / other licensed service providers, at the rates applicable from time to time.

9. Restrictions on Transfer of License

9.1 The LICENSEE shall not, without the prior written consent of the Licensor, either directly or indirectly, assign or transfer its rights as per this license in any manner whatsoever to any other party. The LICENSEE will also not enter into any agreement with any third party either in whole or in part for sub-licence and/or partnership for the provision of service as per this licence. Any violation of this shall be construed as a breach of Licence Agreement, which may even attract the termination

Provided, however, that installation and/ or operations of systems, equipment, and network or part thereof can be given on contract, but the provision of the service cannot be given on contract to any other party;

Provided, further that nothing contained herein will effect or prejudice the rights of the Licensee to enter into or operate under separate Agreements/ Arrangements with other telecommunication service providers/ operators for effectively offering the licensed Service. Such an arrangement will, however, not absolve the licensee of his obligation under this license.

9.2 The written consent permitting transfer or assignment of the License may, however, be granted in accordance with the terms and conditions, and procedures described in **Tripartite Agreement** if duly executed amongst LICENSOR, LICENSEE AND LENDERS.

10. Modifications in the Terms and Conditions of License

10.1 The LICENSOR reserves the right to modify at any time the terms and conditions of the License, in consultation with the TRAI and after affording an opportunity to the Licensee, if in the opinion of the LICENSOR it is necessary or expedient to do so in public interest or for the proper conduct of telegraphs or for extension of License. Provided that the Licensor may without any consultation modify the terms and conditions of the License in the interest of the security of the State.

11. Termination of License

11.1 The LICENSOR may, without prejudice to any other remedy for the breach of conditions of licence, by written notice of reasonable time issued to the LICENSEE at its registered office, seek termination of this license in whole or part under any of the following circumstances:

- a) In case the LICENSEE fails to commission or deliver the SERVICE within the time period(s) specified in the licence or in any extension thereof, if granted by the LICENSOR. However, this does not prevent the licensee from commissioning the service even after scheduled date of commissioning, provided the licence does not already stand terminated: or
- b) In case the LICENSEE fails to perform any other obligation(s) under the licence including remittance of timely payments of Licence fee due to the LICENSOR; or
- c) In case the LICENSEE does not rectify the failure, as may be pointed out to the LICENSEE, within a notice period of 30 days or during such further period as the LICENSOR may authorise in writing in this regard; or
- d) In case the LICENSEE becomes bankrupt or otherwise insolvent. In that event, the LICENSOR may terminate the licence even without compensation to the licensee. Such termination shall not prejudice or affect any right of action, which has accrued or will accrue thereafter to the LICENSOR. The right of termination will arise on the LICENSEE being adjudicated or applying for being adjudicated as bankrupt.

Provided that the recommendations of the TRAI will be taken before revoking the License. In the event the TRAI recommends the revocation of the license after affording an opportunity to the LICENSEE, the LICENSOR may give 30 days written notice to the LICENSEE for revoking the license. However, in the event the TRAI does not recommend the revocation but the LICENSOR still decides to revoke the license, a written notice of at least 90 days shall be given to the LICENSEE.

11.2 If the LICENSEE intends to surrender the licence, it shall give an advance notice of at least 60 days to the Licensor to this effect. If the service is in operation, the licensee shall also intimate its subscribers of consequential withdrawal of service by serving a 30 days notice to them. The licensee shall be liable to pay the revenue sharing percentage till the end of the notice period.

11.3 During the period when a notice for termination of licence is pending, the Quality of Service to the Subscribers as defined for the purpose shall be maintained. If the SERVICE quality is not maintained, (during the notice period), it will be treated as breach of licence conditions and will be dealt with as such.

12. Actions pursuant to Termination of License

12.1 In the event of termination of the licence, the LICENSOR may procure upon such terms and conditions and in such manner as deemed appropriate, such required resources as had not been installed, delivered or brought into commission by the Licensee so as to enable the provision of the Service. The LICENSEE shall be liable to the LICENSOR for any excess/extra costs for such corrective efforts. The criteria for determining the terms and conditions for such procurement will depend upon the market prices prevailing at the time of

procurement. The decision of the LICENSOR in this matter shall be final in all respects.

12.2 Whenever the licence is terminated or not extended, the LICENSOR may if it considers necessary in public interest in order to ensure the continuity of the SERVICE take such steps as necessary including the issue of license to another Indian Company for running the SERVICE. The LICENSEE shall facilitate taking over by the new LICENSEE all those assets as are essential for the continuity of the SERVICE. In such circumstances, LICENSEE shall receive from the new LICENSEE, as the case may be, reasonable compensation for the assets made over.

12.3 In case for any reasons the service cannot be continued, priority will be given to refund the deposits made by the subscribers with the LICENSEE.

12.4 Any sum of money due and payable to the LICENSEE (including earnest money refundable to the Licensee) under this licence may be appropriated by the Government or any other person or persons through the Government of India. The same may be set off against any claim of the Government or of such other person(s) for payment of any sums of money arising out of this licence or under any other licence made by the LICENSEE with the Government, or such other person or persons including TELECOM AUTHORITY contracting through Government of India.

12.5 The Financial Bank Guarantees shall be returned to the licensee company 6 months after the termination of the licence and after ensuring clearance of any dues which the licensee company is liable to pay, including the dues payable to the subscribers. In case of failure of the licensee to pay the dues, the outstanding amounts shall be realised through encashment of Bank Guarantee, without prejudice to other action(s) for recovery of amounts due to the Licensor, which are not secured by the Bank Guarantee.

13. Obligations imposed on the Licensee

13.1 The provisions of the Indian Telegraph Act 1885, the Indian Wireless Telegraphy Act 1933, and the Telecom Regulatory Authority of India Act, 1997 as modified from time to time including the Government of India Policy on Satellite Communications shall govern this license.

13.2 The Licensee shall furnish all necessary means and facilities as required for the application of provisions of Section 5(2) of the Indian Telegraph Act, 1885, whenever occasion so demands. Nothing provided and contained anywhere in this License Agreement shall be deemed to affect adversely anything provided or laid under the provisions of Indian Telegraphs Act, 1885 or any other law in force.

13.3 The LICENSEE shall not, in any manner whatsoever, transfer the licensing rights granted to it to any other party. Any violation shall be construed as a breach of licence.

13.4 A separate License for installation, operation and maintenance of wireless stations including for GMPCS Gateway(s) and user terminals shall be given to the Licensee by the WPC-Wing of the Ministry of Communications under the Indian Telegraph Act, 1885. Once the DOT has issued the license for the provision of GMPCS Service, the grant of WPC license shall be automatic subject to the Licensee complying with the guidelines for this purpose, which may include successful completion of national and international co-ordination, frequency availability, SACFA site clearance, appropriate clearances from other Ministries, and payment of WPC licence fee/royalty as decided by Government of India from time to time.

14. Interconnection

a) Network Connectivity

14.1 All calls originating from or terminating at User terminals in India shall pass through the GMPCS gateway located in India. Such calls will not be routed through any other Gateway located outside India.

14.2 There will also be direct connectivity between each of the Licensee's gateway to the nearest technically feasible VSNL Gateway for all calls from GMPCS to other countries and from other countries to GMPCS except for the countries for which arrangements of direct routing calls from DoT's network exist.

14.3 The international inter-network calls will be routed through VSNL gateway except for the countries for which arrangements of direct routing calls to DoT's Network exist. Till the opening up of international long distance communications to competition, VSNL is to be compensated in case its International Gateway is bypassed for any international long distance calls. The Licensee shall mutually settle such compensation with VSNL. However, in the event of any dispute, it will be resolved by the TRAI.

14.4 The Licensee may enter into agreements with Cellular Mobile Service Providers for providing national and international automatic roaming facility to subscribers in each other's networks through dual-mode user terminals. Roaming will be provided by using signalling transfer capability of service providers' exchanges and that of VSNL gateway exchange.

14.5 All other interconnection issues including performance standards to Gateways shall be subject to Orders/ Regulations issued by the TRAI from time to time.

14.6 The LICENSEE and the interconnected network will mutually define interconnection performance standards in quantitative terms. The same will be based on the Orders/ Regulations issued by the TRAI from time to time.

b) Interface

14.7 The LICENSEE shall operate and maintain the licensed Network conforming to Quality of Service standards to be mutually agreed in respect of Network- Network Interface. For the purpose of providing the SERVICE, the LICENSEE shall install his own equipment so as to be compatible with other service providers' equipment to which the licensee's Applicable Systems are intended for interconnection.

14.8 The additional telecommunication resources for the provision of the service and networking the geographically dispersed equipment of the LICENSEE shall be leased/ rented on mutually agreed terms from service providers including DOT, MTNL, VSNL or authorised Telecom Service providers. The same will be governed by the orders/ notifications of the TRAI issued from time to time on interconnection/ access charges.

14.9 The charges for accessing other networks i.e. PSTN, PLMN etc. for inter-network calls shall be based on mutual agreements between the service providers conforming to the Orders/ Regulations/ Guidelines issued by the TRAI from time to time.

14.10 The network resources including the cost of upgrading/ modifying interconnecting networks to meet the service requirements of GMPCS service will be mutually negotiated keeping in view the orders and regulations issued by the TRAI from time to time.

15. Tariffs

15.1 The tariffs to be charged by the Licensee from subscribers of GMPCS Service in respect of Intra-network calls as well as Inter-network calls (i.e. GMPCS/ PSTN/ PLMN) shall be in accordance with the rates and orders notified by the TRAI from time to time.

16. Customer Service

16.1 The LICENSEE shall provide the service to any individual or legal person, without any discrimination, unless directed by the LICENSOR in writing.

Provided that nothing contained herein will affect or prejudice the rights of the Licensee to carry out check on creditworthiness of its prospective subscribers.

16.2 It shall be the responsibility of the Licensee to issue or cause to be issued bills to the GMPCS subscribers for use of the service. The Licensee shall maintain such records so as to produce itemised billing information. GMPCS system shall be able to generate the billing information, in adequate details, to ensure satisfaction to the customer about the genuineness of the bill. The billing disputes between the LICENSEE and its subscribers will be settled amongst themselves and the licensor will not have any *locus standi* in the matter.

17. Publication of the Service Directory

17.1 The licensee shall publish a Service Directory containing the commercial information on the service with name and address, and access number of the subscribers. If any subscriber does not wish his name and address to be published in the Directory, the service provider shall do so after obtaining concurrence of the subscriber in writing.

17.2 All the subscribers of the service shall be entitled to one free entry in this Directory and any additional information/specific printing in a particular type at the request of the subscriber may be charged for.

17.3 The Authority reserves the right to include information of the subscribers in any other Directory which may be published by the Authority for PSTN/Telex/data Services etc. and the licensee shall be bound to supply the required information as and when asked for.

17.4 The Authority or its representative(s) will have an access to the Database relating to the subscribers of the Licensee. The Licensee shall also update the list of his subscribers and make available the same to the Authority at such intervals as may be prescribed. The Licensee shall make available, at any prescribed instant, to the Authority or its representative details of the subscribers using the service.

17.5 The Licensee will ensure confidentiality of the call details extracted for clearing house purposes.

18. Quality of Service

18.1 The LICENSEE shall ensure the good quality of SERVICES to be provided by him, consistent with the established and generally accepted standards. The LICENSEE shall be responsible for repair of defects and making good any degradation in the SERVICE with promptness and within reasonable period.

18.2 It will be mandatory for the Licensee to comply with such parameters of Quality of Service as may be prescribed by the TRAI from time to time in accordance with its regulations/ orders.

18.3 The LICENSEE shall be responsible for: -

i) Maintaining the performance and quality of service standards.

ii) Maintaining the MTTR (Mean Time to Restore) within the specified limits of the quality of service as given below in respect of normal failures excluding catastrophes :

a) 90% of faults resulting due to subscriber's complaints should be rectified within 24 hours and 99%

within 3 days.

b) The Licensee will keep a record of number of faults and rectification reports in respect of the service, which will be produced before the LICENSOR/ TRAI as and when and in whatever from desired.

18.4 The Licensee shall be responsive to the complaints lodged by his subscribers. He shall rectify the anomalies within the MTTR specified and maintain the history sheets for each installation, statistics and analysis on the overall maintenance status.

18.5 The LICENSOR reserves the right to carry out performance tests on Licensee's network at any time during the currency of the licence to ascertain that the network meets the specified standards on Quality of Service (QOS).

19. Security Conditions

19.1 The operation and maintenance of the GMPCS gateway, which may be located in India, shall be entrusted to VSNL or an agency authorised by the Government for this purpose. The Licensee shall demonstrate the system capabilities with respect to security aspects including monitoring to the Licensor prior to starting operations in India.

19.2 The precise delineation of geographical borders taken by the licensee for the purpose of defining service area in India shall have prior approval of the Government of India. The terrestrial boundaries of India shall be as depicted in the maps issued by Survey of India.

19.3 The Licensee shall give an undertaking to the Licensor that satellites deployed for GMPCS service shall be used over the Indian territory only for the services authorised by the Licensor. No activities such as surveillance, electronic warfare etc. shall be carried out over the Indian Territory, which may jeopardise the sovereignty and security of the country.

19.4 The Licensee shall abide by all foreign and Government of India regulations with respect to International roaming will be provided after obtaining all statutory clearances in accordance with laws of the land as applicable in the country concerned.

19.5 LICENSEE shall create a buffer zone along the India international border where no service would be permitted. Width of this buffer zone along the borders within the Indian Territory shall be as decided by the Govt. of India. The Government will spell out the area, width and co-ordinates of the buffer zone.

19.6 The designated Authority of the Central/ State Government as conveyed to the Telecom Authority from time to time in addition to the Telecom Authority or its nominee shall have the right to monitor the telecommunications traffic in every gateway switch set up in India. Necessary features/ facilities and interfaces required for such monitoring shall be provided by the licensee at its expense. Provision shall be made for simultaneous monitoring by at least six Indian security/ enforcement agencies. The Licensee shall make following type of provision for extending monitored calls :

- a) Extension on PSTN line
- b) Extension on E-1 links (30 channels Pulse Modulation-PCM), which can be stored in a voice logger at gateway and simultaneously transported to user agencies on dedicated line with correlated call Related Information (CRI).

19.7 The Government through appropriate notification may debar usage of mobile terminals in certain areas in the country. By suitable man/ machine command to be given by the operation and maintenance of the licensee in the GMPCS gateway, it should be possible to deny service to subscribers in certain specified areas within the timeframe as may be stipulated.

19.8 The LICENSEE shall not employ bulk encryption equipment in its network. Any encryption equipment

connected to the Licensee's network for specific requirements has to have prior evaluation and approval of the LICENSOR or officer specially designated for the purpose. However, the LICENSEE shall be responsible for ensuring privacy of communication on its network and also to ensure that unauthorised interception of message does not take place.

19.9 LICENSOR shall have the right to take over the SERVICE, equipment and networks of the LICENSEE (either in part or in whole of the service area) in case any directions are issued in the public interest by the Government in the event of a national emergency/ war or low intensity conflict or any other eventuality. Any specific orders or directions from the Government issued under such conditions shall be applicable to the LICENSEE and shall be strictly complied with.

19.10 The LICENSEE shall make available on demand to the agencies authorised by the Government full access to the switching centres, transmission centres, routes etc. for detailed technical security/inspection for espionage, subversive act, sabotage or any other unlawful activity.

19.11 All foreign personnel likely to be deployed by the LICENSEE for installation, operation and maintenance of the licensed network shall be security cleared by the Government of India prior to their deployment. The security clearance will be obtained from the Ministry of Home Affairs, Govt. of India.

19.12 LICENSOR reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security.

19.13 Adequate monitoring facility should be made available by the licensee at the GMPCS Gateway to monitor all traffic (transit as well as traffic originating/terminating in India) passing through the applicable system. For this purpose, the licensee shall set up at his cost, the requisite interfaces, as well as features and facilities for monitoring of calls by authorised agencies as directed by the licensor from time to time.

19.14 The Licensee shall ensure that any user terminal registered in the gateway of another country shall register with Indian Gateway when operating from Indian Territory.

19.15 The Licensee should provide a list of his subscribers, which should be updated at quarterly intervals. The licensee shall ensure adequate verification of each and every customer before enrolling him as a subscriber. The user terminal to be used shall be registered against each subscriber. The licensee shall make it clear to the subscriber that the mobile terminal registered against him is non-transferable and that he alone will be responsible for proper and bonafide use of the service. The LICENSEE shall have provision to scan subscriber operations of subscribers specified by security/ law-enforcement agencies through certain sensitive areas within the Indian territory and shall provide their identity and positional location (latitude and longitude) to Licensor on as and when required basis.

19.16 Any foreign subscriber entering this country with a registered GMPCS mobile terminal should declare the same to the Custom Authorities, who will record the details on his Passport and issue an authorisation for the use of the terminal.

Provided that such visiting subscriber shall give an undertaking to take back the same mobile terminal out of India. Only such authorised terminals brought into India shall be rendered Service by the Licensee.

19.17 The user terminals clandestinely brought into the Indian Territory shall be denied Service. The Licensee shall have in-built capabilities in the system for denial of service to such user-terminals. The visiting subscribers shall be required to register their user terminals on the Equipment Identification Register (EIR) of the Licensee. The LICENSOR will separately notify suitable administrative mechanism in consultation with the Custom Authority for on-line co-ordination on a regular basis between the Air/ Land/ Sea Customs and the Licensee for exchange of information in respect of all mobile terminals legally brought into the country. This arrangement would facilitate the identification and segregation of mobile terminals (registered in other countries) clandestinely brought into the Indian Territory for denial of Service.

19.18 A format would be prescribed by the LICENSOR to delineate the details of information required before enrolling a customer as a subscriber. Such details could be uniformly maintained by the service providers and

submitted for verification whenever called for by the Government agency.

19.19 Licensee will ensure that the Telecommunication installation carried out by him should not become a safety hazard and is not in contravention of Laws of the land.

20. Financial Conditions

a) Bank Guarantee

20.1 The licensee shall submit a financial bank guarantee of an amount commensurate with the annual licence fee in the format prior to the signing of the licence agreement. The LICENSEE shall submit the Financial Bank Guarantee from any Scheduled Bank, to be renewed from time to time and initially valid for a period of two years.

20.2 The licensee will be liable to extend the validity of the financial Bank Guarantee one month prior to its date of expiry on its own without demand from the Licensor for a further period of one year on year to year basis during the full currency of the licence. Any failure to do so may result in the en-cashing the financial bank guarantee after affording a reasonable opportunity to the LICENSEE. This is without prejudice to any other action that may be taken under the terms and conditions of the licence.

20.3 Without prejudice to its right to some other remedy, the LICENSOR may encash Financial Bank Guarantee (in part or in full) in case of any other breach in the terms and conditions of the licence by the LICENSEE. Such an action will, however, be taken after affording an opportunity of hearing to the LICENSEE.

20.4 Breach of non-fulfilment of licence conditions may come to the notice of the LICENSOR through complaints or as a result of the regular monitoring. Wherever considered necessary, LICENSOR will conduct an inquiry to determine whether there has been any breach in compliance of the terms and conditions of the Licence. The LICENSEE will be given an opportunity before any action adverse to his interest is taken and recommendations of the TRAI will be taken before revoking the license.

b) Preparation of Accounts:

20.5 The LICENSEE shall:

a) Compile and maintain accounting records, sufficient to show and explain its transactions in respect of each completed financial year of the License period during which this License Agreement is in force, or of such lesser periods at prescribed intervals as the Licensor may specify, fairly presenting the costs (including capital costs), revenue and financial position of the Licensee's business including a reasonable assessment of the assets employed in and liabilities attributable to the Licensee's business, as well as, for the quantification of adjusted gross Revenue or any other purpose.

b) Procure in respect of each of those accounting statements prepared in respect of a complete financial year, a report by the Licensee's Auditor stating whether in his opinion that statement is adequate for the purpose of this condition; and

c) Deliver to the Licensor a copy of each of the accounting statements not later than three months after the end of the period to which they relate. In this condition, the "Auditor" means the Licensee's auditor for the time being appointed in accordance with the requirements of the Companies Act, 1956 or any other law in force.

d) Send to the Licensor a certified statement of Gross Revenue from the Service for each quarter before the end of calendar month following the quarter.

21. Prohibition of certain Activities by the Licensee

21.1 The Licensee shall not hereunder engage in the provision of any other Service other than GMPCS as defined in this license agreement.

21.2 To remove any doubt, it is, hereby, clarified that nothing contained in condition in Para above shall preclude the Licensee from engaging in advertising and promotional activities relating to any of the Applicable Systems.

21.3 The Licensee shall take measures that prevent the objectionable, obscene, unauthorised or any other content, messages or communications infringing copyright, intellectual property etc., in any form, from being carried on his network, consistent with the established laws of the country. Once specific instances of such infringement are reported to the LICENSEE by the authorised agencies, the licensee shall ensure that the carriage of such material on his network is prevented.

21.4 The Licensee is obliged to provide, without any delay, tracing facility to trace nuisance or malicious calls, messages or communications transported through his equipment and network. Any damages arising out of default on the part of licensee in this regard shall be payable by the licensee.

21.5 In case any confidential information is divulged to the Licensee for proper implementation of the Agreement, it shall be binding on the Licensee and its employees and servants to maintain its secrecy and confidentiality.

22. Inspection and Testing of Installations

22.1 The Licensor will also carry out all performance tests required for successful commissioning of the service, if it so desires, before the service is commissioned for public use. The LICENSEE shall supply all necessary literature, drawings etc regarding the equipment installed for commissioning of the services, and shall also supply all the tools, test instruments and other accessories to the testing party of the LICENSOR for conducting the tests. The list of performance tests will be furnished by the LICENSEE one month prior to the date of commissioning to the Licensor. In case the Licensor chooses to conduct performance test and some deficiency is found therein by the licensor, the delay caused for rectification of the deficiencies, if any, for the commissioning/ provisioning of the service will be entirely on account of the Licensee.

22.2 The Acceptance Testing for each and every interface with the DOT/ MTNL/ VSNL/ or other Service Provider may be carried out by mutual arrangement between the Licensee and the other party involved. The Acceptance Testing schedule shall be mutually agreed. Adequate time, not less than 30 days, will be given by the Licensee for these tests.

23. Right to Inspect

23.1 The Licensor, the TRAI or its authorised representative shall have the right to inspect the sites used for extending the Serviced. The Licensor shall, in particular but not limited to, have the right to have access to leased lines, junctions, terminating interfaces, hardware/software, memories of semiconductor, magnetic and optical varieties, wired options, distribution frames, and to enter into dialogue with the system through Input/output devices or terminals. The Licensee will provide the necessary facilities for continuous monitoring of the system, as required by the Licensor or its authorised representative(s). The Licensor will ordinarily carry out inspection after reasonable notice except in circumstances where giving such a notice will defeat the very purpose of the inspection.

24. Location of Switches

24.1 The LICENSEE shall provide to the LICENSOR location details of switching centres, transmission centres, including routing details etc., and location of these centres shall not be changed without prior

approval of the LICENSOR.

25. Requirement to furnish Information

25.1 The Licensee shall furnish to the Licensor as well as to the TRAI, in the manner and as per the time frames that these Authorities may demand, such documents, accounts, estimates, returns, reports or other information in accordance with the rules/ orders as may be prescribed.

25.2 Engineering Details

- a) The Licensee shall furnish to the Telecom Authority, in such manner and at such times as the Authority may require, complete technical details with all calculations for engineering, planning and dimensioning of the system/network, concerned relevant literature, drawings, installation materials regarding the applicable system.
- b) List of performance tests shall be furnished by the Licensee one month prior to the date of commissioning of service.
- c) Licensee shall supply all tools, test instruments and other accessories to the testing party of Licensor for conducting tests, if it so desires.

26. Disputes Settlement

If a dispute arises, in respect of any matter referred to in the License Agreement between Service Providers or between the Licensor and the Licensee, such disputes shall be decided in accordance with the provisions of the TRAI Act 1997.

27. GMPCS User Terminals

27.1 The Licensee shall have the right to undertake the sale, hire purchase, lease or renting of the GMPCS user/ mobile terminals. Proper usage of terminal at subscriber's premises shall be responsibility of the subscriber.

27.2 The Licensee shall be responsible to ensure that the user /mobile terminal is operated within India in accordance with the terms of the License and the WPC license. The terminal is non-transferable.

27.3 The user/ mobile terminals employed in the network shall be of a type/model certified by an internationally accredited agency with respect to ITU/ETSI standards or any other international standard as may be approved by the Government. They should carry a marking specifying their compliance with such standards. Only such category of subscriber unit as has been granted such a certificate shall be brought into and operated within India under this Agreement.

28. Miscellaneous Conditions

a) Interpretation of Terms/ Definitions

28.1 Unless the context otherwise requires, the different terms and expression used in this license agreement shall have the meaning assigned to them as explained in Attachment to this Appendix.

b) Force- Majeure

28.2 If at any time, during the continuance of this licence, the performance in whole or in part, by either party, of any obligation under it is prevented or delayed, by reason of war, or hostility, acts of the public enemy, civic commotion, sabotage, fire, flood, Act of State or direction from Statutory Authority, explosion, epidemic, quarantine restriction, strikes and lockouts (as are not limited to the establishments and facilities of the Licensee), or act of GOD (hereinafter referred to as event), provided notice of happenings of any such EVENT is given by either party to the other, within 21 days from the date of occurrence thereof, neither party shall, by reason of such event, be entitled to terminate the licence, nor shall either party have any such claims for damages against the other, in respect of such non-performance or delay in performance. Provided service under the licence shall be resumed as soon as practicable, after such EVENT comes to an end or ceases to exist. The decision of the Licensor as to whether the service may be so resumed (and the time frame within which the service may be resumed) or not, shall be final and conclusive. However, the Force Majeure events noted above will not in any way cause extension in the period of the License. While it will normally not be a ground for non-payment of licence fee, the liability for payment of license fee for such inoperative period(s) due to force majeure clause may, however, be reduced/waived by the LICENSOR, at its discretion based on circumstances of the EVENT.

28.3 The Licensee shall be bound by the terms and conditions of this License Agreement as well as by such orders/ regulations and instructions as are issued by the Licensor/ TRAI and/or their successors from time to time.

28.4 All matters relating to this License will be subject to jurisdiction of Courts in Delhi/ New Delhi.

ANNEX**DEFINITIONS AND INTERPRETATIONS RELATING TO THE EXPRESSIONS USED IN THE TERMS & CONDITIONS OF LICENSE AGREEMENT**

Unless the context otherwise requires, the different terms and expression used in the license agreement shall have the meaning assigned to them as explained in the following paragraphs:

1. **APPLICABLE SYSTEMS:** The "applicable system" means all the necessary equipment/ sub-systems engineered to provide GLOBAL MOBILE PERSONAL COMMUNICATION BY SATELLITE in accordance with operational/technical and quality requirements and other terms and conditions of the licence agreement.
2. **Auditor** means the Licensee's auditor for the time being appointed in accordance with the requirements of the Companies Act, 1965.
3. **Connectable System** means a telecommunication system which is authorise to be run under a Licence to provide public telecommunications service and is authorised to be connected to the Applicable system.
4. **DIRECT EXCHANGE LINE (DEL):** A telephone connection between the subscriber's terminal equipment and the terminal exchange.
5. **DOT** means Department of Telecommunications, Government of India as Telecom Service Provider and/ or its successors.

6. **EFFECTIVE DATE:** The effective date is the date on which this Licence Agreement is signed by the parties and if the parties have signed on different dates the latter of the two dates. This licence comes into effect from the effective date of the licence.
7. **Emergency** means an emergency of any kind, including any circumstances whatever resulting from major accidents, natural disasters and incidents involving toxic or radio-active materials.
8. **Emergency Services** in respect of any locality means the relevant public, police, fire, ambulance and coast guard services for that locality.
9. **ENGINEERING :** The technical application of the dimensioning rules and results thereof in order to provide network resources to meet specified Grade of Service (GOS).
10. **GMPCS :** GMPCS means Global Mobile Personal Communications by Satellite.
11. "GMPCS Gateway means a land based satellite link station established to provide a communication link between the Satellite/Satellite Constellation and the 'National PSTN' and 'International Gateway', thereby facilitating the provisions of telecommunications services between Mobile terminal and any telephone linked to the connected PSTN or PLMN.
12. **GMPCS Service Provider** means an Indian registered company, which has been licensed under this licence to set up and operate GMPCS Network and to provide GMPCS Service (as defined by ITU) to the public within the boundaries of Indian Union.
13. **GMPCS Operator** means the legal entity responsible for the operation/ provision of GMPCS system/ space segment.
14. **GMPCS Network** means any satellite based telecommunication network providing telecommunication services directly to end users through the use of mobile terminal from a satellite/constellation of satellite.
15. **GMPCS mobile terminal or user terminal** means the equipment used by the subscribers to avail the GMPCS service such as Mobile Handset; also called user terminal.
16. **LICENSE:** Licence means a licence granted or having effect as if granted under section 4 of the Indian Telegraph Act 1885 and Indian Wireless Act 1933.
17. **LICENSEE:** ***A registered Indian Company that has been awarded license to set up and operate Global Mobile Personal Communications by Satellite (GMPCS) network and to provide the GMPCS service.***
18. **LICENSOR** shall refer to the President of India acting through any authorised person, who granted Licence under Section 4 of Indian Telegraph Act 1885 and Indian Wireless Telegraph Act 1933, unless otherwise specified.
19. **Message** means anything falling within sub Clause/paragraph (3) of section 3 of the Indian Telegraph Act 1885.
20. **MTNL** means Mahanagar Telephone Nigam Limited.
21. **Adjusted Gross Revenue:** Adjusted Gross Revenue for the purpose of levying license fee as a percentage of revenue sharing shall mean the Gross Revenue accruing to the Licensee by way of operations of providing GMPCS service mandated under the license inclusive of revenue on account of value added and supplementary services as further reduced by the following items:
 - i) Interconnection/Access charges payable to other service Providers within India to whose Networks the

GMPCS Network of the Licensee is interconnected for carriage of calls;

ii) Roaming revenues collected on behalf of other Cellular Mobile Telephone Service (CMTS) providers and passed on to them;

iii) Payment to VSNL for bypass;

iv) Revenues through sale of user terminals. In case the service provider subsidises the sale of user terminal by giving rebate on the airtime/ rental tariff, the revenue thus "forgone" will be added to arrive at the Adjusted Gross Revenue. Revenue "foregone" will be the difference between the purchase price of the user terminal by the GMPCS service provider and its sale price to the subscriber. Purchase price will be inclusive of taxes/ duties, if any;

v) Taxes such as service tax, sales tax etc. (levied on the provision of service);

vi) Actual Payments made by the Licensee towards access deficit/ universal service fund or any other levy as may be prescribed for meeting the universal service obligation;

vii) Amounts received as Security Deposits from the consumers/ subscribers for the provision of GMPCS Service;

21. OR/QR Specifications means technical and quality requirements contained in the OR/QR Specifications of Telecom Engineering Centre Department of Telecommunications unless otherwise specified.

22. Public Switched Telephone Network (PSTN) means a fixed specified switched public telephone network a two-day switched telecommunications service to the general public.

23. Public Land Mobile Network (PLMN) means land based mobile network e.g. Cellular Mobile Telephone Service being operated within the country under licence from Telecom Authority on non-exclusive basis.

24. QUALITY OF SERVICE: "Quality of Service" is evaluated on the basis of observable measure on the grade of service, calls lost due to wrong processing, the bit error rate or the response time and also included acceptable grade of number of faults per unit population of the subscriber served, the mean time to restore (MTTR), faults carried over beyond the MTTR and the satisfactory disposal thereof.

25. SERVICE AREA: Service area for Global Mobile Personal Communication Service by Satellite is the territorial jurisdiction of the Union of India except specified areas that may be notified to be excluded from time to time.

26. Services or service means Global Mobile Personal Communications by Satellite Service and shall include the tele-services, bearer services and supplementary services as defined by ITU.

27. Subscriber: Subscriber means any person or legal entity, which avails of the Global Mobile Personal Communications by Satellite Service from the Licensee.

28. TELECOM AUTHORITY: The Director General, Telecommunications, Government of India and includes any officer empowered by him to perform all or any of the functions of the Telegraph Authority under the Indian Telegraph Act, 1885 or such authority as may be established by law.

Comments: The expression 'Telecom Authority' has been defined and then used in the license agreement at different places to denote the Director General, Telecommunications and any officer

empowered by him under the Indian Telegraph Act, 1885 to perform all or any of the functions. This expression (i.e. Telecom Authority) has been used by the DOT in other license agreements such as for basic services. In view of the fact that the Telecom Regulatory Authority of India was constituted in March 1997, the expression Telecom Authority being used for the Director General Telecommunications (or his authorised officer) may now be used for TRAI and the expression Telegraph Authority for the Licensor.

29. **TARIFF:** Tariff means rates and related conditions at which telecommunication services within India and outside India may be provided including rates and related conditions at which messages shall be transmitted to any country outside India, deposits, installation fees, rentals, free calls, usage charges and any other related fees or service charge. The term tariff will have the same meaning as may be defined in the Telecommunication Tariff Orders to be issued by the TRAI from time to time.

30. **TRAI** means Telecom Regulatory Authority of India constituted under the TRAI Act, 1997 as amended from time to time.

31. **VSNL** means "Videsh Sanchar Nigam Ltd."

32. **WPC** means Wireless Planning and Co-ordination Wing of the Ministry of Communications, Department of Telecommunications, Government of India