

Sub: Issues referred by the DoT for reconsideration

By TRAI.

Ref: Secretary DoT's d.o. No. 10-2/2000-BS-II/Vol.I

9<sup>th</sup> October, 2000.

The different issues referred by the DoT for re-consideration by the TRAI have been re-considered and the comments of the TRAI on each of these issues seriatim are given below. While giving comments the relevant paragraph of the Annexe-I to the aforementioned letter of the DoT has been quoted alongwith brief comments of the DoT on the issue whereafter the comments of the TRAI thereon are given.

### 1.1.1 Roll Out Obligations.

#### (a) For new Licensees:

#### DoT Comments

It is worthwhile to point out that a Service provider's roll out obligation has a direct bearing on the objectives of NTP'99 with special reference to the availability of telephone on demand and increase in tele-density. This perspective plan for Telecommunication sector envisages provision of around 13 to 15 lakhs of telephones per annum by private operators. Rural communication is mandatory for Fixed Service Providers.

It is noted that in the free market environment, it will be in the interest of the service operator to generate demand and thereby provide connections, as no operator will establish a switch without provision of necessary connections. It has been pointed out that at present some of the operators are understood to have resorted to verification of financial credentials as well as paying capacity of the subscriber which is against the policy of providing connection without discrimination. Since the demand itself is not registered after verification of credentials of subscriber by some of the operators, hence in order to ensure that the telephone on demand is provided as per Quality of Service Regulation of TRAI, it may be stipulated that basic service operator has to register all requests for telephone connections from any person without any discrimination on any ground. If any connection is attracting USO, then it would be considered accordingly.

#### TRAI Response

There is nothing in our recommendations which states or implies to the contrary and, therefore, there is really no occasion for any reconsideration. If however, it is felt that a further stress on this point is called for, a clause to this effect may be added in the license agreement obliging the licensee to provide telephone connection to every person requesting for it at any place in the area licensed to the service provider, without any discrimination. The service provider should also be required to maintain a transparent, open to inspection, waiting list.

**(b) For Existing Licensees:**DoT Comments

It is noted that the obligations of existing licensees have been recommended to be diluted from provision of DELs and VPTs to establishment of POP in SDCAs with effect from 1.8.99. This is a major deviation and dilution in the committed performance obligations undertaken by the existing licensees, for which due weightage during evaluation of their bids was given to them before award of licences. Moreover, this recommendation of TRAI is also against the stand taken by the Department in the Court of Law and in the Parliament. Even at the time of offering of migration package, it was clarified that these obligations are not diluted.

TRAI Response

The concern conveyed by the DoT has been addressed in the TRAI's recommendation. In the course of its deliberations TRAI had carefully considered the changes that have taken place in the conditions since the licenses were first issued as also the past experiences in regard to the enforceability of the license conditions. It has noted that the existing licensees have already completed 3 years and within the next 2 years only they are required to make their presence in 80% of the SDCAs. Violation of this roll out obligation can lead to cancellation of the license. In making its recommendation about roll out obligation TRAI has also gone by the consideration that two groups of service providers in the same service area should not have basically different roll out obligations as it will be violative of the principle of level playing field. In regard to provision of VPTs and rural DELs TRAI is of the view that such obligations will be better fulfilled by the service providers voluntarily rather than through a conditionality of the license, which has so far not been found to be enforceable.

VPT and rural DELs will get real support and can progress mainly through U.S.O. and accordingly TRAI is of the opinion that a review of its recommendation in this regard is not called for.

**(c) Roll out after phase III (for new and existing licensees)**DoT Comments

It is noted that with unrestricted entry, the 3<sup>rd</sup> phase of new and existing licensees in a service area shall be expiring at different points of time, thus making it impracticable for licensor to review the coverage as indicated above. Further, it amounts to rewarding the inefficient licensee by waiving off his performance liability for the 4<sup>th</sup> phase if the SDCAs under that liability already stand covered by any of the other efficient licensees. Moreover, since the

licence is to be awarded for whole service area, hence diluting the roll out obligations to only 80% of SDCA will amount to awarding the licence for 80% of the SDCA in a service area which is against the principle of awarding the licence for the whole service area.

### TRAI Response

The recommendation in regard to coverage of 80% SDCAs in terms of POP by every licensee upto the end of the third phase of roll out has been made after detailed consideration. It has also been recommended that beyond this stage it will suffice even if only one of the private sector operators extends his services in the residual SDCAs and establishes POPs in addition to the incumbent viz. BSNL/MTNL.

While ideally one can think of 100 per cent coverage by each of the operators in every single SDCA, this position is neither achievable nor necessary. In fact, on practical as well as economic considerations, forcing the issue on this count would only result in violation of the terms of the license either in actuality or in spirit. By forcing this condition the licensor will also be weakening the overall financial viability of each of the network operators avoidably.

In this context it is important to keep in mind that after each of the license holders in the service area has completed its 3<sup>rd</sup> phase obligation of over 80% coverage, the residual SDCAs will actually not be 20%. Firstly, it is most unlikely that each one of the operators will cover the very same 80% SDCAs in reaching its 80% coverage. In all likelihood, therefore, the number of SDCAs left to be covered would add up to less than 20%. Secondly these SDCAs without any doubt will be those where operations are economically least viable and which offer much less business than the other SDCAs already covered. The import is that the demand in these areas will be very limited. In the circumstances, no useful purpose will be served by forcing each of the licensees to expend resources in covering these areas without any benefit either to them or to the society. On the other hand, such inefficient use of resources would only add to the overall cost of the services provided and could impact the ultimate price of service to the consumer. It is with these considerations that TRAI has taken a practical view of the situation and suggested that in the residual areas which in any case, are not likely to be more than 10-15 per cent of the SDCAs, it would suffice if any one of the service providers in addition to BSNL/MTNL establishes points of presence to provide a choice of service to the consumers.

In so far as release of the final tranche of the guarantee is concerned, it is clarified that any such release of the guarantee furnished by a service provider will be possible only if at the time of this release all SDCAs in the entire service area have at least one more service provider in addition to the incumbent, viz. BSNL/MTNL. This position can not be compromised under any circumstances as under the arrangement no refund/release of guarantee to any operator completing his third phase of roll out will be possible until every single SDCA in the service area offers a choice of service provider to the consumer. Naturally, therefore, the service providers will take steps voluntarily to ensure achievement of this objective by mutual arrangements amongst themselves. In the opinion of the TRAI this is a very realistic and practical solution to the

problem and it recommends that it be accepted.

### 1.1.2 NETWORKTH REQUIREMENTS

#### DoT Comments

(d) However, it is felt that as per the policy adopted in respect of NLDOs, the net worth of only those promoters shall be counted who have at least 10% equity stake in the total equity of the company. The net worth shall mean as the sum of paid up equity capital and free reserves. While counting the net worth the foreign currency shall be converted into the Indian rupees at the prevalent rate of RBI on the date of application. It is also felt that the promoter may be permitted to be replaced by another partner of equal or more net worth.

#### TRAI Response

TRAI has not considered it necessary to address this issue in such details. The licensor is free to use his discretion while deciding these details as long as the basic recommendations about the quantum of the minimum networkth which is aimed at weeding out non-serious players is followed.

### 1.1.3 Experience Requirement

#### DoT Comments

(e) Government is of the view that the requirement of one promoter with 30% equity, to have experience in telecom **service** sector may be somewhat too restrictive at this stage. It is also felt that specifying minimum duration of experience in service sector may be viewed against the present trend wherein market forces are free to operate and no artificial barrier is placed. Thus, as in case of NLDOs, the experience criteria should be that the constituent(s) representing at least 30% of the total equity should have experience of **telecom sector**.

#### TRAI Response

The reason behind stressing experience in telecom service sector has been the relevance of such experience to the activity being licensed. TRAI feels that such service experience would really not be wanting. However, if the government considers it desirable to enlarge the scope of the licensee's experience to cover the sector as a whole this may be done at its discretion.

### 1.1.4 Paid up Equity Capital

#### DoT Comments

(f) No minimum amount of paid up equity capital of the applicant company has been recommended by TRAI in the selection criteria. This has been taken as one of the main criteria for issue of NLDO licenses where a minimum paid up equity capital of Rs. 250 crores @ 10% of required net worth has been stipulated. It is proposed to follow the same principle in case of Basic

Telephone Service licenses also by stipulating a minimum paid up equity capital requirement @ 10% of required networth in the selection criteria for various categories of Circles.

### TRAI Response

Having recommended the level of the required networth of the promoters it was not considered necessary to prescribe a minimum equity capital on the understanding that any infrastructure project would not ordinarily be funded with a debt equity ratio of more than 1:1 or at the most 1.5:1. This would imply that the applicant company would be required to bring atleast 40% of the total project cost by way of capital. The applicant company can also not avoid bringing a major portion of this capital in the beginning itself as it will be required to pay the entry fee before the license is issued. As such besides stipulating the net worth no further stipulation about the initial capital to be brought by the applicant company has been considered essential. In the opinion of TRAI a review of its recommendation in this regard is not called for.

### **1.1.5 One Time Entry Fee**

#### DoT Comments

- (g) Government has agreed to the amount of the entry fee proposed for various service areas for basic service operators as per the table contained in para E(iii). However, it is noted that as per para E(ii), minimum entry fee of Rs. 5 crores has been mentioned but in the table as indicated in para E(iii) entry fee has been mentioned as Rs. 2 crores for Himachal Pradesh, J&K, & North East and Rs. 1 crore for Andaman & Nicobar.

In view of the above indicated contradictions, TRAI is requested to clarify the amount of entry fee in respect of above mentioned circles.

### TRAI Response

One time entry fee in respect of Himachal Pradesh, J&K, North East and Andaman and Nicobar, is recommended to be as given in the table on page 13 of the recommendations. The minimum of Rs. 5 crore appearing on page 12 may please be deleted.

## **2.0 LICENSE FEE IN THE FORM OF REVENUE SHARE**

#### DoT Comments

- (h) The Government has accepted the recommendation for amount of license fee to be paid by existing as well as future licensees. However, the license fee is reimbursed to MTNL and BSNL successor company to Department of Telecom Operation in respect of Cellular service as well as National Long Distance service. It is felt that the same principle may be adopted for basic service also.

TRAI is, therefore, requested to consider the above suggestion.

## TRAI Response

The recommendation that MTNL/BSNL should be subject to the same license fee by way of revenue share was made with a view to ensuring a level playing field between the MTNL/BSNL on the one hand and the private operators on the other. The proposal of the government to reimburse to MTNL/BSNL the revenue share paid by them will constitute a departure from this basic principle. It will also be a negation of the declared policy of the government that the corporation will be allowed to operate on fully commercial lines. TRAI, therefore, is not in agreement with the government's views and recommends that MTNL/BSNL should receive the same treatment as any other private operator in respect of license fee payable by them by way of revenue share.

No less important in this context is the issue of USO. As is known, most part of the license fee is to be utilized towards USO. In the event that the license fee is refunded to the BSNL/MTNL, they being the main service providers and, therefore, main contributors of license fees, Universal Access Levy (UAL) and USO to be achieved through it will become a non-starter.

Incidentally it appears from DOT's comments that a decision on reimbursing the license fee to the BSNL/MTNL in respect of their cellular service and NLD Operations has been taken. TRAI has not made any such recommendations and is not aware of a decision having been taken by the Government in this regard. For the reasons stated above, we would not be in favour of the license fee being refunded in any case.

## **2.1 WAIVING OF LICENSE FEE FOR A LIMITED PERIOD OF 4 YEARS IN RESPECT OF EXISTING LICENSES.**

### DoT Comments

- (i) Migration package offered to Basic Service Operators envisage multipoly regime without any protection. The time limit of five years for duopoly regime in service areas where license was already issued, was provided in NTP-99 but the migration package did not provide for the same. All the Basic Service Operators have accepted the migration package unconditionally without any deviation or reservation. Neither NTP-99 nor the migration package envisage such favour.

In view of commitments in the court of law and Parliament at the time of offering of the migration package as well as in view of acceptance by the operators of the migration package, it will not be possible to justify and stand the scrutiny of the Court for waiving the license fee for any period for existing licensees.

Keeping in view the above, the Government has not accepted the recommendation for waiving of license fee for existing private basic service operators. TRAI is, therefore, requested to reconsider the above recommendation.

## TRAI Response

The main consideration behind this recommendation is the significant difference in the amount of the entry fee paid by the existing six basic operators and those who will be entering the field following the fresh recommendations. While it is true that the operators who have been allowed to migrate to the new regime paid the high entry fees in fulfilment of their commitments, it has also to be kept in view that once they have been allowed to migrate, the conditions under which they compete with the new entrants are not so adverse that leave no room for equal competition. Precisely speaking an anti-competitive situation should not be allowed to arise.

In this context it is also noteworthy that even the adjustment proposed, i.e. waiver of license fee for 4 years, reduces the gap and mitigates the imbalance only partially and the pre-NTP 99 licensees continue to suffer the high cost burden resulting from the higher entry license fee paid by them. The Authority is, therefore, of the view that working with too big an economic disadvantage, these service providers may find it very difficult to make additional investments required in future and could fail to do so. It is also quite likely that the quality of their services will get affected adversely for want of the required investments. In view of these factors, the Authority is convinced that some measures are necessary to reduce the difference between the cost of running networks owned by the pre-NTP 99 service providers and those that are owned by those coming in future under the revised terms permissible subsequent to NTP 99. As such TRAI reiterates its earlier recommendations in this regard.

## 2.3 Revenue Share Definition

### DoT Comments

- (j) The government proposed to follow a definition of Adjusted Gross Revenue (AGR) for the purpose of computing license fee which is different from the definition recommended by the TRAI.

### TRAI Response

DoT has proposed a definition of Adjusted Gross Revenue (AGR) which is different from the definition recommended by the TRAI. In this regard it is observed that the definition of “adjusted gross revenue” given by the DoT in the case of GMPCS service seeks to include in the “shareable revenue” a number of items which do not arise from licensed activities e.g. all miscellaneous incomes, including interest, dividends, write backs of earlier years’ provisions etc. This stand seems to be going beyond the terms of license and, therefore, does not appear to be maintainable. On the other hand, the definition proposed by the TRAI which it has been recommending consistently, including in the cases of GMPCS and CMSPs, is clear and precise enough to include all revenues which accrue to the operator from the licensed activities and excludes all items unrelated thereto. Thus, it covers all receipts from provisions of basic services, including supplementary services, value-added services, subsidies on sale of hand-sets etc, while it excludes items like dividend, interest etc. which though constituting “revenue” can not be said to represent revenue from the licensed activities. TRAI is,

therefore, of the view that the definition of gross revenue as conveyed in its recommendation dated 23.6.2000, is appropriate and should be adopted.

## 2.4 RE-SALE

### DoT Comments

- (k) It is felt that in view of the existing market scenario with mergers and acquisitions, it is very difficult to prevent resale. Therefore, keeping in view the market trends and status, resale may be permitted. However, entry conditions in respect of networth, paid up equity and experience criteria has to be ensured while permitting the resale.

TRAI is, therefore, requested to consider the same.

### TRAI Response

The concept of resale discussed in the TRAI recommendations has nothing to do with the change of corporate identity due to mergers, acquisitions etc. which has been forwarded as the reason for resale in the comments provided by the government. TRAI has not offered any comments on resale of the entire business by one network owner to another or in regard to mergers that may take place.

The concept of resale which has been discussed in our recommendations relates to resale of facilities such as local loop. In this context it has been clarified that at the present stage of development of the telecom network in the country, a mandated resale of Local Loop by the incumbent to its competitors does not appear to be feasible. This is in view of the scarcity of Local Loop which is one of the major constraints in providing telephone connections on demand. Another reason for considering resale as premature is the fact that unbundled cost of the network elements are not yet available and, therefore, it is not possible to evolve any methodology which will help development of an objective and transparent formula for sharing of costs and revenues between the seller and the reseller. Moreover, such a resale by the incumbent is likely to encourage new entrants not to lay cable themselves and to act only as a reseller which obviously would be quicker and easier way of entering into this business. This would, however, defeat the very purpose of opening up the sector i.e. building of more infrastructure such as backbone facilities, transmission media and optical fibre.

## 2.5 Infrastructure providers

### DoT Comments

- (l) As per Indian Telegraph Act, there is no provision of registration of service provider. At present, there is no move to amend Indian Telegraph Act separately as Convergence Bill is already under consideration. It is, therefore, suggested that there is no need to change the categories of infrastructure providers as already defined and approved at the time of opening of NLDO.

TRAI is requested to reconsider the recommendation.

### TRAI Response

TRAI's recommendation in this regard is based on the twin considerations, viz. that there is a need to provide all possible encouragement to infrastructure providers and that what needs to be regulated is only the provision of telecom services. Since infrastructure providers provide the backbone to the service providers and do not themselves offer telecom services, TRAI has in the past, on more than one occasion, recommended that they should not be subject to any license fee and that relationship between them and the service providers should be based on commercial negotiations to be conducted between them mutually. We see no necessity of making a departure from this stand.

Incidentally, it may be pointed out that TRAI has not recommended either the registration of infrastructure service providers or a change in their categorisation.

## 2.6 Franchising of Services

### DoT Comments

- (m) While accepting this recommendation of TRAI, it is felt that franchising of the services by the new as well as existing licensees including BSNL/MTNL is permitted with a proviso that all responsibilities for ensuring compliance of terms & conditions of the license shall vest with the licensee only i.e. the original license holder.

TRAI is requested to consider the above suggestion.

### TRAI Response

This already forms part of our recommendations and as such there is no need for any review.

## 2.7 Billing services.

### DoT Comments

- (n) It is pointed out that in case of Basic Service operator, adherence to this clause may not be technically feasible at present at all points of interconnection. With the present state of CDOT technology of Rural Automatic Exchange, CCS No.7 signaling is not supported. Thus this may lead to interconnection difficulty in a village if the Basic Telephone Service operator adheres to the same. Thus a proviso to take care of this is required.

Direct Interconnectivity among all service providers in a service area has been recommended. In respect of Cellular Operator, a private Basic Service Operator cannot be asked and expected to provide point of interconnection at every LDCA or wherever asked for unless mutually agreed to. Thus, as per international practice, the interconnection with Cellular Network may be at the station of Gateway MSC or MSC only. This will reduce the junction requirement for a Basic Service Operator switch at every LDCA thereby reducing the cost.

For international long distance call, the basic service operator shall access international long distance operator through national long distance operator only.

TRAI is requested to consider the above suggestion.

### TRAI Comments

We would like to point out that this recommendation has been made in the Section entitled "NLD Access Arrangements". The Section mainly deals with the interconnection and access arrangement between the Basic operators and the NLD service providers. The Authority is of the view that such an interconnection will be at a much higher level in the network hierarchy, than at the rural automatic exchange which is the lowest level. In this connection, a reference is invited to the interconnection regulation issued by the Authority in May '99 wherein the concept of gateway switches was brought out. Typically, these gateway switches will be the trunk automatic exchanges of the NLD operators and the Tandem/TAX switches of the Basic service providers. Ultimately carriage charges/settlement charges in a multi operator environment will have to be based on the cost of network elements used in providing carriage in various networks. For settlements, gateway functionality at the Point of Interconnect (POI) based on CCS signaling system is, therefore, critical. As such, the Authority reiterates its earlier recommendation in this regard and would like the DoT to prevail upon BSNL to draw a time schedule for upgradation of all gateway switches to CCS No.7 capability. It is also felt that it is possible for the BSNL to achieve this objective within a reasonable time, say, 24 months. They should, therefore, be advised to pay urgent attention to the matter.

## **2.8 Access Deficit Charge**

### DoT Comments

(n) As per para H (xii), TRAI has proposed to employ a methodology called Access Deficit Charge to make up the deficit incurred in providing access to Basic Telephone Service. This will form part of the access charge payable by the NLD operator to the Basic Service Operator for conveying a long distance call through the network of the Basic Service operator.

### Comments of the Government

It is proposed that the said ADC may form a part of interconnection regulations as per 11 (1) (b)(iv) of TRAI Act, 1997 as amended in 2000 or tariff order, issued by TRAI from time to time. It is also noted that the term ADC, which has a financial implication, has neither been defined in the recommendations for NLDO nor constituted a part of guidelines issued thereof. TRAI is, therefore, requested to reconsider the recommendation.

### TRAI Comments

As has already been advised in our D.O. letter No. 4-28/CP/TRAI-2000, dated

October 19, 2000, Access Deficit Contribution (ADC) can be given up when the tariff, particularly the access charge, i.e. the rental becomes fully cost based. Until then, in our opinion, a resort to ADC in some form will be unavoidable. In most developing countries, including India, the process of tariff rebalancing has just begun and at this stage any sharp increase in rental will make basic telephone services less affordable, particularly in rural areas, resulting in a very adverse impact on demand. The rebalancing, therefore, will have to be gradual and spread over a number of years. During this intervening period there will be a justification for ADC to be levied.