

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20 Ashok Road, New Delhi-110 001.

No.20-232/2004-BS.III

Dated, the 21st February, 2004.

OFFICE MEMORANDUM

Sub: Guidelines for merger of licences in a service area.

In keeping with the policy of bringing in sustained reforms in the Telecom sector in India for making the service available in the most efficient and affordable manner, Government have decided, after due consideration of the recommendations of Telecom Regulatory Authority of India, the following Guidelines for merger of Basic, Cellular and Unified Access Service licences in a given Service Area for proper conduct of Telegraphs and Telecommunication services, thereby serving the public interest in general and consumer interest in particular: -

1. Merger of licences shall be restricted to the same service area.
2. Merger of licence consequent to mergers/acquisitions or restructuring of the operations shall be permitted in the following category of licences:
 - (i) Cellular Licence with Cellular Licence;
 - (ii) Basic Service Licence with Basic Service Licence;
 - (iii) Unified Access Services Licence (UASL) with Unified Access Services Licence;
 - (iv) Basic Service Licence with Unified Access Services Licence;
 - (v) Cellular Service Licence with Unified Access Services Licence;

In case of a merger of a basic service license with UASL, the basic service licensee shall pay, at the time of application for merger, the difference of amount of the entry fee, if any, as per the Guidelines for migration to UASL dated 11.11.2003.

3. Merger of licences will be permitted subject to the condition that there are at least three operators in that service area for that service, consequent upon such merger. It is clarified that Unified Access Service Licensee will be counted for Basic as well as

Cellular service separately while deciding the number of operators in a given service area.

4. Prior approval of the Department of Telecommunications will be necessary for merger of the licence. The findings of the Department of Telecommunications would normally be given in a period of about four weeks from the date of submission of application.
5. Any merger, acquisition or restructuring, leading to a monopoly market situation in the given Service Area, shall not be permitted. Monopoly market situation is defined as market share of 67 per cent or above within a given Service Area, as on the last day of previous month. Subscriber base shall be criteria for computing the market share. For example, if an application is made on the 10th January, the market share as on 31st December of the previous year, shall be taken into account. For this purpose, the market will be classified as fixed and mobile separately. The category of fixed subscribers shall include wire-line subscribers and fixed wireless subscribers. The number of subscribers shall be as per the Exchange Data Records. The category of mobile subscribers shall include limited mobile subscribers and full mobile subscribers. The subscriber figure, as per the Home Location Register (HLR) and Exchange Data Record shall be taken into account for the purpose of calculating the number of mobile subscribers in a given Service Area. Further, the Department is at liberty to verify these figures from any other source. In case of merger of two Unified Access Service Licences, the total subscriber base of each will be taken into account.
6. Consequent upon the Merger of licences, the merged entity shall be entitled to the total amount of spectrum held by the merging entities, subject to the condition that after merger, the amount of spectrum shall not exceed 15 MHz per operator per service area for Metros and category 'A' Service Areas, and 12.4 MHz per operator per service area in category 'B' and category 'C' Service Areas. Subject to these limits, the merged spectrum will remain with the merged entity and would be treated as a starting point for further allocation and revision, as per the detailed Spectrum Guidelines to be issued separately. The guidelines on efficient utilization of spectrum and its pricing shall be applicable.
7. The spectrum utilization charges beyond 10 + 10 MHz for GSM based system and 5 + 5 MHz for CDMA/ETDMA based systems shall be prescribed separately. The merged entity will have to pay the prescribed charges from the date of merger of licences.
8. Discretion to choose the band to surrender the spectrum beyond the ceiling will be of the new entity.
9. All dues, if any, relating to the licence of the merging entities in that given service area, will have to be cleared by either of the two parties before issue of the permission for merger of licences.
10. Subject to the orders of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), in Appeal No. 11/2002 (BSNL Vs. TRAI) it may be noted that TRAI has already classified an operator having market share greater or equal to 30% of the relevant market as one having "Significant Market Power" (SMP) in its Reference Interconnect

Offer (RIO). In case the merged entity becomes an SMP post merger, then the extant rules & regulations applicable to SMPs would also apply to the merged entity.

11. The dispute resolution shall lie with Telecom Dispute Settlement and Appellate Tribunal as per TRAI Act 1997 as amended by TRAI (Amendment) Act 2000.

12. While granting permission for merger of licences, the Licensor may, suitably amend / relax/waive the conditions in the respective licences relating to the Clause on holding of 'substantial equity'.

13. LICENSOR reserves the right to modify these guidelines or incorporate new guidelines considered necessary in the interest of national security, public interest and for proper conduct of telegraphs.

14. These Guidelines can be reviewed after a period of one year, or earlier if warranted.

(Sukhbir Singh)
Director (BS.III)