



Association of Unified Telecom Service Providers of India

AUSPI/12/2008/093

3rd June 2008

Shri Nripendra Misra
Chairman
Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi - 110002

**Sub: AUSPI's Response to TRAI Consultation Paper No. 9/2008 on
Mobile Virtual Network Operator (MVNO)**

Dear Sir,

We are pleased to enclose AUSPI's Response to TRAI Consultation Paper No. 9/2008 on Mobile Virtual Network Operator (MVNO).

AUSPI requests the Authority to kindly take our views into consideration while coming out with its recommendations on the subject.

Thanking you,

Yours faithfully,


S.C.KHANNA
SECRETARY GENERAL

Encl: As above

Copy to:

Shri A K Sawhney, Member TRAI
Shri R N Prabhakar, Member TRAI
Shri R K Arnold, Secretary, TRAI
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AUSPI Response to TRAI Consultation Paper No. 9/2008 on Mobile Virtual Network Operator (MVNO)

General

AUSPI welcomes the introduction of MVNOs to stimulate the competition and provide innovation in the delivery of mobile and value added services. With the presence of large number of facility based operators in each service area, the Authority may carryout detailed analysis of likely impact on facility based competition between MNOs. It has been observed that MVNOs are deterrent for MNOs to make new investments in infrastructure. Please refer to OFTEL’s statement in this regard as follows:

“OFTEL accepts that depending on the form of MVNO, the incentives to invest may decline, diluting the benefits of infrastructure competition”

“Investment in network coverage may decline as a result of MVNO entry; existing network operators will not face the same incentives to build out network.”

Regulators in most competitive markets have adopted hands-off or light touch regulatory approach to MVNOs. This is also consistent with the Authority’s approach of non-intervention.

AUSPI supports a regulatory approach for MVNOs as follows:

- (i) the development of MVNO is left to the competitive market forces;
and
- (ii) Regulatory intervention only to remedy a market failure.



Unnecessary regulatory intervention to support MVNOs runs the risk of acting as disincentive for mobile facility based operators to deploy network, invest for quality improvement or to develop new innovative product and services.

Commercial negotiations are possible and regulatory intervention is not needed to facilitate MVNOs. Even in the absence of mandatory access regulation in European and other developed telecom markets, MVNOs have successfully negotiated commercial arrangements with MNOs and entered the mobile market. It is, therefore, contended that the regulatory framework which allows commercial relationships to be created between Mobile Operators and MVNOs is sufficient. In the competitive market, there is no need of regulatory intervention even if commercial negotiations fail between MVNOs and MNOs.

The Authority has rightly stated in the consultation paper that conditions under which MNOs provide wholesale services to MVNOs are far from those that raise specter of price squeeze and therefore does not require special attention of the Authority.

In the light of above, we strongly believe that in Indian Telecom market, there is no need of any regulatory intervention in form of mandating access or deciding the wholesale access to facilitate entry of MVNOs in market. We also see no justification of any regulatory action or policy whereby the Authority may have to intervene in case commercial negotiations breakdown between MNOs and MVNOs as such a policy would be disincentive for the negotiating party to reach an agreement on commercially agreed terms.



Response to the various questions raised in the consultation paper

1. **Do you agree with the definition of MVNO given in section 2.1.6? If not please suggest alternate definition with justification.**

No. We do not subscribe to the definition given in the para 2.1.6 of the consultation paper. The proposed definition goes much beyond the scope of MVNO. We would like to offer the following comments:

i. **Spectrum Sharing**

The spectrum sharing with MVNO proposed in the definition is not appropriate. The MVNO with spectrum will not be a ‘virtual network operator’ but will become a ‘facility based’ MNO’. The facility based MVNO is indistinguishable from Unified Access service provider and as such cannot be covered under a separate regulatory framework or licensing regime. **The suggested definition will bring in an element of Spectrum Trading.**

The Authority earlier had considered the issue of spectrum sharing while formulating its recommendations on infrastructure sharing. While the Authority had allowed infrastructure sharing but sharing of spectrum was not permitted. We believe that the present issue is covered under the earlier recommendation of the Authority and MVNO as such cannot be allowed to share spectrum with MNO. The Authority’s relevant recommendation in infrastructure sharing is given below:

The Authority recommends

- (i) *The licence conditions of UASL/CMSP should be suitably amended to allow active infrastructure sharing limited to antenna, feeder cable, Node B, Radio Access network (RAN) and transmission system only. Sharing of the allocated spectrum is not permitted*

ii. **Numbering Plan**

MVNO should have a separate mobile network code so that its subscribers could be distinguished from MNO’s subscribers in all respect.

In view of the above, we propose the following definition for MVNO:

‘MVNO is an entity that does not have assignment of spectrum but has its own mobile network code and can provide wireless access service to its own end users by accessing radio network of licensed Unified Access Service Provider or Cellular Mobile Service Provider’.

2. **Do you think there is a need to introduce MVNO in the Indian Telecom**



Market. If yes, is it the right time to introduce MVNO as a distinct service provider with its own licensing and regulatory framework? Please elaborate the comments with appropriate reasoning.

Timing of Introduction of MVNO

For healthy competition, enhancing tele-density, increasing affordability and choice, AUSPI feels it is quite appropriate for the introduction of MVNOs in the Indian Telecom Market. Looking at the vast territory of each licence area, and various VAS, it becomes difficult for a MNO to serve niche and far away customers in a satisfying manner. Further, to arrest the falling ARPUs, it is necessary to have a larger share of Value Added Services contribution in the total revenue. This is only possible if specialized entities like MVNOs are introduced in the market to address customer specific service. However, interest of existing operators be taken care of.

There are some issues that would be decided in commercial negotiations. The final shape of MVNO would depend on the arrangement between MNO and MVNO. Therefore the technical conditions in the licensing should be broad and allow negotiation on extent of cooperation between MNO and MVNO.

3. To what extent should the MVNO be permitted to set up their own infrastructure?

MVNOs being virtual operators can not be allowed to own or share spectrum with MNO. Since MVNOs will not be holding spectrum, they should not be permitted to install Radio Access Networks. The MVNOs at most can be allowed to have their own core and value added platforms like voicemail, IN, SMS, billing etc. They should be allowed to brand and bundle the product along with the distribution of their own product.

4. (i): What Regulatory Model should be followed for MVNO in the Indian context?

(ii): What kind of obligations may be imposed on MNOs so that Mobile Virtual Network Operations are implemented effectively in India benefiting the customers?

Please elaborate the comments with appropriate reasoning.

We do not support regulatory intervention for MVNO. We strongly support that a MVNOs may be allowed on commercially negotiated terms. The regulatory intervention is considered only when markets have failed and there is not enough competition. Since Indian mobile market is highly competitive, there is no need of any significant regulatory step requiring mandatory access to MVNO. It is expected that the HH Index which is already the lowest in the world will significantly fall further once new operators start services. In the competitive market, there should not be any need of regulatory intervention even if commercial negotiations fail



between MVNO and MNO. We should follow the example of European Union, where there is no directive that obliges MNOs to grant access to MVNOs.

- 5. What should be the eligibility criteria for MVNO?
&
6 Do you suggest different eligibility criteria for different MVNO models and regulatory frameworks? If Yes, Please suggest with justification thereof.**

The entry barriers should not be such that the genuine MVNOs are not able to make it. At the same time, there should be provisions so as to encourage serious players with sound background only.

We propose the eligibility criteria for MVNO as follows:

- (i) The applicant must be an Indian company, registered under the Indian Companies Act' 1956
- (ii) Networth Reasonable amount
- (iii) FDI 74% and all the other allied guidelines on FDI should be applicable on MVNOs.
- (iv) Cross holding No single company/ legal person, either directly or through its associates, shall have substantial equity 10% holding in more than one LICENSEE Company (MVNO of other MNO or MNO) in the same circle

The eligibility condition has been proposed taking in to account that only serious and sound players are there to provide service.

- 7. Should there be any restriction on the number of MVNOs attached to an MNO? Please elaborate the comments with appropriate reasoning.**

There should not be any restriction on number of MVNOs attached to a MNO. However, there should be restriction on being an MVNO with more than one MNO i.e. an MVNO should not work for more than one MNO in a service area. It should be ensured that a MNO does not oversell its capacity by compromising on the quality of service.

The MNOs and MVNOs should be subject to same QoS standards. MVNO should also be subject to the billing and metering audits, quality of service surveys etc.

- 8. What should be the commercial model/framework for spectrum sharing by MVNO; w.r.t. (i) Department of Telecom and (ii) MNO?**



There shall be no spectrum sharing by MVNO with MNO. We strongly disagree with the proposal to allow sharing of spectrum by MVNO. In case MVNO owns or shares spectrum then it will not be a virtual operator but a facility based MNO. The MVNOs will be indistinguishable from Unified Access service provider as both would be setting up their own access network. In case MVNO owns its own radio spectrum and radio access network then it should be governed and covered under the existing UASL regime and not under the proposed MVNO guidelines.

Since MVNOs can't own Spectrum, there is no need of any commercial model / framework for spectrum sharing with either the Govt. or MNO. Subscriber base of MVNOs should be counted with MNOs for all purpose including spectrum acquisition.

9. What should be the service obligations of MVNO? Please list them with justification thereof.

Once customer is acquired by MVNO then all service obligations and management becomes the responsibility of MVNO. These obligations shall include but not limited to:

- (i) Subscriber verification;
- (ii) Tariffs as per TRAI's Regulations, Directions and Orders;
- (iii) Informing DoT before launch of new services
- (iv) Implement Unsolicited Commercial Calls Regulation;
- (v) Mobile Number Portability subject to Regulation / Regime.
- (vi) Implement Telecom Consumers and Grievances Redressal Regulation, 2007
- (vii) Comply with applicable QoS Regulations
- (viii) Submit all statutory and other reports and information sought by DoT or TRAI or any other statutory body / agency.
- (ix) Carryout detailed accounting separation as mandated under the Accounting Separation regulation.
- (x) Maintain all books of account as mandated by DoT and TRAI.

10. What should be the method and consideration for determining the entry fee for MVNO?



Since no spectrum is being allotted to the MVNOs, there may be nominal entry fee of Rs.10 Crores, Rs. 5 Crores & Rs. 3 Crores for Category A, Category B & Category C circles respectively.

11. What should be the definition of AGR for MVNOs?

MNO and MVNO should have same definition of AGR for the purpose of payment of license fee. The license fees for MVNOs should be the same as for MNOs. The wholesale revenue paid by the MVNO to the MNO should not be included in the AGR for the MNO. Otherwise, it will come to double taxation.

12. What is the best way to protect the subscribers both in terms of Continuity of service and applicability of tariff plan:

i) In case of a dispute between MVNO and MNO?

ii) In case MVNO wants to exit the business.

The disputes between MVNO and MNO are to be treated as disputes between any other service providers. TDSAT has powers to adjudicate disputes between service providers and disputes between MNO and MVNO fall under TDSAT's jurisdiction. With respect to the tariffs, the MVNOs should file their own tariff plans with the TRAI. All regulations of the Authority regarding tariffs also should be applicable to MVNOs.

It is the duty of the licensee to ensure continuity of services to its customers unless License is Terminated or Suspended by the Licensor. MVNOs would be fully responsible for the services to their customers. It does not sound reasonable to ask the MNOs to inherit the subscribers under the same tariff plan as they were enjoying under the MVNO, if it decides to wind up. This should be left to the market forces. If an MVNO exists in the business then the customers are free to move to any other network and since MNP is coming up, this would not cause disruptions. And the market forces will determine as to what kind of options the other operators including the host MNO will offer to the customers.

13. Should there be any roll out obligations specified for MVNO? If yes, what should be the penal provisions for failure/ delay in fulfilling the obligations.

No. MVNO is not a facility based operator, there should not be a rollout obligation.

14. What shall be the specific guidelines on the Mergers and Acquisitions of MVNO? Please elaborate the comments with appropriate reasoning.

Merger of MVNO with other MVNO of same MNO or MVNO/s with its MNO should be allowed as per the existing merger and acquisition guidelines.



- 15. Should there be any restriction on cross holdings between two MVNOs and between MVNO and an MNO in a service area? Please comment on the nature and scale of restructuring.**

We do not support imposition of restrictions / cross holding, especially our market is competitive. Notwithstanding this, cross holding restrictions are already in place for MNO; MVNO should also be subject to similar restriction. MNO not be allowed to invest in MVNO of other operator.

- 16. What should be the FDI limit for MVNO?**

Since both MVNOs and MNOs will be providing similar services in a given area, the FDI limit should be same as UASL i.e 74%.

- 17. What should be the quantum of FBG and PBG for MVNO?**

Since MVNO will not have rollout obligations, PBG may not be insisted upon. However, the FBG should be Rs. 10 Crores for Metro and Category A Circles, Rs. 5 Crores for Category B Circles and Rs. 3 Crores for Category C Circles.

- 18. Any other relevant issue you would like to suggest/comment upon.**

Roaming Issue

MVNO if enters into an agreement with an operator like BSNL for a particular circle which does not have roaming arrangements with any other operators then it is likely that MVNO subscribers would not be able to avail roaming services. **It is, therefore, proposed that roaming amongst all MNOs be mandated.**

Numbering

The MVNO should have separate mobile network code so that its subscribers could be distinguished from MNO' subscribers in all respect.

Number Portability

The MVNO will have the same obligation to port numbers as imposed on MNOs. However, there should be a distinction between a customer request for porting of number and the porting of entire subscriber base of MVNO from one MNO to another MNO. The porting of entire subscriber base should not be allowed under the MNP guidelines. The MVNO cannot unilaterally decide to port numbers to another MNO.

Quality of Service

MVNO should be responsible for compliance of QoS parameters, billing, customer acquisition etc or TRAI's other Regulations/Directions/Orders.



MNOs should not be held responsible merely because MVNO has entered into an agreement for using its access service. MVNOs will be separate licensees and separate entity and shall be required to comply with all rules, regulations, order, licensing conditions etc.