

No.20-100/2007-AS-I
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20, Ashok Road, New Delhi.

22nd April, 2008

Subject: Guidelines for intra service area Merger of Cellular Mobile Telephone Service (CMTS)/ Unified Access Services (UAS) Licences

The intra service area Merger of CMTS / UAS Licences shall be permitted as per the guidelines mentioned below for proper conduct of Telegraphs and Telecommunication services, thereby serving the public interest in general and consumer interest in particular: -

1. Prior approval of the Department of Telecommunications shall be necessary for merger of the licence.
2. Merger of licences shall be restricted to the same service area.
3. Merger of licence(s) shall be permitted in the following category of licences:
 - (i) Cellular Mobile Telephone Service (CMTS) Licence with Cellular Mobile Telephone Service (CMTS) Licence;
 - (ii) Unified Access Services Licence (UASL) with Unified Access Services Licence (UASL);
 - (iii) Cellular Mobile Telephone Service (CMTS) Licence with Unified Access Services Licence (UASL);

Merged licences in all the categories above shall be in UASL category only.

4. The relevant service market be defined as wire line and wireless services. Wireless service market shall include fixed wireless as well.
5. Exchange Data Records (EDR) shall be used in the calculation of wireline subscribers and specifically Visitor Location Register (VLR) data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base.

6. For determination of market power, market share of both subscriber base and adjusted gross revenue of licensee in the relevant market shall be considered to decide the level of dominance for regulating the M&A activity.
7. The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market.
8. The market share of merged entity in the relevant market shall not be greater than 40% either in terms of subscriber base separately for wireless as well as wireline subscriber base or in terms of Adjusted Gross Revenue.
9. No M&A activity shall be allowed if the number of UAS/CMTS access service providers reduces below four in the relevant market consequent upon such an M&A activity under consideration.
10. Consequent upon the Merger of licences in a service area, the post merger licensee entity shall be entitled to the total amount of spectrum held by the merging entities, subject to the condition that after merger, licensee shall meet, within a period of 3 months from date of approval of merger by the Licensor, the prevailing spectrum allocation criterion separately for GSM & CDMA technologies, as in case of any other UAS/CMTS licensee(s).

In case of failure to meet the spectrum allocation criterion in the above mentioned period of 3 months, post merger Licensee shall surrender the excess spectrum, if any, failing which it may be treated as violation of terms & conditions of the licence agreement and action accordingly shall be taken. In addition, after the expiry of above mentioned period of 3 months, the applicable rate of spectrum charge shall be doubled every 3 months in case of excess spectrum held by post merger licensee.

Further, the spectrum transfer charge, as may be specified by the Government, shall be payable within the prescribed period.

11. On merger, spectrum enhancement charge shall also be charged as applicable in case of any other UAS/CMTS licensee.
12. Discretion to choose the band to surrender the spectrum beyond the ceiling will be of the new entity.
13. 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 licensees before issue of the permission for merger of licences.
14. In case consequent to merger of licences in a service area, the licensee becomes a “Significant Market Power” (SMP) post merger, then the extant rules & regulations applicable to SMPs would also apply to the merged entity.
15. The annual license fee and the spectrum charge are paid as a certain specified percentage of the AGR of the licensee. On the merger of the two licenses, the AGR of the two entities will also be merged and the license fee will be therefore levied at the specified rate for that service area on the resultant total AGR. Similarly, for the purpose of payment of the spectrum charge, the spectrum held by the two licensees will be added/merged and the annual spectrum charge will be at the prescribed rate applicable on this total spectrum.

However, in case of holding of spectrum for various technologies by the entity subsequent to M&A, spectrum charges & license fee etc. or any other criterion being followed by the licensor shall be applicable as in case of any other UAS/CMTS licensee.

16. For regulating acquisitions of equity stake of one access services licensee Company/ legal person/promoter company in the enterprise of another access services licensee in the same license area, present guidelines on Substantial Equity shall continue i.e.

“No single company/ legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. ‘Substantial equity’

herein will mean 'an equity of 10% or more'. A promoter company/ Legal person cannot have stakes in more than one LICENSEE Company for the same service area."

17. Any permission for merger shall be accorded only after completion of 3 years from the effective date of the licences.
18. The duration of licence of the merged entity in the respective service area will be equal to the remaining duration of the Licence of the two merging licencees whichever is less on the date of merger.

For example, if licence of company `A' is merging with Licence of company `B', and the remaining duration of licence of 'A' or `B' whichever is less will be applicable for the merged entity in the respective service area.

19. The dispute resolution shall lie with Telecom Dispute Settlement and Appellate Tribunal as per TRAI Act 1997 as amended by TRAI (Amendment) Act 2000.
20. 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.
21. These guidelines are issued in supersession of earlier guidelines issued vide Office Memo No.20-232/2004-BS-III dated 21st February, 2004.

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For and on behalf of the President of India
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