

No. 10-21/2005-BS-I (Vol.II)/52
Government of India
Ministry of Communications & IT
Department of Telecommunications
Sanchar Bhavan, 20 - Ashoka Road
New Delhi - 110001

Dated: 14TH December 2005.

To

All NLD Licensees

SUB: Amendments in National Long Distance Licence Agreement.

The undersigned has been directed to convey the approval of the competent authority for amendments to various clauses of the Licence Agreement for National Long Distance (NLD) Services with immediate effects. The details are enclosed as Annexure (08 pages).

Other terms and conditions of the existing NLD licence (including all amendments) shall remain unchanged .

(Govind Singhal)

Director (BS-III)

For and on behalf of President of India

Copy to :

1. Secretary TRAI
2. Sr. DDG(TEC)
3. DDG(LF)

ANNEXURE

| S.N. | Existing Clauses | Amended Clauses | | | | | | | | | | |
|-------|--|------------------|---------------------------|------------------|---------------------------|----------|--|--|--|--|--|---|
| 1. | <p>1 OWNERSHIP OF THE LICENCEE COMPANY</p> <p>1.1 The LICENCEE shall ensure that the total foreign equity in the LICENCEE Company does not, at any time during the entire LICENCE period, exceed 49% of the total paid up equity. The details of the Indian & Foreign promoters with their respective equity holdings in the LICENCEE company as disclosed on the date of signing of the LICENCE AGREEMENT, are as follows:</p> <table border="1"><thead><tr><th style="text-align: center;">S.No.</th><th style="text-align: center;">Name of the promoter</th><th style="text-align: center;">Indian / foreign</th><th style="text-align: center;">Percent of paid up Equity</th><th style="text-align: center;">Networth</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr></tbody></table> <p>1.2 There shall be no change in the Indian and Foreign promoter(s) or their equity participation unless permitted by the LICENCOR in the interest of Service.</p> <p>1.3 The LICENCEE shall have a minimum paid up equity capital of Rs. 250 Crores, on the date of application.</p> <p>1.4 The promoters of LICENCEE company shall have a combined net worth of Rs 2500 crores and the net worth of only those promoters shall be counted who have at least 10% equity stake in the total equity of the LICENCEE company.</p> | S.No. | Name of the promoter | Indian / foreign | Percent of paid up Equity | Networth | | | | | | <p>1. OWNERSHIP OF THE LICENCEE COMPANY</p> <p>1.1 The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., herein after referred as FDI, will not exceed 74 per cent. The 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company and the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 percent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis.</p> <p>1.2 The majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens. The appointment to these</p> |
| S.No. | Name of the promoter | Indian / foreign | Percent of paid up Equity | Networth | | | | | | | | |
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| <p>1.5 The LICENCEE may, with prior written consent of the LICENCOR, replace a promoter(s) by another promoter(s) of equal or more net worth.</p> | <p>positions from among resident Indian citizens shall be made in consultation with serious Indian investors. Serious investor has been defined below in para 1.7(i).</p> <p>1.3 The Share Holder Agreements (SHA) shall specifically incorporate the condition that majority directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens and shall also envisage the conditions of adherence to Licence Agreement.</p> <p>1.4 FDI upto 49 per cent will continue to be on automatic route. Foreign Investment Promotion Board (FIPB) approval shall be required for FDI in the licensee company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment proposals, FIPB shall take note that investment is not coming from unfriendly countries.</p> <p>1.5 The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.</p> <p>1.6 FDI shall be subject to laws of India and not the laws of the foreign country/countries.</p> <p>1.7 (i) In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company.</p> <p>(ii) The Company shall acknowledge compliance with the licence agreement as a part of Memorandum of Association of the Company. Any violation of the licence agreement shall automatically lead to the</p> |
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| | | <p>company being unable to carry on its business in this regard. The duty to comply with the licence agreement shall also be made a part of Articles of Association.</p> <p>(iii) Chief Technical Officer (CTO)/Chief Finance Officer (CFO) shall be resident Indian citizens. The Licensor can also further notify key positions to be held by resident Indian citizens. Licensee shall notify the names and nationality of such officers on 1st of January and 1st of July every year to Licensor.</p> <p>(iv) The Company shall not transfer the following to any person/ place outside India:-</p> <p>(a) any accounting information relating to subscriber (except for roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ;</p> <p>(b) user information (except pertaining to foreign subscribers using Indian Operator's network while roaming); and</p> <p>(c) details of their infrastructure/network diagram except to telecom equipment suppliers/manufacturers who undertake the installation, commissioning etc. of the infrastructure of the licensee Company on signing of non-disclosure agreement.</p> <p>(v) The Company when entering into roaming agreements with service providers outside India must provide, on demand, the list of such users (telephone numbers, in case of foreign subscribers using Indian Operator's network while roaming).</p> |
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| | | <ul style="list-style-type: none">(vi) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavor to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.(vii) No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any place outside India. For this purpose, the location of satellites serving for domestic traffic shall not be treated as outside India.(viii) No Remote Access (RA) shall be provided to any equipment manufacturer or any other agency out side the country for any maintenance/repairs by the licensee. However, RA may be allowed for catastrophic software failure (such as failure to boot up etc.) which would lead to major part of the network becoming non-functional for a prolonged period, subject to meeting the following conditions:-<ul style="list-style-type: none">(a) Intelligence Bureau and Licensor will be notified, when RA is to be provided.(b) Remote Access password is to be enabled for a definite period only and only for access from pre-approved locations of the Original Equipment Manufacturer (OEM) Vendors and only for the equipments specifically under repair/maintenance.(c) The control of Remote Access i.e. |
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| | | <p>activation, transfer of data, termination etc. shall be within the country and not at a Remote location, abroad.</p> <p>(d) The Government agency will be given all support to record the transactions for on-line monitoring.</p> <p>(e) Any equipment or software that forms part of the overall monitoring shall not be permitted to have remote access under any circumstances.</p> <p>(f) The terms catastrophic software failure, major part of the network and prolonged period used under this clause shall be defined by the Licensor from time to time.</p> <p>(ix) It shall be open to the Department of Telecommunications to restrict the Licensee Company from operating in any sensitive area from the National Security angle.</p> <p>(x) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.</p> <p>(xi) For monitoring traffic, the licensee company shall provide blind access of their network and other facilities as well as to books of accounts to the security agencies.</p> <p>(xii) In case of not adhering to Licence conditions envisaged in para 1.7, the licence(s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance/financial bank guarantee(s) and the licensor shall not be liable for loss of any kind.</p> <p>1.8 The conditions at para 1.1 to 1.7 above shall also be applicable to the existing companies operating telecom service(s),</p> |
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which had the FDI cap of 49%. The Indian & Foreign equity holdings in the LICENSEE company as disclosed by the LICENSEE company on the date of signing of the LICENCE AGREEMENT, are as follows:

INDIAN EQUITY.....

FOREIGN EQUITY.....

The LICENSEE shall declare the above information as on 1st January and 1st July by 7th January and 7th July respectively to LICENSOR. This is to be certified by the LICENSEE company's company secretary or statutory auditor.

1.9 The LICENSEE shall also ensure that any change in share holding shall be subject to all necessary statutory requirements.

1.10 Change in the name of the LICENSEE company shall be permitted in accordance with the provisions under the Indian Companies Act, 1956.

1.11 The LICENSEE company shall have a net worth as well as paid up capital of Rs 2.5 crores. The net worth shall mean as the sum total, in Indian rupees, of paid up equity capital and free reserves. The net worth of promoters shall not be counted. The networth as well as paid up capital is to be maintained during currency of the LICENSE.

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| <p>2</p> <p>2.2 (a) The NLD Service means picking up, carriage and delivery of switched bearer telecommunication service over a long distance network i.e., a network connecting different Short Distance Charging Areas (SDCAs). However, for the present LICENCE, the LICENCEE will only pick up, carry and deliver Inter- Circle traffic which goes outside or across from one circle to another, from and to the network of Access Providers, excluding purely intra -circle traffic except when such pick up, carriage and delivery is by way of mutual agreement with Basic Service Provider in accordance with their respective agreed terms.</p> <p>(b) The LICENCEE can also make mutually agreed arrangements with Basic Service Providers for picking up, carriage and delivery of the traffic from different legs between Long Distance Charging Center (LDCC) and Short Distance Charging Centers (SDCCs).</p> <p>(c) In the case of Cellular Mobile Telephone Service provider, the inter-circle traffic shall be handed/taken over at the Point of Presence (POP) situated in LDCA at the location of originating/terminating Gateway Mobile Switching Center (MSC) or Mobile Switching Center in a circle.</p> <p>(d) The LICENCEE shall be required to make own suitable arrangements / agreements for leased lines with the Access Providers for last mile.</p> <p>NOTE: The list of different Telecom Circles for the purposes of this LICENCE, which can be modified from time to time for the reasons of reorganization of territorial jurisdiction or administrative convenience, is annexed as Annexure-III.</p> | <p>2.2 (a) The NLD Service refers to the carriage of switched bearer telecommunications service over a long distance and NLD Service Licensee will have a right to carry inter circle traffic excluding intra -circle traffic except where such carriage is with mutual agreement with originating service provider.</p> <p>(b) The LICENCEE can also make mutually agreed arrangements with Basic Service Providers for picking up, carriage and delivery of the traffic from different legs between Long Distance Charging Center (LDCC) and Short Distance Charging Centers (SDCCs).</p> <p>(c) In the case of Cellular Mobile Telephone Service traffic, the inter-circle traffic shall be handed/taken over at the Point of Presence (POP) situated in LDCA at the location of Level I TAX in originating/terminating service area. For West Bengal, Himachal Pradesh and Jammu & Kashmir such locations shall be Asansol, Shimla & Jammu respectively.</p> <p>(d) NLD service Licensee shall be required to make own suitable arrangements / agreements for leased lines with the Access Providers for last mile. Further, NLD Service Providers can access the subscribers directly only for provision of Leased Circuits/Close User Groups (CUGs). Leased circuit is defined as virtual private network (VPN) using circuit or packet switched (IP Protocol) technology apart from point to point non-switched physical connections/transmission bandwidth. Public network is not to be connected with leased circuits/CUGs. It is clarified that NLD service Licensee can provide bandwidth to other telecom service licensee also.</p> |
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| | | NOTE: The list of different Telecom Service Area , which can be modified from time to time for the reasons of reorganization of territorial jurisdiction or administrative convenience, is annexed as Annexure-III. |
| 3 | <p>5.1 The LICENCEE shall pay one time Entry Fee of Rs 100 crores which shall be non-refundable, before the signing of the LICENCE. In addition thereto, four Bank Guarantees (BG) of Rs. 100 crores each shall be given, before signing of the LICENCE, which shall be released on completion of each phase of roll out i.e. fulfilling the network Roll out obligations by establishing Point of Presence in Long Distance Charging Areas (LDCAs) as specified in clause 9.2 of this LICENCE Agreement in the manner described below:-</p> <ul style="list-style-type: none"> i. Completion of phase I Rs.100 Crores ii. Completion of Phase II Rs.100 Crores iii. Completion of Phase III Rs.100 Crores iv. Completion of Phase IV Rs.100 Crores <p>Each phase described above shall be taken as an independent obligation unconnected with other. Any shortfall below the percentage of network coverage - Phase I, II , III & IV will result in encashment & forfeiture of the particular BG relatable to that phase. The decision of the LICENCOR shall be final in this regard.</p> | 5.1 The LICENCEE had paid one time non-refundable Entry Fee of Rs 100 crores. |
| 4 | 5.2 In addition to the Entry Fee described above, the LICENCE FEE in the form of Revenue Share @ 10% (cap) plus prescribed contributions from time to time by the LICENCOR towards the Universal Service Obligation Fund (hereinafter called USO fund) with a total cap of 15% | 5.2 In addition to entry fee described above the annual licence fee including USO contribution, @ 15% of the Adjusted Gross Revenue (AGR) shall be payable. With effect from 1.1.2006, the annual licence fee including USO contribution shall be 6% of the |

| | of the annual Revenue Share is payable. Provisionally at present rate of USO is 5% of the Revenue for this LICENCE. | Adjusted Gross Revenue | | | | | | | | | | | |
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| 5 | <p>6.2 Licence fee shall be payable in four quarterly instalments during each financial year. The quarterly instalments of licence fee for the first three quarters of a financial year shall be payable by the Licensee within 15 days of the completion of the relevant quarter of the year. This fee shall be paid by the Licensee on the basis of actual revenues (on accrual basis) for the quarter duly certified with an affidavit by a representative of the Licensee, authorised by a Board resolution coupled with General Power of Attorney. However, for the last quarter of financial year, the Licensee shall pay the licence fee by 25th March on the basis of expected revenues for the quarter, subject to a minimum payment equal to the actual revenue share paid for the previous quarter. For delayed payment beyond the said due dates, penalty as stipulated in licence for delayed payments will apply. The Licensee shall adjust and pay the difference between the payment made and actual amount duly payable (on accrual basis) for the last quarter of the Financial year within 15 days of the end of the said quarter.</p> | <p>6.2 Licence fee shall be payable in four quarterly instalments during each financial year. The quarterly instalments of licence fee for the first three quarters of a financial year shall be payable by the Licensee within 15 days of the completion of the relevant quarter of the year. This fee shall be paid by the Licensee on the basis of actual revenues (on accrual basis) for the quarter duly certified with an affidavit by a representative of the Licensee, authorised by a Board resolution coupled with General Power of Attorney. However, for the last quarter of financial year, the Licensee shall pay the licence fee by 25th March on the basis of expected revenues for the quarter, subject to a minimum payment equal to the actual revenue share paid for the previous quarter. For delayed payment beyond the said due dates, penalty as stipulated in licence for delayed payments will apply. The Licensee shall adjust and pay the difference between the payment made and actual amount duly payable (on accrual basis) for the last quarter of the Financial year within 15 days of the end of the said quarter. The Licensor shall have the right to inspect books of accounts of the Licensee, and, in addition have an independent audit conducted to ascertain the correctness of the licence fee paid.</p> | | | | | | | | | | | |
| 6 | <p>9.2 The LICENCEE undertake to fulfil the following minimum network roll out obligations:</p> <table border="1" data-bbox="181 1241 1131 1316"> <thead> <tr> <th data-bbox="181 1241 421 1278">Phase</th> <th data-bbox="421 1241 660 1316">Time Period (From the</th> <th data-bbox="660 1241 900 1316">Cumulative percentage of</th> <th data-bbox="900 1241 1131 1316">Cumulative percentage of</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> | Phase | Time Period (From the | Cumulative percentage of | Cumulative percentage of | | | | | Deleted | | | |
| Phase | Time Period (From the | Cumulative percentage of | Cumulative percentage of | | | | | | | | | | |
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| | Effective Date) | National Coverage at the LDCA level where Point of Presence has to be established | Coverage of uneconomic and remote areas | | | | |
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| I | 2 Years | 15 | 2 | | | | |
| II | 3 Years | 40 | 4 | | | | |
| III | 4 Years | 80 | 7 | | | | |
| IV | 7 Years | 100 | All | | | | |
| <p>The details of Long Distance Charging Areas (LDCAs) to be covered in each phase including the list of uneconomic and remote areas in the network roll-out of the LICENCEE are given in Annexure-II (to be provided by the LICENCEE) whereas the list of LDCAs is annexed at Annexure -IV and the list of remote and uneconomic areas is also annexed at Annexure-V.</p> <p>NOTE: Provided always that LICENCOR may modify the list of LDCAs on the basis of reorganization / bifurcations of States/LDCAs/ Districts etc.</p> | | | | | | | |
| 7 | <p>13.2 The LICENCOR may, without prejudice to any other remedy available to it for the breach of any conditions of LICENCE, by a written notice of 30 days issued to the LICENCEE at its registered office, terminate this LICENCE under any of the following circumstances :</p> <p>If the LICENCEE :</p> <p>a) fails to commission or deliver the SERVICE within the time period(s) specified in the LICENCE.</p> | | | <p>13.2 The LICENCOR may, without prejudice to any other remedy available to it for the breach of any conditions of LICENCE, by a written notice of 30 days issued to the LICENCEE at its registered office, terminate this LICENCE under any of the following circumstances :</p> <p>If the LICENCEE :</p> <p>a) fails to commission or deliver the SERVICE within the</p> | | | |

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| | <p>b) fails to perform any obligation(s) under the LICENCE including remittance of timely payments of fee and other dues due to the LICENCOR;</p> <p>c) fails to rectify, within the time prescribed, any defect as may be pointed out to the LICENCEE by the LICENCOR.</p> <p>d) goes in liquidation or ordered to be wound up.</p> <p>e) is recommended by TRAI for termination of LICENCE for non compliance of the terms and conditions of the LICENCE.</p> | <p>time period(s) specified in the LICENCE.</p> <p>b) fails to perform any obligation(s) under the LICENCE including remittance of timely payments of fee and other dues due to the LICENCOR;</p> <p>c) fails to rectify, within the time prescribed, any defect as may be pointed out to the LICENCEE by the LICENCOR.</p> <p>d) goes in liquidation or ordered to be wound up.</p> <p>e) is recommended by TRAI for termination of LICENCE for non compliance of the terms and conditions of the LICENCE.</p> <p>(f) fails to comply with FDI norms.</p> |
| 8 | <p>16.3 Interconnection between the networks of different service providers shall be as per national standards of CCS No.7 issued from time to time by Telecom Engineering Center (TEC).</p> | <p>16.3 Interconnection with the switched networks of different service providers within India shall be as per national standards of CCS No.7 issued from time to time by Telecom Engineering Center (TEC). For interconnection with Packet Switched network of different service providers within India relevant national standards are to be followed. For inter-networking between circuit switched and VoIP based network of NLD Service Licensee & Access Service Licensee, the NLD service licensee shall install media Gateway Switch. There shall be no bar installation of Media Gateway switch by Access Service Licensee.</p> |
| 9 | <p>16.4 The requisite monitoring facilities shall be provided by the LICENCEE as and when required by the LICENCOR.</p> | <p>16.4 The requisite monitoring facilities shall be provided by the LICENCEE as and when required by the LICENCOR. The details of leased circuit provided by the Licensee shall be provided monthly to security agencies & Sr.DDG(Vig.), Sanchar Bhawan, New Delhi.</p> |
| 10 | <p>17.1 It shall be mandatory for Basic Service Providers, Cellular Mobile</p> | <p>17.1 It shall be mandatory for Basic Service Providers, Cellular</p> |

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| | Service Providers, Cable Service Providers, to provide interconnection to NLD service providers whereby the subscribers could have a free choice to make inter-circle/international long distance calls through NLD service provider | Mobile Service Providers, Unified Access Service Providers, Cable Service Providers, to provide interconnection to NLD service providers whereby the subscribers could have a free choice to make inter-circle/international long distance calls through NLD service provider. |
| 11 | 17.2 NLD Service provider shall be required to make own suitable arrangements / agreements for leased lines with the Access Providers for last mile | 17.2 NLD Service provider shall be required to make own suitable arrangements / agreements for leased lines with the Access Providers for last mile. Further, NLD Service Providers can access the subscribers directly only for provision of Leased Circuits/Close User Groups (CUGs). Leased circuit is defined as virtual private network (VPN) using circuit or packet switched (IP Protocol) technology apart from point to point non-switched physical connections/transmission bandwidth. Public network is not to be connected with leased circuits/CUGs. It is clarified that NLD service Licensee can provide bandwidth to other telecom service licensee also. |
| 12 | | Added as – “17.10. The NLD service licensee shall, in no case, permit connectivity or similar type of service to any other person or any licensee (including those Other Service Providers who do not require licence under section 4 of the Indian Telegraph Act,1885) whose licence is either terminated or suspended or not in operation at any given point of time. In the event of any connectivity allowed beforehand, the NLD service licensee shall be obliged to disconnect or sever connectivity immediately without loss of time, and further, upon receipt of any reference from the Licensor in this regard, disconnection shall be made effective within an hour of receipt of |

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| | | such reference. The NLD service licensee shall keep the Licensor indemnified from any claim of such Telecom Service Provider or third party. On the question of disconnection the decision of the Licensor shall be final.” |
| 13 | 25.2 SERVICE will be commissioned after obtaining clearance from LICENCOR after successful completion of interconnection tests as mentioned in para 25.1 above. | Deleted |
| 14 | <i>Annexure –II, Annexure –I V and Annexure – V</i> | Deleted |
| | Existing Annexure –III and Annexure - IV | Attached. |