



Cellular Operators Association of India

RSM/COAI/189
November 1, 2011

Shri. R. Chandrashekhar, IAS
Secretary,
DoT and Chairman, Telecom Commission,
Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi - 110001

Dear Sir,

Re: Intra Circle Roaming Agreement for 3G

This is to seek your kind intervention in a position regarding 3G Intra-Circle Roaming, that the DoT appears to be adopting.

Recently some of our member operators have been receiving queries from the TERM cells of DoT regarding the Roaming Agreement for provisioning of 3G services. One of the TERM cell has even gone to the extent of declaring the roaming agreement as illegal. Also the media reports suggest that there is a high degree of confusion at DoT Headquarters on interpretation of the NIA for auction of 3G and BWA. Such a situation is resulting in unnecessary speculation in media and causing serious damage to the reputation of our member companies who are providing the services in strict compliance to the license conditions and the terms of NIA for 3G & BWA.

We respectfully submit the following facts regarding the licensing conditions and terms of NIA for auction of 3G&BWA spectrum-

1. A Unified Access Licensee and provide all types of access services including 2G and 3G mobile services.
2. The UASL allows the licensee to build a technology neutral network.
3. Also a licensee can enter an agreement with other operators in India (both inter and intra circle) or abroad to provide the full mobility services to its subscribers irrespective of the technology.
4. There is misconception that the UASL were amended for provision of 3G services and hence there are two type of license one which permits 2G services and other which permits 2G+3G services. This assumption is far from the reality that the UASL is a technology neutral access service license which allows the provision of all type of access services.
5. We would like to clarify that post auction of 3G and BWA spectrum, the license were amended only to permit the use of additional spectrum allocated through the auction and its payment of spectrum usage charges thereof.



6. Prior to the 3G/BWA auction, the Department of Telecom had made it categorically clear that the **3G/BWA auction is for grant of spectrum and not for grant of license to provide 3G or BWA services**.
7. The approach adopted by the TERM cells is at variance with the Government's stated position at the time of auction of 3G and BWA spectrum.
8. In fact the roaming arrangement have enabled the consumers of the operators who have not been allocated 3G spectrum to enjoy the benefits of high speed data services and these arrangements have helped to meet the objectives of encouraging efficient utilization of spectrum and of promoting broadband penetration to citizens.
9. This has also resulted in additional revenue from the roaming subscriber and hence the additional revenue share to the Government in the form of License Fee, Service Tax, etc.
10. The roaming agreements between the operators having network of different technologies is not a new phenomenon. In fact it is quite common on international roaming where various countries have installed their mobile networks with different technologies e.g. 2G, 3G, etc.
11. In fact, intra-circle roaming has advanced the consumer benefit to a great extent without putting any immediate pressure on the Government to increase the availability of 3G spectrum.
12. Discouraging roaming arrangements between operators, by taking any skewed or narrow view, would lead to the following issues:-
 - a. The customers of the operators who have not been allocated the 3G spectrum would be deprived of high speed data services.
 - b. It would be against the Government's commitment before the auction of 3G and BWA spectrum. It is worthwhile to mention that during the auction process of 3G and BWA spectrum, DoT had specifically stated that "Intra-Circle Roaming will be permitted".
 - c. It would also be in contradiction to DoT's most recent comments on TRAI's Recommendations dated May 11, 2010 and Feb. 8, 2011 wherein it was stated that "Intra Service Area roaming in 3G network where one of the operators does not have 3G spectrum shall not be treated as spectrum sharing.
 - d. It would be contrary to the "public interest". In fact, during June 2008, the Intra service roaming (ICR) was introduced by DoT by way of a license amendment on the grounds of Public Interest only.
 - e. It will create a contrary and anomalous situation where International and Inter-circle Roamers (even if that operators has not been allocated 3G spectrum in any of the circle) would be free to roam on any network in India e.g. 2G or 3G etc but the customers within the same circle will be precluded from doing so.



In Summary, we believe that any disallowance of intra-circle roaming will be a substantial reversal of the DoT's stated position on the issue and a reinterpretation of the fundamental nature of the technology neutral UAS license structure.

Further, to meet the customer's expectations, the operators are required to provide seamless 3G services on pan India basis which has forced the operators to enter into the roaming agreement. Also, the operators who have paid heavily for 3G spectrum are already finding it difficult to recover their costs. So any conflicting communication by DoT/TERM cells in this regards brings further uncertainty to the forecasted revenue stream and hence making it even more difficult to arrange the much needed funding to roll out of 3G networks.

Sir, we seek your kind intervention to have the DoT adopt the position that intra-circle roaming for 3G services is a permitted activity in consonance with the UASL and NIA (3G & BWA) conditions and the documented statements made by the DoT itself.

We are also enclosing a detailed representation as Annexure to this letter.

We thank you for your kind consideration.

Kind regards,

Rajan S. Mathews
Director General

CC : Shri. Chandra Prakash, Member (T), DoT
: Shri. A.K. Mittal, Sr. DDG (AS), DoT
: Shri. Ram Narain, DDG (TERM), DoT
: Dr. Ashok Chandra, Wireless Advisor, WPC



Annexure I

Appendix to Letter to Secretary, DoT on Intra-Circle Roaming

TERM cells of DoT and media had been certain queries on the Roaming arrangement for 3G. The following paragraphs shall clarify the factual position on the question being raised.

1) The definition of Service in the Licence Agreement.

- a. The definition of "SERVICE" given in UAS Licence Agreement states "*Service covers collection, carriage, transmission and delivery of voice or non-voice messages over LICENSEE's network in licensed service area and includes provision of all types of services except for those requiring a separate Licence*";
- b. In NIA, the definition of 3G / BWA service has been given as under:-
In case of Successful Bidders, services offered under the scope of respective service licenses using 3G / BWA spectrum assigned through the auction process.
- c. No amendment was done in the licence agreement of the operators who were allocated 3G spectrum in regard to the definition of "SERVICE" so definition given in UAS Licence Agreement prevails.

2) The Roaming Services allowed in license are technology neutral.

- a. The UAS License expressly allows Licensees to enter into roaming agreements with other Licensees and to provide national and international roaming services to their customers. Section 2.2(a)(i) of the UAS License states:

"However, the licensee shall be free to enter an agreement with other service provider(s) in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised / directed by Licensor otherwise"
- b. DoT vide an amendment to the UAS and the CMTS license on 12th of June 2008 extended the permission of roaming to the Intra-circle scenario. This amendment thus is a part of the UASL/CMTS license terms and permits operators to enter into "***mutual commercial agreements for intra-service area roaming facilities***" in addition to the International and National Inter-circle roaming facility.
- c. It is clear from the above that a telecom service provider (UAS/CMTS licensee) is therefore permitted to enter into intra-circle and inter-circle roaming arrangements with any other Licensees to allow its subscribers to avail services in the network of another Licensee.



- d. The amendment to the licence agreement of original 3G allottees is called "Amendment of Unified Access Services (UAS) Licence Agreement(s) to use 3G spectrum for provision of Telecom Access Services". The amendment covers use of spectrum, validity period of 3G spectrum, roll out obligations, licence fee, spectrum usage charges, merger of 3G spectrum, breach, revocation and surrender of 3G spectrum. There is no specific mention in the amendment to 3G service. Thus, the amendment only transfers the right to use the 3G spectrum to the winner.

3) No Requirement to comply with Roll Out Obligations when 3G Services are provided by way of Roaming arrangements

- a. Under the UAS License, a telecom service provider is permitted to enter into intra-circle and inter-circle roaming arrangements with any other licensees to allow its subscribers to avail full mobility services in the network of another Licensee.
- b. DoT vide letter no.842-725/2005-VAS(Pt.)/291 on the "Impact of Amendment of Clause 2.2(a)(i) of UASL issued vide Ref. No. 842-725/2005-269 dated 12th June 2008 on Roll-Out Obligations has stated that:
"Roaming arrangement is a matter between two service providers and has no relation with Roll-Out obligations imposed on the Licensee."
- c. The original 3G operator is still responsible for network rollouts and in case of failure it stands to lose its 3G spectrum.

4) During the auction of 3G and BWA, the Government had auctioned only the new spectrum and not a new licence or service.

- a. The spectrums in 2.1 GHz and 2.3 GHz bands were auctioned last year for 3G and BWA services respectively. In respect of existing licensees, who had won the right to use 2.1 GHz spectrum, the respective amendment in the license to use the 3G spectrum in 2.1 GHz was done for provision of telecom access services which have already been allowed under the respective UAS License.
- b. It was clearly specified in the Notice Inviting Applications (NIA) to participate in the 3G auction that the existing Licensees, if they are winning bidders, would be granted the right to use the 2.1 GHz band under their current UAS License while new entrants who had won the right to use the 2.1 GHz band under the auction would be granted a fresh UAS License.
- c. Prior to auction, when some stakeholders asked the questions related to auctioning of spectrum or new licence or service, DoT categorically made it clear that the auction is for spectrum and it is nothing to do with any service or licence. DoT's response on such questions are as under:-



Q. No.	Question	Response of DoT
359	Whether voice and interconnection is permitted to BWA operator? It is worthwhile to note that present ISP licence does not permit this.	The award of BWA spectrum by itself <u>does not confer the right to provide services</u> . An operator may provide only those services for which it has a licence. <u>The current auction deals with grant of spectrum, not licence.</u>
274	In light of the policy of technology neutrality and Unified Access Service licenses, are there any restrictions whatsoever on the use of the 800 /900/1800 /2100 /2300 MHz, or any other spectrum band, for providing access services?	The permissible usage is governed by the provisions of the respective service licenses
188	Please confirm whether 3G services can be rolled out in 2G spectrum assignments?	Provision of services is governed by the licence held by the service provider. The current auctions are for spectrum, not licenses.

Thus, it is clear that the auction was for spectrum and not for any new licence or service.

- 5) The roaming was specifically allowed as a clarification in the NIA and no condition regarding the allocation of spectrum was prescribed to be complied by the roaming partner.
 - a. To avoid any further doubts, in February 2010, when the Government was finalising the modalities and framework for auction of 3G spectrum and its subsequent use, the industry had specifically asked the DoT whether intra-circle roaming for offering of services to customers would also be applicable for 3G in case some operators are not able to acquire spectrum in all circles.



Q. No.	Question	Response of DoT
48	<p>a. <u>After 3G auctions not all existing UASL licensees will hold 3G spectrum in any licensed areas due to the limited 3G blocks on offer. Will customers of UASL licenses who do not hold 3G spectrum be allowed to roam on the 3G networks of other UASLs in the same licensed area?</u></p> <p>b. will it not be customer friendly for the government to mandate that <u>3G spectrum holders allow the customers of operators not holding 3G spectrum in the same licensed area to roam on their networks</u> under an administered pricing mechanism?</p>	<p>a. The roaming policy is applicable to the licences and not to specific spectrum bands. Hence, roaming will be permitted.</p> <p>b. However, at present, mandatory roaming or MVNO is not part of the Government's telecoms policy.</p>

Thus, it is clear that 3G intra-circle roaming can take place for whole service area between a 3G and non-3G operator.

6) **The Government does not consider Intra Circle Roaming as spectrum sharing.**

- a. In its reference dated 10th October 2011 to TRAI on its recommendations "Spectrum Management and Licensing Framework", DoT itself has clarified that **"Intra Service Area in 3G network where one of the operators does not have 3G spectrum shall not be treated as spectrum sharing"**. [para no. 4.118 (6.61) (v), page no. 36].
- b. Further, the intra service area roaming was introduced by DoT by way of license amendment dated 12 June 2008 on the grounds of 'public interest or the proper conduct of the service'. The provision of 3G intra service area roaming allows subscribers to gain access to high speed data services and it meets the larger national goal of high speed broadband access to all citizens.

Thus, the 3G roaming arrangement cannot be termed as a spectrum sharing.



7) The 3G Arrangement cannot be termed as MVNO

In an MVNO-MNO arrangement, the customer acquisition is undertaken by the MVNO and the customer remains on the MNO network only for access services. However, a 3G Roaming arrangement, is mainly an arrangement between an MNO-MNO, as the customer remains on his home network for voice and VAS services.

8) No Loss to Government on account on Roaming.

a. **Auction Amount:** Prior to auction, some stakeholders specifically asked whether an intra-circle roaming agreement can place between a 3G and non-3G operator and the DoT expressly permitted it. All operators participated in the auction with this knowledge only and the revenue from auction surpassed everyone's expectations. Thus, the current roaming agreements should not raise anyone eyebrows;

b. **Recurring spectrum charge:** There is a misconception that the provision of 3G services through roaming arrangements amounts to loss of revenue to the Government. According to the UAS License terms and conditions, a UAS Licensee is authorized to provide all types of access services under the existing license. As mentioned hereinabove, even the DoT has specifically mandated that the 3G/BWA auction was for the grant of spectrum, and not for a 3G license. Therefore, the amounts paid were towards the spectrum allocation and not towards grant of license to provide 3G services.

However, since the telecom operators did not have the required spectrum in all the circles, they have entered into roaming arrangements. Under these roaming arrangements, there is neither any grant of additional spectrum to the telecom operators nor do the roaming arrangements amount to spectrum sharing between the operators, as clarified by DoT. We therefore fail to understand the loss of revenue alleged by the Government, given that the telecom operators have paid all amounts due towards spectrum allocation.

On the contrary, the Government stands to gain from the roaming arrangements between telecom operators. Previously, in the absence of intra-circle roaming only 3G operators paid spectrum charges. However, after entering into roaming arrangements with other non-3G operators in different licensed service areas, non-3G operators are also paying spectrum usage charge & license fee on their 3G revenue. Therefore, the Government now has an additional source of revenue due to maximum spectrum usage and enhanced subscribers base.

c. **Consumer Benefit:** In a market comprising of 13-15 telecom operators, an artificially scarcity was created when only 3-4 3G spectrum slots were auctioned. This spectrum scarcity would have hindered the Government from achieving its objective of extending the benefits of 3G services to maximum customers. Discouraging roaming arrangements between operators would result in the customers of non-3G operators of any licensed service area being deprived of 3G services. Therefore, the need of the hour is to make 3G services available to customers of even the non-3G operators by execution of intra-



circle roaming agreements. In fact, intra-circle roaming has advanced the consumer benefit to a great extent without putting any immediate pressure on the Government to increase the availability of 3G spectrum.

9) **The Security Issues and Lawful Interception and Monitoring in case of intra & inter-circle roaming.**

The modus operandi of monitoring / interception remains the same whether a subscriber is roaming on other operator's 2G network or 3G network (for both intra-circle and inter-circle). In the 2G intra circle roaming scenario, the security agencies have been giving interception request to both roaming seeker and provider. This is done to ensure a seamless interception of the communication in the event of a subscriber making a choice of using other operators' network.

The same process is implemented for both intra-circle & inter-circle in case of 3G roaming also.

Hence, no additional efforts are required either from security agencies or from the operator for monitoring of a 3G roaming subscriber vis-à-vis 2G roaming subscriber.

10) **Summary**

- a) DoT has already permitted the roaming of the customers of UASL licenses who do not hold 3G spectrums on the network of the operators who hold 3G spectrum.
- b) Any change of view by the DoT now would therefore mean a substantial reversal of stated position on the issue and respective roaming policy by the Government before and after auction, but also the re-interpretation of fundamental nature of the technology-neutral UASL licensing structure.
- c) As a bidder in the auction, our member operators relied upon the clear statements from the DoT to assess the market value of the spectrum on offer – both the retail opportunity to sell services directly to customers, but also the opportunity to enter into intra-circle roaming arrangements with other licensed operators.