



Telecom Regulatory Authority of India

Recommendations

on

**“Terms & Conditions for Resale in International
Private Leased Circuits (IPLC) Segment”**

March 23, 2007

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International Private Leased Circuits (IPLC) Segment

Background

The Telecom Regulatory Authority of India (TRAI) had submitted its recommendation to the licensor on 16.12.2005, on the measures to promote competition in International Private Leased Circuits (IPLC) in India. The licensor vide letter no. 16-3/2006-BS-I dated 23.11.2006 informed that its recommendations pertaining to **“Introduction of Resale in IPLC segment”** and **“Access to essential facilities including landing facilities for submarine cables at cable landing stations”** have been accepted. Licensor also requested TRAI to give its recommendations on terms & conditions for introduction of Resale in IPLC segment.

To formulate recommendation on the issue of Introduction of Resale in IPLC segment, TRAI issued a consultation paper on 22.12.2006. The Authority received comments from the stakeholders. The Consultation Paper and the comments received from the stakeholders were hosted on TRAI’s website. Open House Discussion was also held on 29.01.2007 at Delhi. The inputs received from stakeholders and during open house discussion have been duly considered by TRAI while finalizing its recommendation on the subject.

The TRAI’s recommendations to the Licensor on the “Terms and Conditions for Introduction of Resale in International Private Leased Circuits (IPLC) Segment” follow:-

1. Scope of Licence for Resale in IPLC Segment

1.1 During the consultation process, the Authority received various comments on the scope of the Resale in the IPLC segment such as

providing full freedom to Resellers to access cable landing stations and international bandwidth from the foreign carriers' in the capacity denomination of N X 64 E1, N X E1 up to DS3 only. After due consideration and careful examination of all the comments, the Authority makes the following recommendations on the Scope of Licence for Resale in International Private Leased Circuits (IPLC) segment:-

- (a) Provide end-to-end IPLC between India and country of destination for any capacity denomination.
- (b) Public Switched Telephone Network / Public network not to be connected with IPLC.
- (c) The resellers to take IPLC from International Long Distance Service Providers (ILDOS) licensed under section 4 of the Indian Telegraph Act, 1885.
- (d) Resellers shall be permitted to enter into an arrangement for leased line with Access Providers, National Long Distance Service Providers and International Long Distance Service Providers for provision of IPLC to end consumers.
- (e) The Resellers can access the subscribers for provision of IPLC only and not for any other purpose.
- (f) Resellers should be allowed to sell bandwidth on retail basis with, or, without, value addition to end consumers. Resellers should not sell the bandwidth to other Resellers.
- (g) Co-location of the equipment of the resellers at cable landing station should be on the same terms and conditions as may be made applicable from time to time for licensed International Long Distance Operators.

- (h) Resellers should be allowed to create own infrastructure for multiplexing, de-multiplexing, billing system and related to customer management.
- (i) Licence of the Resellers should be for the whole country and not limited to any single service area.

2. Eligibility criteria

2.1 The Authority received various comments from stakeholders on eligibility criteria. Some of the suggestions are briefly summarized below:-

- (i) The overall regulatory and licensing framework for Resellers should be in line with that of International Long Distance Operators.
- (ii) Light regulatory approach to be adopted.
- (iii) Minimum net worth to be specified.

2.2 The above suggestions have been examined in the context of key objective **to create effective competition in the IPLC segment** and the Authority recommends:-

- (a) Open competition in the Resale in the IPLC segment without any ceiling on the number of Resellers.
- (b) Licence may be issued to all such applicants who meet eligibility criteria in terms of financial parameters and licence conditions.

- (c) Reseller should be an Indian company, registered under the Companies Act 1956 and complies with all other laws of the land.
- (d) Reseller will ensure that the telecommunication installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and the public policy.
- (e) The company itself should have a net worth as well as paid up capital of Rs. 2.5 Crores on the date of application and shall submit the certificate to that effect from Company Secretary / Company's statutory Auditor along with the application for license. 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 for determining the net worth of the company for this purpose. The minimum net worth and paid up capital shall be maintained during currency of the Licence.

3. Limit of Foreign Equity

3.1 Resellers as such would be providing the IPLC bandwidth on the retail basis to the subscribers. At present this IPLC bandwidth is being provided by the licensed ILDOs only. Hence the terms & conditions for foreign equity should be consistent with those of ILD sector as applicable from time to time.

4. Entry Fee

4.1 The entry fee for the International Long Distance licence is Rs. 2.5 Crores. As the scope of the Resellers is limited to providing the

International Private Leased Circuits only and they are not permitted to sell the voice traffic (telephony), the Authority recommends that it would be appropriate to impose an entry fee of Rs. 1 Crore, which shall be non-refundable, in order to have a balance between encouraging the new players to enter into the market and also at the same time to ensure that only serious players enter into the market.

5. Licence Fee

5.1 Since the scope of the licence is limited only to providing IPLC, the Authority does not find it necessary to impose any rollout obligation on the Resale licence.

5.2 In order to maintain a level playing field, the Authority recommends that licence fee may be kept as applicable to International Long Distance Licence which is at present 6% of Adjusted Gross Revenue (AGR). As no rollout obligation is being suggested, in order to ensure that the Reseller makes serious efforts in establishing his business, the Authority recommends that a minimum amount of annual licence fee of Rs. 5 lakhs or revenue share as applicable to ILDOs (at present 6% revenue share of annual AGR), whichever is higher shall be applicable. For part period of the year, the licence fee shall be calculated on pro-rata basis.

6. Financial Bank Guarantee

6.1 The Resellers should submit Financial Bank Guarantee (FBG) of Rs. one Crore (Rs 1.00 Crore) within one year from the effective date of licence agreement or before the commencement of the service, whichever is earlier. FBG shall be valid for a period of one year and shall be renewed from time to time for such amount as may be directed by the Licensor.

6.2 The Resellers, on its own, shall extend the validity period of the FBG on similar terms at least one month prior to date of its expiry without any demand or notice from the Licensor on year to year basis. Any failure to do so, shall amount to violation of the terms of the licence and entitle the Licensor to encash the FBG and to convert it into a cash security, without any reference to the Resellers at his risk and cost. No interest or compensation whatsoever shall be payable by the Licensor on such encashment.

6.3 Without prejudice to its rights of any other remedy, the Licensor may encash the FBG in case of any breach, in the terms & conditions of the Licence.

7. Security conditions

7.1 Clause 23 of Licence agreement for International Long Distance (ILD) service mandates security conditions to be applicable on ILDO. Some of the security conditions are:-

- (a) Installation of the monitoring equipment at the gateway station by the ILDOs.
- (b) After installation of the monitoring equipment, they should get the same inspected by monitoring/security agencies.
- (c) The cost of monitoring equipment to be borne by ILDOs.
- (d) ILDOs to make necessary arrangement for monitoring of all communication traffic by the government agencies at locations designated by them.
- (e) To make arrangement for monitoring simultaneous communication traffic (at least 210 channels) by Government

security agency at location individually desired by the Central Government, State Government / union territory.

- (f) The requisite infrastructure in terms of hardware / software required for monitoring of all telecommunication traffic is also to be engineered / provided, installed and maintained by the ILDOs at their cost.

7.2 Resellers are allowed to take international bandwidth from the licensed ILDOs only. The ILDOs have to install monitoring equipment as explained in above paragraph. Therefore, mandating the installation of same kind of monitoring equipment would unnecessarily duplicate the infrastructure already developed / installed by the licensed ILDO for the same purpose. Hence Authority recommends that there is no need to install monitoring equipment by the Resellers. However, Resellers have to extend full support to security agencies and follow the guidelines issued from time to time by the security agencies / licensor / TRAI. ILDO and Reseller, both, shall be responsible for breach of any security conditions or instructions issued by security agencies / Licensor in accordance with their functional responsibility.

7.3 Therefore, the Authority recommends that DOT may like to work out the exhaustive security conditions in consultation with concerned security agencies / departments. Some of the security conditions to be observed by Resellers are stated below:-

- (a) The Government or its authorized representative shall have right to inspect the sites used for extending the service and in particular but not limited to, have the right to have access to IPLCs, terminating interface, hardware / software and distribution frame. ILDO and Reseller both will provide the necessary facility for continuous monitoring of the system as required by the Department of Telecommunications or its

authorized representative. Inspection will ordinarily be carried out after reasonable notice except in circumstances where giving such a notice will defeat the very purpose of the inspection.

- (b) The Resellers shall provide a type of service/ protocol for which the concerned International Long Distance Operator does have the capability for interception in the monitoring equipment.
- (c) Without prejudice to the liability of ILDO, the Resellers should cooperate with security agencies, work as a nodal interface for security agencies and should also extend scrutiny of the customer base as and when demanded by the agencies.
- (d) Without prejudice to the liability of ILDO the Resellers should pass on any direct request placed by security agencies on him for interception to the concerned authorized representative of the ILDO for necessary actions.
- (e) Wherever considered appropriate Department of Telecommunications may conduct any inquiry either suo-moto or on complaint to determine whether there has been any breach in compliance of terms and conditions of the Licence and for such inquiry the Reseller shall extend all facilities and co-operation.
- (f) It shall be open to the Licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.

- (g) In order to maintain the privacy of voice and data, monitoring shall only be upon authorization by the Union Home Secretary or Home Secretaries of the States/ Union Territories or by such officer or authority as may be authorized by the Central Government from time to time.
- (h) 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.
- (i) Resellers shall provide necessary facilities depending upon the specific situation at the relevant time to the Government to counteract espionage, subversion, sabotage or any other unlawful activity.
- (j) Resellers shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place.
- (k) Licensor reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security and / or public interest.
- (l) Resellers will ensure that the telecommunication installation carried out by it should not become a safety hazard and is not in contravention of any statute / rule or regulation and public policy.
- (m) Resellers is obliged to provide, without any delay, tracing facility to trace nuisance, obnoxious, offensive or malicious calls, messages or communication transported through his equipment and network.

- (n) Resellers shall not employ bulk encryption equipment in its network. Any encryption equipment connected to the Licencee's network for specific requirements has to have prior evaluation and approval of the licensor or officer specially designated for the purpose.
- (o) Resellers should provide a list of his subscribers to authorized security agencies directly as well as to the licensor and it should be updated at quarterly intervals. Addition and deletion in this list should be reported on monthly basis. Licencee shall ensure adequate verification of each and every customer before enrolling him as a subscriber.
- (p) A format would be specified by the Licensor to delineate the details of information required before enrolling a customer as a subscriber. Identification of the subscriber / business entity supported by documents like photo identity card, ration card, driving licence, passport, voter's identity card, PAN card, registration certificate etc. shall be pre-requisite before providing the service.

8. Remote access

Conditions for the Remote Access should be same as is applicable for ILD licence from time to time.

9. Tariffs

The Authority recommends that the Resellers would charge the tariff for service as per the TRAI's tariff order / Regulations / Directions issued in this regard from time to time. Resellers should also fulfill all requirements (including publication of tariff notification and provision of information) as may be directed by TRAI through its orders / Regulations

/ Directions issued from time to time under TRAI Act 1997 as amended from time to time.

10. Preparation of Accounts:

10.1 Resellers shall draw, keep and furnish independent account for the service and shall fully comply with the orders, directions or regulations as may be issued from time to time by the Licensor / TRAI, as the case may be.

10.2 The Licensor or the TRAI as the case may be, shall have a right to call for and the Reseller shall be obliged to supply and provide for examination, any books of accounts that the Reseller may maintain in respect of the business carried on to provide the service under this Licence at any time.

11. Duration of the licence

11.1 Resellers are non-facility based operators or minimum facility based operators. They may either lease infrastructure from the facility based operator or decide to develop their own infrastructure in tune with their licence requirements. They will be taking bandwidth only from ILDOs licensed under Indian Telegraph Act 1885. Therefore, their licence duration should be less than the duration of ILDOs licence.

11.2 The licence period of ILDOs is 20 years which is extendable by a period of 5 years subject to satisfactory performance in accordance with terms and conditions of the Licence particularly in regard to Quality of Service parameters. Therefore, the Authority recommends the duration of the licence for the Resellers to be 10 years which is extendable by 5 years subject to satisfactory performance in accordance with terms and conditions of the licence.

12. Customer service

12.1 The Authority recommends that:-

- (a) The LICENSEE shall register demand for SERVICE without any discrimination from any applicant and provide the SERVICE, unless otherwise directed by the LICENSOR. The LICENSEE shall not in any manner discriminate between subscribers and shall provide service on the same commercial principle. He is required to maintain a transparent, open to inspection waiting list. Without prejudice to any action which may be taken under the TRAI Act or any other law for the time being in force, the LICENSOR shall have the right to impose suitable penalty, not limited to a financial penalty, apart from any other actions for breach of this condition.
- (b) The LICENSEE shall launch the SERVICE on commercial basis only after commencement of registration in the manner prescribed. Before commencement of SERVICE in an area, the LICENSEE shall notify and publicize the address where any subscriber can register its demand for such service. Any change of this address shall be duly notified by the LICENSEE.
- (c) The LICENSEE shall ensure continuity of services to its customers.
- (d) The LICENSEE's contractual obligations towards the CUSTOMER will include terms and conditions under which the SERVICES shall be provided or terminated. The LICENSEE shall notify to CUSTOMERS all the arrangements with respect to billing, repair, fault rectification, compensation or refunds etc. All complaints in this regard

will be addressed/ handled as per the guidelines, orders or regulations or directives issued by the LICENSOR / TRAI.

- (e) Any dispute, with regard to provision of SERVICE shall be a matter only between the aggrieved party and the LICENSEE or between the service providers, as the case may be. The LICENSEE shall duly notify this to all before providing the SERVICE. And in no case the LICENSOR or the TRAI shall bear any liability or responsibility. Hence, licensee shall keep the Licensor and TRAI indemnified from all claims, cost, charges or damages in the matter.
- (f) Reseller shall clearly indicate the specifications of the service to the subscriber at the time of entering into contract with such subscriber.

13. Quality of Service (QoS)

13.1 The Authority recommends:-

- (a) Reseller shall ensure the quality of service as specified or directed by the Licensor or TRAI. The Licensee shall adhere to such QoS standards and provide timely information as required therein.
- (b) Licensor or TRAI may carry out performance tests and also evaluate the QoS parameters in Licensee's network at any time during the tenure of the licence period. The Licensee shall provide ingress and other support including instruments, equipment etc. for carrying out such performance tests and evaluation of quality of service parameters.

14. Other conditions

14.1 The Authority also recommends following conditions for Resellers:-

- (a) Resellers shall not, without the prior written consent of the Department of Telecommunications either directly or indirectly assign or transfer this licence in any manner whatsoever to a third party or enter into any agreement for sub-leasing / or partnership relating to any subject matter of the licence to any third party either in whole or in part i.e. no sub-leasing / partnership / third party interest shall be created.
- (b) Resellers shall ensure that there is a logical separation between the International Private Leased Circuits of Resellers and any other telecom activity provided by the same company.
- (c) Resellers shall be obliged to furnish any information to the Licensor as called upon from time to time. Licencee shall also submit information to TRAI as per any order, direction and regulation issued from time to time under the provisions of TRAI Act 1997 or any other law for the time being in force or any amended or modified.
- (d) Resellers shall be solely responsible for installation, networking and operation of necessary equipments and systems, redressal of subscribers' complaint, issue of bills to its subscribers, collection of revenues, attending to claims and damage arising out of the services provided by him.

- (e) Resellers shall comply with any direction / regulation / orders issued by Licensor or TRAI under TRAI Act 1997 or any other law for the time being in force.

15. Amendment in the licence agreement for International Long Distance Operators (ILDs)

The draft amendment required in the ILD licence conditions is enclosed as **Annexure**.

Apart from amendment in Clause 2.2(a), **DOT need to amend the ILD service licence conditions to ensure that ILDOs are responsible for any security breach or instructions in accordance with functional responsibility of ILDO for sale of IPLC bandwidth to Resellers. This needs to be notified simultaneously with the amendment in clause 2.2 (a).**
