

# Comments on Draft Regulatory and Licensing Guidelines for Issuing Renewal License to Existing Mobile Licensees for Establishing, Operating and Maintaining GSM/CDMA Cellular Mobile Telecommunication Services in Bangladesh

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The current licenses of Grameenphone, Banglalink, Axiata and Citycell are to expire in 2011. It is in this background that BTRC has developed draft license renewal guidelines. The process is already delayed and is likely to have depressed investment because of the uncertainty. Thus it is best that any and all submissions on the said draft are considered and the guidelines finalized at the earliest to reflect economic efficiency and transparency. It is equally important to send out a clear signal to the world that principles of good governance have been and will be applied in the sector as large foreign investments are required to achieve the stated objectives of Digital Bangladesh. In other words investor confidence is vital. Our views, highlighting efficiency, transparency and good governance, on selected important sections of the draft guidelines are as below.

1. **Duration of License:** While the initial renewal for 15 years is good and corresponds to generally accepted practice the reason to restrict the subsequent renewal for just 5 years is not clear. Given investments in telecoms are long-term in nature the 5 year period is too short. Short license periods negatively distort investment behavior. It would be ideal if license renewal procedures are stated upfront so that the current situation does not recur. BTRC must find the right balance in terms of certainty for the operators and the rapidly changing market, regulatory and policy conditions in terms of license duration.

## 2. Fees and Charges for Licenses and Spectrum

- 2.1. The two key issues are (a) separation of license from spectrum and (b) the administratively set fees and charges for license and spectrum, separately.

- 2.2. In fact, both issues must be considered together. Because a mobile license has no value without the spectrum (in bands that are commercially valuable because of standards) available to offer services, the initial value of a license has to reflect the value of spectrum. In other words there will be no value in an initial license if that licensee has no spectrum to offer services prescribed in the license. However, the actual amount of spectrum that is required will not be the same for all operators all the time. Therefore, there is merit in decoupling the fees and charges after the first assignment.

- 2.3. The draft guidelines propose to charge a license renewal fee of BDT 10 crore from each operator and a spectrum assignment fee of BDT 150 crore per MHz of GSM 1800MHz band and CDMA frequency and BDT 300 crore per MHz of GSM 900MHz band from each operator for the initial assignment of spectrum. Thereafter an annual fee, based inter alia on the number of subscribers, is to be paid.
- 2.4. First, the upfront lump-sum amounts for the renewal of license appear to have been arbitrarily established by BTRC. There is no logical justification for the amount or any transparency in how it was arrived at. Given the substantial sums involved, it is not clear why there is an additional annual fee; in 2008, it appears that the assignment and the fee was for a 18-year period. Even if there is an annual fee, it is not advisable to anchor it on number of subscribers since there is no logical connection between the two and the linkage may create market and data-reporting distortions.
- 2.5. The license fee is low relative to the spectrum charge. As per the draft document a spectrum fee was first charged in 2008 when additional spectrum was provided to Grameenphone, Banglalink and Axiata. BTRC had then charged BDT 80 crore per MHz in the 1800MHz band for 18 years subject to the renewal of licenses. However what is not mentioned in the draft is that given the very high price tag Banglalink and Axiata had only taken up less than half of the spectrum offered.<sup>1</sup> In the context of offering data-rich applications that would be essential for the success of Digital Bangladesh, one wonders why disincentives for spectrum use are being created, when spectrum is available and not in use. In this background the basis for BDT 300 crore per MHz proposed in 2011 for the original spectrum becomes important. The reason for the further increase in fees in just over 2 years needs an explanation.
- 2.6. In any event, the proposed method for issuing licenses and spectrum is contrary to emerging best practices in that the amount charged should reflect the correct economic value of the spectrum and its efficient use via the license; the concept of economic efficiency alluded to at the very beginning is central. This becomes more relevant in light of the higher than optimal administratively set price charged in 2008 (as seen ex-post). Thus the question becomes one of what the 'right price' is for spectrum.
- 2.7. The 'right price' is always a convergence of competing interests of demand and supply and to administratively establish the same is extremely difficult.

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<sup>1</sup> Banglalink took up a block of 2.6MHz from 5.1MHz offered and Axiata only 2.0MHz from 5.0MHz offered.

If somehow the amount is 'wrong' then it can have long-term negative consequences to all stakeholders; consumers, government and operators leading to sub-optimal use of resources causing high opportunity costs in economic development.

- 2.8. It is not that Bangladesh is new to market determined pricing of licenses. When Warid was issued a GSM 1800MHz mobile license in 2005 it is reported that the fee was determined to be USD 50 million (at today's exchange rate BDT 35.6 crore) based on an auction. Furthermore, in 2008, Banglalion Communications is reported to have secured a WiMAX license via an auction for BDT 21.6 crore. Thus the BDT 10 crore non-transparent license renewal fees and the BDT 150 crore per MHz or BDT 300 crore per MHz spectrum fee depending on the band is a departure from the previous relatively transparent processes.
- 2.9. It is our view that BTRC reconsider this position and opt for a market determined or at the very least market-based fee spectrum.
- 2.10. While there are multiple ways in which a market price could be determined via an auction or mixed procedure that includes an auction and a reserve price BTRC could consider at least the 2004 license renewal of Pakistan and the 2004 license renewal of Norway. In the former case it was a pure auction while in the latter it was an open public discussion based reserve price which could have gone for an auction but did not.<sup>2</sup> Given Teletalk and Warid licenses are also coming due in a few years (2019 and 2020) establishing a

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<sup>2</sup> Pakistan: A hybrid sealed-bid, ascending auction format was followed to auction two new mobile licenses (in addition to the existing four). Of the 33 who offered expressions of interest, 9 entered the first stage of the auction by depositing a bond. The first stage was a sealed bid auction, with the top 5 bidders being allowed to enter the next stage. The second stage bidding started at the highest bid amount from the first stage. Eventually Telenor and Space Telecom won the license at a price of USD 291 million. Since Space Telecom couldn't eventually meet Pakistan Telecom Authority's payment deadlines their license was offered at the same price to Warid Telecom which accepted. Importantly, PTA had ruled prior to the auction that the existing mobile operators would have to pay the same license fee (as determined by the auction) to renew their own licenses when they expire. Paktel and Instaphone's licenses expired in 2005; Mobilink's license expired in 2007. Thus even the incumbents were keen on a lower license price for the new entrants.

Norway: The licenses of Telenor and Netcom were to expire in late 2005. In mid 2004 the Ministry of Transportation and Communications held an open consultation to determine a license renewal fee. At the end of 2004 the Minister announced that both would be offered license renewals for a lump sum fee of NOK 100 million (USD 17.4 million) and an annual fee of NOK 9.6 million (USD 1.7m). However, it was also announced that if any other party also expressed interest, then an auction would be held with the reserve price set at NOK 100 million. No third party expressed interest, thus, Telenor and Netcom received licenses renewal at the stated terms.

market determined fee would be much more far-sighted than reliance on an administratively established amount.

- 2.11. The annual charges of the license and spectrum could perhaps be justified on account of the cost to BTRC for maintenance of services. But, the need to charge more for the annual spectrum usage after already paying a per MHz charge to reflect greater need based on the number of subscribers we feel is illogical. This is in addition to a proposed 7.0 percent share of gross revenue (5.5 percent general charge and 1.5 percent social obligation charge) and other revenue share on international calls. Such charges almost seem as if success is being penalized. They also have the effect of distorting incentives for accurate data reporting.
3. **Spectrum Trading.** The draft guidelines indicate that BTRC 'may' publish guidelines of spectrum trading. However, this should be done immediately so that there would be confidence in the market that in case of market failure in initial allocation that it would be possible to trade in a secondary market for better and more efficient reallocation of spectrum.
4. **Summary.** As stated at the start, our submissions are limited to a few important issues, particularly in terms of economic efficiency, transparency and good governance. We believe that introducing a market-based process to determine the price for licenses and spectrum (can still be per MHz model), bundled or otherwise, would be helpful in ensuring such economic efficiency, transparency and good governance. This would in turn be helpful in building confidence to attract greater foreign investments to the sector to accelerate the drive towards a Digital Bangladesh. Bangladesh has succeeded through market approaches to provide its people low-cost voice connectivity. These same mechanisms must be mobilized to provide low-cost data connectivity and thereby enable the vision of Digital Bangladesh. Simply prioritizing revenue maximization is not the way to achieve these noble objectives.