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NEW GUIDELINES FOR CAPTIVE NON-PUBLIC NETWORK AND SPECTRUM LEASING TO ENTERPRISES: CAN IT RESOLVE THE SPECTRUM ALLOCATION CONUNDRUM?

2 July 2022 In a recent development, on 27 June 2022, the Department of Telecommunications (**DoT**) issued guidelines for captive non-public network (**CNPN**) license (**CNPN Guidelines**) and leasing of spectrum to enterprises (**Spectrum Leasing Guidelines**) (collectively referred to as the **Guidelines**), along with corresponding amendments to existing telecom licenses (**Amendments**).

The Guidelines have been issued to further goals of the National Digital Communications Policy, 2018 which *inter alia* aims to promote emerging digital technologies like artificial intelligence, Machine-to-Machine (**M2M**) communications, Internet of Things (**IoT**), robotics, mobile edge computing, etc. In order to aid the advancement of such technologies and industry 4.0 revolution, use of private captive networks has been found to be critical. The issuance of the Guidelines and the Amendments may prove to be a blessing for the tech industry and ease the issues for leasing of spectrum by telecom service providers (**TSP**).

Background

As a backdrop, DoT received several requests from the industry regarding spectrum requirements for captive usage of 5G applications, use of access spectrum for satellites, etc. In this light, DoT had sought recommendations of the Telecom Regulatory Authority of India (**TRAI**) on *inter alia* the quantum of spectrum/band, if any, to be earmarked for private captive/isolated 5G networks and how to address the spectrum requirements of captive 5G applications of industries for machine/plant automation purposes, M2M, etc. Some industry bodies such as Cellular Operators Association of India had requested DoT to not reserve any spectrum which has been identified for International Mobile Telecommunications (**IMT**), for private captive networks.

TRAI in its recommendations on 'Auction of Spectrum in frequency bands identified for IMT/5G' dated 11 April 2022, among other, acknowledged that there is demand for localized private captive cellular networks. TRAI noted that this need can be met by using unlicensed spectrum, leasing of spectrum by TSPs to private entities or earmarking some dedicated spectrum for private captive networks. During the consultations, many stakeholders supported the idea of granting permission for spectrum leasing by TSPs. Ultimately, TRAI also *inter alia* recommended that TSPs having 'access spectrum' may be permitted to lease this spectrum to enterprises having captive wireless private network permission or license. In this regard, it was recommended that DoT should formulate appropriate guidelines for grant of such permission / license.

Salient features of the CNPN license

In light of foregoing, DoT issued the much-anticipated Guidelines which contemplate a licensing framework for CNPN. Some key features of the CNPN license are set out below:

- **Eligibility:** According to the CNPN Guidelines, the applicant entity should be an Indian entity registered under the Companies Act, 2013 with a minimum network of INR 100 crores. It is also required that the applicant company should be the occupant of the geographical areas / properties (either owned or leased) where the CNPN is intended to be established. Such areas have been termed as 'area of operation' of the applicant entity for the purposes of the CNPN license.
- **Scope of license:** The CNPN license permits establishment of indoor / within premise isolated CNPN for own use within the areas of operation of the license. Importantly, this license is only limited to captive use by enterprises and cannot be used for providing

commercial telecom services. TSPs having access service authorisation are permitted to provide CNPN as a service to enterprises.

- **Restriction on connection with public networks:** As CNPN is a private network, the connection to public networks (e.g., PSTN, PLMN, GMPCS, etc.) has been expressly prohibited. Instead, CNPN licensees shall be permitted to connect their CNPNs established at multiple locations through leased lines.
- **Financial requirements:** One of the major relaxations with the CNPN license (in contrast to some other telecom licenses) is that there is no requirement to pay any entry fee and license fee, which is typically based on the 'adjusted gross revenue' (**AGR**) of the telecom licensee. Typically, these are some cost-intensive factors with telecom licenses. With only the requirement to pay a non-refundable application processing fee of INR 50,000, CNPN license may be a lucrative choice for enterprises seeking to establish their own CNPN by leasing spectrum from TSPs, provided the entity can meet the hefty minimum net worth requirement for eligibility.
- **Security conditions:** CNPN licensees will be required to comply with relevant network security conditions and instructions regarding the procurement of telecom equipment from 'trusted sources' issued by the Government from time to time.

Leasing of spectrum to CNPN licensees

The CNPN Guidelines permit leasing of IMT spectrum by TSPs having access spectrum to CNPN licensees on mutually agreed terms and conditions, subject to requirements under the Spectrum Leasing Guidelines.

To facilitate this, corresponding Amendments were also issued which permit TSPs having access service authorisation to lease spectrum and provide CNPN as a service to enterprises using network resources (such as through network slicing) over their PLMN (which is a public network).

With the recent spectrum auctions, TSPs will be permitted to lease auction acquired/liberalised IMT spectrum. There are also certain obligations cast upon such TSPs including submission of details of leased spectrum, areas pertaining to the lease, etc. Upon entering into the spectrum lease, the CNPN licensees will also be required to obtain the Standing Advisory Committee on Radio Frequency Allocation (**SACFA**) clearance and import certificate.

Comment

The past few weeks have shown a tussle between TSPs and tech companies with regard to allotment of spectrum and setting up of private networks. On one hand, the tech companies have been arguing in favour of direct spectrum allotment and setting up of private networks for advancement of technology in India. On the other hand, the telecom operators opposed the direct allocation of IMT / 5G spectrum to private entities for setting up on CNPN, citing the potential losses and adverse impact on 5G network rollouts and services offered by TSPs.

With the Guidelines, it seems like the regulatory authorities are aiming at a balanced approach. However, some concerns have already been raised owing to the high minimum network requirements and uncertainty of spectrum pricing. It will also have to be seen if further guidance is provided on the definition of 'isolated network'. Only time will tell how this framework is implemented in practice and if the existing tension(s) between the tech companies and TSPs will be eased.

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