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Government of India  
Ministry of Communications & IT  
Department of Telecommunications  
(LR-Cell)

No.820-1/05-LR (ITSP Amend)

Dated: 03.03.2006

To

All Internet Service Providers (Including Internet Telephony)

**Subject:** Amendment in Terms and conditions of Licence Agreement  
No ..... dated ..... for provision of Internet Services  
(including Internet Telephony) .

The undersigned is directed to convey the approval of competent authority for amending the license agreement as per the details below:

I. Clause 1.1 of Schedule B and Clause 13.5 of Schedule C Part II of licence have been modified as under:

Sl. No.	Existing Clause	Amended Clause
(i)	<p><b>Clause 1.1: Quantum of license fee and Schedule of payment:</b></p> <p>(i) The licence fee is payable by the licensee in consideration for grant of this licence, for the complete duration for which this licence is granted. This has no relation to the actual start/provision of service by the licensee or any mutual obligations between the licensee and any other service provider/BSNL/MTNL /VSNL/ Departments of the Central or State Government/local or statutory bodies.</p> <p>(ii) The Telecom Authority has decided to waive the Licence Fee for a period upto 31.10.2003 and a nominal licence fee of One Rupee per</p>	<p><b>Clause 1.1: Quantum of license fee and Schedule of payment:</b></p> <p>(i) The licence fee is payable by the licensee in consideration for grant of this licence, for the complete duration for which this licence is granted. This has no relation to the actual start/provision of service by the licensee or any mutual obligations between the licensee and any other service provider /BSNL/MTNL/VSNL/ Departments of the Central or State Government/local or statutory bodies.</p> <p>(ii) The Telecom Authority has decided to waive the Licence Fee for a period</p>

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Sl. No.	Existing Clause	Amended Clause
	<p>annum will become payable from 01.11.2003; however, the Telecom Authority reserves the right to review an impose license fee including Universal Service Obligation (USO) levy anytime during the validity of the license, which decision with its terms and conditions, shall be binding on the licensee.</p>	<p>upto 31.10.2003 and a nominal licence fee of One Rupee per annum will become payable from 01.11.2003 upto 31.12.2005.</p> <p>(iii) With effect from 01.01.2006, annual licence fee annually @ 6% of Adjusted Gross Revenue (AGR), excluding spectrum charges will be applicable in addition to Rupee One per annum. The Licensor reserves the right to modify the above mentioned Licence Fee any time during the currency of this Agreement.</p> <p>(iv) <b>Radio Spectrum Charges:</b></p> <p>a) The LICENSEE shall pay spectrum charges, if applicable, in addition to the Licence Fees.</p> <p>b) Further royalty for the use of spectrum for point to point links and other access links shall be separately payable as per the details and prescription of Wireless Planning &amp; Coordination Wing. The fee/ royalty for the use of spectrum /possession of wireless telegraphy equipment depends upon various factors such as frequency, hop and link length, area of operation and other related aspects etc. Authorization of frequencies for setting up Microwave links by Licensed Operators and issue of Licenses shall be separately dealt with WPC Wing as per existing rules.</p> <p>(v) <b><u>Definition of 'Adjusted Gross Revenue':</u></b></p> <p>a) <b><u>Gross Revenue:</u></b> The Gross Revenue shall be inclusive of Internet access service, internet content service, Internet Telephony service installation charges, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services,</p>

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Sl. No.	Existing Clause	Amended Clause
		<p>supplementary services, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.</p> <p>b) For the purpose of arriving at the "Adjusted Gross Revenue (AGR)" the following shall be excluded from the Gross Revenue to arrive at the AGR:</p> <p>(i) Charges from Internet access, Internet content and Internet access related installation charges.</p> <p>(ii) Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.</p>
(ii)	<p><b>Clause 13.5: Preparation of Accounts</b> The LICENSEE shall;</p> <p>(a) maintain and prepare accounting records, sufficient to show and explain its transactions in respect of each financial year or part thereof of the LICENCE during which this Licence is in force, or of such lesser periods as the LICENSOR may specify, fairly presenting the costs (including capital costs), revenue and financial position of the LICENSEE's business and including a reasonable assessment of the assets employed in and liabilities attributable to the LICENSEE's business.</p> <p>(b) procure in respect of each of those accounting statements prepared in respect of a financial year or part thereof of the LICENSEE, a report by the LICENSEE'S Auditor stating whether in his opinion that statement is adequate for the purposes of the condition; and</p>	<p><b>Clause 13.5: Preparation of Accounts</b> 13.5.1 The LICENSEE will draw, keep and furnish independent accounts for the SERVICE and shall fully comply orders, directions or regulations as may be issued from time to time by the LICENSOR or TRAI as the case may be.</p> <p>13.5.2 The LICENSEE shall be obliged to:</p> <p>a) Compile and maintain accounting records, sufficient to show and explain its transactions in respect of each completed quarter of the Licence period or of such lesser periods as the LICENSOR may specify, fairly presenting the costs (including capital costs), revenue and financial position of the LICENSEE's business under the LICENCE including a reasonable assessment of the assets employed in and the liabilities attributable to the</p>

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	<p>(c) deliver to the LICENSOR a copy of each of the accounting statements not later than six months after the end of the period to which they relate.</p> <p>In this condition: the "Auditor" means the LICENSEE's auditor for the time being appointed in accordance with the requirements of the Companies' Act, 1956.</p>	<p>LICENSEE's business, as well as, for the quantification of Revenue or any other purpose.</p> <p>(b) Procure in respect of each of those accounting statements prepared in respect of a completed financial year, a report by the LICENSEE's Auditor in the format prescribed by the LICENSOR, stating inter-alia whether in his opinion the statement is adequate for the purpose of this condition and thereafter deliver to the LICENSOR a copy of each of the accounting statements not later than three months at the end of the accounting period to which they relate.</p> <p>(c) Send to the LICENSOR a certified statement sworn on an affidavit, by authorized representative of the company, containing full account of Revenue as defined in condition 1.1(v) of Schedule B for each quarter separately along with the payment for the quarter.</p> <p>13.5.3 (a) The LICENSOR or the TRAI, as the case may be, shall have a right to call for and the LICENSEE shall be obliged to supply and provide for examination any books of accounts that the LICENSEE may maintain in respect of the business carried on to provide the service(s) under this Licence at any time without recording any reasons thereof.</p> <p>(b) LICENSEE shall invariably preserve all billing and all other accounting records (electronic as well as hard copy) for a period of THREE years from the date of publishing of duly audited &amp; approved Accounts of the company and any dereliction thereof shall be treated as a material breach independent of any other breach, sufficient to give a cause for cancellation of the LICENCE.</p> <p>13.5.4 The records of the LICENSEE</p>

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		<p>will be subject to such scrutiny as may be prescribed by the LICENSOR so as to facilitate independent verification of the amount due to the LICENSOR as its share of the revenue.</p> <p>13.5.5 The LICENSOR may, on forming an opinion that the statements or accounts submitted are inaccurate or misleading, order Audit of the accounts of the LICENSEE by appointing auditor at the cost of the LICENSEE and such auditor(s) shall have the same powers which the statutory auditors of the company enjoy under Section 227 of the Companies Act, 1956. The remuneration of the Auditors, as fixed by the LICENSOR, shall be borne by the LICENSEE.</p> <p>13.5.6 The LICENSOR may also get conducted a 'Special Audit' of the LICENSEE company's accounts/records by "Special Auditors", the payment for which at a rate as fixed by the LICENSOR, shall be borne by the LICENSEE. This will be in the nature of auditing the audit described in <u>para 13.5.5</u> above. The Special Auditors shall also be provided the same facility and have the same powers as of the companies' auditors as envisaged in the Companies Act, 1956.</p> <p>13.5.7 The LICENSEE shall be liable to prepare and furnish the company's annual financial accounts according to the accounting principles prescribed and the directions given by the LICENSOR or the TRAI, as the case may be, from time to time.</p>

II. The following is added as para 13.4 (A) under Schedule C Part II of License :

**13.4 (A) Schedule of payment of ANNUAL LICENCE FEE and other dues:**

(a) For the purposes of the Licence Fee, the 1st year shall end on 31st March following the date of commencement of the Licence Agreement and the Licence fee for the First year shall be determined on a pro-rata basis for the actual duration of the "year". From second year onwards, the year shall be of Twelve English calendar months from 1st of April to the 31st March for payment of Licence Fee.

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EXPLANATION: The Licence fee for the last quarter of the first year and last quarter of the last year of the Licence will be computed with reference to the actual number of days after excluding the other quarters, each being of three months.

(b) Licence Fee shall be payable in four quarterly installments during each financial year (FY). Quarterly installment of licence fee for the first three quarters of a financial year shall be paid within 15 days of the completion of the relevant quarter. This Fee shall be paid by the LICENSEE on the basis of actual revenue (on accrual basis) for the quarter, duly certified with an affidavit by a representative of the LICENSEE, authorized by the Board Resolution coupled with General Power of Attorney. However, for the last quarter of the financial year, the LICENSEE shall pay the Licence Fee by 25<sup>th</sup> March on the basis of expected revenue for the quarter, subject to a minimum payment equal to the actual revenue share paid of the previous quarter.

(c) 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 financial year within 15 days of the end of the quarter.

(d) The quarterly payment shall be made together with a STATEMENT in the prescribed form as **Annexure-I**, showing the computation of revenue and Licence fee payable. The aforesaid quarterly STATEMENTS of each year shall be required to be audited by the Auditors (hereinafter called LICENSEE'S Auditors) of the LICENSEE appointed under Section 224 of the Companies' Act, 1956. The report of the Auditor should be in prescribed form as **Appendix-I to Annexure-I**.

(e) Any delay in payment of Licence Fee payable, or any other dues payable under the LICENCE beyond the stipulated period will attract interest at a rate which will be 5% above the Prime Lending Rate (PLR) of State Bank of India prevalent on the day the payment became due. The interest shall be compounded monthly and a part of the month shall be reckoned as a full month for the purposes of calculation of interest. A month shall be reckoned as an English calendar month. Provided that in respect of the licence fees accruing on or after First April, 2005, the rate of interest shall be the prime lending rate (PLR) of the State Bank of India (SBI) existing on the first day (namely 1<sup>st</sup> April) of the concerned financial year plus two percent (2%).

(f) Final adjustment of the Licence fee for the year shall be made based on the gross revenue figures duly certified by the AUDITORS of the LICENSEE in accordance with the provision of Companies' Act, 1956.



(g) A reconciliation between the figures appearing in the quarterly statements submitted in terms of the clause 13.4(A)(d) of the agreement with those appearing in annual accounts shall be submitted along with a copy of the published annual accounts audit report and duly audited quarterly statements, within 7 (seven) Calendar days of the date of signing of the audit report. The annual financial account and the statement as prescribed above shall be prepared following the norms as prescribed in **Annexure-II**.

(h) In case, the total amount paid as quarterly Licence Fee for the 4 (four) quarters of the financial year, falls short by more than 10% of the payable Licence Fee, it shall attract a penalty of 150% of the entire amount of short payment. However, if such short payment is made good within 60 days from the last day of the financial year, no penalty shall be imposed. This amount of penalty shall be payable within 15 days of the date of signing the audit report on the annual accounts, failing which interest shall be further charged per terms of **Condition 13.4 (A)(e)**. Provided that in respect of the licence fees accruing on or after First April, 2005, the rate of penalty shall be fifty percent (50%).

(i) The Fee/royalty payable towards WPC Charges shall be payable at such time(s) and in such manner as the WPC Wing of the DoT may prescribe from time to time.

(j) All sums becoming due and payable as mentioned in this Licence Agreement shall be paid by the LICENSEE through a demand draft or Pay Order payable at New Delhi, drawn on any Scheduled Bank, in favour of the Pay & Accounts Officer (HQ), DOT or any other Authority if so designated by LICENSOR.

(k) The LICENSOR, to ensure proper and correct verification of revenue share paid, can, if deemed necessary, modify, alter, substitute and amend whatever stated in **Conditions 13.4 (A)(d), 13.4 (A)(g), 13.5.5 and 13.5.6** hereinbefore and hereinafter written.

III. The following is added as para 13.8 (A) under Schedule C Part II of License :

**13.8A FINANCIAL BANK GUARANTEE (FBG)**

(i) The LICENSEE shall submit a Financial Bank Guarantee (FBG), valid for one year, from any Scheduled Bank or Public Financial Institution duly authorized to issue such Bank Guarantee, in the prescribed Performa as **Annexure-III**. Initially, the financial bank guarantee shall be for an amount of Rs. 20 lakh, Rs.2 lakhs and Rs.50 thousand (for Category A, B and C ISPs respectively) which shall be submitted before signing the Licence agreement. Subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to license fee for two quarters and other dues not otherwise securitised and any additional amount as deemed fit by the Licensor. The amount

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of FBG shall be subject to periodic review by the Licensor and shall be renewed from time to time till final clearance of all dues.

- (ii) Initially, the Financial Bank Guarantees shall be valid for a period of one year and shall be renewed from time to time. The LICENSEE, on its own, shall extend the validity period of the Bank Guarantees for 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 Bank Guarantees and to convert into a cash security without any reference to the LICENSEE at his risk and cost. No interest or compensation whatsoever shall be payable by the LICENSOR on such encashment.
- (iii) Without prejudice to its rights of any other remedy, LICENSOR may encash Bank Guarantee (FBG as well as PBG) in case of any breach in terms & conditions of the LICENCE by the LICENSEE.

3. The acceptance of above mentioned amendments be conveyed within 15 days of the receipt of this communication along with the FBG of the requisite amount .

K. Haridhasapavalan  
Assistant Director General (LR-I)  
For and On Behalf of President Of India

Encl: Annex-I, II, III (8 Pages from Page No-9 to 16)