



**BANGLADESH
TELECOMMUNICATIONS
REGULATORY
COMMISSION**



Report on Submissions on ULR Licensing

Prepared by
David Butcher and Associates, Apex Economics and HB Consulting

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List of Acronyms and Abbreviations

BTRC	Bangladesh Telecommunications Regulatory Commission
BWA	Broadband Wireless Access
ICX	Interconnection Exchange
IGW	International Gateway
IIG	International Internet Gateway
ILDTS	International and Long Distance Telecommunications Services
ISP	Internet Service Providers
MPTC	Ministry of Posts and Telecommunications
Mobile	Cellular Mobile
NGN	Next Generation Network
NIX	National Internet Exchanges
NTTN	Nationwide Telecommunication Transmission Network
PSTN	Public Switched Telecommunication Network
QoS	Quality of Service
TIOB	Telecom Infrastructure of Bangladesh
UCL	Unified Carrier Licenses
ULR	Unified Licence Regime
VoIP	Voice over Internet Protocol

Appreciation

The DBA led consulting team would like to thank the Commissioners and staff of the Bangladesh Telecommunications Regulatory Commission (BTRC) for their cooperation during the course of this assignment. In particular, we would like to thank the Chairman, Maj Gen Zia Ahmed, PSC (Retd.), Mr. Hasan Mahmood Delwar, Vice-Chairman, Mr. Aliwardy Khandkar, (Commissioner), Mr. Md. Mahbubor Rahman (Commissioner) and Mr. Mallick Sudhir Chandra (Commissioner) for their time and hospitality. We would also like to thank our Project Director Lt. Col. Md Shahidul Alam for his availability and readiness to discuss all matters arising, our Project Coordinator for their cooperation and generosity with his time, Md. Golam Razzaque our Project Coordinator for his assistance and sound advice. In addition, we must thank all the officers and staff of the Commission in particular Major MD Rakibul Hassan who shared his knowledge and experience with us on many occasions. That you one and all, we sincerely hope that our work has helped you in the important work you do for the people of Bangladesh.

David Butcher
TEAM LEADER

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Introduction

1. Introduction

1.1 Background

1. The Bangladesh Telecommunications Regulatory Commission (BTRC) engaged David Butcher and Associates (the Consultant) to lead a team to make recommendations on a possible Telecommunications Unified Licence Regime (ULR) for Bangladesh. The BTRC is considering implementing a ULR to resolve many licensing issues and to foster a renewed period of sector growth.
2. Following the Stakeholder Consultation in September 2009 and its release of the draft licenses prepared by the Consultant, BTRC convened a further stakeholder consultation meeting in December 2009 to receive a presentation from the Consultant on the model proposed for a Unified Licensing Regime for Bangladesh. Subsequent to the December meeting, it issued the Consultant's draft a report on Fees and Migration. Additional comments arrived over the ensuing days.
3. The BTRC's wisdom in engaging in a consultative process is evident from the depth of the submissions received from the private sector. The companies that made submissions have devoted substantial resources to this exercise and have made very helpful contributions. The added dimension of knowledge, resources and experience will result in improvements in the proposal from the Consultant and substantial new ideas from the private sector.

1.2 Common Themes in Submissions

4. All industry participants making submissions welcomed the opportunity to participate in the consultative process and complemented the Commission on this initiative. There is strong willingness in the sector to engage positively with the Commission to address a number of issues that unless resolved, will affect adversely sector performance in the next few years. Operators see reforms to licensing as one but not the only issue the Commission should address.
5. The principal common themes in submissions are:
 - In its decision-making, BTRC should accord priority to benefits accruing to final users of telecommunications services – the citizens of Bangladesh; other issues are secondary.
 - Sequencing of consideration of the issues with an impact upon the ULR proposal could have been better. The logical sequence is:
 1. Policy review: sector policy and ILDTS policy,
 2. Amendments to the law and regulations, and
 3. Introduction of a new licensing model
 - While the sector welcomes the consultative process now initiated by the BTRC, there was a strong message that it should not be a one off exercise; all submissions propose, in one way or another, an ongoing dialogue on policy issues. (This theme appears in statements concerning the time available for interaction and the volume of material for assessment by the sector, consultants and the Commission as well as in commitment to ongoing engagement).
 - Revenue to the national government from the telecommunications sector is a by-product of a thriving and successful sector. The experience of the sector has been that investment and subscriber growth have increased government

revenue. If pursuit of revenue becomes a primary objective this will undermine investment incentives and compromise subscriber growth, which will be counterproductive to government revenues in the longer-term.

- There is a need for ongoing capacity building in the BTRC, particularly among the technical staff so that they are better acquainted with policy issues and international best-practice.

1.3 Availability of Information

6. Submissions question some factual matters regarding existing licenses; many of these errors are attributable to the lack of a central database of existing licences and amendments, filed according to the individual enterprise or licensee. Bangladesh is currently non-compliant with the WTO Basic Agreement on Telecommunications with requires:

“Where a licence is required, the following will be made publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence, and

(b) *the terms and conditions of individual licences.*

The reasons for the denial of a licence will be made known to the applicant upon request”.¹

For the future health of the sector, a readily available database of all licenses extant is a priority investment for BTRC.

Table 1-1: Recommendation 1

Recommendation	Explanation
<ul style="list-style-type: none"> • The BTRC should install, equip and maintain accurate and reliable database of ALL licenses issued by the Commission • This database should meet Bangladesh’s obligations under the WTO Telecommunications Services: Reference Paper, WTO 24 April 1996, in respect of making publicly available the terms and conditions of individual licences. 	<ul style="list-style-type: none"> • The WTO Telecommunications Services: Reference Paper, signed in April 1996, is the fundamental obligation of each WTO member • A reliable database of licenses is essential to manage the sector effectively • If the database is available much of the enforcement, will mutual self-enforcement by the respective companies.

1.4 Important Submissions

7. Participants agreed that a ULR model for Bangladesh must simultaneously address a number of important objectives:
 - Good principles: It must embody principles of neutrality (between technologies and services), simplicity (in offering new service and implementation), flexibility (to offer services customers need) and reduced administrative burden on the sector,
 - Correct Incentives: it should encourage companies to help meet the government’s objectives of sector development, which include higher tele-density and ongoing contributions to government revenue,

¹ *WTO Telecommunications Services: Reference Paper*, WTO 24 April 1996

- Long-term stability: a forward looking licensing system to accommodate a long term vision for the sector,
 - Stable transition: migration proposals that are easy to accommodate, given reasonable time, and ones that should minimize disruption to and within the sector,
 - Business friendly: the ULR should seek to minimize uncertainty and maximize the opportunities to earn a reasonable return on investments, thereby encouraging ongoing investment and innovation by sector participants,
 - International Best Practice: reflect principles based on international best practices, while simultaneously leaving intact, for the time being, some of the unique features of the current Bangladesh telecommunication regulatory regime,
 - Flexibility: accommodate any future changes in technology and business conditions, without any need for major revisions of licences,
 - Light-touch: a less activist, lighter form of regulation so that the Commission can focus on significant issues (e.g. investment, competition, coverage and quality of services),
 - Skills and capacity: ongoing engagement between the sector and the regulator to take advantage of the skills and experience of the sector participants, and
 - Revenue Neutrality: ensuring that at the end of the process, no existing licensees are in a fundamentally worse off position than they are at present.
8. Opinion was mixed on the extent to which the consultant's proposals met these objectives and submissions suggested the addition of several additional principles:
- ULR licences should:
 - (i) mean "any service using any system under a common license."
 - (ii) be consistent with Telecommunications Act 2001 ("Act"),
 - (iii) be consistent with the Companies (Bangladesh) Act 1994,
 - (iv) involve only obligations that are commercially reasonable; and
 - (v) The cost of ULR licence migration should be reasonable.
 - "No operator should be worse off under a ULR compared to its existing licence, including the respective spectrum allocation",
 - ULR framework should recognise the existing ownership of spectrum frequencies, especially for cellular services which underpin the Bangladeshi telecommunications sector's recent success;
 - The introduction of a ULR should be but a step in an overall restructuring of operator licences in order to reflect the technical and market realities of convergence,
9. Submissions stress that Bangladesh now has a competitive telecommunications market. BTRC has issued more than 900 provider licenses, nine inter-operator facilities, 2 Broadband Wireless Access (BWA), 6 Cellular Mobile Telecom Operators, 14 Public Switched Telephone Network (PSTN) Operators and more than 398 Internet Service Providers (see Appendix 5-1).
10. Bangladesh's market is a rapidly maturing and is competitive. Customers unhappy with the services and prices offered by one provider have, in most parts of Bangladesh, ample opportunities to move from one mobile provider to another provider. This is the essential test of the need for detailed regulation.
11. Overall submissions sought to stress fundamental characteristics of regulation in competitive markets:

In a competitive market with supplier options, the principal regulator is competition; the roles of the regulator are threefold, to:

- (1) lay down simple, easily and cost effectively implemented ground rules,*
- (2) act as the impartial referee in the market place making rare and reasonable use of regulatory powers only in the most exceptional circumstances where dominance is being misused;*
- (3) uphold the integrity of the licenses and other determinations that it issues.*

In summary, the quality of regulation in a competitive market we can judge by the rarity and quality of regulatory interventions.

12. In summary, the quality of regulation in a competitive market we measure by the rarity and quality of regulatory interventions. This project aims to assist BTRC discharge its obligations. It will assist it with devising simple, easily and cost effectively implemented rules. It will help make it possible for BTRC to act primarily as an impartial referee and to limit the use it needs to make of its regulatory powers. We also aim to make it easier for BTRC to uphold the integrity of the licenses and other legal instruments it issues. The following sections make recommendations on how BTRC should undertake this task.

2

Detail of Submissions

2. Detail of Submissions

2.1 Licensing Strategy

13. A strategy is “a long - term plan aimed at achieving a specific goal”.² The strategic purpose of the Bangladesh Telecommunications Act (2001) is “the development and efficient regulation of telecommunication systems and telecommunication services in Bangladesh”. The BTRC’s vision stresses that it is to “facilitate affordable telecommunication services of acceptable quality for all regardless of their location”. These all require the Commission to focus on affordable, quality services for all citizens of the country achieved by efficient regulation of the sector. Some submissions raised issues regarding sector strategy.

2.1.1 Submissions on Strategy

14. The submissions on sector strategy are summarised in Table 2-2. As noted above in respect of the themes flowing through the submissions there is strong support for the principles of simplicity, consistency, flexibility, neutrality equitable. Underlying this theme is the realisation by the companies that Bangladesh is now a relatively mature market and the critical requirement is for clear rules, published and observed processes, stable, enduring licenses and rare and reasonable regulatory intervention in the sector.
15. In most submissions, there is strong support for ULR in principle (albeit ITOB suggested a 10 year moratorium of new licenses before the introduction of ULR). Each company proposed an agreement on strong conditions before introduction of ULR. AXB (Axiata Bangladesh on behalf of AKTel)³ offered support for ULR provided the design meets the conditions outlined in paragraph 8 above. Grameenphone and Warid offer support in principle provided the transition protects the interests of existing companies and addresses its concerns. Warid suggest that ULR should also include a requirement for number portability.

2.1.2 Sequencing

16. Submissions from AXB, Grameenphone and Warid suggest that sequencing of reforms is a major strategic issue. AXB suggests strong there should be a review of policy followed by a review of the law and then changes to the licensing system (the balance of the AXB submission can be read as assuming BTRC’s acceptance of this suggestion).
17. The Consultant agrees that the logical sequencing is policy review, legislative change and new licenses. However, we accepted the assignment as tendered and had to work on the assumption that in practice sequencing will be different.
18. As we will show later, we accept the wisdom of decisions on the principles of reform first, followed by the detailed provisions.

² The word “strategy” derives from the Greek strategos, “general,” also stratos “multitude, expedition,” or literally “that which is spread out” plus agos, “leader” and from the word agein “to lead”. The word Strategic “pertaining to strategy” was first used in 1825. A strategy is about implementing attaining specific goals

³ *AXB Submission to the BTRC in relation to the ULR Project Report on Licensing (1)*, Page 4 and *AXB Submission to the BTRC in relation to the ULR Project Report on Licensing (1)* Page 3

Table 2-1: Recommendation 2

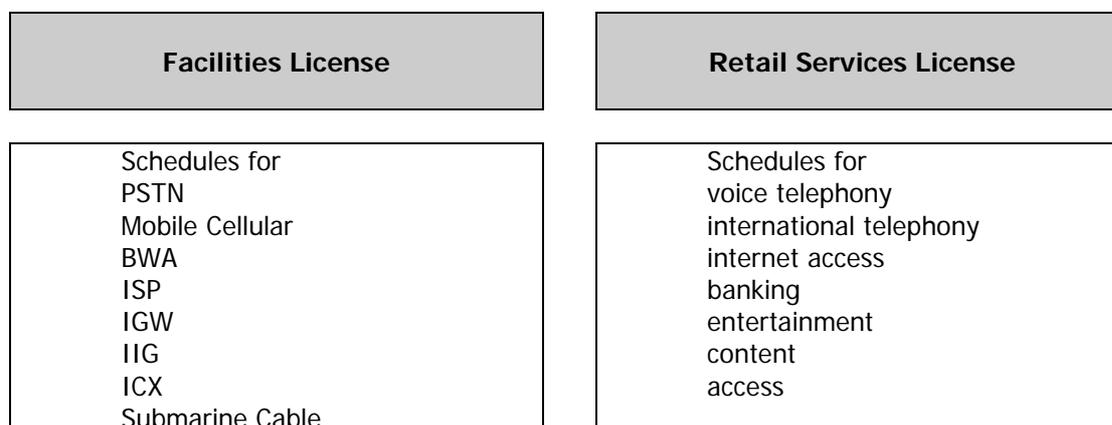
Recommendation	Explanation
<ul style="list-style-type: none"> The BTRC should work with the ministry and Government to complete the policy review and any consequential amendments to the Act before issuing ULR Licenses. 	<ul style="list-style-type: none"> The consensus of submissions is that a policy review and legislation review should precede implementation of ULR This remains good advice even if it is necessary to roll over expiring licenses before for a brief period.

2.2 Legislation

2.2.1 Alignment of Proposals with Legislation

19. AXB's submission suggests that the Consultant's proposals may be ultra vires (outside the legal authority of the 2001 Act). We are confident that this view reflects a misunderstanding of the Consultant's proposed model. Some changes we now propose to the draft licenses will have no impact on the actual model, but may address the concern expressed.
20. The misunderstanding arises from placing insufficient weight on the phrase "any service using any system under a common license". In Consultant's proposed model, the various directives and guidelines illustrated in Exhibit 1 of AXB Submission 2 will subsume in the proposed Common Facilities License and Common Retail Licenses respectively. Under this model, there will be no other regulatory frameworks. What we propose is simply: "any service using any system under a common license". The Model is as set out in Figure 2-1:

Figure 2-1: Consultant's Proposed Licensing Structure



21. The ITOB noted that there is a possible conflict between a ULR regime and the ILDTS policy. This is correct. ILDTS creates of a series of legislated monopolies. The policy is not having the anticipated benefits because existing technologies create incentives to avoid the bottleneck created by legislation.
22. ILDTS policy is currently under review and perhaps the review will overcome these problems. Grameenphone noted the need to change higher level legislation before beginning major reforms to licensing and Warid reiterated the point.

Table 2-2: Summary of Comments on Strategic Issues

	AXB	ITOB	Grameenphone	Warid
STRATEGY				
Theme	Flexibility and Neutrality	Support for the current structure	Simplicity, consistency, flexibility, neutrality equitable	Simplicity, consistency, flexibility, neutrality equitable
ULR Principles	Strong Support for changed ULR, provided conditions are met	Postpone ULR for 10 to 15 years	Support in principle provided the interests of existing companies are protected	Support in principle provided the interests of existing companies are protected, number portability too.
Sequencing	There should be a review of policy followed by a review of the law and then changes to the licensing system	10 year moratorium on new licenses before moving to ULR	In favour of policy and legal review	In favour of a policy and legal review

Table 2-3: Summary of Comments on License Structure

	AXB	ITOB	Grameenphone	Warid
Alignment with Legislation	Believes the consultant's proposals may be ultra vires	Noted possible conflict with the ILDTS policy	Need to change higher level legislation	Review policy and Law before reviewing licenses
Alignment with Policy	Both Policy and legislation need review.	Proposed license does not change anything	Policy should align with legislation. Both need review.	Objective should be a win-win situation for all
Primary Legislation	Should adopt the AXB model to avoid the need for legislative changes	Happy with the status quo	Focus on higher level legislation. Basic principles and procedures in legislation	Law should be reviewed before the introduction of ULR
Proposed License	Need to have predetermined phase out of schedules	No practical change for inter-operator licenses	General Operations License or Pure Retail License	No undue advantage to the fist licences renewed
Cessation of new licenses	Agree with cessation	Cessation 10 years before conversion	No comment	No comment

2.2.2 Primary Legislation

23. In respect of suggested modifications to the Primary Legislation AXB, suggested adoption of the model they propose will avoid the need for legislative changes, other than those specified later. ITOB are happy with the status quo and see no need for major change. Grameenphone again brought a focus on higher level legislation. In particular, it believes that to give greater stability to the licensing system in Bangladesh BTRC should spell out in the law or in the subsidiary regulations, the basic principles and procedures that operate in the case of licensing changes, investigations and determinations,. Warid reiterated that the review of the law should happen before the introduction of ULR.

2.2.3 Alignments with Policy

24. To align licenses with Policy AXB propose a review of both Policy and legislation. ITOB by contrast cannot see any change proposed nor do they see a need for change. Grameenphone would like to see the policy reiterated and legislation should align with it. They agree that a review of both is urgent given the maturing of the sector since Parliament passed the law in 2001. Warid make the sensible observation that the overall objective should be a win-win situation for all

2.3 Structure of Licenses

2.3.1 License Design

25. A summary of submissions on the structure of licenses is in Table 2-3. In respect of the design of the proposed licenses, AXB provided some alternative drafts. These appear to be based on the assumption that the policy and legislative reviews will take place before the introduction of ULRs and that the reviews will result in a substantial change or modification to the ILDTS policy. The consultant cannot make this assumption.
26. Instead, the Consultant has retained some policy provisions in the license drafts. We include them despite, as AXB suggest, they are best handled elsewhere. When BTRC (or the policy and legislative review) take action, BTRC can change the Draft to cite the more comprehensive regulation or other document.

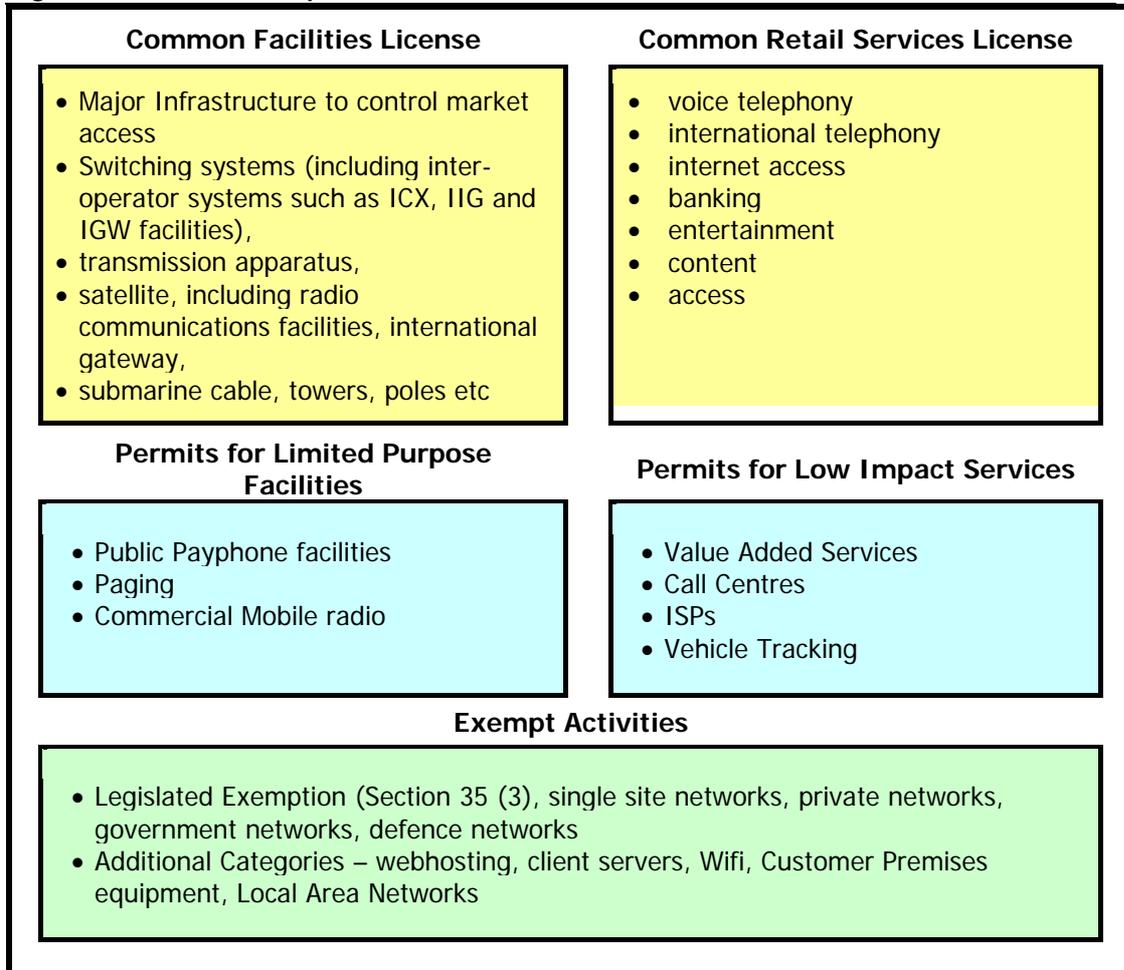
2.3.2 Permits or Registration

27. In Appendix 2 to the Licensing Report, the Consultant recommended a system of registration for the categories of license where there are few public policy reasons for licensing the operator. AXB notes that there is no registration system provided for in the Act and recommended the creation of a category of licences to cater for these activities and for niche or limited purpose facilities.
28. However, the Act does not explicitly provide for difference categories of licenses either. What the Act does do is to provide for permits (Section 40(2)). We now propose that low impact facilities and services should be issued with permits. With this alteration to the AXB diagram in Exhibit 1 of Submission 2, the Consultants' model and the AXB model are virtually identical.
29. We agree with AXB there is no need to register facilities that are exempt from licensing. The difference arose because the Consultant used the term "exemption" too loosely to describe low impact activities.
30. The principal difference is the Consultant proposed classification of inter-operator switches: ICX, IIG and IGW as systems. AXB instead sees these as services. The

test is, whether or not they provide final user services. If they do then they will need a Retail Services License as well. If not they will only need a Common Facilities License. We cannot identify any situation where inter-operator switches will provide services to final users directly.

31. The Consultant's modified model we depict in Figure 2-2. This shows similarity to the diagram in the AXB submission.

Figure 2-2: Effect of Proposed Licenses



2.3.3 Phase out of Schedules

32. The only purpose of the schedules is as a tool to allow the transition if there is no change in the sequencing of policy review, legislative change and issuing of licenses. They incorporate the exiting rules, primarily the ILDTS policy, until a comprehensive policy review and legislative change allow removal of the schedules.
33. AXB make the sensible suggestion that there should be a predetermined timetable for the phase out of schedules. A timetable for removal will put pressure on the Ministry and Parliament to expedite the policy review and parliamentary processes.
34. The ITOB see no practical change for inter-operator licenses in the proposed license configuration. This overlooks the fact that BTRC will remove the schedules at the conclusion of the policy and legislative review.

2.3.4 Proposed Single License

35. Grameenphone propose⁴ that for vertically integrated licensees there be a single General Operations License to replace the proposed Common Facilities License and the Common retail license. However, it also proposes an evaluation of the Singapore model to see whether it would be appropriate for Services Based Operators to have a License to allow them to offer services only, without facilities.
36. This suggestion is very similar to the model proposed by both the AXB and the Consultant. The only difference would be that vertically integrated companies would have a single license covering facilities and services, whereas AXB and the Consultant suggested they have one of each. Depending on the drafting of the respective documents, this may make some difference or none at all. Warid's principal concern with the drafting of the licenses is that no undue advantage to the first licensees when their license is renewed.

2.4 License Submissions - Summary

37. In a brief review of extensive submissions on the principles and practice of licensing, it is not possible to do justice to the work undertaken by the various companies and organisations making submissions. However, a pattern has emerged that three of the submissions are broadly consistent with the licensing structure illustrated in Figure 2.2 above.

2.5 Migration

2.5.1 Understanding

38. Table 2-4 outlines the submission received on the migration issues. Paragraph 37 of the Consultant's Fees and Migration Report, states that of the existing license categories, 19 will transition to one or more of the existing licences. In paragraph 38, it reports that facilities only operators will receive only a Facilities License and service only operators will receive only a Retail Services License. Paragraph 41 then illustrates that an operator with both facilities and services will receive both licenses.
39. AXB appears to have misunderstood the diagram and some of the supporting information. Their criticism that the mapping exercise will restrict mobile operators is, therefore, incorrect.
40. Seen in this context paragraphs 2.7.1(51) of the ULR Fee and Migration Report "Some operators may hold both, for example a Retail Service licence holder will have a Facilities Licence for self supply of transmission services," paragraph 2.1(15) and paragraph 2.6(45) are all correct, albeit describing slightly difference aspects of the same license. No other submissions raised concerns about this issue.

2.5.2 Cessation of New Licenses

41. Current license holders are generally very concerned that at the time BTRC is considering a move to ULR it is simultaneously advertising guidelines for issuing new licenses. Too many licenses in a market devalue the existing licenses and the value of the assets the companies have put in place.

⁴ *Consultation Response from Grameenphone*. Page 10

Table 2-4: Summary of Comments on Migration

	AXB	ITOB	Grameenphone	Warid
MIGRATION				
Understanding	Goal is any service using any system under a common license	Any service using any system under a common license	“Unified” should be any system providing any service	Just renaming existing licenses is inappropriate
Principles	Proposed an alternative way to meet the principles (misunderstood model)	No neighbouring country has gone for ULR	Historic risk, willingness to invest, maturity of market also considered	Agrees with enunciated principles
Cessation of New Licenses	Oppose published guidelines for new licenses	Suggest a 10 year pause before issuing new licenses	Have previously supported a cessation of new licenses	No comment
Structural Separation	Against any measures	Favour 3 layer sector structure gradual conversion to ULR over 10-15 years	Criticise static efficiency of proposed facilities sharing	Should apply to the Dominant operators but not everybody
Profitability	Noted only 1 of seven mobile companies profitable and none of 12 PSTN	Network is adequate for 10-15 years	Insufficient investment in competing infrastructure	BTRC should ensure a business friendly environment to encourage investment
Predictability Transparency	Strong support of predictable regime, clarified procedures and processes	Long periods of notice before ULR 10 years at least	Law: mandate stakeholder engagement, limit appeals and amendments \$ independence of regulator	ULR essential to foster investment but SMP must be part of the process
Migration Administration	Shorter migration period with mandatory migration on renewal	No comment	Time be taken to arrive at a full consensus among all stakeholders	Voluntary migration
Issues: PSTN Mobile	PSTN with mobile licenses OK provided paid for the same as mobile operators	ANS operators should not get a facilities license	PSTN Payment for Spectrum – Stripping out spectrum will resolve	No problem with full mobility provided they pay the same
Issues: ILDTS	The policy is contrary to ULR and should be withdrawn, arguable ultra vires	Policy is working and provides good service to all parties	Consumer benefits should take priority price and quality	ILDTS needs to be changed before conversion to ULR
Issues: SMP	Favour SMP policy, but not in the license. Should be in Act	No mention of SMP. Seek intervention to prevent ANS from installing facilities	SMP policy is appropriate but should not form part of the license	SMP essential to “any service using any system under a common license”
Consistency	Impossible to achieve consistency using individually negotiated schedules	No comment	Consistent framework with a sound legal basis	Consistent treatment for PSTNs seeking mobile capability. Light touch regulation

2.5.3 Single Document

42. The submissions generally accept that the appropriate goal for a ULR is “any service using any system under a common license”. However, opinions vary as to what this means in practice. Nobody appears to believe that it is yet practical to have a single telecommunications license in Bangladesh for every conceivable service and system.
43. AXB provide us with a draft License Template and proposes that Facilities and Services appendixes respectively could cover the respective activities. This will work for a company offering both facilities and services. It will not work for the services only operator. While this is a brave attempt to have a ULR in a single document, we think that the difficulty of drafting a single documents shows that Bangladesh is not in the position of Europe where only general authorisations are required and access to spectrum.

2.5.4 Principles

44. It is therefore appropriate to identify what companies seek from migration to ULR. All the submissions seek the ability to use multiple systems and offer multiple services under one or two licenses. It was to avoid confusion that the Consultant suggested the names “Common Facilities License” and “Common Retail Services” license. As far as we can tell there is no rule created by law that prevents issuing licenses with these names.
45. All the submissions accept that multi-service licenses are the objective of the policy. Warid makes the additional point that “just renaming existing licenses is inappropriate”. AXB have proposed alternative migration approaches to ensure migration meets underlying principles of ULR. ITOB simply states that no neighbouring country has gone for ULR and therefore there is no hurry for Bangladesh to move in that direction. Grameenphone point out that the fact some companies took risk when nobody else was willing to invest and the maturity of market all need consideration as part of the migration strategy. Warid agrees with enunciated principles.

2.5.5 Structural Separation

46. Several submissions reacted strongly against what they describe as “structural separation”. Structural separation usually refers to vertical separation of the monopolistic aspects of a telecommunications company from the competitive elements in an endeavour to promote additional service level competition. AXB in particular is against any measures that resemble structural separation. It opposes any suggestion that holding a Facilities License will exclude the holder from holding a Retail Services License. The Consultant made no such suggestion. Nothing in either report sustains such a suggestion. Neither report on which submissions have been received advocate sector wide structural separation.
47. The confusion may arise from a reading of Conditions 9-13 of the proposed Common Facilities License⁵. The clauses referred to come after Condition 8 that relates to SMP policy. Taking these two together, they proposed greater transparency for the sector.
48. Grameenphone contend it would be more appropriate to make Conditions 9-13 contingent on a finding of abuse of a dominant position under Condition 8. This option, however, may have the effect of discouraging entities from meeting their obligations of transparency, offering reference interconnection offers, acting in a non-discriminatory fashion, undertaking accounting separation, cost accounting

⁵ Consultation on Draft Unified Licensing, December 2009, From Page 4-1

obligations or offering access to and use of network facilities UNLESS they are designated as a dominant operator.

49. We must affirm that according to our reading of the Act, the regulations and many of the existing licenses, these are all obligations or powers that exist in existing laws, regulations, licenses or come recommended by the EU directives, for example. The purpose of putting them in the license is to make a “one document list of rights and obligations” so that both the regulator and licensee understand their respective rights and obligations.
50. If the sector participants are unhappy with the policy and the law the place to change these is in the review of policy and the law. Alternatively, the discussion of Predictability paragraph 2.5.8 below shows, the Commission can address these concerns by providing appropriate processes limiting the discretions granted under the law. This matter is perhaps one for ongoing debate and discussion and AXB have provided an alternative draft licenses for consideration.

2.5.6 Static vs Dynamic Efficiency

51. Grameenphone criticise Clauses discussed in paragraph 2.5.5 above, as measures as seeking “static efficiency” at the expense of dynamic efficiency. However, facilities-sharing is currently a dynamic aspect of the international sector. As a recent review of the mobile sector shows⁶ structural separation by outsourcing network management is at the heart of the Indian model, pioneered by Bharti Airtel, India’s biggest mobile operator. This model passes much of the risk of coping with a rapidly growing subscriber base to other parties and leaves Bharti to concentrate on marketing and strategy. Bharti’s network management is outsourced, but so is construction. The scheme, known as “managed capacity” now used by several Indian operators.
52. When moving into a new area, Bharti requests a certain amount of calling capacity and pays for it three months later at an agreed price per unit of capacity. This approach gives the vendor an incentive to build the network reliably, but as economically as possible. Vendors, gain economies of scale because they build, run and support networks for several operators. They manage them with 25 percent fewer staff than bundled operator needs. Bharti’s operating expenses are around 15 percent lower than they would be if it were to build and run its network itself. Its IT costs are also around 30 percent lower, according to Capgemini, the article reports.
53. Infrastructure-sharing is part of the Indian scene too as it is in Bangladesh. In 2007, three Indian operators, Bharti, Vodafone Essar and Idea Cellular, pooled 100,000 of their towers in a single company, Indus Towers. Not all the operators use all the towers (the average is about 1.5 operators per tower), but the arrangement saves the three companies having to find new sites and build their own towers. Indus Towers also leases tower capacity to other operators.
54. Similarly, Reliance Communications has spun off its towers into a separate unit that will offer tower capacity to other operators. This turns an operator’s underemployed assets into a source of new revenue. Through developments like these India is leading telecommunications around the World into a lower cost more efficient era.
55. Even these Indian developments are not unique. PCCW in Hong Kong was marketing its network facilities to its competitors ten years ago, through a separate

⁶ *The Mother of Invention*, Special Report on telecoms in emerging markets, The Economist, 25 September 2009

division of the company⁷. The unusual feature about India is the extent of voluntary, market-led sharing as a way to reduce costs. The unfortunate feature of Bangladesh is the extent to which companies still look on infrastructure sharing as an imposition rather than as an opportunity.

56. Pressures to reduce costs, to make possible serving large numbers of people on very low incomes have driven the Indian models. Bangladesh is facing similar pressures and should prepare to face them head on if Bharti enter the Bangladesh market by one means or another.

2.5.7 Profitability

57. Reports and submissions use frequently the phrase “business friendly environment”. At its most fundamental, this phrase means that companies must be profitable. To offer services, they must have facilities, to have facilities they must invest, to invest they must have a reasonable rate of return on their investments. A reasonable rate of return they can only achieve by making profits. How can the regulator contribute to companies making profits?
58. AXB noted that only one of seven mobile companies profitable and none of 12 PSTN. AXB also noted a critical shortage of capacity in the sector for rapidly expanding demand and put forward facilities competition as an appropriate response. By contrast, ITOB believe that the existing network is adequate for the next 10-15 years and do not expect substantial ongoing investment. Grameenphone is in accord with AXB and maintain that there is insufficient investment in competing infrastructure. Warid concur and propose that BTRC should ensure a business friendly environment to encourage investment
59. A business friendly environment also means that regulatory laws, rules and licenses need to be simple, easily complied with and cost effective. The regulator needs to act as an impartial referee in the market place making rare and reasonable use of regulatory powers only in the most exceptional circumstances to prevent misuse of dominance. It must refrain from amending licenses during their currency and any move away from any established agreement or understanding should occur only in the most exceptional circumstances with notice and due process. In addition, the financial demands on the sector must be reasonable. There is no reason in principle why taxation on the telecommunications sector should be greater than on any other sector. Regulatory services provided by the regulator should not be a tax gathering machine.
60. As noted in paragraph 2.5.6 above there are things that operators can do themselves to boost profitability. However, if the sector is to make the investments required to increase returns, it needs assurance that it will be able to keep the money earned (less a predetermined and reasonable tax).

2.5.8 Predictability Transparency

61. There was strong support among all migration submissions for a predictable licensing regime, clarified procedures and processes. ITOB was perhaps optimistic asking for at least ten years of notice before a change to ULR. This is why all submissions emphasise the review of the policy, law and regulations before major changes to licenses.

⁷ *Report on Study Tour, Regulatory Regime in Telecommunications Project Cambodia, PPIAF GRANT NO: #A090100/M/TC1/RF/KH, DBA, 2002*

62. Submissions also want limitations on the regulatory mandate, stakeholder engagement at all stages of the regulatory processes, an appeals process against unfavourable regulatory decisions and financial independence for the regulator. Warid endorses these sentiments, but adds not only is ULR essential to foster investment, but SMP analysis and remedies must be part of the process.

2.5.9 Migration Administration

63. Submissions from the private sector also suggest a shorter migration period with mandatory migration on renewal. ITOB make no comment on the issue, as they do not contemplate and migration for at least 10 years. The principal advice from Grameenphone is that BTRC take sufficient time to arrive at a full consensus among all stakeholders. The Consultant concurs. Warid strongly support voluntary migration.
64. In the AXB submission, there is also comment on the make up and the mandate of the transition team. Given BTRC has not had the opportunity to take even a decision in principle on the subject, intensive it should undertake detailed work on that issue with its advisers during the next stage of consideration.
65. It respect of negotiating schedules, the Consultant acknowledges the proposed process it at best untidy. The difficulty arises from the fact that BTRC is seeking advice on a URL before the policy review and the Act amendment. It is also a consequence of the fact that existing policies and practices are currently inconsistent with a ULR regime. As indicated previously it is the unanimous view of the sector participants that the sequencing of ULR consideration should have been different.

2.5.10 PSTN Mobile

66. One of the major issues in moving to a ULR is that the new license aims at any licensed operator, using any system to offer any service. This implies that PSTN operators currently using CDMA technology to deliver fixed wireless services will be able to offer mobile services too. Companies with mobile licenses generally accept this situation provided they pay for spectrum use to the same extent as mobile operators.
67. Grameenphone note that it is incorrect to say (as is recorded in the respective licenses available to the Consultant) that other mobile companies paid nothing for spectrum. Using the Warid payment of US\$ 3.3 million per Mhz of spectrum as a base and noting the payment by GP/Banglalink/Aktel of US\$ 11 million for 1800 MHz spectrum, by averaging the cost of spectrum across 900 and 1800 MHz spectrum bands the earlier arriving companies actually paid a similar amount to Warid. Grameenphone are also confident that stripping spectrum out of operating licenses will resolve the problem in future.
68. For reasons that are not entirely clear ITOB believe that ANS operators should not get a facilities license. This is contrary to the Consultant's recommendation. Warid have no problem with full mobility for PSTN operators provided they pay the same for spectrum as other operators. The difficulty with this suggestion is that PSTN operators are loss making and short of cash so some form of delayed payment would be required.

2.6 ILDTS

69. Three of the submissions receive believe that the ILDTS policy is diametrically opposed to the policy of ULR. AXB submit that ILDTS is not only contrary to ULR, it is arguably ultra vires (illegal) and BTRC should withdraw the policy.

Grameenphone believe that the ILDTS needs changing before converting licenses to ULR. Warid believe that consumer benefits should take priority in respect of price and quality, with the implication that the ILDTS is increasing prices and doing little for quality.

70. ITOB by contrast submit that the policy is working and provides good service to all parties. They do not support the changes proposed by AXB and favour retaining the three layer sector structure with a gradual conversion to ULR over 10-15 years. Given that the ITOB membership predominantly comprises companies dependent upon the three layer structure this submission is understandable. Other companies regard the existing three layer structure as a major impediment to investment in the sector.

2.6.1 SMP

71. Most parties making submissions agree that a policy on SMP is appropriate. AXB and Grameenphone agree with the policy, but believe it should be in the Act and not in the license. Warid go further and state that an SMP policy is essential to give effect to the principle of "any service using any system under a common license". ITOB make no mention of SMP, but simply seek to prevent ANS operators from installing facilities.

2.6.2 Consistency

72. Throughout the submissions, there are numerous references suggesting BTRC should adopt policies that are consistent with the Act, make decisions consistent with other decisions and give consistent treatment to companies. It is clear from this that in the sector there is a perception of a lack of consistency in the actions of the various Commissions and in particular a lack of consistency with the Act. If BTRC accepts the criticisms, measures to improve the consistency of decision making should be a high priority.
73. AXB note that it will be impossible to achieve consistency using individually negotiated schedules. This is true only if the content of the schedules is inconsistent between operators. If the text is consistent in the objectives sought and with policies and laws in place a substantial degree of consistency is possible.
74. Grameenphone make a strong plea for a consistent licensing framework soundly based in the law. Warid also seek consistent treatment. They particularly highlight consistency for the BTRC's approach regarding PSTNs seeking mobile capability. They strongly urge the BTRC to adopt a much "lighter touch" style of regulation.

2.7 Fees and Taxes

2.7.1 Current Situation

75. Table 2-5 summarises the submissions on Fees and Migration. Submissions (both written and verbal) indicate that the current fee and taxation systems are difficult to administer and for BTRC is almost impossible to audit to ensure that companies are paying the contacted amounts.
76. Paragraph 3.6.1 on Page 3-8 of the Fees and Migration Report indicates that in 2007 BTRC had a total budget of BDT565.51 crore (US\$80.8 million) and in 2008 it was BDT1677.6 crore (US\$239.7 million). This revenue represented about 7.6 and 7.9 percent of total government revenue respectively.

2.7.2 Proposed Framework

77. Not surprisingly the sector submissions are virtually unanimous that there are too many fees and fees are too high. To address the structural issue, in the Consultant's Fees Report, we identified a possible restructuring of fees and taxes designed to simplify and rationalise the current system. While AXB found this proposal insufficiently specific, Grameenphone by contrast acknowledged that the diagram 3-1, a Generic Model of Fees and Charges is a useful contribution to understanding the underlying principles.
78. Grameenphone also recognised that an exercise to identify ways of equalising the fees and ensuring that AXB's proposed principle: that nobody should be "worse off" is a large and complex exercise quite outside the scope of this consultation. Warid confined its comments to support for a fundamental evaluation of the fee structure is required.

2.7.3 Spectrum Purchase

79. The Consultant made a particular recommendation in respect of spectrum. The idea is to separate the allocation of spectrum from the allocation of operating licenses. This will be particularly important in ULR, as spectrum details will be different in each case. If details are incorporated in the operating license this will prevent the publication of a common license for all operators.
80. AXB is happy with the idea provided it the migration process protects existing spectrum rights and is comfortable with the current purchase fee and annual fee configuration. This condition is implicit in the Consultant's proposal as there is no suggestion that rights of spectrum holders will change.
81. Grameenphone support the idea too, as a way to resolve the PSTN mobility issue. Grameenphone's comments also focused on the price paid for spectrum by mobile operators. Warid's principal concern is that new entrants should pay higher fees than Warid did for its spectrum. There is insufficient detail to comment on that proposal.
82. Grameenphone also signalled agreement with the Consultant's suggestion of penalties for spectrum hoarding with a "use it or lose it" policy. There was no comment on this from the other submissions.

2.8 Summary

83. In a brief review of extensive submissions, it is not possible to do justice to the work undertaken by the various companies and organisations making submissions. However, a pattern has emerged that three of the submissions are broadly consistent with the licensing structure illustrated in Table 2-3. In the absence of any policy difficulties migration along the lines suggested by the Consultant and by AXB will be relatively straightforward. Most of the existing policy determinations, identified by AXB as obstacles to ULR will automatically lapse with the implementation of ULR.
84. The difficulty the Consultant has faced in framing recommendations and the problem the BTRC will have in proceeding is that a significant policy such as the ILTDS are contrary to the principles of ULR. In addition, other policy decisions such as SMP are pending, as is a review of the Act. We can broadly identify two migration options and thanks to AXB, the BTRC now has two license drafts from which to choose.

Table 2-5: Fess and Taxes

	AXB	ITOB	Grameenphone	Warid
FEES and TAXES				
Current Situation	Too many fees and too high. Difficult to administer	No comment	Separate exercise to identify a way of equalising the fees	Fundamental evaluation of the fee structure is required
Framework	Finds the suggested framework hard to understand, not specific	No comment	Finds the suggested framework a useful starting point for a detailed analysis	Support the unbundling of the Fee Structure
Spectrum Purchase	Purchase fee and annual fee is accepted.	No comment	Mobile operators did pay for spectrum	New entrants should pay higher fees than Warid
Spectrum Hoarding	No comment	No comment	Agree with use or lose	No comment
Separation of Spectrum from operating license	Priority remains to ensure the protection of spectrum rights	No comment	Favours separation of spectrum and operating license	No objection to the separation of spectrum and operating license provides rights protect

3

Options

3. Options

3.1 Two Models

85. If we have correctly interpreted the submissions, the Consultant's model and AXB's model are very similar. Both are essentially one license for facilities and another for services. Spectrum allocation will be under a separate process.
86. The model promoted by Grameenphone is a variant on the Consultant's model. It proposes a single license for vertically integrated companies and a separate license for service only companies. Grameenphone also supports a separate process for spectrum allocation. The two models, DBA/AXB and Grameenphone are therefore, very similar.
87. Both of these proposals imply substantial modifications to ILDTS policy, to end the licensing of individual pieces of equipment, ending mandated market allocation and prohibitions on operators using their own gateways and access to submarine cables.
88. The decisions to be taken by BTRC are:
1. Should it proceed further with preparations for the introduction of ULR in Bangladesh?
 2. If the answer is yes, is the model proposed by the Consultant (and the nearly identical model proposed by AXB) appropriate?
 3. If the answer is yes, should the BTRC await the policy review and review of the Law and then proceed with a ULR (probably not requiring schedules) or should it proceed with ULR without waiting for the policy and Law review to determine significant policy issues?
 4. Should the BTRC cease issuing new licenses during the implementation of ULR?

3.2 Should the BTRC Proceed

89. The issue to decide is: should the BTRC proceed with preparations for the introduction of a ULR? Our recommendation is clear; there is sufficient support in the sector to proceed with preparations for ULR. MSL are the way of the future in telecommunications and if Bangladesh does not move now events will overtake the country's telecommunications licensing system.

Table 3-1: Recommendation 3

Recommendation	Explanation
<ul style="list-style-type: none">• The BTRC should proceed with preparations for a ULR in Bangladesh	<ul style="list-style-type: none">• MSL or a ULR will greatly simplify the system currently in use and encourage investment• There is sufficient support in the sector to proceed with ULR and many participants see major advantages• MSL systems are common in the region, countries including Malaysia, Singapore and India have variants

3.3 Is the Model Appropriate

90. If the BTRC decides to proceed with a ULR or MSL system, the next question to answer is the appropriateness of the model proposed by the Consultant (and the nearly identical model proposed by AXB).
91. For the reasons given above the model greatly simplifies the licensing currently used in Bangladesh. It is practical to implement with minimal disruption to the sector. It is in accordance with international best practice. It upholds the principles of neutrality (between technologies and services), simplicity (in offering new service and implementation), flexibility (to offer services customers need) and reduced administrative burden on the sector.
92. Taken together these characteristics of the proposed system will improve the business friendly environment in the Bangladesh telecommunications sector and encourage new investment, more widespread service, particularly in rural areas, reduced costs and better service.

Table 3-2: Recommendation 4

Recommendation	Explanation
<ul style="list-style-type: none"> The model of licensing promoted by the Consultant and the almost identical model promoted by AXB should be the template with which the BTRC proceeds. 	<ul style="list-style-type: none"> The proposed licensing system simplifies the current system, is practical to implement, Promotes international best practice for licensing Will improve the business environment in Bangladesh's telecommunications sector

3.4 Which Draft to Use

93. The Consultant has provided BTRC with Common Facilities and Common Retail Services Licenses. AXB provided an edited copy of the consultant's work with extensive amendments. Many of the changes proposed improve or modify the drafting to bring the license closer to International Best Practice.
94. The Consultant has now compared these two drafts and the Consultant's Second Drafts are included in Appendix 5-3 and Appendix 5-4. As discussed in Appendix 5-2: Detailed Criticisms of Drafting of Proposed Licenses) several Conditions in these licenses will need to be reviewed should the policy review and amendment to the Act take place before BTRC issues the Common Facilities and Common Retail Services Licenses.
95. In the event that the policy review and BTRC formulate appropriate policies regarding:
- Quality of Service
 - Access and Interconnection (ILDTS and Reference Offers)
 - Significant Market Power

an appropriate cross reference to the Statute, Regulation or Policy should replace the current Conditions in the Facilities and Retails Services Licensees.

Table 3-3: Recommendation 5

Recommendation	Explanation
<ul style="list-style-type: none"> In the event that BTRC formulate appropriate policies on: <ul style="list-style-type: none"> Quality of Service Access and Interconnection (ILDTS and Reference Offers) Significant Market Power An appropriate cross reference to the Statute, Regulation or Policy replace the current Conditions in the Facilities and Retails Services Licensees. 	<ul style="list-style-type: none"> These issues are all complex policy matters and require more detailed treatment than is possible in a single Condition in a License The draft has been prepared on the assumption that BTRC will issued ULR licenses before the policy work is complete and therefore reference to these issues is included. If the policies change first, then BTRC should replace the relevant clauses by a reference to the policy or the revised law or policy.

3.5 Policy Review - Timing

96. Assuming the BTRC decides to accept the Consultant’s proposed model, should the BTRC await the policy review and review of the Law and then proceed with a ULR most (probably not requiring schedules) or should it proceed with ULR without waiting for the policy and Law review. This is the most difficult decision to take. The options we spell out in Table 3-4: Decision Matrix.

Table 3-4: Decision Matrix

	Proceed Now	Await Review
In favour	<ul style="list-style-type: none"> Licenses are coming up for renewal, A consultative exercise has produced a large amount of agreement Urgent to improve the business environment Industry needs the flexibility offered by the new licenses The outcome of the policy and law review is uncertain, moving now will create facts to be considered by the review 	<ul style="list-style-type: none"> Logical sequence is review the policy, review the law, change the licenses There remain some points of difference particularly with ITOB If the policy review results in substantial changes to ILDTS it will simplify the transition Maybe a stronger consensus following a policy review It is possible to renew unchanged licenses for a limited period
Against	<ul style="list-style-type: none"> License changes should come after policy review and law change Operators recommend change in sequencing ILTS is in force but contrary to the principles of ULR There may be no significant changes emerge from the policy review 	<ul style="list-style-type: none"> The outcome of the policy review and law change is uncertain A policy review may take more than a year and Parliamentary processes even longer Schedules will give enough flexibility to incorporate any policy changes in the licenses

97. There are arguments on both sides. However, BTRC has to make a decision. Our advice is that Bangladesh will gain many benefits from regime we propose and it should begin preparations for implementing ULR, including recruitment, appointment of advisers and capacity building.

98. In respect of factors within the control of BTRC (e.g. SMTP Policy) it should make an early decision to adopt that approach and amend the draft licenses to cross reference the to the relevant policy document, instead of repeating it in the text.

Table 3-5: Recommendation 6

Recommendation	Explanation
<ul style="list-style-type: none"> Considering all the factors involved, the Consultant recommends BTRC proceed with preparations for a ULR. BTRC should take measures to address the concerns expressed, by addressing factors in draft licenses better located in regulations. BTRC should engage in Ongoing and meaningful consultation with the sector operators. 	<ul style="list-style-type: none"> On balance, there is sufficient consensus around a practical model to justify moving ahead. The timing and outcome of the policy and legal review could be so far away that BTRC should address urgent problems in the sector with minimal delay.

3.6 Should BTRC Cease Issuing New Licenses

99. A primary objective of the consultative process has been to minimise disruption in the sector during the transition. It is essential to retain a business and investment friendly environment in the sector. The ITOB members regard the possible issuing of new licenses under the ILDTS policy as a breach of all the undertakings made to them under the policy.

100. Throughout the consultation process and where mentioned in the submissions on the draft licenses, the stakeholders are unanimous that issuing new licenses for major entities or for new pieces of equipment should cease during the transition to ULR. We strongly recommend that BTRC announce a moratorium on new major licenses from the time the Commission decide to move to a ULR until the process is complete.

Table 3-6: Recommendation 7

Recommendation	Explanation
<ul style="list-style-type: none"> BTRC should announce a moratorium on issuing new licenses for major enterprises or for the matters covered by the ILDTS policy until the transition to ULR is completed. 	<ul style="list-style-type: none"> This recommendation aims at ensuring the BTRC honours the commitments made under the ILDTS policy and at ensuring that BTRC achieves a transition with minimal disruption of the sector.

101. We are confident that the sector will accept a package of decisions along the lines we have proposed. It is essential that BTRC continue to keep in close touch with all stakeholders to refine and adjust matters of detail where consistent with the overall objective.

4

Conclusion

4. Conclusion

102. The Bangladesh Telecommunications Sector has been an extraordinary success in the last few years increasing the number of investors and operators, increasing the number of subscribers from barely a million to more than 50 million. The message the consultant has received from the companies in the sector is that techniques that worked well in a sector of less than 1 million subscribers need to change in a sector of more than 50 million subscribers.
103. Lack of profitability is the principal concern of all companies in the sector. Changes in the rights of operators during the currency of their licenses (requiring the purchase of new licenses or curtailing of business options) are bemusing operators and structural engineering in the sector (such as the ILDTS) is contrary to international best practice and contrary to the objective of any service using “any system under a common license”.
104. There is strong willingness in the Bangladesh Telecommunications Sector to engage positively with the Commission to address these issues. Unless they are resolved, there is a widespread fear that growth and development of the sector will either stagnate or grow far more slowly than the country needs. We have commented in this report on the dynamism of the sector in neighbouring India and operators are looking for similar developments in Bangladesh.
105. Companies in their submissions seek an environment that accords priority to benefits accruing to final users of telecommunications services. They seek a logical sequencing of consideration of the issues with sector policy reviews, followed by policy decisions and legislation followed by practical steps towards multi-service licensing.
106. The consultative process on ULR initiated by the BTRC is most welcome in the sector. There are strong sentiments in favour of an ongoing dialogue on policy critical sector policy issues. We trust that our work on ULR has made a positive contribution.

5

Appendix

5. Appendix

Appendix 5-1: BTRC Licences in Place

BTRC Licences	Category of Licence	Licensee	Remarks
1	International Gateway (IGW) Services	4	including BTCL
2	Interconnection Exchange (ICX) Services	3	including BTCL
3	International Internet Gateway (IIG) Services	2	including BTCL
4	Broadband Wireless Access (BWA)	2	
5	Cellular Mobile Telecom Operator	6	including Teletalk
6	Public Switched Telephone Network (PSTN) Operator	14	including BTCL
7	Nationwide Telecommunication Transmission Network (NTTN) Service Provider	2	
8	Nationwide Optical Fibre Telecommunication Transmission Network	1	
9	Pre-Paid Card Service Operator	2	
10	Vehicle Tracking Services	3	
11	Internet Protocol Telephony Service Provider – Nationwide	28	
12	Internet Protocol Telephony Service Provider – Central Zone	5	
13	Internet Protocol Telephony Service Provider – Zonal [<i>South-East: 02, South-West: 00, North-East: 00, North-West: 00</i>]	3	
14	Internet Service Provider – Nationwide	101	including BTCL
15	Internet Service Provider – Central Zone	81	
16	Internet Service Provider – Zonal [<i>South-East: 27, South-West: 06, North-East: 10, North-West: 11</i>]	54	
17	Internet Service Provider – Category A	105	
18	Internet Service Provider – Category B	16	
19	Internet Service Provider – Category C	5	
20	VSAT User	49	
21	VSAT Provider	14	
22	VSAT Provider with HUB	5	
23	Call Centre	319	
24	Hosted Call Centre	57	
25	Hosted Call Centre Service Provider	46	
26	International Call Centre	2	
		929	

http://www.btrc.gov.bd/licensing/operators/summary_of_licenses.pdf accessed 10/3/2010

Appendix 5-2: Detailed Criticisms of Drafting of Proposed Licenses

Comments on the Draft Facilities License

	AXB Proposal	CONSULTANT RESPONSE	RECOMMENDATION
	AXB propose replacing a large number of definitions with a “catch all” statement that “terms in the license shall have the same meaning as prescribed in the Act unless the contrary intention appears”	This is a sensible suggestion, which will cut down on the size of the documents	Recommendation: BTRC should agree to this suggestion.
	AXB suggest a simplification of the current text on the obligation of accounting separation	This recommendation achieves all the objectives of the original text and the Consultant proposes acceptance of the suggestions	Recommendation: BTRC should agree to this suggestion.
1.	AXB contend there is no definition of “customer”. Reference is made to “consumer”.	The submission is back to front. The definition ensures that “customer” in the license and “consumer” in the Law have the same meaning	Recommendation: Provision Remain Unchanged
2.	QoS conditions should be addressed in the Interconnection Regulations and are not usually spelled out in a licence. AXB suggest removing these provisions from the license and issuing a separate QoS policy	Correct. However, the policy, law and regulations are under review. This condition therefore ensures that the point is covered. Our preference too would be for this issue to be resolved separately from the licensing system. In the meantime we have allowed the section to stand.	Recommendation: BTRC should agree to this suggestion, provided that BRC review the interconnection regulations and ensure the issue of QoS in this condition is achieved
3.	It is unusual to include a Reference Interconnection Offer (RIO) in the license. These are addressed in the Interconnection Regulations and not usually spelled out in a licence.	Correct. However, the policy, law and regulations are under review. This condition therefore ensures that the point is covered.	Recommendation: BTRC should agree to this suggestion, if they review the interconnection regulations and address the inclusion of RIO.
4.	AXB do not consider a licence the appropriate instrument to specify details of SMP and competition regulation. The SMP framework should be set out in a standalone subsidiary instrument, with the licence referring to that regulation. The licence condition must be consistent with the Act and any subsidiary instruments issued pursuant to the Act. Parallel regulation of the same subject is inappropriate.	Agreed. If an SMP policy is agreed and an appropriate regulation is passed before the issuing of any revised license, then we agree with the change.	Recommendation: BTRC should agree to this suggestion that BRC formulate and put in place a satisfactory SMP Policy prior to issuing new licenses

	AXB Proposal	CONSULTANT RESPONSE	RECOMMENDATION
5.	The requirement for a RIO should be set out in the Interconnection Regulations rather than as a licence condition per se. That is, the licence condition must be consistent with the Interconnection Regulation and there should be no parallel regulation on interconnection or competition/SMP.	This issue has been address in response to point 4 above	Recommendation: BTRC should agree to this suggestion, provided there is a satisfactory RIO Amendment to Inter-connection Regulations
6.	This is a licence and concerns compliance by the licensee of licence conditions rather than imposition of rules by the Commission on various subject matters per se (as in a subsidiary legislation). Therefore, the language should be drafted from the angle of compliance by the Licensee. The licence condition on non-discrimination should not be limited to subject of access and interconnection only.	The point at issue is a difference in license drafting styles. Provided they are consistent with the Law, references that appear in the law may be either cited or repeated in the license. The latter approach allows the reader to gain a full picture of rights and obligations while only reading one document. The point about discrimination is agreed	Recommendation: For this draft of the license we propose to repeat critical statutory provisions in the license where this is necessary to clarify the meaning of the condition. We will amend licence condition on non-discrimination so that it is not limited to subject of access and interconnection only.
7.	In respect of the provisions in relation to accounting AXB have proposed amendments to language and drafting.	The proposal is to redraft the provisions relating to accounting to spell out what may be required. It makes no difference of substance.	Recommendation: BTRC should agree to this suggestion.
8.	Proposed paragraph repeats issues already covered in Condition 7 (access and interconnection) and 8 (infrastructure sharing).	After due consideration the consultant concludes that this is correct.	Recommendation: The original condition should be deleted.
9.	AXB contend that the methodology and details of the cost accounting system is not appropriately located in a licence and should be in a separate document.	The suggestion similar to other similar suggestions. The wording has been changed to cover the relevant points at a higher level of abstraction. The Commission can still achieve the original objective	Recommendation: BTRC should agree to this suggestion.
10.	These documents are arguably not applicable to Bangladesh. The CALEA is the Communications Assistance for Law Enforcement Act . It is a United States wiretapping law passed in 1994, during the presidency of Bill Clinton.	The drafting of the condition needs to be reviewed to address the concerns raised. However, this provision exactly appears in many existing licenses. As far as we know there is no obstacle to Bangladesh recognising documents from other countries	Recommendation: This provision should be subject to a separate review to determine necessity, relevance and appropriateness of the condition.

	AXB Proposal	CONSULTANT RESPONSE	RECOMMENDATION
11.	The condition requiring the publication of details of tariffs, fees, QoS etc may not be relevant to all operators.	Agreed. However, this Condition only comes in to effect following a Commission determination. In its preliminary consultation the Commission will have the opportunity to identify its relevance or not.	Recommendation The text as revised should be included.
12.	The Disputes Condition should be in relation to disputes between licensees and another licensed network operators rather than licensee and commission.	Agreed	Recommendation: BTRC should agree to this suggestion.
13.	Any provisions in the license in relation to competition should be consistent with the Competition Regulation. Details of anti-competitive provisions are not usually included in a licence.	AXB suggest a more widely drawn Condition that leaves spelling out the details to a separate Competition Regulation.	Recommendation: BTRC should agree to this suggestion, provided that BRC formulate and put in place a satisfactory SMP Policy prior to issuing new licenses
14.	This Condition repeats Section 37(3)(b) of the Act. However, the Act does not specify what the meaning of the phrase "rural and sparsely populated areas".	As this is a very restricted Condition. The Consultant has suggested that the phrase should relate to areas unserved when the license is issued.	Recommendation BTRC should agree to this suggestion.
15.	The original draft is inconsistent with section 37(1) of the Act, which expressly prohibits transfer of licence.	Agreed. The Condition has been redrafted and the cross referencing to the Act is included.	Recommendation BTRC should agree to this suggestion.

Comments on the Draft Retail Services License

	AXB Comment	CONSULTANT RESPONSE	RECOMMENDATION
1.	AXB do not consider a licence the appropriate instrument to specify details of SMP and competition regulation. The SMP framework should be set out in a standalone subsidiary instrument, with the licence referring to that regulation. The licence condition must be consistent with the Act and any subsidiary instruments issued pursuant to the Act. Parallel regulation of the same subject is inappropriate.	Agreed. If an SMP policy is agreed and an appropriate regulation is passed before the issuing of any revised license, then we agree with the change.	Recommendation: BTRC should agree to this suggestion, provided that BRC formulate and put in place a satisfactory SMP Policy prior to issuing new licenses
2.	The provision in relation to network design is not relevant since the Licensee is only providing retail telecommunications services are not wholesale services or operating telecommunications systems.	Agreed. The paragraph should be deleted.	Recommendation: BTRC should agree to this suggestion.
3.	These documents are arguably not applicable to Bangladesh. The CALEA is the Communications Assistance for Law Enforcement Act . It is a United States wiretapping law passed in 1994, during the presidency of Bill Clinton. Are these documents applicable to Bangladesh	The drafting of the condition needs to be reviewed to address the concerns raised. However, this exact provision appears in many existing licenses. As far as we know there is no obstacle to Bangladesh recognising documents from other countries	Recommendation: This provision should be subject to a separate review to determine necessity, relevance and appropriateness of the condition.
4.	AXB wishes to delete the condition requiring upgradeable systems that can cope with Number Portability as and when the Commission mandates Number Portability, all expenses in this regard shall be borne by the Licensee.	The Commission is required by Law to consult with the operators when it wishes to make major changes to laws, regulations and licenses. This provision makes provision for this happening.	Recommendation: No change to the clause
5.	Any provisions in the license in relation to competition should be consistent with the Competition Regulation. Details of anti-competitive provisions are not usually included in a licence.	AXB suggest a more widely drawn Condition that leaves spelling out the details to a separate Competition Regulation.	Recommendation: BTRC should agree to this suggestion, provided that BRC formulate and put in place a satisfactory SMP Policy prior to issuing new licenses
6.	Rollout obligations are no longer necessary as competition is rapidly overtaking any obligations set out in a license	Agree	Recommendation: BTRC should agree to this suggestion.

Appendix 5-3: Second Draft of Facilities License

(Document provided as a separate file)

Appendix 5-4: Second Draft of Retail Services License

(Document provided as a separate file)