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No. RP/I/S&L/01/001



To,

Secretary  
Telecom Regulatory Authority of India,  
Mahanagar Door Sanchar Bhawan,  
J.L. Nehru Marg, (Old Minto Road),  
New Delhi - 110 002

**Kind Attention:- Shri Sudhir Gupta, Pr. Advisor (MS)**

**Subject: Pre-Consultation on Allocation of Spectrum in 2G band in 22 Service Areas by auction**

Dear Sir,

This is with reference to TRAI's Pre-Consultation Paper on the subject matter. In this regard, kindly find enclosed our response for your kind consideration.

Yours Sincerely,  
For Bharti Airtel Ltd.

A handwritten signature in blue ink, appearing to read 'R. Gandhi', written over a horizontal line.

**Ravi P. Gandhi**  
Vice President  
Head Regulatory Policy  
India and South Asia

**Bharti Airtel Limited's response to TRAI's Pre-consultation Paper on "Allocation of spectrum in 2G band in 22 service areas by auction" dated 3<sup>rd</sup> Feb.'12**

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The Hon'ble Supreme Court, in its recent judgment dated 2<sup>nd</sup> Feb.'12, has directed TRAI to make fresh recommendations on allocation of the spectrum in the 2G band in 22 service areas by auction. Subsequently, in its pre-consultation paper dated 3<sup>rd</sup> Feb.'12, TRAI has sought the comments of all stakeholders on the related issues of 2G spectrum auction.

In this background, we would like to make the following submissions:

1. We understand from some media reports that some of the affected operators have been pushing that the auction be restricted to those operators whose licences stand quashed;

We firmly believe that such suggestions are contrary to the Hon'ble Supreme Court order and DoT's press release dated 29<sup>th</sup> Jan.'11, on the following grounds:

- a. In its judgment, the Hon'ble Supreme Court has directed TRAI for the following:

*"Keeping in view the decision taken by the Central Government in 2011, TRAI shall make fresh recommendations for grant of licence and allocation of spectrum in 2G band in 22 Service Areas by auction, as was done for allocation of spectrum in 3G band.*

- b. The press release of the DoT dated 29<sup>th</sup> Jan.'11, states:

*"In future, the spectrum will not be bundled with licence. The licence to be issued to telecom operators will be in the nature of 'unified licence' and the licence holder will be free to offer any of the multifarious telecom services. In the event the licence holder would like to offer wireless services, it will have to obtain spectrum through a market driven process. In future, there will be no concept of contracted spectrum and, therefore, no concept of initial or start-up spectrum. Spectrum will be made available only through market driven process.*

The relevant extracts from the Hon'ble Supreme Court's judgment and DoT's press release dated 29<sup>th</sup> Jan.'11 clearly establish the following:

- In the auction scenario, the concept of "initial spectrum" or "startup spectrum" does not exist;
- The auction recommendations must cover the spectrum allocations to all the eligible participants.

**Thus, it is clear that for the upcoming auction process, no concept of "start-up spectrum" or "initial spectrum" can be applied. Thus, no artificial distinction should be created between "start-up" spectrum and "additional" spectrum.**

2. TRAI would recall that it has made recommendations to DoT for cancellation of licences of those operators, who have failed to fulfill their rollout obligations. These licences were liable to be cancelled by the DoT. Therefore, such licencees do not deserve to participate

in the auction of spectrum in the same circles where they have already failed to fulfill their rollout obligations by taking shelter under the Hon'ble Supreme court order.

**Therefore, all existing UAS / CMTS licences and potential new entrants should be allowed to participate in the auction. However, those existing licences, who have already defaulted on their rollout obligations, should not be permitted to participate in the auction.**

3. In case, the auction is restricted to a specific “class of operators,” then it will certainly have the following implications:
  - This will be contrary to the judgment / findings of the Hon'ble Supreme Court and will again give rise to the litigation. In fact, in its judgment, the Hon'ble Supreme Court has clearly held that the auction process should be non-discriminatory and non-arbitrary;
  - This will favour only one set of players. This will seriously restrict the competition in the bidding process and will create an uneven level playing field, which is not in the interest of the consumers;
  - This will seriously suppress the market value of the spectrum due to the participation of the limited number of operators;
  - This will raise the issues of fair process, transparency and equal opportunity as were earlier highlighted by the Vigilance authorities such as like CAG, CVC.

**Therefore, all existing UAS / CMTS licences and potential new entrants should be allowed to participate in the auction. However, those existing licences, who have already defaulted on their rollout obligations, should not be permitted to participate in the auction.**

4. The spectrum auction policy should not create any bias, on any of the parameters, in favor of any set of operators. Particularly, the following aspects must be decided fairly, transparently and in a non-arbitrary manner:
  - a. The minimum units of the spectrum for which the bids are to be submitted should be kept the same for all the bidders. However, in order to ensure the wider distribution of spectrum, the TRAI may like to consider to impose a limit of maximum 5MHz to be acquired by one single bidder in the upcoming auction;
  - b. The overall spectrum holding for each operator shall be limited to 25% of 2G spectrum in that service area, as recently announced by the DoT in its policy.

**Thus, we propose that a fair & rational policy for unit size / pricing / quantum of the spectrum should be decided for all the eligible participants.**

5. The auction policy should not create artificial scarcity of the 2G spectrum by limiting the allocation of spectrum. Further, auctions must be conducted at regular intervals for proper calibration of spectrum price determination;

**Thus, we recommend that all available 2G spectrum i.e. spectrum of the cancelled licences and spectrum available with DoT, should be put up in the upcoming auction.**

6. During the auction policy, the following issues related to spectrum recurring charge should be addressed:
  - a. **Spectrum Usage charge on the auctioned spectrum:** Internationally, whenever the price of the spectrum is derived through auction, the recurring spectrum charge is levied only to recover the administrative cost;

We therefore suggest that the spectrum usage charge on the auctioned spectrum should be kept at minimal to recover the cost of administration. This will be in line with the international best practices.

- b. **Removing ongoing arbitrage on spectrum usage charge:** Presently, there is an existing arbitrage over 2G spectrum recurring charges. For example, if one 2G operator holds 9.4MHz in 900MHz & 1800MHz together, they pay the spectrum charge @ 6% of their entire revenue. However, another 2G operator holdings 9.4MHz in 800MHz & 1800MHz pay the spectrum charge @3%;

On two occasions in the past, including its recommendations in Aug.'07, TRAI had recommended maintaining parity over 2G spectrum recurring charges, by proposing the following scheme of spectrum usage charge for dual technology operators:

*4.31 The other issue related to the spectrum charges/fee payable by such operators who have opted for use of multiple technologies for providing access services. Here again, the spectrum charges/fee will be governed by the combined total of spectrum allocated in different technology specific bands, i.e. the slab of spectrum charge/fee would be determined by the combined total of spectrum.*

However, this recommendation of the TRAI was neither accepted by the DoT nor it was referred back to TRAI in compliance with the fifth proviso to Section 11 of the TRAI Act, for its reconsideration;

Thus, this particular action was legally untenable on the part of DoT. The Hon'ble Supreme Court has now stated that the actions taken by the DoT between Sept. 07 and March '08, during which this particular decision was also taken, are illegal. Thus, it is necessary that TRAI must now reiterate its earlier stand on spectrum recurring charge on all 2G spectrum bands in line with its earlier stated recommendation, as stated above.

It is important to note that the Govt. has already lost more than Rs 1,000 crores on this account and is likely to lose another Rs.5,000 crores in next 10 years, if the existing scheme of spectrum usage charge for dual technology operators is not corrected;

7. The validity period of the auctioned spectrum should be for 20 years, as done in the last 3G/BWA auction. When the spectrum is taken through auction, it is advisable that it must be granted for a longer term as the telecom sector requires huge investments and the payback take the large number of years. In fact, this issue was debated during 3G/ BWA auction as well and thereafter, the spectrum rights were granted for a period of 20 years;

As all existing licences were due for extension prior to 20 years period of 3G / BWA spectrum, a specific provision was added to the licence agreement to allow the spectrum usage rights of 3G/BWA spectrum to continue beyond the expiry of licence. The relevant clause states:

*.....23.7(i) Validity period for 3G spectrum: The licensee is authorized to use this spectrum for a period of 20 years from the date of award of right to commercially use the allocated 3G spectrum.....If the validity period of the UAS licence agreement expires before the expiry of the right to use the 3G spectrum for 20 years, awarded by means of the said auction, then the validity of the UAS licence for operation of Unified Access Services by using the said 3G spectrum only, shall be extended to make it coterminous with the validity of the right to use the 3G spectrum, without any charges and in such manner as the Licensor deems fit.....*

**Therefore, we suggest that the rights of the auctioned spectrum should be given for 20 years. Further, this period will be in line with the TRAI /DoT proposal on Unified Licence regime where TRAI / DoT is already considering the delinking of the spectrum with the licence.**

8. The auctioned spectrum should be technology neutral: GSM, WCDMA, LTE etc. Once the spectrum is obtained in auction, it is necessary that the bidder must be allowed to use this spectrum with whichever technologies he wants. Putting artificial restrictions on technology would lead into sub-optimal usage of the spectrum;

**It is therefore suggested that all spectrum should be allowed to be used for all technologies.**

9. The spectrum auction should be held simultaneously for all the service areas.
10. In order to ensure the better utilization of spectrum, the auction winner should be allowed to swap slots to get continuous blocks of spectrum.
11. It has been the practice of the Government to collect the auction/ bidding amount upfront. We recommend that this practice should continue for the upcoming auction as well and operators should be required to pay the auction amount upfront. It will ensure that only the serious operators participate in the auction process;

**In case, a different policy is followed now for allowing the payment of the amount in installments then it is requested that the same policy may be applied to those operators, who have already paid the huge sums of money in the last 3G / BWA auction.**

12. As a pre-condition, those existing licencees who wants to participate in the upcoming auction, must be compliant to the following earlier conditions imposed on them:

- a. **Roll-out obligations:** In accordance with the policy of dual technology licences as announced on 19<sup>th</sup> Oct.'07, the dual technology operators were required to meet the roll-out obligations using the alternate spectrum within one year /three years from the date of allotment of the spectrum;

Further, in its press release dated 19<sup>th</sup> Oct.'07, DoT has clearly stated:

“No additional spectrum may be allocated to licensees without fulfilling the roll out obligations. In case of spectrum auction, a Licensee, who has not met the roll-out obligation against an existing licence, should not be eligible to participate in any spectrum auction until the roll out obligation is met;

**Thus, only those dual-technology operators who have complied with this requirement should be allowed to participate in the auction process.**

- b. **Payment for usage of spectrum for specific service:** According to the ‘Guidelines for Auction and Allotment of Spectrum for 3G Telecom Services’ dated 1<sup>st</sup> August 2008 and amendment thereto dated 11<sup>th</sup> September 2008, the CDMA operators require allocation of a separate carrier (2x1.25 MHz) for offering 3G-EVDO services in 800 MHz band;

In 2010, the auction of 800MHz for 3G EVDO service did not take place along with 3G auction. However, the 3G EVDO services could have been provided only after the payment of the amount discovered through 3G auction. Presently, dual technology operators are using one carrier of CDMA spectrum for 3G-EVDO services from their existing CDMA holdings.

**Thus, the TRAI should ensure that those operators who are presently providing 3G-EVDO services without getting 1.25MHz carrier at the auction-linked price, should stop the 3G-EVDO services immediately. Further, TRAI should also ensure that unless the Govt. recovers the money from such operators, they should not be allowed to participate in the auction.**

- c. In its press release dated 19<sup>th</sup> Oct.'07, the DoT had stated the following:

*At the time of further allotment of spectrum in any technology, allotment will be subject to the condition that in case the eligibility of the licensee for allocated spectrum in other technology falls below the criterion set for spectrum allotment in the specified technology for the last*

*consecutive six months then corresponding chunk of spectrum in that technology will be surrendered by the licensee before any further allotment of spectrum is considered.*

**It is desirable that the Govt. must undertake an exercise to ensure that the current allocation of spectrum in all technologies held by the existing operators is as per their eligibility according to the applicable subscriber linked guidelines. In case, any of the operators is holding spectrum more than their eligibility, in any of the technology, then such spectrum should be withdrawn and put up for auction.**

**Please note that our above views are only preliminary for pre-consultation paper. We will submit our detailed response once TRAI release its consultation paper and reserve our right to submit our responses on the comments made by the other stakeholders on the pre-consultation paper.**