

Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, New Delhi 110002.

27.08.2014

Dear Sirs,

Comments To Consultation Paper No. 10/2014 of 07.08.2014

I seek the indulgence of the Authority to submit my Comments, not in the format of the Questions raised in Chapter IV, but along my line of reasoning.

Background

The Authority has observed in 2.3 “ *The Auction poses a very real problem for the licensees i.e. the very continuity of their service in an LSA is subject to the outcome of the Auction* “.

The Authority goes on to urge in 2.5 “ *In view of the above, the Authority is of the view that before conducting the Auction the government should explore the possibility of making available one more additional block of 5 MHz contiguous spectrum.....*”

The Authority has unerringly placed its finger on **the problem** with the proposed Auction. But thereafter the Authority has stopped short of explicitly laying bare the underlying policy infirmities that lie at the root of **the problem**. Unless the underlying infirmities are squarely confronted, they will not get addressed. That not being so, the half-measures advocated by the Authority in 2.5, while perceptively along the right lines, fall tantalizingly short of solving **the problem**. The Authority has also not been unequivocal that principles of policy must, at all costs, be upheld.

It is respectfully submitted that those **policy infirmities**, which are the **root cause** of **the problem**, are that the **Auction a) Promotes Business and Public Service Discontinuity, and b) Promotes Predatory and Unfair Competition**. Fortunately, there exist remedies which will

not just solve the problem, but indeed enormously benefit every legitimate stakeholder; public, government, telecom sector, and every worthwhile principle; policy integrity, fair play, and competition. That the remedies are in the nature of add-ons to measures already advocated by the Authority, makes their implementation simple. But before placing the remedies for the consideration of the Authority, it is crucial to first nail the policy infirmities in clear terms.

Promotes Business and Public Service Discontinuity

On-the-Ground-Infrastructures providing 24X7 Public Services, like rail tracks, like electricity services, like the Grand Trunk Road, or like telecom services, are built for their life, which may span centuries. Conceiving these in 20 year Batch Mode is simply incredible. This feature is elementary and its application is universal. The National Telecom Policy NTP 1999 unsurprisingly embedded this Business and Public Service Continuity principle in as many words "*Licenses would be awarded for an Initial Period of 20 years and would be extendible by additional periods of 10 years thereafter*". In a normative sense, the life of the license was the life of the business. Of course, in the License Clause the government reserved the final right to decide extension, as is the responsibility of the State for a public service. Such rights are indeed to be exercised, illustratively in situations like where a Licensee is financially insolvent, or is abetting anti-national activities, or is squatting on spectrum. But to conjure from this Clause, 19 years later, an inference that *every* telecom businesses started in the 1990s was effectively just a 20 year affair, is extra-ordinary. Whether this inference is tenable, where will the blackout of a massive network leave the public, are all frightening issues, but for the purpose of this Consultation Paper they beg the point. The point is not whether the government *can* precipitate termination. The point for the Authority to mull is whether the government *should* precipitate termination. It may be recalled that in the 1990s the spectrum bands were assigned by government mandate, and only around assigned bands did global scale networks get configured, and gigantic investments staked. It would be one thing, completely understandable, to charge the full market/auction price for spectrum for Extension Periods. But it is quite another thing to surgically sever the spectrum of running operations, then to place mainly such severed spectrum for auction, creating conditions where the severed operations will be

gasping but competing operations will exploit. Far from fidelity to the policy promise of Business and Public Service Continuity, this situation directly abets Discontinuity. This first infirmity also leads directly to the second policy infirmity.

Promotes Predatory and Unfair Competition

In 2.3, the Authority having first acknowledged that the very continuity of the services of incumbent TSPs is at stake, later asserts that such TSPs will have no alternative but to win back the 900 MHz spectrum. Taking the liberty of analyzing these statements, of the Authority to the Authority, what the Authority is saying is that not only will the Incumbent TSP have to bid for what it may perceive to be the inherent value of its severed 900 MHz spectrum, it will additionally have to bid far beyond the inherent value, just to stay alive. These statements amount to an admission by the Authority of Unfair Competition, although the Authority has not used that expression. But matters get worse. Let us examine from the standpoint of Competing Bidders who are not incumbents in a particular LSA. These Competing Bidders too will perceive an inherent value for the 900 MHz spectrum, but they will coolly raise bids far beyond such value, secure in the knowledge that the Incumbent has no alternative but to match. So either the Incumbent eventually still makes the winning bid, in which case the Competing Bidders will have financially bled and competitively enfeebled the Incumbent, without spending a penny. Or, a Competing Bidder emerges the winner, in which case it bags not just the 900 MHz spectrum but also the scalp of a major competitor. Heads I Win, Tails You Use!

This amounts to a rigged contest and stark Predatory Competition.

The picture is clear. ***The principles of Public Service Continuity and Fair Competition can be upheld in the Auction ONLY if there is an adequate share of 'new' spectrum.*** The 2010 Auction was all 'new' spectrum, so this contradiction never surfaced. In the 2014 Auction, there was the serendipitous Order of the Supreme Court that added the canceled 1800 MHz spectrum as 'new' spectrum, so this policy contradiction was swept under the carpet. But this time around the bulge under the carpet is telltale.

It is the responsibility of the Authority to ensure level playing field and fair competition in the telecom sector. In this matter the Authority has not just to recommend, it has to ensure.

It is humbly submitted that the half measures suggested by the Authority in 2.5, while along the right lines, do not solve the problem. Combining spectrum holdings of two incumbents, a top-up here and there, and distributing into three blocks is good, but very far from enough. This auction cannot shed its egregious character without an adequate share of 'new' spectrum. Yet, a few simple measures, as add-ons to the measures the Authority has already suggested, can turn the situation on its head. I request the consideration of the Authority to these below

Add-On Suggestions to the Measures Already Proposed by the Authority

As a baseline, every step suggested by the Authority from 2.5 to 2.12, to add new spectrum, to harmonize existing assignments for capacity and versatility, and to dismantle man-made barriers in a spectrum starved country, are whole-heartedly supported.

The Add-On Suggestions are

Spectrum

1. 3 blocks of 5 MHz of 2100 MHz spectrum must be added as 'new' spectrum for the Auction, by concluding the swap with Defense. This is a no-brainer. While the 2100 MHz and the 900 MHz bands are not perfect substitutes, yet they indirectly substitute. In any case, the commercial deployment of these 3 slots is long years overdue in the national interest.
2. BSNL should be asked to retain only a maximum of 8 MHz of administered spectrum, consisting of one block of 900 MHz (whatever the determined block size) and the balance in 1800 MHz. Spectrum beyond 8 MHz should be surrendered, and this should be added as 'new' spectrum to the Auction pool. The government could indicatively extend 50% of the Reserve Price pro-rated for their balance license period as budgetary support to BSNL. The BSNL was extended out of turn spectrum assignments, their traffic does not require spectrum beyond 8 MHz, which anyway they have only for a few years. It will only benefit BSNL to monetize an unused asset while they can.

The above two steps, taken together with all the steps suggested by the Authority from 2.5 to 2.12, are essential to introduce adequate 'new' spectrum as may qualify the Auction as

being compliant with the policy tenets of Business and Public Service Continuity, and of Fair Competition. The Authority should stipulate these as minimum conditions.

Block Size

The Authority may like to consult with leading equipment/handset vendors and operators, whether with recent advances a block size less than 5 MHz can support 2G, 3G, and 4G technologies. If yes, then that should become the default block size instead of 5 MHz. Although creating one extra block of 900 MHz in every LSA has to be an over-riding consideration, yet there is a threshold below which this will be a destructive outcome. This is another reason why the surrender of excess spectrum by BSNL is crucial.

Reserve Price

On the assumption the Authority accepts the above suggestions, there could be concerns voiced from the usual quarters about spectrum oversupply leading to muted price discovery. Usually such voices manifest a narrow understanding of policy. However, for better or for worse, India has since 2010 already gone down the path of exaggerated price discoveries emerging from restricted spectrum supplies. Given this history, a sharp drop in spectrum price is now no longer desirable for a more authentic reason. High volatility in spectrum prices reduces business outcomes to a lottery, which is anti-competitive. Under such circumstances, regulators override conventional econometric models and hard code the Reserve Price as a tool to dampen price volatility. For this reason, it is suggested that :

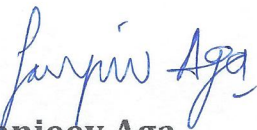
1. the Reserve Price for the 2100 MHz and 1800 MHz bands be pegged at 75% of the post-inflation-adjusted last auction prices, with the Authority using its expertise to normalize outlier values.
2. The Reserve Price for the 900 MHz band be, for technical reasons, fixed at 1.5 times the 1800 MHz Reserve Price.

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I trust the Authority will consider these suggestions, which will make the Auction compliant with policy principles, will respect consumer interest, will drive sector and GDP growth, will boost government revenues far beyond what is envisaged, and once again place the telecom sector as the instrument of societal change.

With kind regards,


Sanjeev Aga