

TELECOM USERS ASSOCIATION OF INDIA

No: 115/ TEL/12

Date: 14th February, 2012

To

Shri Sudhir Gupta

Pr. Advisor (MS)

Telecom Regulatory Authority of India.

New Delhi

**SUB: COMMENTS/SUGGESTIONS ON 'ALLOCATION OF SPECTRUM IN 2G BAND
IN 22 SERVICE AREAS BY AUCTION'**

Dear Sir,

This is in response to the Pre-Consultation paper floated by TRAI on 'Allocation of spectrum in 2G band in 22 service areas by auction' on February 3, 2012 inviting the comments/suggestions of all stakeholders, pursuant to the directive of the Hon'ble Supreme Court in its Judgment dated February 2, 2012.

Our comments/suggestions on the said subject are attached in the Annexure for the kind consideration of the Authority.

Thanking you.

With regards

Yours sincerely,



Dr. Girija B Nanda

Chief Functionary cum General Secretary

Encl: Comments / Suggestions (Total Pages-6)

THE BUZZWORD

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Comments/Suggestions on "Allocation of Spectrum in 2G band in 22 Service Areas by Auction"

TRAI has brought out a Pre-Consultation on "Allocation of Spectrum in 2G band in 22 Service Areas by Auction" pursuant to the directive of the Supreme Court in its Judgment dated 02.02.2012 that, "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." The Hon'ble Court has also asked the Central Government to consider these recommendations and take appropriate decision within next one month and grant fresh licenses by auction. This, in our view, is an excellent opportunity for TRAI as well as the Central Government to resolve the issue of spectrum allocation in 2G band together with the long pending associated issues. TRAI has already displayed its proactive approach on the matter by floating the above-mentioned Pre-Consultation and the Consultation Paper on Draft Guidelines for Unified Licence/Class Licence and Migration of Existing Licenses. We expect the Central Government to utilize this opportunity to clean up its long pending matters which involve huge financial implications on the Exchequer, like levy of one-time fees on excess spectrum, release of spectrum over prescribed limits, refarming of precious spectrum in 800/900MHz band, etc which are also a part and parcel of the spectrum allocation issue. These matters need urgent attention as this would clear up the complexities/disparities in the allotment process, earn huge revenue for the Government and establish a level playing field for all the operators.

The approximate loss to the Exchequer due to the pendency on levy of one-time fees is of about Rs. 18,000 crore as per the prices recommended by TRAI and still the Government has not reacted on it for almost four years now. Apart from this, the issue of spectrum refarming of valuable spectrum in 900MHz Band has also been deferred till the renewal of the licenses on the excuse that there is no sufficient spectrum available in 1800MHz band. The persisting delay is benefitting the incumbents who are not only able to hoard the scarce and efficient resource but also managing to pay miniscule prices in return. Therefore, it will be prudent for TRAI to bring in the issues of excess spectrum and spectrum refarming together with issue of the spectrum allocation in 2G band as this would help building a definite path for the allocation process and bring out clarity on this vital issue for all the stakeholders.

ISSUE OF LEVY OF ONE-TIME FEE ON EXCESS SPECTRUM HELD

It is almost four years since DOT decided that excess spectrum with telecom operators would be subjected to a One-Time Fee. The one-time fee on existing operators, which is worth about Rs 18,000 crore (based on TRAI recommended values), is yet to be recovered, and there is a fear that the interested operators might power lobby on the matter and would be able to delay



the matter further beyond the forthcoming 2G Auction to benefit themselves from the auction prices and dilute the recoverable amount.

It was decided by DOT, way back in May 2008 that One-Time Fee would be charged for spectrum beyond 6.2MHz and the Department will start communicating it to operators. The DOT had then asked TRAI to recommend the basis for such charge. In May 2010, TRAI recommended that **3G prices** should be used as reference price for the one-time fee for excess 2G Spectrum. In January 2011, Minister of Communications made press statements that the TRAI recommendations on 2G Spectrum pricing would be examined speedily, and that allocations beyond 4.4 MHz would be charged. In February 2011, **TRAI recommended specific prices for each Telecom Circle** based on a detailed Report from Professors from reputed Engineering and Management Institutes. It is learnt from newspaper releases that Telecom Commission has decided that the charges should be calculated retrospectively from the Date of Allocation based on the TRAI recommended price or 3G price, whichever is higher.

Unfortunately, no action has been taken by DOT to recover this amount from incumbent operators like Bharti, Vodafone, etc. The **recoverable amount** based on TRAI recommended prices and 3G prices, whichever is higher, with a retrospective charge from the Date of Allocation of spectrum beyond 6.2MHz amounts to **about Rs. 9,000 crores for the leading beneficiary Bharti and Rs. 7,000 crores for Vodafone.**

It is apparent that the interested operators are lobbying for the delay in the implementation of the decisions taken by the Telecom Commission and may succeed in getting their proposal of 'proxy' auction (where the price arrived through auction of available spectrum in 2G band would be applied on pro-rata basis for the current excess holdings) accepted. Knowing well that the new operators, under threat of uncertainty, are unlikely to be active bidders, the large incumbent operators would subsequently be able to manipulate the auction of available spectrum in 2G band through limited cartelized bidding. These prices, if applied retrospectively for recovering one-time fee for the excess spectrum held by the old operators, would deprive the nation of thousands of crores unless the right framework/rule is put in place.

ISSUE OF REFARMING OF SPECTRUM IN 800/900 MHz BAND

Another benefit that the existing operators are drawing is from the earlier allotment of spectrum in 800/900 MHz band for the provision of 2G services through CDMA/GSM technology which is much more economical to roll out the networks as compared to the 1800MHz band. It has been recognized worldwide that spectrum in these bands is very efficient for the provision of broadband services on wireless platform. Many nations have already undertaken the exercise of refarming the spectrum in these bands and auctioned the spectrum in 800/900 MHz band for LTE services. More and more countries are joining the



parade recognizing the advantage this process will create. TRAI has also highlighted this need in its Recommendation on 'Spectrum Management and Licensing Framework' dated May 11, 2010. However, due to the insufficiency of equal amount of spectrum in 1800MHz band, TRAI had mentioned that spectrum in 900MHz band would be refarmed on renewal. We view this as an excellent opportunity for TRAI to re-raise this issue as the cancellation of 122 licenses has resulted in an addition of more than 400MHz of spectrum in the pool of spare spectrum in 1800 MHz band. Also, as per the data given by WPC as on 31.12.2011, there is a spare spectrum of 211 MHz available with DOT. Therefore, all together there is enough spectrum available for the refarming of the much more efficient 900MHz spectrum instead of waiting until the renewal of the licenses.

We believe that TRAI should recommend an auction process for the allocation of the spectrum in 2G band addressing the above matters in parallel to ensure the following:

True value of the Spectrum and its efficient use

The Hon`ble Supreme Court has upheld the view in its above-mentioned Judgment that Spectrum is a scarce resource and the same should be allocated at a price commensurate with its true economic value. NTP 1999 also provides that the spectrum shall be utilized for providing the people of India, secure, reliable, affordable and high quality converged telecommunication services anytime, anywhere. The decision of the Central Government declared by its Press Note dated 29.01.2011 clearly mentions that in future spectrum shall be allocated by auction to determine its current market value. In order to ensure that the auction process results in the determination of true economic value of the scarce resource, the real quantum of spectrum available should be determined first and the best use it can be put to. Here, we would like to bring forth the long pending issue of excess spectrum held up by existing operators at a negligible price and the matter is pending on the Government's end now for almost four years. **Therefore, the release of excess spectrum beyond the contracted amount is essential to establish how much of the spectrum in 2G Band is actually available and how it can be utilized in the best possible manner.** Besides this, as proliferation of Broadband service is on the Government's priority list, the refarming of spectrum in 900MHz should be dealt with urgent priority. TRAI has already brought out this fact in its Recommendation on 'Spectrum Management and Licensing Framework' but mentioned that the same can be done only on renewal of licenses. As elaborated above, both these matters can now be dealt with, in order to settle the long pending issues.

Introduction of adequate competition

It is in place to recall the recent happening of late 2011 where three of the existing players had introduced a tariff increase by cartelizing and nothing could be done to stop that. In another case, the operators have cartelized to provide 3G services in the circles where they have not been awarded the 3G spectrum through intra-circle roaming arrangements. We fear that such



kind of unfair trade practices will feature more in future if a rational process of auction is not put through to ensure adequate competition in the market. As mentioned earlier, the existing operators have already proposed a 'proxy' auction price to be levied for charging one-time fees for excess spectrum. There are very high chances that the incumbents end up in limited cartelized bidding in order to draw benefits of these auction prices in the one-time fee due on the excess spectrum held by them and shove away the competition. Many of the companies whose licenses are subject to cancellation vide the Supreme Court Judgment are already disheartened by the uncertainty around and the huge money blocked in the investments they have made in establishing their network. Ideally auctions extract the true market price of any product/service but only if there is parity in the value of such product/service to all the participants. Hence, TRAI should take great care in recommending a procedure for auction of spectrum in 2G band so that the end objective of creating a competitive market is not jeopardized.

Revenue to the Government

As per the above decision of the Central Government taken in 2011, spectrum is to be auctioned in future to ensure revenue to the Government commensurate to the current market value of the Spectrum. Again we would like to emphasize that the spirit of the decision is to rationalize the pricing of spectrum everywhere and therefore, even the One-time charge on the excess spectrum should be implemented the earliest. Secondly, the exercise of spectrum refarming if undertaken at this juncture, it will fetch the true market value of 900MHz spectrum, when auctioned, which is multi-fold higher than 1800MHz spectrum. According to a study based on recent auctions which took place in other countries, the available spectrum in 900MHz band can fetch a whopping sum of Rs. 200,000 crores for the National Exchequer, if it is vacated and auctioned for provision of broadband wireless services. Apart from this, with regard to the allotment in 2G Band, the auction process should be segregated amongst the different classes of participants to ensure competitive bidding and reserve prices should be set according to the economic value of the spectrum to the respective groups.

Recommended process for 'Allocation of Spectrum in 2G band in 22 Service Areas by auction'

Considering the above matters in light of the provisions of NTP 1999, the Judgment of Hon'ble Supreme Court dated February 2, 2012, the Decision of the Central Government taken in 2011, and the TRAI recommendations on 'Spectrum Management and Licensing Framework' dated May 11, 2010 and February 8, 2011, to discover true economic value of the spectrum following is suggested:

- A. With the newly created inventory of spectrum in 1800MHz band, adequate spectrum may be set aside for refarming of the spectrum in highly efficient 900MHz band which is already recommended by TRAI in its recommendations mentioned above. This spectrum in 900MHz band can be subsequently auctioned for IMT advanced services which will



not only facilitate fast proliferation of broadband services but will also fetch very high revenue for the Government.

- B. Balance of the spectrum left in 1800MHz band after reserving suitable quantity for refarming, may be allocated through multiple levels of auctions to comply with the Judgment of the Hon'ble Supreme Court for allocation of spectrum in 2G band in 22 service areas by auction and to fetch true economic value of the spectrum. This will also provide a fair chance to the companies whose licenses have been cancelled vide the above Judgment. The multiple level auction process is illustrated below:

Multiple level Auction process

1. Price Discovery of 'upto 6.2 MHz' spectrum in 1800 MHz band

Level I Auction – The different parameters in this auction level will be as below:

Eligible Applicants: Companies whose licenses have been quashed and new prospective entrants who want to bid for the spectrum

Spectrum Pool: The spectrum getting vacated as a result of cancellation of licenses less the spectrum that TRAI may decide to set aside for refarming of 900 MHz band and for subsequent phase wise allocations

Block Size: 4.4 MHz

Reserve price: Certain percentage (say 70% or 75%) of the price recommended by the expert committee of TRAI for 'upto 6.2 MHz' of spectrum

Level II Auction – The different parameters in this auction level will be as below:

Eligible Applicants: All existing UASL/CMTS Licensees having spectrum less than 6.2MHz and winners of Level I auction

Spectrum Pool: The balance spectrum from the Level I auction, if any plus available spectrum as specified by WPC on 31st January 2011

Block Size: 1.8 MHz

Reserve price: per MHz price discovered in Level I auction

2. Price Discovery of 'beyond 6.2 MHz' spectrum in 1800 MHz band (prospective charging)

Level III Auction – The different parameters in this auction level will be as below:

Eligible Applicants: All operators

Spectrum Pool: Excess spectrum of all existing operators i.e. spectrum over and above the present contracted spectrum plus the spectrum available after Level II Auction, if any

Block Size: 1.8 MHz

Reserve price: Certain percentage (say 70% or 75%) of the price recommended by the expert committee of TRAI for 'beyond 6.2 MHz' of spectrum, 3G price, or per MHz price discovered in Level II auction, whichever is higher.

3. Calculation of one-time fee payable by existing UASL operators for excess spectrum beyond 6.2MHz (prospective and retrospective charging)

- For Future use of spectrum – the price discovered in Level III auction may be charged from the date of recommendation based on Level III auction till the licence validity period
- For Past use of spectrum - the price recommended by the expert committee of TRAI for 'beyond 6.2 MHz' of spectrum or 3G auction price whichever is higher from the date of allocation till date of recommendation based on Level III auction

Multiple levels of Auctions described above are summarized in the Table below:

Level	Applicants	Volume	Slot Size	Reserve Price	Restriction
I	Cancelled Licensees and New applicants	Cancelled Spectrum less set aside by TRAI for Refarming Auction in later phases	4.4	70%-75% of TRAI Price 'upto 6.2 MHz' (Rs 5,000-5,500 Crs for 4.4 MHz pan India)	
II	Existing, having spectrum less than 6.2MHz + Level I winners	Cancelled Spectrum Less: Level I allocation Add: Spare spectrum	1.8	Level I price	
III	All	Available subject to minimum of what is in use	1.8	70%-75% of TRAI Price 'Beyond 6.2 MHz,' or 3G price, (Rs 4,500-5,000 Crs / Mhz for pan India) or Level II price whichever higher	Subject to 25% of spectrum available in the service area or TRAI limit of 8 / 10 MHz, whichever is higher

Note:

A. Existing operators to be charged for spectrum held in excess of 4.4MHz and upto 6.2MHz at the price discovered in Level II

B. For spectrum held by existing operators beyond 6.2MHz, following charges to be levied

1. For future use of spectrum - the price discovered in Level III auction from the date of recommendation till licence validity period
2. For Past use of spectrum - the price recommended by the expert committee of TRAI for 'beyond 6.2 MHz' of spectrum or 3G auction price, whichever is higher from the date of allocation till date of recommendation

