



Comments on Permitting Trading of Spectrum in India

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1. We welcome the opportunity provided by the Authority to submit additional comments on issues pertaining to spectrum trading based on the DoT’s letter dated 22nd August, 2013. The DoT has sought the recommendations of the authority on the following issues related to trading of spectrum:
 - i) Conditions and timing for permitting trading of spectrum obtained through auction.
 - ii) Quantity of spectrum for trading by an operator.
 - iii) Revenue payable apart from legal, regulatory and technical framework.
 - iv) Any other item.
2. We feel that it is a very good opportunity to take such progressive steps which lead towards the efficient utilization of spectrum. However, for the spectrum trading to be successful and to be able to deliver the desired benefits to the telecom operators and due returns to the Government, it is very essential that the policy on spectrum trading should be forward looking, vibrant, leaving no loopholes to avoid exploitation of Government revenues, easy to implement and without any contradictions. The policy should keep in view and address appropriately the guidelines on trading enunciated by the Government at the time of auction of 3G and BWA spectrum in 2010 and 800 / 1800 MHz spectrum auction in November, 2012 and March, 2013 so that the new policy stays clear and is not embedded in long drawn legal issues. At the same time, the policy on spectrum trading should not have contradictions with the M&A guidelines announced by the MOC&IT vide his press statement dated 15th February, 2012.
3. Keeping the above objectives in view, the Authority is requested to kindly address and provide clarity on the following issues;
 - i) Scope of Trading
 - ii) Spectrum usage charge
 - iii) Merger and Acquisition (M&A)
 - iv) Cap on spectrum holding
 - v) Rollout obligations
 - vi) Quality of Service (QoS)
4. **Scope of Trading:-**
 - 4.1 We bring to the notice of the Authority that the spectrum was initially allotted to the telecom operators administratively. The spectrum was

allotted for the first time through auction in 2010 when 3G and BWA spectrum in 2100, 2300 and 2600 MHz bands was put to auction. In response to query no 278 on Auction of 3G and BWA spectrum, the DOT had clarified that at present, spectrum trading and sharing were not permitted. Thereafter, spectrum in 1800 MHz and 800 MHz bands was also allotted through auctions conducted in November, 2012 and March, 2013. This spectrum was also allotted in an environment when no spectrum trading was allowed as at that time also and the DoT has clarified vide Query No.385 that spectrum trading is not allowed in India at this stage. Thus, it may be observed that the operators have a mix of spectrum allotted through administrative process as well as auction process and the auction conditions ruled out spectrum trading.

- 4.2 In case trading of spectrum is allowed now, a view would have to be taken whether the spectrum allotted through administrative process can be traded by the operators or the spectrum allotted through auction will only be tradable. The letter dated 22nd August 2013 from the DOT invites recommendations of the Authority with respect to the trading of spectrum obtained through auction and as such DOT clearly rules out the trading of spectrum allotted through administrative process. The Authority is requested to provide clarity whether spectrum allotted through earlier auctions will also be under the purview of trading or the spectrum to be allotted in future will only be tradable.

4.3 In view of above, with the objective of level playing field, Authority is requested to provide clarity whether all access spectrum allotted so far administratively or through auction will be tradable or the spectrum to be allotted in future will only be tradable?

5. Spectrum Usage Charge:-

- 5.1 Another important issue needing clarification will be with respect to the spectrum usage charge. Kind attention of the Authority is invited to Clause 3.5 of the NIA issued on 25th February, 2010, wherein the spectrum usage charges for GSM, CDMA, 3G and BWA spectrum were specified. As per the NIA, there were no additional spectrum usage charges towards the allotment of 5 MHz of 3G spectrum in 2100 MHz band and 1% of AGR as spectrum usage charge with respect to the allotment of 20 MHz of BWA spectrum. The SUC for standalone 3G operator was prescribed as 3% of the AGR. The NIA had further noted that the spectrum charges payable by GSM and CDMA operators that are successful in the 3G auctions will be ranging from 3% of AGR up to 8% of AGR depending on the GSM/CDMA spectrum held by the operators.

- 5.2 Similarly the NIAs issued at the time of auction of spectrum in Nov. 2012 and March 2013 had noted that the spectrum usage charge in addition to the spectrum auction price as a 3 to 8 percentage of AGR, depending on the spectrum slab, shall be payable by the successful bidder. The NIAs have further noted that the spectrum being allotted via these auctions will be added for determining the slab for spectrum usage charges. In case of spectrum trading being permitted now, a view has to be taken whether the spectrum usage charges for 3G spectrum will continue to be NIL and for BWA spectrum as 1 % of AGR only irrespective of 3G and BWA spectrum held by the operators.
- 5.3 **In view of above, Authority is requested to provide clarity whether the spectrum usage charges for 3G spectrum will continue to be NIL and for BWA spectrum as 1 % of AGR only irrespective of 3G and BWA spectrum held by the operators ?**

6 **Merger and Acquisition (M&A):-**

- 6.1 Vide clause 2.1 of the NIA has laid down that not more than one block of 3G spectrum and one block of BWA spectrum shall be allocated to a single bidder in a service area. Further, Clause 4.8 of the NIA dealing with Merger and Acquisition (M&A) also bars the holding of more than one block of 3G and one block of BWA spectrum in a service area.
- 6.2 The cap on holding of only one block each of 3G and BWA spectrum also needs to be modified in respect of 3G spectrum in view of the likely auction of 3G spectrum in near future as we understand that an arrangement is being worked out with Defense, wherein 3 blocks of 3G spectrum in 2100 MHz band are being negotiated in return of equivalent amount of spectrum in 1900 MHz band. The auctioning of additional blocks of 3G /BWA spectrum in near future will not accrue the desired results if the existing cap of one block is not amended.
- 6.3 License conditions of the existing 3G/BWA spectrum operators specify that in case of service area merger, they shall be allowed to retain only one 3G/BWA spectrum block and surrender the remaining blocks in that area.
- 6.4 **In view of above, Authority is requested to recommend modification of existing license conditions so as to allow the operators to retain more than 5MHz of 3G spectrum and more than 20 MHz of BWA spectrum in the area.**

7. Cap on Spectrum Holding :

- 7.1 The NIAs issued in September, 2012 and January, 2013 for the auction of 800, 900 and 1800 MHz spectrum have stipulated that for the purpose of the auctions, a cap of 25% of total spectrum assigned in all the bands put together and 50% within the given band in each service area shall apply for total spectrum holding by each operator.
- 7.2 In case, spectrum trading is allowed, it would not be possible to maintain these caps of 25% and 50%.
- 7.3 It is thus recommended that spectrum caps of 25 % and 50 % may be suitably modified upwards for the spectrum trading to take place.**

8. Rollout Obligations

- 8.1 All the commercial space allotment carrying rollout obligations so as to ensure that the spectrum is not kept idle and is put to use for the benefit of society. With this policy background, the Government had prescribed certain obligations for various spectrum bands, wherein the operators with 3G / BWA/ 800 / 900 / 1800 MHz spectrum have to rollout their services in pre-defined areas within 5 years of the allotment of spectrum.
- 8.2 In case the spectrum trading is allowed, either the operators may be allowed in spectrum trading only after meeting their rollout obligations laid down in the license or their rollout obligations do not get diluted even if they part with some of their spectrum holding.**

9. Quality of Service (QoS) Parameters

- 9.1 As per the license, the operators are required to ensure a quality of service as prescribed by the licensor or TRAI from time to time. It is thus recommended that the obligations to meet the desired QoS parameters as mandated by the licensor or TRAI should not be diluted on the plea that some portion of the spectrum has been traded off to the other operator. The overall responsibility of maintaining the QoS should continue to be with the original allottee of the spectrum so that the public is not inconvenienced.