

RJIL-Reg/TRAI/2013-14/

29<sup>th</sup> August, 2013

To,

Sh. Arvind Kumar,  
Advisor (Networks, Spectrum and Licensing),  
Telecom Regulatory Authority of India,  
Mahanagar Door Sanchar Bhawan,  
Jawahar Lal Nehru Marg (old Minto Road),  
New Delhi-110002

**Sub: TRAI's Press release on permitting spectrum trading in India**

Dear Sir,

This is with reference to the press release no. 63/2013, please find attached additional comments of Reliance Jio Infocomm Limited (RJIL) on the issues pertaining to permitting spectrum trading in the country.

Thanking you,

Yours Sincerely,

**For Reliance Jio Infocomm Limited**

**Kapoor Singh Guliani**

Authorized Signatory

**RJIL's Comments on CP 06/2013 on 'Valuation and Reserve Price of Spectrum' – additional views on the Spectrum Trading**

**Q.8 Is it right time to permit spectrum trading in India? If yes, what should be the legal, regulatory and technical framework required for trading?**

We welcome the reference made by the Department of Telecommunications (DOT) on the important issue of spectrum trading in India and opportunity provided by the Authority for submitting additional inputs on this subject.

It may be recalled that TRAI had raised this topic in its earlier consultation papers, recommendations and reference back to DOT. Most of the points discussed earlier are still relevant and needs to be evaluated while deliberating on the issues of conditions and timing for permitting trading of spectrum obtained through auction, quantity of spectrum for trading by an operator, revenue payable apart from legal, regulatory and technical framework for permitting spectrum trading in India.

We would also like to draw kind attention of the Authority to the provisions of NTP-2012 which has been formulated after extensive consultation with all stake holders. Clause 4.1 of NTP-2012, inter-alia, envisages “to move at the earliest towards liberalisation of spectrum to enable use of spectrum in any band to provide any service in any technology as well as to permit **spectrum pooling, sharing and later, trading** to enable optimal utilisation of spectrum through appropriate regulatory framework.” **Therefore, as per policy framework laid down by the Government, the decision and implementation of spectrum pooling and sharing must be put first in place and evaluated before any decision on spectrum trading is taken.**

**Further, M&A policies yet to be announced by DoT for TSP's will also have major impact on business decisions of the TSP's with regard to spectrum pooling, sharing, trading, etc.** and have to be taken into account while formulating the policy framework for spectrum trading.

The Policy should discourage monopoly/strong dominant player's situations and hoarding of spectrum as a commodity to derive maximum advantage at a later date. The Authority is kindly aware that most of the TSPs are having spectrum allocated as bundled with their UAS licenses. Some of the incumbent operators are holding spectrum beyond prescribed limits, **which needs to be taken back.** Further, this spectrum is not liberalised and was allocated for specific purposes using specified technologies e.g. GSM or CDMA and the operators have not paid any market determined price to obtain the same. **This spectrum, therefore, cannot be traded as such.**

The TSPs may hold spectrum allocated as bundled with the license or they may acquire additional spectrum through various routes such as Auction, M&A, pooling, sharing, and trading etc. **TRAI may, therefore, have to**

**recommend spectrum cap which any single entity (licensee) can hold, preferably in consultation with Competition Commission of India** to discourage few dominant players to monopolise the market and dictate their terms to subscribers and the Government at a later date.

It may, therefore, be **prudent to defer spectrum trading for the times being till above issues are addressed**. However, in case it is to be permitted at this stage, some of the key points the Authority should take into consideration are deliberated below:

### **Legal Framework:**

**a. Legal basis for spectrum trading rights:** Spectrum is treated as national asset with sovereign right over it by the Government and has only been assigned on a 'right to use' basis for a fixed period to the service providers. A licensee has no ownership right to enable it to trade it. In this context it may be recalled that in its recommendations on auction of spectrum dated 12<sup>th</sup> May 2012 on reference received from DOT on recommendations of 23<sup>rd</sup> April 2012, TRAI had agreed with DOT's observation that issues like mortgage of spectrum, trading of spectrum will require legal examination by Ministry of law, Ministry of finance and Reserve Bank of India. If this examination has already been carried out in consultation with respective ministries, these opinions may be shared by TRAI with all stakeholders.

**b. Competition Law:** The introduction of spectrum trading should help promote effective competition in the markets in which spectrum is used and therefore reduce the possibility of distortion of competition. However, TRAI in its earlier recommendation had stated that *"It is possible that allowing spectrum trading at this juncture might result in anti-competitive conduct through consolidation/hoarding of spectrum or through an incumbent precluding the newcomers from providing service by buying out the spectrum necessary for such services. This would adversely affect the consumers and the growth of telecom services in India."* To address such concerns, we consider that it is desirable for the Government to address the issues acquisition of market power as well as the abuse of dominance through appropriate legal framework.

**c. Customer Protection:** The spectrum trading regime may also result into issues impacting customers in terms of quality of service, requiring them to buy new equipment to continue with the existing service, continuation of service, dispute resolution mechanism when the services are being offered by non-licensed entity etc. Such issues

need to be addressed by the Government with appropriate customer protection safeguards in the spectrum trading policy.

**d. Merger & Acquisition Policy:** The spectrum trading regime will also require appropriate amendments in the M&A policy framework and review of auction conditions that currently restrict acquiring more spectrum in the same frequency band.

**e. Application of the policy for spectrum obtained through previously held auctions:** In order to ensure fairness and level playing field, it will be necessary for the Authority to ensure that the policy on spectrum trading is made applicable uniformly for all spectrum bands that have been obtained through previously held auctions. This will also facilitate ease of implementation and reduce the costs for the compliance monitoring. The legal position on this matter needs to be made clear to all stakeholders

1. **Spectrum trading model:** Broadly there can be two models (a) where both allocation as well as assignment rights can be changed or (b) Where allocation right cannot be changed but assignment rights can be changed. Based on the type of model opted for spectrum trading, underlying design elements and policy framework will differ. Pros and cons of both the models **require extensive consultation with all stakeholders.**
2. **Regulatory framework:** The introduction of spectrum trading represents a fundamental shift in the way spectrum management will take place in India. Although it may be desirable to adopt light touch regulatory approach while implementing spectrum trading, the same needs to be done **only after framing sound regulatory policy framework** covering various issues like;
  - a. **Eligibility:** The policy should clarify on the eligibility for the operators to participate in the spectrum trading and whether it will be permitted among licensed telecom service providers having access spectrum obtained through auction or can it be traded with non-licensed entity. In case of later, the spectrum trading implementation will also require clarity on **the Mobile Virtual Network Operator (MVNO) regime**, which is yet to be put in place.
  - b. **Geographical limits:** Should it be restricted only for trading of spectrum within the circle or across circle trading will also be permitted.

- c. **Time period& amount of spectrum:** This will be relevant if the Government wants to control minimum and/or maximum amount of spectrum that can be traded and similar restriction for time period (short term / long term) for which such spectrum can be transferred to the other entity
  - d. **Frequency bands& Technical parameters:** The policy on spectrum trading also needs to clarify on any restriction for frequency bands eligible for trading and associated technical conditions in terms of power output, antenna gain, EIRP, Emission etc. **With the spectrum trading, there may be a greater chance of undue interference as a result** of user making changes to the spectrum use. The policy framework should therefore provide satisfactory protection for all spectrum users. The Government may need to provide a more structured approach to resolving disputes which arise in relation to interference, and to provide clearer guidance as to when and how it will seek to resolve such disputes.
  - e. **Role of the Licensor:** It may be necessary to obtain prior approval of the Government prior to concluding any spectrum trading transaction. This is particularly relevant in the prevalent regime wherein the spectrum usage charges escalate with the amount of spectrum holding. This may result into change in the effective rate of spectrum usage charge payment both for transferor as well as receiver of the spectrum as result of a trading transaction. Therefore the policy should specify the process for requesting Licensor's approval and information that trading parties will be required to share with the Licensor.
  - f. **Role of market intermediaries:** The spectrum trading market will function most efficiently with maximum availability of information to the likely participants which can include actual spectrum assignments, intention to buy or sell, information on historic trade and prices. As a result, broad range of market intermediaries like agents, central exchange etc. may emerge. Therefore the spectrum trading policy should also specify rules for market intermediaries, covering issues such as disclosure of information, fair trading & ethical practices, regulations regarding trading environment.
3. **Parity with Spectrum sharing policy:** The Government has announced broad guidelines for sharing of 2G spectrum vide its press release dated 15<sup>th</sup> February 2012. These guidelines include provisions for prior

permission, validity of spectrum sharing permission, eligibility restrictions, restriction on total amount of spectrum and spectrum bands eligible for spectrum sharing, spectrum usage charge calculations on the total spectrum held by both the operators together etc. In view of this, the regulatory framework for Spectrum trading needs to be prepared in such manner that rather than making current spectrum sharing framework redundant, it should complement it.

#### 4. Way forward:

- a. In line with the NTP-12 policy framework as mentioned above, it may be advisable for the Government to adopt stepwise process by first implementing spectrum sharing / pooling regime. **After evaluation of this implementation, it may be appropriate to move towards spectrum trading regime.**
- b. **All the concerned ministries/departments may be consulted beforehand to address the legal issues** involved in spectrum trading.
- c. Meanwhile considering complexities of issues that may be involved in implementation of spectrum trading, it may be advisable for the Authority to **issue draft guidelines on the spectrum trading framework for the industry wide consultation.** This will help all stakeholders to offer more informed opinions on this critical issue.
- d. In order **to ensure fairness and transparency in the auction process, it may be necessary that the auction participants are fully informed** about the policy on the spectrum trading. For this purpose in the proposed NIA it may be indicated that *“Spectrum trading guidelines, as prescribed and amended by DOT from time to time, will apply to Successful Bidders.”*