

## **Pre-Consultation on “Allocation of Spectrum in 2G band in 22 Service Areas by Auction”**

It is well recognised fact that spectrum, which forms a vital part for any wireless service, is a finite and scarce natural resource. In India wireless access is going to continue its dominant role in the last mile connectivity. For any scarce resource, the primary economic objective of the Government will be to maximise the net benefits to the society that can be generated from that resource by ensuring its efficient distribution and optimal utilisation. Considering this, adequate availability of spectrum and efficient spectrum management are critical which can make a big difference to a country's prosperity.

The proposed consultation on allocation of spectrum in 2G band in 22 service areas by auction is as a result of the Judgement by the Hon'ble Supreme Court of India dated 2<sup>nd</sup> February 2012 directing TRAI as “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 Court has further directed the Central Government to consider these recommendations and take appropriate decision within next one month and grant fresh licenses by auction. The principles laid down in the said judgement and the decision taken by Central Government in 2011 will, therefore, have to be the guiding principles while designing the proposed auction.

Before bringing forth our comments/suggestions on the various aspects that may be considered while recommending a process for the allocation of spectrum in 2G band, we would like to submit that the basic objective behind issuing fresh licenses in 22 service areas was to introduce sufficient competition in the telecom market for ensuring faster proliferation of services as well as fairness and reasonability of the prices at which these services are made available to the public. NTP-99 as well as the Draft National Telecom Policy-2011 also envisions providing the people of India, secure, reliable, affordable and high quality converged telecommunication services anytime, anywhere.

Keeping in view the spirit of the above-mentioned Judgment of the Hon'ble Court, the decision taken by the Central Government in 2011, NTP 1999, and the TRAI recommendations on Spectrum Management and Licensing Framework and provisions of the Draft NTP 2011, we would like to submit that the Authority may **kindly consider the following aspects/parameters while recommending the process for allocation of spectrum in 2G band:**

## **1. Implementation of Unified Licensing Regime**

The Hon'ble Court in its above-mentioned Judgment mentioned that TRAI shall make fresh recommendations keeping in view the decision taken by the Central Government in 2011. In the said decision, GOI has declared that 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. Therefore, it has become essential to implement the Unified License Regime first and foremost before the allotment of spectrum in any band. We appreciate TRAI's thoughtful/proactive move of bringing out the consultation paper on Draft Guidelines for Unified Licence/Class Licence and Migration of Existing Licenses on February 10, 2012. We expect that the recommendations of TRAI and the decision of the Government thereupon will be expedited so that the Unified Licensing Regime is implemented in a time bound manner to simplify further processes including spectrum allocation as per the judgement of the Hon'ble Supreme Court.

## **2. Promotion of Competition and Protection of Consumer Interest**

To ensure fair competition and protect the consumers' interest, adequate number of spectrum slots in the 2G band will be required to be brought under the spectrum auction process to ensure sufficient number of operators in each service area. In addition to the 122 licensees whose licenses are subject to cancellation vide the said Judgment of the Supreme Court, the new applicants should be allowed to participate in the auction provided all the participants are either unified license holder under the new regime or meet the prescribed eligibility criteria. This will not only ensure fair competition amongst the bidders but will also introduce adequate competition in the market so that good quality services are made available to the public at reasonable prices. It is further suggested that the requirement of the existing telecom operators should be dealt with separately and after completing the auction process for allocation of spectrum to the new licensees. Invitation for auction to all interested, including the incumbents, would mean a brawl amongst the unequal and might result in stronger taking away the pie at relatively much lower rates. This will not only deprive the country of true economic value of its scarce resource but will also defy the basic objective of introducing fair competition in the market.

### **3. Efficient use of Spectrum and Determination of its current market value**

Spectrum is a national resource, an asset of the natives and the Government plays the role of a custodian. Proliferation of new technologies and the growing demand for telecommunication services has led to manifold increase in demand for spectrum and consequently the finite resource has become scarce to fulfil the current demand. Therefore, the responsibility becomes even bigger for the Government to ensure that the resource is efficiently used and the price at which it is given is determined by market driven forces. NTP 1999 envisages that, "It is essential that the spectrum is utilized efficiently, economically, rationally and optimally. Also there is a need for a transparent process of allocation of frequency spectrum for use by a service provider and making it available to various users under specific conditions." Therefore, it is essential to assess the best utilization of the spectrum and its efficient use before auctioning the same.

We would like to recall the need for refarming of spectrum in 900MHz band brought out by TRAI in its Recommendation on 'Spectrum Management and Licensing Framework' dated May 11, 2010. TRAI supported the efforts underway in different countries to reform the 900 MHz spectrum in view of its value for providing 3G services and for future technologies. 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. Cancellation of 122 licenses has resulted in an addition of 413.6 MHz of spectrum in the pool of spare spectrum in 1800 MHz band. As per the data released by WPC as on January 31, 2011, there is a spare spectrum of 211 MHz available with DOT. This builds up the total pool of ~625 MHz in the 2G band. Now that there is ample amount of spectrum in 2G band, TRAI can expedite the process of refarming of more efficient spectrum in 900 MHz band by setting aside partially a quantum of spectrum for refarming from the newly created stock of spectrum in 1800MHz band and then auction the rest of the stock. This will not only ensure that the scarce resource is put to most efficient use but will also fetch the true market value of 900MHz spectrum, which is multi-fold higher than 1800MHz spectrum, when auctioned at right time subsequent to the proposed auction of spectrum in 1800 MHz band.

Therefore, it would be prudent and in the larger interest of the Nation and the consumers that this newly created inventory of spectrum in 2G band is gainfully utilized for refarming of precious spectrum in 900MHz by setting aside adequate spectrum for the purpose after considering the excess spectrum already held up by the operators. Currently, the operators are expanding their networks to proliferate broadband services all across the country. An earlier release of the 900MHz band can lay down a roadmap for future network planning and can ensure a timely and efficient utilization of the scarce resource. After setting aside adequate spectrum, the rest spectrum in 1800 MHz band can be auctioned first to the new/fresh players and then to the existing players.

#### **4. Fair opportunity to the affected license holders/aggrieved parties**

The Hon'ble Supreme Court vide above referred judgement of Feb 2, 2012 has quashed 122 licenses granted to the private operators on or after 10.1.2008 as well as the subsequent allocations of spectrum to them. The cancellation is to come into effect after four months i.e. from June 2, 2012. This decision has affected nine private operators. Amongst these parties, there are players who have made serious efforts to foray their services within these four years i.e. 2008-12. This not only involves a huge amount of capital expenditure for their network rollout excluding the one time fee of Rs. 1,651 crores per license but also involves the interest of the customers on the network of these operators. Besides, huge foreign money has flown into the country which is based on the credentials which Indian telecom market holds on the Global platform; this might be questioned if fair opportunity is not given to these foreign players to make good of/ protect their investments. An auction process allowing them an opportunity to regain their start up spectrum, after proving their eligibility for the unified license, will provide the serious players amongst these licensees a chance to protect their business and investments. As submitted earlier, the existing operators who have applied for additional spectrum over the start up spectrum or the contracted spectrum, should be restrained from participating in the auction for allotment of initial or start up spectrum in 2G band to new players as this might result in shrivelling of competition because of the disparity in the value of spectrum for the new player and the existing player.

#### **5. Address the requirements of existing operators**

There is no doubt that the existing operators who have applied for additional spectrum shall be allotted the spectrum so that they can ensure better quality of services to their subscribers at the earliest. However, it is a known fact that the economic efficiency of the spectrum increases manifold with the block size. This fact is also highlighted by TRAI, in its Expert Committee Report on pricing of 1800MHz spectrum wherein it has priced spectrum per MHz 'upto 6.2 MHz' separate from the spectrum per MHz 'beyond 6.2 MHz' and the price per MHz of the latter is much higher than that of the former. Therefore, these parties should be classified/categorized separately and should be allotted the residual spectrum by subsequent auctions after the allotment is made to the winners of auction held for fresh/new players. Here, the priority should be given to the auction of spectrum for those who are having only 4.4 MHz over the auction for ones who are looking for spectrum beyond the contracted spectrum of 6.2 MHz.

## **6. Adequate revenue to the Government**

The Central Government in its decision in 2011, referred in the above-mentioned Judgment, mentioned that, "...we will be able to design a policy that ensures that existing licence holders get the spectrum they need and are entitled to, while simultaneously, ensuring that the Government also receives revenues commensurate with the current market value of spectrum." The above parameters on one hand help in ensuring efficient use of spectrum, fair competition in the market and protection of consumer interest, on the other hand, these parameters help in determining the fair market value of the resource and thus ensuring that the Government also receives revenues commensurate with the current market value of spectrum. To further safeguard against the unexpected drop in the auction prices due to temporary slump in its demand or because of the restrictive trade practices by few players, the reserve prices for different auctions will have to be prescribed carefully. For the new players, the reserve price can be benchmarked against the service area wise per MHz price recommended by TRAI for spectrum holding up to 6.2 MHz or a price based on the recent equity transactions which took place after the grant of licenses in 2008.

## **7. Technological Neutrality of Spectrum**

After implementation of the Unified Licensing Regime and allocation of spectrum through Auction, an issue can be raised by some stakeholders that this spectrum may now be allowed to be used for providing IMT advanced services as well. Keeping in view the previously mentioned Judgment of the Hon'ble Court and the decision taken by the Central Government in 2011, it can be seen that the outcome of the auction is expected to provide true economic value of start up spectrum, additional spectrum of 1.8MHz, and spectrum beyond 6.2 MHz which thereby limits the use of technology in the proposed spectrum band. If at all this spectrum is also to be used for providing IMT advanced services, the policy decisions in this regard will have to be taken before the Auction to ensure 'Level Playing' field and get true economic value of the spectrum as the spectrum in 1800 MHz band is much more efficient than the spectrum in 2100 MHz and 2300 MHz bands for providing broadband services. The reserve price in this case has to be higher than the 3G Auction price taking into consideration the time indexing and efficiency factor of this band. To reflect the time indexing, the previous auction price should be increased @WACC (about 13.5 % p.a.) and to account for the purpose of efficiency factor, the relative cost of rolling out broadband services in the two bands may be considered as the benchmark for deciding the reserve price which according to some studies is about 50% in 1800 MHz band than that of in the higher bands. It has also to be ensured that use of spectrum by the incumbent operators who got this

spectrum bundled with the license or got it allocated subsequently based upon the Subscriber Linked Criteria is restricted for the purpose of providing 2G services only.

### **Key Issues**

Keeping in view the broad principles enunciated above, the typical important issues that may have to be addressed by the Authority in the proposed consultation process on the allocation of spectrum in 2G band by auction are summarised as below:

- Implementation of Unified Licensing Regime.
- Level of Competition.
- The Auction structure, which will provide fair opportunity to the affected parties as well as address the requirements of existing operators.
- Entities to be permitted for participation in the Auction.
- Quantum of the spectrum to be auctioned.
- The block size and number of blocks per service area.
- The reserve price for ensuring that the Government receives revenues commensurate with the current market value of spectrum for different blocks.
- The validity of the spectrum in 2G band acquired through the proposed auction.
- Technological Neutrality of the Spectrum to be allocated through Auction.
- Other relevant issues that need to be addressed for ensuring efficient, economical, rational and optimal use of the spectrum.