



Telecom Regulatory Authority of India



Recommendations

On

Working Guidelines for Spectrum Trading

(Response to reference received from Department of
Telecommunications on recommendations of
28th January 2014)

21st May 2015

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CHAPTER-I: INTRODUCTION

1. In its recommendations on “Valuation and Reserve Price of Spectrum” dated 9th September 2013, the Authority had, inter-alia, recommended that spectrum trading should be permitted in the country. In its back-reference dated 11th October 2013, on the recommendations of TRAI on “Valuation and Reserve Price of Spectrum” dated 9th September 2013, the DoT conveyed its in-principle acceptance of Authority's recommendation to permit spectrum trading in the country. In its response dated 23rd October 2013, the Authority informed the DoT that it would shortly work out the detailed guidelines for its implementation.
2. The Authority sent its recommendations on “Working Guidelines for Spectrum Trading” on 28th January 2014. Many of the recommendations have been referred back by the DoT to the Authority for reconsideration through its letter dated 27th April 2015.
3. After considering the DoT's views on various recommendations, the Authority has finalized its response. The Authority's earlier recommendations, the views of the DoT thereon, and the response of the Authority are provided in Chapter II.

CHAPTER-II: PARAWISE RESPONSE

1. Para 2.1

Spectrum trading refers to the transfer of rights to use the spectrum. The words ‘seller’ and ‘buyer’ are used in the context of transferring the rights from one user to another. When a block of spectrum is traded, the associated rights and obligations of the spectrum block shall stand transferred from the seller to the buyer.

(TRAI Recommendation)

DoT View

Such transfer of usage right will be subject to guidelines on trading as well as license amendment and permission granted by licensor.

Response of TRAI

The Authority has only recommended the definition of spectrum trading. The procedure for carrying out spectrum trading has been covered in the recommendations in para 2.20.

In view of the above, the Authority reiterates its recommendations.

2. Para 2.2

Under spectrum trading, only outright transfer of spectrum is permitted, i.e. the ownership of the usage right is transferred to the buyer. Spectrum leasing is not permitted at this point of time.

(TRAI Recommendation)

DoT View

Only outright transfer of right to use of spectrum is permitted.

Response of TRAI

The Authority agrees with the DoT's view.

3. Para 2.3

Spectrum trading will not alter the original validity period of spectrum assignment.

(TRAI Recommendation)

DoT View

Spectrum trading will not alter the original validity period of spectrum assignment as applicable to the traded block of spectrum.

Response of TRAI

The Authority agrees with the DoT's view.

4. Para 2.4

All dues and recoveries till the effective date of transfer shall lie with the seller and after the trade is effected, all dues and recoveries shall lie with the buyer of the spectrum.

(TRAI Recommendation)

DoT View

There will be some dues such as and not limited to License fee and SUC, which will be determined after the date of trading consequent to submission of audited annual report.

TRAI is requested to reconsider that while allowing the trading of the spectrum, all dues identified/imposed/communicated subsequent to date of trading and pertaining to the period prior to date of trading shall be the liability of the buyer/jointly or severally of buyer and seller.

Response of TRAI

After considering the DoT's view and for bringing more clarity on this issue, the recommendations are amended as:

“All dues and recoveries after the effective date of transfer including prior period items will be the liability of the buyer.”

5. Para 2.5

A licensee shall not be allowed to trade in spectrum if it has been established that it is in breach of terms and conditions of the licence and the Licensor has ordered for revocation/termination of its licence.

(TRAI Recommendation)

DoT View

TRAI is requested to provide clarification of the following:

- (i) What should be done during notice period for termination/ revocation of the license or when such a notice is contemplated?
- (ii) What should be done when there are court cases against such notices?

Response of TRAI

The Authority reiterates its earlier recommendations.

6. Para 2.6

For the present, Spectrum Trading shall be permitted only on a pan-LSA (Licensed Service Area) basis i.e. spectrum cannot be traded for a part of the LSA. In case the spectrum assigned to the seller is restricted to part of the LSA by the Licensor, then, after trading, the rights and obligations of the seller for the remaining part of the LSA with regard to assignment of that spectrum shall also stand transferred to the buyer.

Example:

Suppose, due to non-availability of spectrum in some of the districts of an LSA, spectrum has been assigned to a TSP (seller) in only some parts of an LSA (say in 22 districts out of total 33 districts of Rajasthan) with a promise to assign spectrum in the remaining on its availability and it transfers its right to use the spectrum to another TSP (buyer) through spectrum trading. Then, whenever spectrum in remaining 11 districts become available, the spectrum in these districts shall be assigned to the buyer as per the promise to the seller, after the payment of the balance amount for the remaining 11 districts, if applicable.

(TRAI Recommendation)

DoT View

In case of allotment of spectrum limited to some of the districts in a LSA, TRAI is requested to clarify how to decide the assignment and pricing of spectrum to the buyer in the trade at a later date in remaining part of the LSA in view of the NIA conditions in different auctions.

Response of TRAI

As provisioned in Para 2.1, when a block of spectrum is traded, the associated rights and obligations of the spectrum block shall stand transferred from the seller to the buyer. Therefore, relevant provisions of NIA with respect to spectrum assignment in part of the LSA, which were applicable to seller before the spectrum trade, will apply to buyer subsequent to the spectrum trade.

7. Para 2.7

The seller and the buyer shall be required to inform the Licensor regarding the spectrum trade, 6 weeks prior to the effective date of

trade. However, no permission will be required from the Licensor/ Government for Spectrum Trading.

(TRAI Recommendation)

DoT View

TRAI is requested to provide suggestions for making necessary amendments in license agreements/wireless operating licence and any other steps to be taken for trading of spectrum.

Response of TRAI

The Authority is of the opinion that after finalisation of guidelines of spectrum trading, the DoT may carry out appropriate modifications in the various clauses of the relevant licenses.

The Wireless Operating Licence of both buyer/seller will be required to be amended to reflect upon the change in the user right of the concerned spectrum block after the spectrum trading while keeping the original validity period unchanged.

8. Para 2.8

Spectrum trading will be permitted only in the following bands:

- i. All spectrum bands earmarked for Access Services by the Licensor will be treated as tradable spectrum bands. Currently spectrum in 800MHz, 900MHz, 1800MHz, 2100MHz, 2300MHz and 2500MHz spectrum bands have been allocated for Access Services.*
- ii. Only that spectrum in the above mentioned bands (in sub-para (i)) is permissible to be traded which has either been assigned through an auction in the year 2010 or afterwards, or on which the Telecom Service Provider (TSP) has already paid the*

prescribed market value (as decided by the Government from time to time) to the Government.

(TRAI Recommendation)

DoT View

Para 2.8 (i) and (ii)

- a) Presently ISPs are not covered under Access Services whereas spectrum in 2300 MHz and 2500 MHz is held by some of the ISPs. Keeping this in view,

TRAI is requested to provide clarification whether spectrum held by ISPs in 2300 MHz and 2500 MHz bands may be permitted to trade the spectrum bands in these bands and if so, what would be the terms and conditions, which inter-alia include charging of difference of entry fee prescribed for Unified Access service License and entry fee for Category “A” ISP in the event of said spectrum is traded by an ISP to Access Service Provider.

- b) TRAI is requested to indicate the methodology for determining the market value of the spectrum.
- c) TRAI is requested to clarify even after payment of market value of spectrum, whether the use of technology by the Buyer other than those being used by the Seller is permissible. If so, then terms and conditions for the same may also be requested from TRAI.
- d) The relevant provisions in the NIA for auction of spectrum with regard to liberalisation of existing spectrum holding in 1800 MHz band. Accordingly, the Buyer will be allowed to use the spectrum acquired in 1800 MHz band through trading to deploy any technology by combining it with their existing spectrum holding in the same band after converting their entire existing

spectrum holding into liberalised spectrum in that band as per the prevalent terms and conditions. TRAI may clarify.

Response of TRAI

- a) Trading of spectrum is a new concept in the country. Therefore, to begin with, spectrum trading may be allowed only between two access service providers (CMTS/UASL/UL (AS)/UL with authorization of Access Service).**
- b) The market value of the spectrum is to be determined by the Government. It may be on the lines similar to the existing clauses of the relevant NIAs for liberalisation of spectrum holding.**
- c) The terms and conditions attached to the spectrum under the provisions specified in the relevant NIA document or otherwise shall continue to apply after the transfer of spectrum unless specifically mentioned in these guidelines.**
- d) The Authority agrees with the DoT's view.**

9. Para 2.10

The terms and conditions attached to the spectrum under the provisions specified in the relevant Notice Inviting Application (NIA) document or otherwise shall continue to apply after the transfer of spectrum unless specifically mentioned in these guidelines.

(TRAI Recommendation)

DoT View

The relevant provisions in the NIA for auction of spectrum with regard to liberalisation of existing spectrum holding in 1800 MHz band. Accordingly, the Buyer will be allowed to use the

spectrum acquired in 1800 MHz band through trading to deploy any technology by combining it with their existing spectrum holding in the same band after converting their entire existing spectrum holding into liberalised spectrum in that band as per the prevalent terms and conditions. TRAI may clarify.

Response of TRAI

The Authority agrees with the DoT's view.

10. Para 2.11

The following eligibility conditions shall be applicable for participating in spectrum trading:

- i. Only CMTS/UASL/UL(AS)/UL licensees shall be eligible to participate in the spectrum trading. The entire spectrum held by the licensee in a particular spectrum band within an LSA should be tradable i.e. it has either been assigned through an auction in the year 2010 or afterwards, or on which the TSP has already paid the prescribed market value (as decided by the Government from time to time) to the Government.*
- iv. The seller should clear its spectrum usage charges (SUC) and its instalment of payment (in case seller had acquired the spectrum through auction and opted for deferred payment) till the effective date of trade.*

Example:

Consider the following hypothetical case of a schedule of payments in a case where the seller had opted for deferred payment:

Schedule of payments		
Instalment	Due date for payment	Amount (Rs. crore)
<i>Upfront payment</i>	<i>25-03-2013</i>	<i>330.00</i>
<i>First instalment</i>	<i>26-03-2016</i>	<i>129.93</i>
<i>Second instalment</i>	<i>26-03-2017</i>	<i>129.93</i>
<i>Third instalment</i>	<i>26-03-2018</i>	<i>129.93</i>
<i>Fourth instalment</i>	<i>26-03-2019</i>	<i>129.93</i>

<i>Fifth instalment</i>	<i>26-03-2020</i>	<i>129.93</i>
<i>Sixth instalment</i>	<i>26-03-2021</i>	<i>129.93</i>
<i>Seventh instalment</i>	<i>26-03-2022</i>	<i>129.93</i>
<i>Eighth instalment</i>	<i>26-03-2023</i>	<i>129.93</i>
<i>Ninth instalment</i>	<i>26-03-2024</i>	<i>129.93</i>
<i>Tenth instalment</i>	<i>26-03-2025</i>	<i>129.93</i>

If the effective date of trade is 31-03-2020, the seller must have cleared SUC due till that date as well as all the payments due up to and including the fifth instalment of deferred payment indicated in the table.

- v. *Where an issue, pertaining to the spectrum proposed to be transferred is pending adjudication before any court of law, the seller shall ensure that its rights and liabilities are transferred to the buyer as per the procedure prescribed under the law and any such transfer of spectrum will be permitted only after the interest of the Licensor has been secured.*

(TRAI Recommendation)

DoT View

- (i) Refer to the views given in Para 2.8 above.
- (iv) TRAI is requested to clarify in case, part of the spectrum is traded, how the balance instalments are to be treated.
- (v) TRAI is requested to clarify how the seller shall ensure that its rights and liabilities are transferred to the buyer as per the procedure prescribed under the law and the interest of the Licensor will be secured.

Response of TRAI

- (i) In view of the TRAI's response in Para 2.8 (a) above and to bring more clarity, para 2.11 (i) is modified as given below:**

“Only CMTS/UASL/UL(AS)/UL with authorization of Access Service licensees shall be eligible to participate in the

spectrum trading. The entire spectrum held by the licensee in a particular spectrum band within an LSA should be tradable i.e. it has either been assigned through an auction in the year 2010 or afterwards, or on which the TSP has already paid the prescribed market value (as decided by the Government from time to time) to the Government.”

- (iv) If any TSP sells only a part of its spectrum holding in a band, both, buyer as well as seller, will be required to pay the remaining instalments of payment (in case seller had acquired the spectrum through auction and opted for deferred payment), prorated for the quantum of spectrum held by each of them subsequent to the spectrum trade.**
- (v) An appropriate tripartite legal document would have to be signed between the seller, buyer and the Licensor regarding transfer of rights and liabilities.**

11. Para 2.14

A TSP is permitted to sell either its entire spectrum holding in a spectrum band or a part of it. In each case, obligations of sellers and buyers will be as follows:

Seller

- i. The seller will place details of proposed trade in the public domain at least six weeks before the effective date of transfer.*
- ii. If a TSP (seller) sells the entire quantity of its spectrum in a band then the contingent roll-out obligations of that spectrum will stand transferred to the buyer.*
- iii. In case a TSP (seller) wishes to sell only a part of its spectrum holding in a particular band then:*

- *The seller shall remain responsible for the roll-out obligations linked with that spectrum band.*
- *The seller has to ensure that it continues to hold a minimum quantum of spectrum in that band so as to meet the roll-out obligations and Quality of Service (QoS) norms as prescribed by the TRAI/Licensor from time to time after the sale of spectrum.*

Buyer

- The buyer shall be responsible for the roll-out obligations linked with the spectrum being acquired through spectrum trading. If it is acquiring the entire spectrum holding of the seller, then the time period for compliance of the roll-out obligations will remain the same as was originally prescribed, subject to a minimum period of two years, subject to the validity period of the spectrum.*

Example:

Suppose the seller has 10 MHz of spectrum in a particular band in an LSA and it has roll-out obligations for a period of seven years. After a period of three years of holding, if it sells its entire 10 MHz of spectrum holding, then, the buyer will get four years (i.e. remaining period for seller to fulfill its roll-out obligations) from the effective date of transfer to fulfill the roll-out obligations. If it sells its entire 10 MHz of spectrum holding, after a period of six years of holding, then, the buyer will get two years (and not one year) to fulfill the roll-out obligations.

- If the buyer is acquiring a part of the spectrum holding of the seller in a spectrum band, then both buyer and seller will have spectrum holding in that band after the trade. In such a scenario, both will be responsible for the roll-out obligations. However, to fulfil the roll-out obligations, the buyer shall be entitled only to the time period as was originally provided during the assignment of the spectrum by the DoT.*

Example:

Suppose the seller has 10 MHz of spectrum in a particular band in an LSA and it has roll-out obligations for a period of seven years. If it sells part of its spectrum holding (say 5 MHz), the seller shall remain responsible for the roll-out obligations linked to the spectrum in that band. The buyer shall also fulfill roll-out obligations linked with the spectrum band. In this case, buyer will get entire seven years from the effective date of transfer.

iii. If the buyer has met some or all of its roll-out obligations through its prior spectrum holding in that band, it shall be taken into account and the buyer will not be required to repeat the required testing for roll-out obligations it has already met.

iv. The buyer has to ensure that, after trading, it acquires a minimum quantum of spectrum in that band so as to meet the roll-out obligations and QoS norms as prescribed by the TRAI/Licensor from time to time.

(TRAI Recommendation)

DoT View**Seller**

- i. Being an agreement between the parties, purpose of putting the information in public domain (whether for inviting proposal, or to inform subscribers, or to invite comments etc.) and time requirement (effective date may not be known with certainty in advance) may be clarified.
- ii. The NIA and license do not prescribe “contingent” roll-out obligations. It prescribes only roll out obligation. TRAI is requested to clarify.
- iii. TRAI may clarify what should be the minimum spectrum, as prescribed in second bullet under (iii) herein.

Buyer

- i. From the example given, it is understood that the time period available for compliance of roll out obligation is the “originally prescribed” period (and not the “balance” period available to the seller) for roll out obligation from the effective date of transfer subject to a minimum period of two years. In this scenario, the total roll out obligation may be double of the originally prescribed roll out obligation. TRAI may clarify
- ii. In the same band, the buyer may have different type of roll out obligation as compared to the spectrum acquired through trading. TRAI may clarify for this scenario also.
- iii. Refer observation above under para 2.14 (Seller) (iii)
- iv. It is understood that “that band” shall have the same meaning as incorporated in the NIA i.e. 1800 MHz and 900 MHz will be treated that same band for this purpose.

Response of TRAI

Seller

- i. The reason for putting the information in public domain at least six weeks before the effective date of transfer is for the purpose of transparency. Here, the effective date refers to the date when buyer and seller want to transfer their rights, in compliance of all the requirements specified in these guidelines.**
- ii. Contingent roll-out obligations refers to the roll-out obligations linked with the spectrum block being traded.**
- iii. In case a TSP (seller) wishes to sell only a part of its spectrum holding in a particular band then the seller shall not only remain responsible for the roll-out obligations linked with that spectrum band but it also has to ensure that it continues to meet the roll-out obligations and**

Quality of Service (QoS) norms as prescribed by the TRAI/Licensor from time to time after the sale of spectrum. Seller may decide itself how much spectrum is required to fulfil these obligations.

Buyer

- i. There are two distinct possibilities. If buyer is acquiring the entire spectrum holding of the seller in a spectrum band, then it will get the balance time period for compliance of the associated roll-out obligations, subject to a minimum period of two years. If the spectrum trade takes place when the time period for roll-out obligations is about to be over, the buyer should be given a reasonable time period to fulfil the roll-out obligations. Therefore, provision of a minimum period of 2 years has been recommended. First example is given in the recommendations to illustrate it.**

- ii. In another case, if the buyer is acquiring a part of the spectrum holding of the seller in a spectrum band, then both buyer and seller will have spectrum holding in that band after the trade. In such a scenario, both will be responsible for the roll-out obligations. There is no change in the roll-out obligations prescribed for seller, even if it is holding a lesser quantity of spectrum in that band post-trade. In addition, buyer will also be required to fulfil entire roll-out obligations. Since there is no change in the roll-out obligations of seller and there will be additional roll-out obligations for buyer, it has been recommended that buyer should be given entire time duration to fulfil these roll-out obligations. Second example is given in the recommendations to illustrate it.**

- iii. Same response as given for Seller in (iii) above.**

- iv. **Please see Para 2.5 of TRAI’s Recommendations on “Terms and Conditions of Unified License (Access Services)” dated 2nd January, 2013.**

12. Para 2.15

If the buyer does not intend to change the use of spectrum from its present usage, the issue of interference is not likely to arise. Only the buyer may have to coordinate the use of frequencies with the neighbouring users. However, if, after spectrum trading, spectrum is intended to be used for any purpose other than its present usage, then:

- i. *Details of the technology, which the buyer intends to use, will have to be intimated to the WPC, so as to ensure that the intended use does not create any interference with other users.*
- ii. *The buyer has to make a provision for the guard-bands from its spectrum holding to ensure that no interference is caused to the users holding adjacent spectrum.*

(TRAI Recommendation)

DoT View

Intimation for trade by seller and buyer should also include the technology to be used even if there is no change from the present use.

Response of TRAI

Information regarding technology to be used by the buyer is already part of format prescribed for prior intimation to be submitted jointly by trading licensees. Annexure – I of the recommendations may be referred to.

13. Para 2.16

A TSP will not be permitted to trade any spectrum in the spectrum band in which it has acquired any spectrum through trading (or auction) for a period of 2 years from the effective date of transfer of spectrum (or effective date of assignment), i.e. TSP is required to hold spectrum for at least two years from the date it acquires the spectrum.

(TRAI Recommendation)

DoT View

TRAI is requested to reconsider the period of 2 years in the light of lock-in period mentioned in NIA as 3 years. However, this will be applicable only to the spectrum block proposed to be traded and not the entire band.

Response of TRAI

The lock-in condition mentioned in the NIA restricts a promoter to sell its equity. It has no relation with trading of spectrum acquired through auction.

A lock-in period of 2 years has been recommended after detailed deliberation with the industry.

The Authority agrees with the DoT's view that lock-in period should be applicable only to the spectrum block proposed to be traded and not the entire band. Accordingly, the recommendation is revised as:

“A TSP will be allowed to sell the spectrum through trading only after two years from the date of its acquisition through auction or spectrum trading or administratively assigned spectrum converted to tradable spectrum.”

It is clarified that in case of administratively assigned spectrum converted to tradable spectrum after paying the prescribed

market value, period of two years will be counted from the effective date of assignment of spectrum.

14. Para 2.17

A non-refundable transfer fee of one percent (1%) of the transactional amount or one percent (1%) of the prescribed market price, whichever is higher shall be imposed on all spectrum trade transactions. The transfer fee shall be paid by the buyer (transferee) to the Government.

(TRAI Recommendation)

DoT View

TRAI is requested to clarify the following:

- (a) rationale for recommending 1% transaction fee.
- (b) definition of “transaction amount” and the methodology of ascertaining transaction amount
- (c) definition and calculation for ascertaining the “market price”
- (d) It is understood that the amount received from trading shall be part of AGR for the purpose of License fee.

Response of TRAI

- (a) The transaction fee is being imposed to cover the administrative charges which will be incurred by the Government in servicing the trade. Therefore, the Authority has recommended the transfer fee at a nominal amount of one per cent of the transaction amount.**
- (b) Transaction amount refers to the amount payable by the buyer to the seller to purchase the rights to use the spectrum block. It will be decided exclusively by the buyer and the seller.**

- (c) **The market prices are to be assessed by the Government. It may be on the lines similar to the existing clauses in the relevant NIAs for liberalising the spectrum holding.**
- (d) **The amount received from trading shall be part of AGR for the purpose of License fee.**

15. Para 2.18

Frequency swapping/reconfiguration i.e. rearrangement of spot frequencies in the same band, from within the assignments made to the licensees will not be treated as trading of spectrum.

(TRAI Recommendation)

DoT View

It is noted that with reference to TRAI recommendations dated 23 April, 2012 on Auction of Spectrum, a decision has already been taken and has become part of the NIA conditions that:

“Frequency reconfiguration i.e. rearrangement of spot frequencies in the same band, from within the assignments made to the licensees, may be carried out, with the authorization of WPC Wing, among the licensees, only when the entire spectrum held by them is liberalized. No charges will be levied for rearrangement of frequency spots.”

It is informed that the above decision is a part of NIA.

Response of TRAI

The Authority reiterates its recommendations. However, the DoT may refer to paras 2.60 to 2.64 of TRAI’s recommendations on ‘Valuation and Reserve Price of Spectrum’ dated 9th September, 2013 and paras 2.59 to 2.63 of recommendations on ‘Valuation and Reserve Price of Spectrum: Licences Expiring

in 2015-16' dated 15th October 2014 wherein the Authority has specifically dealt with the reconfiguration of frequencies assigned.

16. Para 2.19

Existing rules applicable to Spectrum Usage Charge (SUC) shall continue to apply on spectrum acquired through spectrum trading. Spectrum acquired through spectrum trading will be treated akin to spectrum acquired through auction.

(TRAI Recommendation)

DoT View

Following type of SUC regimes are prevalent:

- (a) Rates of SUC vary with methodology of allotment of spectrum i.e. (i) allotted administratively or (ii) through auction process in 900 MHz and 1800 MHz bands.
- (b) Further, the rates of SUC vary with quantum of spectrum and provisions of the NIA for auction of spectrum through which spectrum has been allotted.
- (c) In 800 Band, clarification has been sought for SUC rate.
- (d) In case of spectrum in 2100 MHz (3G), the prescribed rates of SUC as NIA for auction of spectrum in 2010 are:
 - (i) The spectrum charge for the 3G Spectrum shall be payable on total AGR of 2G and 3G services taken together;
 - (ii) Slab rate for standalone 3G operators shall be equal to the lowest slab rate i.e. 3% of AGR;
- (e) In case of spectrum in 2300/2500 MHz (BWA), the prescribed rates of SUC as NIA for auction of spectrum in 2010 is:

Licensees using BWA Spectrum need to pay 1% of AGR from services using this spectrum as annual spectrum charge irrespective of the licence held by them. Such revenue would be required to be reported separately.

In view of the above, TRAI is requested to clarify applicability of different rates of SUC for the traded spectrum in different bands, as recommended by TRAI in Para 2.8 (i).

Response of TRAI

Keeping in view the complexities involved in determining the SUC for various quantum of spectrum acquired through different methodologies, the Authority in its recommendations dated 9th September 2013 has recommended that SUC for all auctioned spectrum should be at a flat rate of 3% of AGR of wireless services. The reasons for recommending this are available in paras 5.1 to 5.32 of its recommendations of September 2013.

In para 2.19 above, the Authority has clearly recommended that spectrum acquired through trading should be treated akin to spectrum acquired through auction.

17. Para 2.20

Process of Spectrum Trading:

- ii. Both the trading parties shall jointly give a prior intimation of 6 weeks before the effective date of the trade to the WPC. The transfer fee shall be paid by the buyer at the time of intimation. The intimation will be made to WPC in a prescribed format placed at Annexure I.*
- iii. On receipt of intimation of proposed trade, the WPC will place the details of the prospective trade on its web-site, which will contain information about the seller and the buyer (name, address), their licence references, information about the spectrum (quantum of spectrum, frequencies), transaction amount, effective date as indicated by seller/buyer and all other relevant details.*
- iv. A licensee shall not be allowed to trade in spectrum if it has been established that it is in breach of terms and conditions of licence*

and the Licensor has ordered for revocation /termination of its licence.

- v. *It will be the responsibility of the trading parties to ensure that they fulfill all the eligibility conditions. However, the WPC may object to the trade and inform the reasons of objection to the trading parties in writing within a maximum period of two weeks from the date of intimation of spectrum trade. The WPC can object only if:-*
 - a. *The seller and buyer do not meet the eligibility conditions for participating in the spectrum trading, as prescribed in these guidelines, or*
 - b. *The spectrum proposed to be traded is not tradable spectrum as per the extant guidelines, or*
 - c. *The applicable transaction fee is not paid, or*
 - d. *Spectrum caps are being violated by the buyer.*
- vi. *The trading parties will reply to the WPC within a maximum period of two weeks from the date of receipt of intimation regarding the objection from the WPC. The WPC will take a final decision and communicate within the next two weeks to the trading parties.*
- vii. *The WPC shall update its record regarding transfer of spectrum within a maximum time of two weeks after the effective date of trade.*
- viii. *Intimation regarding the trading shall be provided by the buyer and seller to the Licensor, TRAI and any other relevant agencies prescribed by the Government from time to time within 30 days from the effective date of transfer of spectrum.*
- ix. *TSPs are individually and collectively responsible for complying with the trading regulations, including spectrum caps and interference norms etc.*

(TRAI Recommendation)

DoT View

(ii) & (iii) Para 2.7 may please be referred.

(iv) The views as mentioned in Para 2.5 above may please be referred.

(v)¹ The intimation would be examined with reference to the guidelines issued by the Government. However, apart from points mentioned by TRAI, following issues may have to be considered:

- If the Seller/Buyer is under notice period for termination/ revocation of the license or issuance of such notice is contemplated.
- If there is a court case on such notice.
- The technology proposed to be used by the buyer is in conformance with the prevalent guidelines.
- Issues, as referred in Paras 2.11 (iv) and 2.4

The time taken for decision by Government will depend on fulfilment of all terms and conditions of trading.

In case of collective responsibility, TRAI is requested to clarify as to what should be the mechanism for enforcement of collective responsibility keeping the interests of Government secured.

Response of TRAI

(ii) & (iii)

In the present context, Para 2.7 is not relevant. However, for issues in para 2.7, response of the Authority in Para 2.7 above may be referred.

(iv) Please see response of TRAI in Para 2.5 above.

¹ Marking (v) is apparently missed out by the DoT in its back reference.

(v) Regarding the first two issues raised by DoT, the Authority reiterates its recommendations given in the Authority's response in Para 2.5.

On the issue of the technology proposed to be used by the buyer, the Authority agrees with the DoT's view. However, the WPC/DoT should issue clear guidelines on the technologies that can be used by the buyer.

Para 2.11 (iv) is one of the eligibility conditions. Therefore, it is already a part of Para 2.20 (v)(a).

Para 2.4 only talks about the onus of liabilities in case of spectrum trading.

To comply with the objections raised by WPC, as recommended above in Para 2.20 (vi), the trading parties will have maximum period of two weeks from the date of receipt of intimation regarding the objection from the WPC and after that, the WPC will take a final decision and communicate within the next two weeks to the trading parties. Therefore, it may not be appropriate to state that the time taken by the Government will depend on fulfilment of all terms and conditions of trading.

Regarding the mechanism for enforcement of collective responsibility, as stated earlier in its response in para 2.11, an appropriate tripartite legal document would have to be signed between the seller, buyer and the Licensor to ensure to ensure that the interests of the Government are protected.

18. Para 2.22

The banks/financial institutions (lenders) who have entered into a tripartite agreement with the Licensor and licensee for the spectrum held by the licensee shall not be allowed to trade the spectrum. However, in the event of material defaults of terms and conditions of loan agreements between lenders and the licensee (holder of spectrum

obtained through spectrum trading), the lender shall have the right to seek assignment or transfer of usage rights over the spectrum to a buyer or selectee with the prior permission of the Licensor in accordance with the tripartite agreement subject to, the buyer, meeting the prescribed eligibility conditions.

For example, when a licensee is in material default of amounts due under its loan agreements with lenders, the lenders may initiate, with the permission of the Licensor, action for transfer or takeover of usage rights over spectrum to a selectee company who will then assume all the obligations and responsibilities of the previous holder of usage rights towards the Licensor.

Para 2.23

The tripartite agreement between the buyer of spectrum (licensee), Licensor, and lender (provided for under the licence) should also incorporate a provision for seeking transfer, assignment, and endorsement of usage rights of the spectrum acquired through trading to a buyer/ selectee of the lender's choice in the event of material default of the lender's dues. While doing so, it has to be ensured that the tripartite agreement between the seller of the spectrum (licensee), the Licensor, and the seller's lender is also amended to the extent of the quantum of spectrum traded.

(TRAI Recommendations)

DoT View

Para 2.22 and 2.23

It is noted that, at present, there is no Tripartite Agreement (TPA) for the spectrum alone. Further, licensees who have signed TPA, hold administratively assigned spectrum. Participation of Government in TPA is primarily for the purpose of enabling the bank/FI to appoint a selectee and recovery of dues in the case of material default by the licensee as well as to enable Government itself to protect its dues to

the extent recoverable. As per current TPA, entire license is to be transferred to the selectee along with administrative assigned spectrum. Hence, in normal case, there is no case for permitting bank/FI to trade the spectrum held by the licensee.

Secondly, objective of the bank is to recover/protect its dues. It cannot lay any claim on the entire market value of spectrum whether procured by the licensee on administrative assignment or through auction or trading, when the opportunity arises for transferring the license/spectrum to the selectee. This may have to be considered along with the issue of granting right to the licensee to trade the spectrum which is covered in the loan agreement/TPA.

TRAI is requested to provide its considered view along with suggested conditions to be incorporated in TPA, for existing (with administratively assigned spectrum) and TPA for spectrum alone.

Response of TRAI

After delinking of spectrum from licence and permitting to trade the spectrum, TPA needs to be modified to protect the interest of the Licensor and Lender. In its recommendations on ‘Auction of Spectrum’ dated 23rd April 2012, the Authority had recommended that “Mortgage of spectrum may be allowed by spectrum holders to a registered Indian financial institution against borrowings”. The Authority had also recommended that “The Department of Telecommunications must take up with the Ministry of Finance and the Reserve Bank of India to remove all the road blocks in the framework for borrowings by the telecom sector against the spectrum assigned to them.”

In its recommendations on ‘Valuation and Reserve Price of Spectrum’ dated 9th September 2013, the Authority had recommended that “The DoT should take up the matter with RBI before the proposed auction so as to ensure that commercial banks and other lending institutions are in a

position to provide loans to the telecom companies for participation in the auction.”

The DOT already has a standardized TPA for existing licensees in place. It may therefore, in consultation with Ministry of Law finalize an appropriate TPA for safeguarding the Government interest for spectrum alone cases.

19. Para 2.24

The amended format of the Tripartite Agreement should be made a part of the Unified Licence Agreement.

(TRAI Recommendation)

DoT View

The observations in 2.22 and 2.23 may please be referred.

Response of TRAI

Please see response of TRAI in Para 2.22 and 2.23 above.

20. Annexure-I of the recommendations

DoT View

Keeping in view various recommendations of TRAI, following additional details would be required from Seller and Buyer

- (i) All documents required to establish the eligibility to participate in the trading of spectrum;
- (ii) Information in respect of Seller/Buyer whether they have entered into TPA with any lender;
- (iii) Whether the Seller/Buyer is under notice period for termination/ revocation of the license;

- (iv) Whether there is court case on any issue/ dispute related to license, spectrum, dues/demands, etc. and whether there is stay from any Court/ Tribunal, if so details thereof;
- (v) The technology proposed to be used by the buyer.
- (vi) Details of spectrum held by seller and buyer and method of acquisition for each chunk of spectrum in each band, including date of allotment.
- (vii) Document containing roll out obligations and compliance thereof with respect to the spectrum to be traded.
- (viii) Amount of all Bank Guarantees and their validity period from Buyer and Seller.
- (ix) Instalments paid and due for spectrum acquired through auction.
- (x) A provision need to be made in Guidelines or Annexure-I to ensure that Government is indemnified from any dispute arising out of trading between seller and buyer.

Response of TRAI

Point (i), (iv), (vi) and (x) are agreed. Point (v) is already covered in Sl.No. 24 of the Annexure of the recommendations. Regarding the remaining points mentioned above, the Authority is of the opinion that the additional information sought may already be available with the DoT. In view of this, it may be re-examined by the DoT whether the same information is required to be sought again.