

TVR/VIL/030
28 March 2012

The Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi-110002

Dear Sirs/Madam,

VODAFONE COUNTER RESPONSE TO COMMENTS ON TRAI CONSULTATION ON AUCTION OF SPECTRUM

I. PRELIMINARY COMMENTS

We welcome this consultation and the opportunity to respond to the comments of others. As we noted in our initial comments, this consultation covers many issues which have the potential to put the communications industry in India back onto a robust and sustainable footing.

However, some of the comments by other parties, if given credence, will steer TRAI away from providing a coherent and sustainable policy framework for spectrum assignment and pricing.

Moreover, some of these comments are fundamentally inconsistent with the Honorable Supreme Court's decision in this regard; as such they will lead to delays in the process and likely legal reversals of any TRAI decision on which they are based.

II. REITERATION OF PRESENT SUBMISSIONS

We would thus like to first reiterate our submissions and submit that any contentions/claims by any party contrary to our submissions should be treated as denied. In specific we reiterate

1. There is no Contracted Spectrum of 6.2MHz under License; nor is spectrum allocated beyond 6.2MHz in excess of purported contracted limits. All spectrum allocated under license is contracted spectrum.
2. The GSM allocations to Tata have already been quashed by the Hon' ble Supreme Court and therefore the same action also ought to be extended to the dual GSM spectrum allocated to Reliance, Shyam and HFCL.
3. All future allocations of spectrum are only through auction - thus any submission for administrative allocation of spectrum within purported "contracted" limits or for equal quantum of spectrum in 900MHz and 1800MHz would be a violation of the Supreme Court judgment and the clear mandate to TRAI.
4. The concept of prescribed limit of 8/10MHz has no basis in policy or license.
5. Without prejudice, the TRAI recommendations on "prescribed" limit are no longer relevant as they were made in the context of a huge mismatch in the demand and

- supply of spectrum, which situation has changed now after the Supreme Court judgment and further spectrum also available with the Government
6. The admitted position of both TRAI as well as DoT that the concept of prescribed limit does not apply to spectrum acquired through the market and thus the very concept of this administrative limit becomes redundant once spectrum is to be allocated only through auctions.
 7. All available spectrums should be put to auction; un-used spectrum creates no value and gives no benefit to society. Sub optimal allocations have several adverse implications
 8. Our licenses are technology neutral and allow us to provide all types of services; therefore there is no need for spectrum to be liberalized before it is put to auction. TRAI has misinterpreted policy & license whilst recommending that 900MHz needs to be taken back in order to be allocated for IMT services.
 9. The issues related to refarming do not flow from the judgment of the Hon'ble Supreme Court and the TRAI cannot adjust the spectrum made available pursuant to the SC judgment to further its refarming objectives.
 10. Our licenses provide for "extension" - it includes all allocated spectrum at extension, including 900MHz. Withdrawal of 900MHz will be against our license provisions
 11. Redistribution of 900MHz spectrum is against public interest and has adverse implications that have not been considered by TRAI.
 12. The auctions should be held concurrently for all spectrum bands
 13. Auctions should be open to all - both new entrants as well as existing operators
 14. Any auction of spectrum that excludes the pre-2008 incumbents will not only be in violation of the Supreme Court judgment, but will defeat the purpose of an auction and give a result that is no different from an administered price.
 15. The block size must be set so as to suit both new entrants as well as existing operators. Bidders should be allowed to bid for multiple blocks.
 16. Spectrum caps may be set on the basis of total spectrum held in a service area irrespective of service and technology mix deployed. A separate limit may be prescribed for sub 1GHz spectrum
 17. The reserve price may be the same as the reserve price for the 3G /BWA auctions.
 18. Rollout obligations must be prescribed for new entrants
 19. The spectrum usage charge regime is discriminatory, it penalizes performing operators, it is difficult to monitor and enforce; spectrum charges should be the same for all operators
 20. Spectrum should be auctioned for 20 years and the payment should be made upfront
 21. Spectrum trading should be permitted. As a first step, TRAI may recommend trading of assignment rights
 22. Spectrum should not be allowed to be mortgaged as there would be several practical implications

III. COUNTER COMMENTS

In light of the above submissions, we would like to specifically refute the following submissions made by some stakeholders

1. **We do not agree with any submission that the Supreme Court judgment should not apply to allocation of 2G spectrum within purported "contracted" limits as**

- a. There is no Contracted Spectrum of 6.2MHz under License; nor is spectrum allocated beyond 6.2MHz in excess of purported contracted limits. All spectrum allocated under license is contracted spectrum
 - b. This would be a violation of the Supreme Court judgment and the clear mandate to TRAI to make recommendations for allocation of spectrum in 2G band in 22 Service Areas by auction, as was done for allocation of spectrum in 3G band.
2. **The presumption by Tata that the current consultation** (for auction of spectrum in response to the Supreme Court mandate **does not mean that TRAI has changed its earlier stand recommending against the auction of 2G spectrum in 800,900 and 1800MHz band is patently flawed and untenable and against the judgment of the Supreme Court.** It may specifically be noted that with regard to the TRAI recommendations of 2007 to not auction, but allocate 2G spectrum on the basis of 2001 price by invoking the theory of level playing field, the Hon'ble Supreme Court has stated:

“keeping in view the facts which have been brought to the notice of the Court that the mechanism evolved by TRAI for allocation of spectrum and the methodology adopted by the then Minister of C&IT and the officers of DoT for grant of UAS Licences may have caused huge loss to the nation, we have no hesitation to record a finding that the recommendations made by TRAI were flawed in many respects and implementation thereof by the DoT resulted in gross violation of the objective of NPT 1999 and the decision taken by the Council of Ministers on 31.10.2003.”
3. It may also be noted that the **above presumption of Tata is also contrary to the DoT decision of 29 January 2011** that *“In future... Spectrum will be made available only through market driven process”* **and in fact, even TRAI's own subsequent views** in the matter.
4. **Any decision taken by DoT based on the TRAI recommendations of 2007** which have been **held to be flawed by the Hon'ble Supreme Court would be equally flawed** and invalid.
5. **We do not agree to any submission seeking equal quantum of spectrum in 900MHz and 1800MHz** as it is against the very concept of auctions that has been directed by the Hon'ble Supreme Court.
6. **We do not agree that incumbent operators should be excluded from the auctions, or that separate auctions should be held for different categories of operators** as this would be a **violation of the Supreme Court judgment** that clearly states that there should be a fair and transparent method of selection; all eligible persons get fair opportunity of competition, no attempt should be made to scuttle the claim of worthy applicants and that the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process **as also defeat the very purpose of an auction.**

7. It may be noted that the intrinsic value of spectrum will be much higher for operators whose licenses have been cancelled by the Hon'ble Supreme Court and that value can only be determined through an open auction in which all eligible persons are entitled to participate.
8. Without **prejudice to our submission that the GSM spectrum allocated to the dual spectrum operators should be withdrawn**, we would like to submit that **these operators should be debarred from participating in any auction of spectrum as they have not met their rollout obligations**. It may be noted that the DoT Press Release of 19 October 2007 stated that *"In case of spectrum auction, a Licensee, who has not met roll-out obligation against an existing licence, should not be eligible to participate in any spectrum auction till the roll out obligation is met"*
9. **We do not agree with any submission that 900MHz should be immediately "refarmed"** as this would be a violation of license, under which the said spectrum has been allocated.
10. **We do not agree that separate auctions should be held for 800/1800MHz** as both spectrums are used to offer similar services and target the same set of consumers. Auction of all bands concurrently will give bidders the maximum flexibility thus making the process most robust and effective.
11. **We do not agree with any contention that 800MHz is less valuable than 1800MHz spectrum**. It may be noted that 800MHz is being used by the CDMA operators to provide 3G EVDO services, which was required to be priced, both by TRAI as well as DoT at **an amount proportionate to the highest bid for spectrum in 2.1 GHz band**.
12. **We do not agree with any submission that spectrum should be allowed to be mortgaged**. This has **several practical difficulties** in a scenario where spectrum and license are delinked. Spectrum as a standalone asset cannot revert to the bank which is not allowed to hold it as a non-licensee and therefore cannot derive any value from this resource.

IV. FRONTIER REPORT

We seek leave to resubmit the Report of Frontier Economics on "Best Practice principles for the auction of spectrum in India as the earlier Report, due to paucity of time, did not include some relevant and important aspects related to the setting of the reserve price for auctions.

There are also some further additions in the document that elaborate on an existing point, already made in the earlier version.

We earnestly request you to consider this Report.

Kind regards,

Sincerely yours,

T. V. Ramachandran
Resident Director
Regulatory Affairs & Government Relations

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