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## ETISALAT DB TELECOM'S COMMENTS - Pre-Consultation Paper on "Allocation of Spectrum in 2G Band in 22 Service Areas by Auction"

In our opinion, the proposed Consultation Paper should address the following aspects related to Spectrum Allocation through Auction:

### A. AUCTION OBJECTIVE

TRAI must clearly spell-out the objective and criterion for the proposed 2G auction. In our opinion, the objective of the proposed 2G auction should be to promote **competition and affordability** as also envisaged in the 10<sup>th</sup> & 11<sup>th</sup> five year plan. It is pertinent that the draft NTP-2011 also echoes this objective in the following words *".....National Telecom Policy-2011 is designed to ensure that India plays this role effectively and transforms the socio-economic scenario through accelerated equitable and inclusive economic growth **by laying special emphasis on providing affordable and quality telecommunication services in rural and remote areas....."***

*".....Thrust of this policy is to underscore the imperative that sustained adoption of technology would offer viable options in overcoming developmental challenges in education, health, employment generation, financial inclusion and much else. NTP-2011 is an initiative to create a conducive policy framework to address these issues and to touch lives of all citizens and transform India. By formulating a clear policy regime, NTP-2011 endeavors to create an investor friendly environment for attracting additional investments in the sector apart from generating manifold employment opportunities in various segments of the sector. **In achieving the goals of National Telecom Policy 2011 revenue generation will play a secondary role....."***

*".....The principal policy objectives are to optimally leverage our existing and developing ICT infrastructure and capabilities to meet the growing need for high quality social sector services like education, health, skill development, welfare or benefit programmes, e-government services, economic services like banking, insurance, transportation and logistics, and other societal needs like entertainment, communications, social media, information dissemination, etc...."*

The aforesaid objectives envisioned in draft NTP 2011 are ingrained in the Government's commitment to promote affordable and diverse social sector services for the Indian masses. Revenue generation, admittedly, would play a comely second fiddle in this design of things.

In light of the above, clearly, revenue maximization cannot be the guiding factor for this 2G auction, which was the case for previously held 3G auctions. The 2100 MHz band spectrum that

was auctioned in 2010 enables provision of value added services like video conferencing, high-speed gaming and other entertainment services; whereas 1800 MHz band spectrum which is available for auction at present has hitherto been used for provision of basic mobile services. Moreover, entities who acquired 2100 MHz spectrum were already holding 900 / 1800 MHz spectrum for 2G services and therefore it was apt and opportune for the Government to adopt revenue maximization as a guiding principle for the 3G auction.

In the instant case, the underlying objective of the auction should be to afford opportunity for equal competition as the bulk of spectrum constituting the auction pool of reserves is to be retrieved from licensees of 2008 whose licenses have been quashed by the Hon'ble Supreme Court in their Judgment dated 02-Feb-2012; licensees who have made significant investment to establish and operate state-of-the-art cellular mobile networks. In order to yield a chance to these licensees to win-back the spectrum to sustain their business and preserve their investments, the TRAI must not promote revenue maximization as an objective for the current auction.

It is also well established that the subscriber acquisition costs of new entrants are substantially higher than that of incumbents whereas the ARPU is significantly lower. TRAI has also, in the past, acknowledged that the new entrants would primarily target the marginal customers. In order to ensure sustainable competition in the market it would be appropriate to adopt an auction approach which allows competition to survive.

## **B. ELIGIBILITY FOR PARTICIPATION**

TRAI must define the eligibility criterion for participation in the Auction. In our opinion, in case only the spectrum released upon cancellation of 122 Licenses alongwith spectrum currently available with DoT is put for auction, then only licensees awaiting start-up spectrum, new entrants and licensees whose licenses were cancelled on 02-Feb-2012 should be permitted to participate. This would enable the licensees who have been impacted by the Hon'ble Supreme Court's Judgment to win-back spectrum after paying a fair market-linked price. It would also grant an opportunity for fresh players to gain an entry into the Indian market. Any other composition would defy all notions of parity with legacy allocations, since contractual spectrum (i.e. upto 6.2MHz) has previously been granted by the DoT under FCFS policy at entry fee of 2001, which were not current market rates. Table A in Annexure enumerates instances of grant of spectrum between 2004 and 2008 at 2001 rates.

In case all existing licensees are permitted to participate in a single unified auction (for start-up spectrum, up to contractual and above contractual spectrum) then besides the spectrum



released upon cancellation of 122 Licenses, all spectrum likely to become available in 2013-14 upon expiry of term of some of the existing licenses, spectrum available for re-farming, spectrum likely to be released by the Ministry of Defence, spectrum allocated under FCFS policy between 2001 and 2007 and spectrum allocated to existing Licensees beyond contractual amount should also be put for auction.

### C. AUCTION METHODOLOGY

Auction should be held Service-Area wise for all 22 Service-Areas of the country. We recommend two separate auctions for 2G spectrum as explained below:

- i. Auction of start-up spectrum – Participation in this auction should be permitted only for licensees awaiting start-up spectrum, new entrants and licensees whose licenses were cancelled under the Hon'ble Supreme Court's Judgment. For this auction, the spectrum pool should comprise:
  - ✓ Spectrum of licenses which are cancelled on 02-Feb-2012 by Hon'ble Supreme Court
  - ✓ Spectrum currently available with DoT

It is suggested that the starting point for this exercise should be to identify how many blocks of start-up spectrum are available LSA-wise and what is the number of players that the Government desires to retain in the market. The minimum number of blocks for auction per LSA should be equal to the number of players per LSA whose licenses have been quashed on 02-Feb-2012. The auction methodology should thereafter be chalked out to ascertain a fair market price for start-up spectrum.

A pertinent issue which the Consultation Paper should address is 'what price to charge from Licensees who were awarded Licenses between 2001 and 2007 under the FCFS policy at the auction price (entry fee) determined in 2001?' Although the Hon'ble Supreme Court quashed licenses awarded on/after 10-Jan-2008 pursuant to two press releases dated 10-Jan-2008 as "illegal"; however they did not accept the argument of EDB's well-respected counsel (Senior Advocate Mr. Harish Salve) that if the Court comes to the conclusion that auction is the only method for grant of licenses and spectrum, then all licenses awarded since 2001 should also be annulled because multi stage bidding was done only in 2001 for the purpose of entry of 4<sup>th</sup> CMSP and thereafter no auction was held. Thus licenses awarded since 2001 upto 2008 were granted under FCFS policy at 2001 prices and hence liable to be quashed by this logic. The consultation paper may also address the issue of 'whether there is a need to devise a methodology to adjust the auction-determined price of 2012 to comparable rates for past years to charge from licensees who were awarded licenses between 2001 and 2007?'

- ii. Auction of additional spectrum over & above start-up/contractual limit - A second separate auction may be held for incremental spectrum. One of the reasons is that the Hon'ble Supreme Court's Judgment can be plausibly inferred to have declared illegal not just licenses granted on/after 10-Jan-2008 but also allocation of spectrum subsequent to 10-Jan-2008. This group comprises additional spectrum granted to incumbents above 4.4/6.2 MHz, 2G spectrum granted to dual technology players etc. Participation in this auction should be open to all Licensees. This auction should have in-built safeguards to discourage hoarding of spectrum. Spectrum holding for any TSP should be limited to 8MHz in circle service areas and 10MHz in Metro service areas as recommended by TRAI on 10-May-2010 (Para 3.28) Accordingly, licensees already holding 8MHz in circles and 10MHz in metros should be precluded from participation in this auction.

For this auction, the spectrum pool should comprise:

- ✓ Spectrum leftover in first Auction
- ✓ Additional spectrum allocated subsequent to 10-Jan-2008

In this context, the consultation paper should also address a very critical question as to 'what price should be charged from existing Licensees as one-time levy for spectrum allocated beyond the contractual limit for which they have not paid an upfront market-linked price?' Whether the auction determined price of 2012 for incremental spectrum reflects the true value of these allocations in the past and if not, how should this price be adjusted? Table B at Annexure provides details of spectrum allocation beyond contractual amount for which no upfront fee has been levied.

Another pertinent question would be 'whether this pool should also comprise 2G spectrum allocated to Dual Technology Players?' This decision in turn is incumbent on whether we treat the dual technology spectrum as start-up spectrum or additional spectrum. It also depends on whether this spectrum allocation is also deemed to be quashed by virtue of the Hon'ble Supreme Court's Judgment?

The objective of holding two separate auctions is to maintain level playing field in the industry amongst (i) licensees who were allocated spectrum above the contractual amount without charging an upfront one-time fee, (ii) licensees who were allocated spectrum under FCFS policy between 2001 and 2007 but whose licenses have not been quashed by the Hon'ble Supreme Court since these fall within the category of *illegal* licenses if we go by the spirit of the SC Judgment and (iii) licensees who were allocated spectrum under FCFS policy on/after January 2008 and whose licenses have been quashed by the Hon'ble Supreme Court purely because these were made Respondents to the Civil Writ Petition before the Supreme Court.



A suitable Auction Methodology should be adopted that results in a “market price” for the spectrum and attracts serious investors to roll-out services. The DoT needs to be conscious of the ground realities in the telecom sector right now - with banks wary of financing the telecom companies, shaken investor confidence after the SC Judgment quashing licenses, confusion amongst foreign investors about the security of their investments etc.

#### **D. RESERVE PRICE**

There should be two separate Reserve Prices for the two auctions:

- i. For auction of initial start-up spectrum / upto contractual limit: As such, Reserve Price has no significance here as this is an open auction for fresh licenses and the interested parties would far exceed the number of blocks available for auction. If at all a Reserve Price has to be defined, it should be based on the service-area wise Entry Fee of Rs. 1658 crores for 6.2 MHz since this is the last auction determined price for spectrum in 1800 MHz band (as identified in 2001). This price needs to be appropriately adjusted if the block size is larger or smaller than 6.2MHz. Any other Reserve Price would be subject of controversy as it would serve to distort competition and militate against the principle of level playing field.
- ii. For auction of spectrum above contractual limit: Defining an appropriate Reserve Price is very significant for this Auction since existing players would be competing for incremental spectrum and it is in their interests to keep the ‘per MHz price’ at the bare minimum. Therefore preventing cartelization is paramount.

#### **E. SIZE OF BLOCK**

There should be two separate Block Sizes for the two auctions:

- i. For auction of initial start-up spectrum / upto contractual limit: The minimum block size should be 5MHz (or 6.2 MHz being the contractual spectrum which is granted by DoT) as per the norm for minimum GSM allocations to ensure basic Quality of Services. This is also the minimum quantum of spectrum required to build a viable and sustainable GSM-2G network. It is also pertinent that in the last auction in 2001, a block of 6.2MHz was identified as a single lot for allocation. If at all any lesser quantum has to be considered, then it should be atleast 5 MHz to protect the technology-neutrality of spectrum and make it amenable to use for any Network.
- ii. For auction of spectrum above contractual limit: The minimum block size should be 1 MHz. Licensees already holding spectrum upto Prescribed Limit (8MHz in circles and 10MHz in metros) should be precluded from participation in this auction.

#### **F. EARNEST MONEY**

There should be two separate Earnest Money for the two auctions:

- i. For auction of initial start-up spectrum / upto contractual limit: The Entry Fee already paid by the 2008 licensees may be kept as earnest money.
- ii. For auction of spectrum above contractual limit: An appropriate Earnest Money should be estimated since these Licensees would be bidding for spectrum whose entry cost is NOT covered by the Entry Fee paid by them.

#### **G. CEILING ON SPECTRUM HOLDING**

As recommended by TRAI on 11-May-2010, the limit on spectrum to be assigned to a service provider should be 2X8MHz for all service areas other than in Delhi and Mumbai where it will be 2X10MHz (Para 3.28 of TRAI Recommendations dated 11-May-2010).

#### **H. SPECTRUM USAGE**

TRAI should determine whether there is a need to place any restriction on the usage of spectrum w.r.t. Services (2G/3G/4G) or should the spectrum utilization be liberalized. In our opinion, spectrum should be technology-agnostic and accordingly we have proposed a minimum block size of 5MHz for the first auction.

#### **I. CONCERNS REGARDING VIABILITY, RETURN ON INVESTMENT ETC.**

Finally, we would like to emphasize that it is important for government policy and regulatory practices to ensure sustainable competition. "Over-licensing" driven by the interests of quick revenue for the Exchequer is a short-term view with longer term damaging consequences within the industry and to service provision for consumers. Mobile Voice has already crossed revenue saturation in the urban market and has limited viability in high-cost low-ARPU rural market. Data services are expected to fill this gap by driving consumption in the next phase of growth of Indian Telecom. In other words, only a 2G voice + 4G data player can be prepared to compete in the current market.

A measured licensing approach, based on rigorous market analysis will achieve greater benefits for the country's ICT ambitions, consumer choice and innovation. Reasonable returns on investment will be enabled to support innovation and additional network deployment. Policies also need to enable market self-determined changes (i.e. M&A). The result of this approach will be a healthier market and greater, sustainable revenue returns for the Exchequer through the fees and taxes currently placed on industry (and, de facto, consumers).

Therefore the Government should evaluate the feasibility of auctioning of additional slots of 2300/2500 MHz and 700 MHz (Digital Dividend) spectrum alongwith the start-up quantum of 1800 MHz spectrum. The Learned Minister of Communications Shri Kapil Sibal in his interaction with the Press on 02-Feb-2012 has indicated that the DoT is planning auction of 4G by end of 2012. Therefore, it would be opportune to auction both bands to make it a better bargain for the Licensees bidding for start-up spectrum.

This, and other planned consultations, is significant in setting practices to enable India's ICT industry to be successful again, to support the country's growth across a number of sectors as well to contribute to enhancing the social economic welfare of the country. It is important that the policies and practices put in place are carefully considered, planned and implemented. EDB trusts the views and recommendations set out herein contribute to the TRAI's initiatives.

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**TABLE – A**

**Start-up Spectrum Allocation during 2004 to 2008 at 2001 rates**

| S. No. | Service Provider | Service Area | Effective Date of Licence | Date of Spectrum Allocation | Initial / Start-up Spectrum |
|--------|------------------|--------------|---------------------------|-----------------------------|-----------------------------|
| 1      | ABTL             | Bihar        | 6-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 2      | Idea             | Mumbai       | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 3      | Aircel           | AP           | 5-Dec-2006                | 10-Jan-08                   | 4.4                         |
| 4      |                  | Delhi        | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 5      |                  | Gujarat      | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 6      |                  | Karnataka    | 5-Dec-2006                | 10-Jan-08                   | 4.4                         |
| 7      |                  | Maharashtra  | 5-Dec-2006                | 10-Jan-08                   | 4.4                         |
| 8      |                  | Rajasthan    | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 9      |                  | Mumbai       | 6-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 10     | Bharti           | Bihar        | 10-Feb-2004               | 6-May-04                    | 6.2                         |
| 11     |                  | J&K          | 10-Feb-2004               | 22-Jun-04                   | 4.4                         |
| 12     |                  | Orissa       | 10-Feb-2004               | 6-May-04                    | 6.2                         |
| 13     |                  | UPE          | 10-Feb-2004               | 6-May-04                    | 6.2                         |
| 14     |                  | WB           | 11-Feb-2004               | 12-Aug-04                   | 4.4                         |
| 15     |                  | Assam        | 8-Jul-2004                | 27-Dec-04; 15-Mar-05        | 4.4                         |
| 16     | Dishnet          | Assam        | 21-Apr-2004               | 22-Jul-04                   | 4.4                         |
| 17     |                  | Bihar        | 21-Apr-2004               | 7-Feb-06                    | 4.4                         |
| 18     |                  | HP           | 21-Apr-2004               | 13-Mar-06                   | 4.4                         |
| 19     |                  | J&K          | 21-Apr-2004               | 1-Sep-04                    | 4.4                         |
| 20     |                  | North East   | 21-Apr-2004               | 22-Jul-04                   | 4.4                         |
| 21     |                  | Orissa       | 21-Apr-2004               | 24-Dec-04                   | 4.4                         |
| 22     |                  | WB           | 21-Apr-2004               | 15-Dec-04                   | 4.4                         |
| 23     |                  | Haryana      | 14-Dec-2006               | 11-Jan-08                   | 4.4                         |
| 24     |                  | Kerala       | 14-Dec-2006               | 10-Jan-08                   | 4.4                         |
| 25     |                  | Kolkata      | 14-Dec-2006               | 5-Apr-07                    | 4.4                         |
| 26     |                  | MP           | 14-Dec-2006               | 11-Jan-08                   | 4.4                         |
| 27     |                  | Punjab       | 14-Dec-2006               | 11-Jan-08                   | 4.4                         |
| 28     |                  | UPE          | 14-Dec-2006               | 11-Jan-08                   | 4.4                         |
| 29     |                  | UPW          | 14-Dec-2006               | 11-Jan-08                   | 4.4                         |
| 43     | Vodafone         | UPW          | 13-Feb-2004               | 6-May-04                    | 6.2                         |
| 44     |                  | WB           | 23-Mar-2004               | 12-Aug-04                   | 4.4                         |
| 45     |                  | Assam        | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 46     |                  | Bihar        | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 47     |                  | HP           | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 48     |                  | J&K          | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 49     |                  | North East   | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 50     |                  | Orissa       | 5-Dec-2006                | 11-Jan-08                   | 4.4                         |
| 51     |                  | MP           | 20-Mar-2007               | 11-Feb-08                   | 4.4                         |



**TABLE – B**

**GSM Spectrum Allocations above 6.2 MHz without upfront one-time fee**

| LSA          | Aircel   | Bharti      | BSNL        | IDEA        | Loop       | MTNL        | Reliance   | Spice      | Vodafone    | Total        |
|--------------|----------|-------------|-------------|-------------|------------|-------------|------------|------------|-------------|--------------|
| AP           |          | 3.8         | 3.8         | 1.8         |            |             |            |            |             | 9.4          |
| ASS          |          |             | 3.8         |             |            |             |            |            |             | 3.8          |
| BH           |          | 3           | 3.8         |             |            |             | 1.8        |            |             | 8.6          |
| CHN          | 2.4      | 2.4         | 1.8         |             |            |             |            |            | 1.8         | 8.4          |
| DL           |          | 3.8         |             | 1.8         |            | 6.2         |            |            | 3.8         | 15.6         |
| GJ           |          |             | 1.2         |             |            |             |            |            | 3.6         | 4.8          |
| HP           |          |             | 3.8         |             |            |             |            |            |             | 3.8          |
| HR           |          |             | 3.8         |             |            |             |            |            |             | 3.8          |
| J&K          |          |             | 1.8         |             |            |             |            |            |             | 1.8          |
| KK           |          | 3.8         | 3.8         |             |            |             |            |            | 1.8         | 9.4          |
| KOL          |          | 1.8         | 3.8         |             |            |             |            |            | 3.6         | 9.2          |
| KR           |          |             | 3.8         | 1.8         |            |             |            |            |             | 5.6          |
| MH           |          | 2           | 3.8         | 3.6         |            |             |            |            |             | 9.4          |
| MP           |          | 1.8         | 3.8         | 1.8         |            |             |            |            |             | 7.4          |
| MUM          |          | 3           |             |             | 3.8        | 6.2         |            |            | 3.8         | 16.8         |
| NE           |          |             | 3.8         |             |            |             |            |            |             | 3.8          |
| OR           |          | 1.8         | 3.8         |             |            |             |            |            |             | 5.6          |
| PN           |          | 1.6         |             |             |            |             |            | 1.6        |             | 3.2          |
| RJ           |          | 2           | 1.8         |             |            |             |            |            |             | 3.8          |
| TN           | 3.6      |             | 1.8         |             |            |             |            |            | 1           | 6.4          |
| UPE          |          | 1           | 3.8         |             |            |             |            |            | 2           | 6.8          |
| UPW          |          |             | 3.8         | 1.8         |            |             |            |            |             | 5.6          |
| WB           |          |             | 1.8         |             |            |             |            |            |             | 1.8          |
| <b>Total</b> | <b>6</b> | <b>31.8</b> | <b>63.4</b> | <b>12.6</b> | <b>3.8</b> | <b>12.4</b> | <b>1.8</b> | <b>1.6</b> | <b>21.4</b> | <b>154.8</b> |