

S Tel's comments on TRAI Pre-Consultation on "Allocation of Spectrum in 2G band in 22 Service Areas by auction"

We welcome the urgency shown by TRAI in starting the Consultation process on the Hon'ble Supreme Court's following direction.

"Keeping in view the decision taken by the Central Government in 2011, TRAI shall make fresh recommendations for grant of license and allocation of spectrum in 2G band in 22 Service Areas by auction, as was done for allocation of spectrum in 3G band."

The decision of the Central Government mentioned above has been conveyed in the form of a press statement dated 29.1.2011 issued by the present Minister of C&IT, wherein the salient points are.

- 1. In future, the spectrum will not be bundled with license. The license 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. In the event the licence holder would like to offer wireless services, it will have to obtain spectrum through a market driven process.*
- 2. In future, there will be no concept of contracted spectrum.*
- 3. Government needs to seriously consider the adoption of an auction process for allocation and pricing of spectrum beyond 6.2 MHz while ensuring that there is adequate competition in the auction process.*

As these points have been accepted by the Hon'ble Supreme Court as the enunciation of a policy, these may be taken as policy decisions despite of there being no official communication to this effect.

Besides this, we must also consider that the Hon'ble Supreme Court has allowed the writ petitions only on the questions raised before it, and has refrained from accepting other arguments as evident in para no. 78 of the judgment.

Now, TRAI being the sector regulator needs to take cognizance of all the issues resulting from this Judgment. Prime among those issues would be:

- 1) Treatment of the ex-licensees (2008 Licensees), who's License has been quashed by this Judgment but who have completed the roll-out obligations under the License, within the prescribed time lines. And the substantial CAPEX involved in doing so.**
- 2) Treatment of the 3G Spectrum won in the Auction by the above mentioned former Licensees.**
- 3) Treatment of the foreign equity infused in the country by the above mentioned former Licensees.**
- 4) Treatment of the subscribers acquired by the above mentioned former Licensees.**

Besides these other points of discussion are the,

- a) Eligibility of participating in the Auction and Maximum limit of Spectrum that a Licensee can hold in a service area,**
- b) Base price of the Spectrum,**
- c) Quantity of the Spectrum to be auctioned, the available Slots and their size,**
- d) Spectrum usage charges after the Spectrum has been acquired in Auction.**

All these points are discussed separately in the following Sections.

Section 1: Treatment of the quashed 2008 Licences:

1. Former licensees, whose Licenses have been quashed:

There is obviously a large cost involved in launching of services, which involves purchase and set-up of equipment, Network and associated infrastructure including acquisition costs for acquiring customers. This cost was incurred by S Tel and other Operators, on the basis of a valid license which was issued on the basis of a known policy and TRAI recommendations of 2007. Now as that policy has been assailed by the Hon'ble Supreme Court, It would not be inappropriate for S Tel and other affected operators to have the expectation that TRAI, as a protector of the industry interests, will provide them some protection in the proposed Auction. The most logical expression of this would be by giving a **“first right to refusal”** to all the 2008 operators, in the manner as herein below recorded.

The Operator's whose licenses have been revoked by the Hon'ble Supreme Court on the grounds of a successful challenge against the 2007 Government policy (“2008 Licensees”), shall have the right to bid for at least two slots of 4.4 MHz spectrum per service area, reserved for them in the proposed Auction. The slots and bands of spectrum that is suggested to be auctioned is provided under The Methodology of Auction below.

All fees and charges including but not limited to Entry fee, License fee, Spectrum usage charges etc. and the value of Financial and Performance Bank Guarantees already paid/furnished shall be considered as part of the bid amount already committed by the 2008 Licensees and the same shall be accordingly reduced from the successful bid amount payable by such Licensees after market determination of the same through the proposed auction. In the event the 2008 Licensees decide not to participate in the proposed auction and/or where any of the 2008 Licensees do not emerge as the successful bidder in the proposed auction, all fees and charges shall be refunded and Guarantees and undertakings provided by such Licensees shall be released to and in favour of such 2008 Licensees.

To address any claims of compensation that are likely to emanate from the 2008 Licensees, the investments made by such Licensee towards provision of its services, i.e. all Capital expenditure including Share Capital and free reserves shall be considered as part of bid amount already committed by the 2008 Licensees and the same shall be accordingly reduced from the successful bid amount payable by such Licensees after market determination of the same through the proposed auction. In the event the 2008 Licensees decide not to participate in the proposed auction and/or where any of the 2008 Licensees do not emerge as the successful bidder in the proposed auction, such 2008 Licensees shall be at liberty to seek such recourse towards compensation.

2. Treatment of the 3G Spectrum won in the Auction by the above mentioned former Licensees.

A very important question with far reaching implications is that what happens to the 3G spectrum won by the 2008 Licensees at the 2010 3G auction. One of the eligibility conditions in the 3G auction was that the applicant shall be a UAS Licensee or shall give an undertaking that it shall acquire a nominee UASL after successfully bidding in the auction.

Now, let us consider the case of 2008 Licensees who bid successfully in the auction, these Licensees were at that time holders of then valid licenses and consequently were not required

to provide any undertaking that they shall acquire new licenses, but post Hon'ble Supreme Court's judgment there is ambiguity on the fate of the 3G spectrum acquired by them.

There is an urgent need to address the substantial investment made by the 2008 Licensees towards 3G spectrum, which has been bonafidely and successfully acquired by them, fair and square under the recently concluded 3G auction. This issue has a significant bearing on the proposed auction especially for those of the 2008 Licensees who have acquired the 3G Spectrum by way of an amendment to the existing UASL licenses. As a logical consequence to the above, those of the 2008 Licensees who have won 3G Spectrum should be refunded the entire value of the 3G Spectrum bid amount and investment, if opted for, irrespective of bidding or not bidding in the proposed 2G auction.

3. Treatment of the foreign equity infused in the country by the 2008 Licensees:

As widely reported and publicized these former licensees were able to attract a considerably large amount of foreign equity, this had the express approval of the Finance ministry and the mandatory clearances by the FIPB. This investment was, to a large extent, directed towards the telecom infrastructure.

TRAI has a responsibility to send out a strong message to the world at large that if the investment came to the country on the premise of a policy which was validated by TRAI in its capacity as an expert body, which later on turned out to be faulty, then the investor will not bear the brunt of this alone and the Regulator will ensure that it facilitates redress and compensation by the Government to such investors and also ensure repatriation of the FDI to the respective foreign investors to send right signals to the international investors. In this context, it is necessary to provide necessary assurance to foreign investors who have already made FDI investment in the 2008 Licensees that their investment as made, shall be compensated for and permitted repatriation, irrespective of bidding or not bidding in the proposed 2G auction.

4. Treatment of the subscribers acquired by the 2008 Licensees:

The 2008 Licensees cancelled by the Hon'ble Supreme Court had a combined subscriber base of more than 70 million as on 31st Dec 2011. Going by Industry trends in last few years, most of these are likely to be life-time subscribers. What will happen to these subscribers?

While we at S Tel are actively providing all possible support to these subscribers in migrating to other Operators but TRAI shall also intervene in this matter and shall waive of the lock-in period of 90 days and also waive of the MNP port-in charges for these subscribers. These subscribers shall also be given base plans of their choice at no extra cost. The common man shall not be made a victim of faulty policy and faultier implementation.

Section 2: The AUCTION

a) Eligibility of participating in the Auction and Maximum limit of Spectrum that a Licensee can hold in a service area:

All Companies or group of companies satisfying the underlying eligibility conditions in the UASL guidelines and/or guidelines for Unified Licensing shall be allowed to participate in the Auction.

The Authority has itself recommended the maximum spectrum limits in a service area as recent as May 2010, and these seem to be fair enough and these shall be persisted with, i.e. the existing operators shall be allowed to bid only to the extent that their spectrum holding is within these prescribed limits.

All the applicants for additional spectrum may also be asked to participate in the Auction for additional spectrum but within the prescribed maximum limit. Our suggestions with respect to the Methodology of Auction are given below.

Considering the finite nature of Spectrum and the increased emphasis on efficient utilization of spectrum, spectrum sharing shall be permitted along with the introduction of MVNO. These steps taken together would not only optimize the monetary value of spectrum but will also help optimize its utilization.

b) Base price of the Spectrum:

TRAI shall consider for auction of 2G spectrum in 1800 MHz or higher bands only.

As we have experienced in the 3G auction, the auction will discover the correct price whatever the base price. However, as a base price is required anyways, it seem reasonable that the price discovered in the last 2G auction in 2001 may be taken as base price. But we shall bear in mind that the 2001 price included the cost of the license and along with it promised the contracted spectrum of 6.2 MHz. Now as the proposed Unified License regime would include a one-time fee for the License also, this should be discounted from the base price of the spectrum.

c) Methodology of Auction:

The Spectrum available for auction would not only be the spectrum allocated to the 2008 Licensees but also the spectrum already available with DoT and any more spectrum vacated by Defense forces. Another tranche of spectrum can be made available by asking the existing operators (including BSNL/MTNL) to vacate the spectrum allocated in excess to the TRAI prescribed maximum limit.

A cursory examination of the spectrum availability indicates that the spectrum availability will be very different in various service areas; a service area like Delhi might have only around 8 MHz of spectrum available for auction, whereas Orissa will have more than 20 MHz of Spectrum available for auction. This situation is at a great variance to the spectrum availability situation at the time of 3G auction. Thus the condition that the bidding for all service areas will stop at the same time may not be suitable. Therefore it is suggested that price discovery mechanism shall be service area specific and eligible players and slots shall be as provided herein below:

The Spectrum Auction shall be a two stage Auction:

First stage of Auction will have a minimum of two slots 4.4 MHz of spectrum, the eligible bidders for this will be all the 2008 Licensees and any new entity eligible to participate in the bidding. This will help maintain requisite level of competition in the market.

Second Stage of Auction bidding shall be open to all eligible bidders. We suggest spectrum slots of 1MHz each with the option of bidding for more than one slot subject to the maximum limit.

d) Spectrum usage charges after the Spectrum has been acquired in Auction

This is an important question. Till date, Spectrum was bundled with License and a Licensee could apply for additional spectrum based on subscriber (VLR) based criteria and it had to pay a higher spectrum usage charge. Now as per the policy enunciated by the Hon'ble Minister of Communications and IT, all spectrum will be auctioned.

Earlier as the Operator was not paying anything upfront for the right to use spectrum the graded spectrum charge was logical, now as the right to use spectrum will be won at a market price, the above mentioned logic does not stand any longer. The spectrum usage charge shall be fixed at a nominal rate, say 1% of the AGR.

We would urge The Authority to take a holistic view of the points discussed above and keep these in mind while framing the consultation paper.