



S Tel/LT/2012/1798
March 21, 2012

The Secretary,
Telecom Regulatory Authority of India,
Mahanagar DoorSanchar Bhawan,
Jawahar Lal Nehru Marg (Old Minto Road),
New Delhi 110 002

Kind Attn: Pr. Advisor (MS)

Subject: S Tel's response to Consultation Paper on "Auction of Spectrum"

Dear Sir,

Our views on the issues raised in the Consultation Paper No. 04/2012 on "Auction of Spectrum" are enclosed herewith.

This is for your consideration please.

Thanking you,

Yours faithfully,
For S Tel Private Limited


J Sugumaran
Chief Operating Officer

S Tel's comments on TRAI Consultation Paper on Auction of Spectrum

We sincerely welcome the issues brought out by the Authority in the aforementioned consultation paper. It is appreciable that Authority is looking at a comprehensive spectrum policy and is seeking to address wide ranging issues including refarming of Spectrum, liberalization of Spectrum, Auction of new bands of Spectrum, Usage charges in post auction era, Spectrum trading etc. The consultation on these issues will surely lead to the evolution of a long-term Spectrum policy.

However, the issue at hand is the unprecedented situation created by the Supreme Court Judgment dated 2nd February 2012. The priority at this stage should be the treatment of the 2008 Licensees, who have become unwitting victims of a faulty policy and faultier implementation. The task at hand for TRAI is the early recommendations on the modalities of auction of spectrum/Licenses in 2G band. TRAI shall bear in mind the fact that comes June 2, 2012, the Licenses will stand cancelled. The time-period of 4 months is all that Supreme Court has given to complete all the activities related to Auction. TRAI shall focus all its energies on the auction of 2G Spectrum/Licenses to ensure that the all activities are completed well in time.

Other issues like Auction of Spectrum in 700 MHz band, refarming of 800/900 MHz band and other policy issues not related to the auction of 2G spectrum and Licenses shall be taken at a later date through a separate consultation process. **Still, we want to make it abundantly clear that the no Operator shall be allowed to retain any chunk of 900/800 MHz spectrum and the complete tranche of this spectrum shall be auctioned.**

In our response to the Pre consultation on "Allocation of spectrum in 2G band in 22 Service Areas by auction", we had suggested various steps that Authority must take to protect the interests of the 2008 Licensees (Licensees whose Licenses have been quashed by the Supreme Court judgment dated 2.2.2012).The consultation paper does not address any of these points. We request the Authority to reconsider these points of vital interest:

- 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.**

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.

As far as the issues brought out in the Consultation paper are concerned. **We would request that the first priority of the Authority shall be to issue recommendations on Auction of 2G Licenses. All other questions are irrelevant right now.** We understand the fact that there shall be a comprehensive and systematic approach to the whole gamut of questions related to Spectrum in various frequency bands and a cohesive Spectrum policy needs to be evolved, but that should be done through a separate consultation paper.

We believe that the evolution of the long term policy for Spectrum requires setting up of timelines for important milestones. We must consider the simple facts that the auction for 2G has to be completed on urgent basis, the refarmable Spectrum will start becoming available in 2014 only and the first major chunk will be available in 2015 only, The Liberalization will require handling a host of legacy issues. In view of this we would suggest the complete exercise be undertaken in a phased manner with timelines. Suggested phases are as below:

Phase 1: Auction and allocation of Spectrum in 1800 MHz band, timeline: 2012

Phase 2: Handling of legacy issue related to Liberalization and the liberalization of Spectrum, timeline: 2013-14

Phase 3: Auction of spectrum in 700 MHz band and refarming of the 900/800 MHz bands timelines 2015-16

Our detailed responses to the questions framed in the Consultation paper are as below:

Q1. How can the various principles outlined by the Hon'ble Supreme Court in various observations brought out in para above be sufficiently incorporated in the design of spectrum auction?

S Tel's Response: We understand that the Court has stressed on the principles of Equality, Increase in competition and optimum utilization of the Natural resources.

Competition: The auction shall focus on maintaining requisite level of competition in the market as well as competition for right to use spectrum. Therefore we have suggested that auction be held in two phases, the first phase reserved for new entrants in the market and the second phase be made open to all to have real competition for spectrum rights.

Equality: We are suggesting that no artificial barriers be put for participating in the Auction. The only restriction on participating in the Auction shall be at phase-1, which is required to arrest cartelization and to provide requisite competition in the market.

Optimum Utilization of Natural resources: In the light of spectrum scarcity and finiteness. We are recommending the introduction of the following policy measures so that the goal of Optimum Utilization of Natural resources is attained:

- I. Spectrum sharing
- II. Spectrum liberalisation
- III. Spectrum trading
- IV. Intra and Inter circle roaming in non spectrum holders
- V. Introduction of MVNO.

Q2. What are the key objectives to be kept in mind in the auction of the spectrum?

S Tel's Response: The primary objectives of the auction shall be as follows:

- I. Timeliness
- II. Restoration of Level playing field by means of fair Treatment of the 2008 Licensees. The detailed point wise steps required for this have been discussed in the preamble of our response and also in our response to the TRAI Pre consultation on "Allocation of spectrum in 2G band in 22 Service Areas by auction",
- III. Maintaining requisite level of competition in the market
- IV. Ensuring the no worse-off principle

Q3. What should be the amount of spectrum which should be auctioned?

S Tel's Response: The Spectrum to be auctioned should be the total 2G spectrum at disposal of DoT, it includes not only 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.

Q4. Should the spectrum be liberalised before it is put to auction?

S Tel's Response: We appreciate that Authority has started looking towards liberalisation of Spectrum. Spectrum liberalisation is a corollary to the auctioned spectrum. But the Authority shall look at the time required for implementing the Liberalisation. If this does not affect the timelines for the 2G Auction, then it may be taken up, but the Authority shall bear in mind that if it is a time consuming exercise, then it is going for it before the Auction would not be fair on the 2008 Licensees. Anyhow, this shall be a part of the larger Spectrum policy Consultation process and is not relevant at the moment.

Q5. For the refarming of 800 and 900 MHz bands from the existing licensees, which of the three options given above should be adopted? Please elaborate with full justification.

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Q6. What are the issues that may arise in the above mentioned refarming process?

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Q9. Should the refarming of spectrum in 800/900 MHz bands be dealt independently or should a comprehensive approach be adopted linking it with the availability and auctioning of 700 MHz band?

S Tel's Response: These questions are not relevant to the Auction of 2G spectrum/Licenses and should be taken up at a later date through a separate consultation.

However, We understand the difficulties in refarming as enumerated in the Paper and have evaluated the three options suggested. But to evolve a more pragmatic approach to refarming should start with Authority asking Government to provide a time bound schedule for spectrum vacation by various Govt. agencies. The allocation of spectrum in lieu of the 900/800 MHz spectrum shall be primarily be made from this spectrum.

Q7. For new technologies e.g. UMTS/LTE, 5 MHz is the minimum amount of spectrum required. Certain licensees have only 4.4 MHz spectrum in 900 MHz band and 2.5 MHz spectrum in 800 MHz band. What are the possible options in case of such licensees?

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Q8. Some GSM spectrum allocations may be interleaved between operators; to avoid fragmentation, reconfiguration between operators may be required. Whether frequency reconfiguration is required and what are the challenges and possible solutions?

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Q10. Which of the two approaches outlined above be adopted?

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Q11. When should 700 MHz spectrum be auctioned?

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Q12. Should the auction in 700 MHz band be linked with the granting permission for the liberalised use of 800/900 MHz band?

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Q13. How much spectrum in 700 MHz band should be put to auction initially and what should be the amount of spectrum which a licensee should be allowed to win in that auction?

S Tel's Response: These questions are not relevant to the Auction of 2G spectrum/Licenses and should be taken up at a later date through a separate consultation.

Q14. What should be the structure of the auction process?

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Q15. Should auction be held in single stage or multi stage?

S Tel's Response: We had suggested in our response to the pre consultation paper that the Auction shall be held in two stages.

The first stage shall determine the new players in the market; it shall be for two slots of start-up spectrum of 4.4 MHz and open only to new players including all the licensees who are waiting for start-up spectrum in service area. The methodology can be of English option.

The second stage having smaller slots of 1MHz each and it shall be open to all players.

The process adopted in the 3G auction had one major flaw, i.e. simultaneous closure of auction in all service areas, which led to the artificial hike in bid amounts causing feasibility and sustainability concerns. If this flaw is done away with, then the 3G model can be used for phase 2 of the 1800 MHz spectrum auction.

There shall be a separate price discovery for Spectrum in 700/800/900 MHz bands through auctions at a later date.

Q16. Should there be a simultaneous auction for spectrum in 800 and 1800 MHz bands?

S Tel's Response: As per Authority's recommendations of 2010, the spectrum on 800 MHz will be refarmed, as restated in the paper and also in question no. 9. Therefore logically there is no case for auction of spectrum in 800 MHz band along with the spectrum in 1800 MHz band.

But as some licenses quashed by the Supreme Court judgment were having spectrum in 800 MHz as well, so the spectrum to the extent of spectrum quashed shall be auctioned but it shall be at a higher price and as the quantity of spectrum available is not large, it shall be open to all.

Q17. What should be the block size of the spectrum?

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Q18. Should the block size be dependent on the frequency? If so, what should be the block size in each band?

S Tel's Response: The block size in the first stage for 1800 MHz band auction shall be 4.4 MHz, with 2 slots reserved for new players in each service area. The aim shall be to introduce at least two new players in each service area. Every participant can bid for at most one slot of 4.4 MHz slot at this stage, so as to maintain to some extent the competition levels attained before the Supreme Court judgment. This will help ensure that the benefits of tariff reduction are not lost and the subscribers are not harmed unnecessarily.

The second stage shall have 1 MHz spectrum blocks with no limit on the number of slots a player can bid for. All operators new as well as incumbents shall be allowed to participate, so that they can acquire spectrum as per their business plan and strategy but with cap on amount of spectrum as specified by TRAI. New players shall be allowed to participate at this stage as well, so that if a player was unable to win in the first stage, it can bid for more than one slot and participate in the auction.

For 800 MHz, block size shall be 1.25 MHz

Q19. Should there be a cap on amount of spectrum one can bid? If so, what should it be?

S Tel's Response: No licensee shall be allowed to hold more than 8 MHz of spectrum in 1800 MHz band in each service area except for Delhi and Mumbai, where the limit shall be 10 MHz

Q20. Should there be a separate cap on the total amount of spectrum one can hold; if so, what amount should it be?

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Q21. Should there be a cap on the amount of spectrum one can hold in respect of sub-GHz spectrum? If so, what should it be?

S Tel's Response: As mentioned earlier we believe that there shall be a cap on the spectrum holdings and it shall be separate for each spectrum band, the detailed suggestions in this regard are given in the below table:

Spectrum Band	Maximum Limit allowed
800/900/700 MHz	5 MHz

1800 MHz	8 MHz all over India except Delhi and Mumbai, where it shall be 10 MHz
2.1 GHz	5 MHz
2.3 GHz	20 MHz
Other bands	Depending upon availability at the time of auction

Q22. Who all should be eligible to participate in the auction?

- a. Only licensees whose licences have been cancelled;
- b. Only eligible applicants as on 10.01.2008;
- c. Only licensees whose licenses have been cancelled and all new eligible entrants at the time of auction; or
- d. Open to all including the existing Licensees.

S Tel's Response: We believe that the first stage of auction shall be open to all eligible applicants, this includes that Licensees whose license has been quashed by the Supreme Court Judgment and any other non holders of Spectrum in 800/900/1800 MHz bands.. All existing spectrum holders in 1800/800/900 MHz may be barred at this stage.

The second stage with small slots of spectrum shall be open to all including the existing Licensees.

Q23. What should be reserve price per MHz of spectrum in the year 2012 for 1800 MHz band?

S Tel's Response: The auction price discovered at the last auction held in 2001, may be taken as the reserve price. Any way as the 3G auction has indicated that in a free and fair auction for a in demand commodity is just a number and has no bearing on the final auction price.

Q24. What should be the reserve price per MHz of spectrum in the 700/800/900 MHz bands.

S Tel's Response: As the Authority has equated these bands to the 3G band in its recommendations, therefore the base price of for the auction of spectrum in 700/800/900 MHz bands shall be at least double of the base price of spectrum in the 1800 MHz auction.

Q25. Whether the reserve price should be uniform across the country or service area wise?

S Tel's Response: The reserve price shall be service area wise.

Q26. What should be the roll out obligations linked to the auctioned spectrum?

S Tel's Response: Roll-out obligations were linked to the License with bundled spectrum under the earlier regimes. These roll-out obligations were very inconsistently implemented and have no relevance in the era of auctioned spectrum.

The roll-out obligations for 3G spectrum shall be imposed for all future Spectrum allocation.

Q27. What should be the annual spectrum usage charge for the spectrum being auctioned?

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Q28. Should the spectrum usage charge be in line with present criteria of escalating charge with the amount of spectrum holding or a fixed percentage as was done for 3G and BWA spectrum?

S Tel's Response: The market determined price of spectrum shall automatically rule out the escalating charge for spectrum usage. Once the operator has paid or committed to pay a market determined price for the right to use spectrum for a period then the spectrum usage charges shall be only in the form of administrative charges. These shall be fixed at 1% of AGR.

Q29. What should be the period of validity of spectrum?

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Q30. What should be the period of price of spectrum?

S Tel's Response: The period of validity as well as period of price of spectrum shall be fixed at 20 years from the date of allocation. This will provide sufficient time period for business planning. Automatic renewal option can be introduced, but the renewal of spectrum shall be at the determined price of spectrum in the 19th year.

Q31. Should the government allow deferred payment schedule of the spectrum auction fee, or should the payment be upfront in nature?

S Tel's Response: We support the deferred payment schedule. It shall be in the form of 5 installments spread over the period of validity of spectrum. The cost of providing telecom services has risen considerably and the fact that ARPU and tariffs are constantly falling down. This would provide a much needed support to the Industry.

Q32. Should Spectrum trading be allowed in India?

Q33. (a) Among the various models discussed above, in your opinion which model of spectrum trading is best suited for India?

(b) In your opinion is there any other model which can be implemented in India? If yes, please describe.

Q34. What should be the eligibility criteria to trade the spectrum?

S Tel's Response: The time for Spectrum trading in India has arrived. With increased emphasis on finite nature of spectrum and the consequent need for effective utilization of the spectrum, we need to introduce many concepts whose time has come. We have also look at the market experience and market dynamics to understand the need for Spectrum trading. With the introduction of auctions for spectrum, the investment in Spectrum will be a major chunk of the total investment by a TSP. If the TSP is unable to utilize this fully then why shall there be hurdles in case the TSP wants to monetize this investment. This will not only benefit the operator but also lead to the optimum utilization of natural resources.

We agree with the Authority that in the beginning should be by allowing only for change of assignment rights. Of course the detailed regulatory commercial and legal framework needs to be worked out. But the broad principles can be defined as:

- I. No revenue loss to Government
- II. Shared obligations to the Licensor
- III. Efficient utilization of Spectrum.

The situation is also ripe for the introduction of MVNO. Intra and Inter circle roaming between non spectrum holders in a service area can also be looked at.

Q35. Whether the spectrum assigned for 3G and BWA services be allowed to trade? If yes, give reasons.

S Tel's Response: Yes, in fact the spectrum trading shall be first introduced for 3G and BWA services. The reason is simple that only the holders of 3G and BWA spectrum holders have paid current market price for Spectrum.

Q36. Can spectrum be allowed to be mortgaged for raising capital for telecom purposes?

S Tel's Response: Yes. But a well thought out approach in regards is warranted. We need to devise a proper legal and regulatory framework for this. The eligibility criterions for the both the mortgager and mortgagee need to be defined.