

Response to TRAI Consultation paper

on

Overall Spectrum Management and review of license terms and conditions

By

Dr. Mahesh Uppal

Director Com First (India) Pvt Ltd

Chapter 1

Spectrum requirement and availability

1. Do you agree with the subscriber base projections? If not, please provide the reasons for disagreement and your projection estimates along with their basis?

No Comment

2. Do you agree with the spectrum requirement projected in ¶ 1.7 to ¶1.12? Please give your assessment (service-area wise).

No. Comment

3. How can the spectrum required for Telecommunication purposes and currently available with the Government agencies be re-farmed?

By engaging with the agencies to see whether, if their costs were covered, such usage can be moved to non-commercial parts of the spectrum

4. In view of the policy of technology and service neutrality licences, should any restriction be placed on these bands (800,900 and 1800 MHz) for providing a specific service and secondly,

after the expiry of present licences, how will the spectrum in the 800/900 MHz band be assigned to the operators?

This question is unclear. All spectrum for commercial use, in general, must be assigned on established market principles with strict technology neutrality.

5. How and when should spectrum in 700 MHz band be allocated between competitive services?

The 700 MHz spectrum is precious. Its optimal use is best ensured if it is available for connectivity and broadband using any technology. To ensure optimal roll out, it must be allocated, using an auction amongst commercial players. A small part of it could be allocated separately for exclusive use of non-commercial, non-profit players.

6. What is the impact of digital dividend on 3G and BWA?

Very little in the short- term. If allocation of spectrum is technology neutral, the DD can be leveraged to the full by any service that the spectrum supports. If a part of spectrum is set aside for non-commercial civil society to share, it could be put to best use.

Chapter 2

Licensing issues

6. Should the spectrum be delinked from the UAS Licence? Please provide the reasons for your response.

This is not just necessary but urgent if India is to leverage wireless technologies to the full. Current rules do not encourage efficiencies. It is not technology neutral, which means companies receive different amounts of spectrum for deployment of competing technologies. In a rational approach to spectrum, the companies select technology based on nature and amount of spectrum available and its price. Currently, the choice may be because the operator licensed for GSM would automatically expect more spectrum (4.4MHz) than the one who selects CDMA (2.5MHz)

7. In case it is decided not to delink spectrum from UAS license, then should there be a limit on minimum and maximum number of access service providers in a service area? If yes, what should be the number of operators?

No. This would be unnecessary if the spectrum is priced according to market principles – e.g. through an auction- and not allocated at an arbitrary price determined by government agencies. Most infrastructure markets do not require externally set limits on number of players since market entry costs and the advantages of incumbency have a strong deterrent effect on speculators or non-serious players.

8. What should be the considerations to determine maximum spectrum per entity?

Market rules should be used to allocate and price spectrum. A high enough limit to ensure that at least 6 players can be accommodated, would ensure that no company is able to thwart competition in the market. Other considerations would not be transparent enough.

9. Is there a need to put a limit on the maximum spectrum one licensee can hold? If yes, then what should be the limit? Should operators having more than the maximum limit, if determined, be assigned any more spectrum?

Please see earlier answers. All operators must be responsible for their spectrum supplies, in much the same as real estate companies are for their land.

10. If an existing licensee has more spectrum than the specified limit, then how should this spectrum be treated? Should such spectrum be taken back or should it be subjected to higher charging regime?

The spectrum must be priced along market lines. If legacy licence issues make this difficult, a negotiated settlement must be sought with the operators in a spirit of give and take. (This could be on the lines of shift from the licence fee regime to revenue sharing that was implemented in 1999)

11. In the event fresh licences are to be granted, what should be the Entry fee for the license?

All fees or terms must reflect market principles. Arbitrary fees for entry or usage have created the current problems.

13. In case it is decided that the spectrum is to be delinked from the license then what should be the entry fee for such a Licence and should there be any roll out condition?

See answer to previous questions.

14. Is there a need to do spectrum audit? If it is found in the audit that an operator is not using the spectrum efficiently what is the suggested course of action? Can penalties be imposed?

Post facto rules maybe legally complicated and must be avoided. Operators must be moved to a market-based regime for spectrum allocation without any delay.

15. Can spectrum be assigned based on metro, urban and rural areas separately? If yes, what issues do you foresee in this method?

Yes. However, the principle used should still be market based.

16. Since the amount of spectrum and the investment required for its utilisation in metro and large cities is higher than in rural areas, can asymmetric pricing of telecom services be a feasible proposition?

Market based pricing through an auction would reflect the difference in value of spectrum in different environments.

17. Whether the existing licence conditions and guidelines related to M&A restrict consolidation in the telecom sector? If yes, what should be the alternative framework for M&A in the telecom sector?

Companies must have flexibility to consolidate, provided that does not reduce the number of players in the market to below six.

18. Whether lock-in clause in UASL agreement is a barrier to consolidation in telecom sector? If yes, what modifications may be considered in the clause to facilitate consolidation?

Lock-in period are necessary only if government has provided subsidies to the company or companies attempting to merge, acquire or sell licences. Once spectrum is priced according to market principles, lock-in periods will be unnecessary.

19. Whether market share in terms of subscriber base/AGR should continue to regulate M&A activity in addition to the restriction on spectrum holding?

Existing thresholds are acceptable.

20. Whether there should be a transfer charge on spectrum upon merger and acquisition? If yes, whether such charges should be same in case of M&A/transfer/sharing of spectrum?

No, unless the company got spectrum at a subsidised price. Else, a nominal fee to the reflect the cost of regulatory or licensing effort necessitated by the M&A exercise.

21. Whether the transfer charges should be one-time only for first such M&A or should they be levied each time an M&A takes place?

See answer to previous question.

22. Whether transfer charges should be levied on the lesser or higher of the 2G spectrum holdings of the merging entities?

See answer to question 20.

23. Whether the spectrum held consequent upon M&A be subjected to a maximum limit?

Every arbitrary government rule will distort the market.

Spectrum Trading

24. Is spectrum trading required to encourage spectrum consolidation and improve spectrum utilization efficiency?

Yes.

25. Who all should be permitted to trade the spectrum ?

All licensed players who would have met government's economic and security criteria to get the licences,

26. Should the original allottee who has failed to fulfill "Roll out obligations" be allowed to do spectrum trading?

Yes, with the rollout obligation automatically falling on the new buyer.

27. Should transfer charges be levied in case of spectrum trading?

No, unless the company got spectrum at a subsidised price. Else, charges must reflect costs incurred by TRAI/DoT.

28. What should be the parameters and methodology to determine first time spectrum transfer charges payable to Government for trading of the spectrum? How should these charges be determined year after year?

No new parameters are necessary. All licensed players who would have met government's economic and security criteria to get the licences, must have flexibility to transfer assets to similarly cleared licensed operators unless the former have been subsidised by government.

29. Should capping be limited to 2G spectrum only or consider other bands of spectrum also? Give your suggestions with justification.

Market principles must be used to deal with all commercial spectrum.

30. Should size of minimum tradable block of spectrum be defined or left to the market forces?

Market principles must be used to deal with all commercial spectrum.

31. Should the cost of spectrum trading be more than the spectrum assignment cost?

No.

Spectrum sharing

32. Should Spectrum sharing be allowed? If yes, what should be the regulatory framework for allowing spectrum sharing among the service providers?

No new parameters are necessary. All licensed players who would have met government's economic and security criteria to get the licences, must have flexibility to transfer or share assets with similarly licensed players unless the former have been subsidised by government. It is understood that the party/parties that uses/use the spectrum will need to be singly and severally bound to ensure use of spectrum according to licence conditions.

33. What should be criteria to permit spectrum sharing?

See previous answer to Q32.

34. should spectrum sharing charges be regulated? If yes then what parameters should be considered to derive spectrum sharing charges? Should such charges be prescribed per MHz or for total allocated spectrum to the entity in LSA?

See previous answer to Q32.

35. Should there be any preconditions that rollout obligation be fulfilled by one or both service provider before allowing the sharing of spectrum?

See previous answer to Q32.

36. In case of spectrum sharing, who will have the rollout obligations? Giver or receiver?

See previous answer to Q32.

Perpetuity of licences

37. Should there be a time limit on licence or should it be perpetual?

There should automatic renewal of licence unless its condition have been violated or if a new regulatory regime is being introduced for all similar licences (after due process). In the latter case, a company must have the right to continue if it accepts the new regime or is able to transfer licence to another qualified player who accepts the new regime.

38. What should be the validity period of assigned spectrum in case it is delinked from the licence? 20 years, as it exists, or any other period

Please see answer to Q37.

39. What should be the validity period of spectrum if spectrum is allocated for a different technology under the same license midway during the life of the license?

Please see answer to Q37.

40. If the spectrum assignment is for a defined period, then for what period and at what price should the extension of assigned spectrum be done?

Please see answer to Q37.

41. If the spectrum assignment is for a defined period, then after the expiry of the period should the same holder/licensee be given the first priority?

Yes. This is implied in the answer to Q37.

Uniform License Fee

42. What are the advantages and disadvantages of a uniform license fee?

The obvious advantage is simplicity and the prevention of arbitrage.

43. Whether there should be a uniform License Fee across all telecom licenses and service areas including services covered under registrations?

Ideally, no fee is required after spectrum is priced to its full market value. If it is levied, the uniform fee is preferable as argued in 42.

44. If introduced, what should be the rate of uniform License Fee?

No new fee is called for. If necessary, it should be a small and flat fee determined by the regulator based on sector revenues, not a percentage of any operator's own revenues.

Chapter 3

Spectrum assignment

45. If the initial spectrum is de-linked from the licence, then what should be the method for subsequent assignment?

Standard international norms must be employed. All efforts must be made to avoid any anomalous rules.

46. If the initial spectrum continues to be linked with licence then is there any need to change from SLC based assignment?

Standard international norms must be employed. All efforts must be made to avoid any anomalous rules.

47. In case a two-tier mechanism is adopted, then what should be the alternate method and the threshold beyond which it will be implemented?

Standard international norms must be employed. All efforts must be made to avoid any anomalous rules.

48. Should the spectrum be assigned in tranches of 1 MHz for GSM technology? What is the optimum tranche for assignment?

Standard international norms must be employed. All efforts must be made to avoid any anomalous rules.

49. In case a market based mechanism (i.e. auction) is decided to be adopted, would there be the issue of level playing field amongst licensees who have different amount of spectrum holding? How should this be addressed?

A onetime settlement in a spirit of give and take must be negotiated to move to the new regime based on best practices.

50. In case continuation of SLC criteria is considered appropriate then, what should be the subscriber numbers for assignment of additional spectrum?

SLC must be avoided at all costs. They are indefensible since they come with perverse incentives. SLC, if retained, will further hurt India's long-term interests in wireless technologies.

51. In your opinion, what should be the method of assigning spectrum in bands other than 800, 900 and 1800 MHz for use other than commercial?

Standard international norms must be employed. All efforts must be made to avoid any anomalous rules.

Spectrum pricing

52. Should the service providers having spectrum above the committed threshold be charged a one time charge for the additional spectrum?

Yes if it is a part of a onetime settlement suggested in answer to Q49.

53. In case it is decided to levy one time charge beyond a certain amount then what in your opinion should be the date from which the charge should be calculated and why?

This must be negotiated with the operators as a part of the one-time settlement.

54. On what basis, this upfront charge be decided? Should it be benchmarked to the auction price of 3G spectrum or some other benchmark?

Standard international norms must be employed. All efforts must be made to avoid any anomalous rules.

55. Should the annual spectrum charges be uniform irrespective of quantum of spectrum and technology?

No new fee is called for. If necessary, it should be a flat fee determined by the regulator based on sector revenues, not a percentage of any operator's revenues.

56. Should there be regular review of spectrum charges? If so, at what interval and what should be the methodology?

See answer to Q55. TRAI must set the fee every year after appropriate process

Structure for spectrum management

57. What in your opinion is the desired structure for efficient management of spectrum?

WPC must liaise with ITU on international harmonization. TRAI must determine the norms for allocation and pricing based on international principles.

Other Issues

This document does not reflect accepted categories and themes in spectrum management. It would have helped if the consultation sought views on the relative merits and demerits of the 3 broad approaches to spectrum management viz.

1 Administrative allocation and pricing spectrum

2. Beauty parades and

(3) Market based approaches

Those wishing to contribute could then have been asked to suggest options within each approach e.g. (1) administrative would raise issues such as validity of subscriber linked criteria, fixed price, recurring fees etc and conditions under which they could be recommended, (2) Beauty parades – could require suggestion on appropriate criteria such as financial or technical excellence of a spectrum claimant that could be used to decide who gets spectrum and how much or (3) market principles (e.g. whether auctions are desirable and how they should be designed. Other questions would then seek views on whether commercial and non commercial, government or private players, small or big users should be treated differently etc. Etc. The failure to use a structured approach makes the exercise confusing, and less useful than it could have been. The authority must consider how- at least in the open house stage the discussion could be structured thematically.
