



Cellular Operators Association of India

WITHOUT PREJUDICE

RSM/COAI/2013/152

August 21, 2013

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

Dear Sir,

Subject: Counter comments on TRAI Consultation Paper on Valuation and Reserve Price of Spectrum

This is with reference to the TRAI Consultation Paper No. 06/2013 dated July 23, 2013 on Valuation and Reserve Price of Spectrum.

Pursuant to the Consultation paper, COAI submitted its comments to TRAI vide letter no. RSM/COAI/2013/149 dated August 14, 2013, post which TRAI has published the comments received from all the stakeholders. In reference to the comments made by various stakeholders, our submissions are enclosed for your kind perusal.

We hope our views and submissions will merit the kind consideration and support of the Authority.

This is without prejudice to our existing and future submissions on various related issues in various present and future legal proceedings.

Kind regards,

Rajan S. Mathews
Director General

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COAI Counter Comments on TRAI Consultation paper On

VALUATION AND RESERVE PRICE OF SPECTRUM: Released on 23rd July 2013

In light of our submissions vide our letter no. RSM/COAI/2013/149 dated August 14, 2013, we would like to submit our points of view on some of the submissions made by other respondents and stakeholders. Our comments are as below:

Reforming Aspects

1. Some stakeholders have suggested reforming of entire 900 MHz band stating that it is a decided policy of the Government, however, while doing so they have not considered the legal contract of the Government with the operators currently assigned spectrum in the 900 MHz band.
2. Firstly, we would like to reiterate that the term “Reforming” as used by DoT and as suggested by some stakeholders is a complete misnomer and out of line with international practices as already brought out in our response to the consultation. Nowhere has the entire spectrum been withdrawn for Reforming. In other countries, where limited reforming has taken place, the operators had far higher allocations of spectrum than India and there has only been partial withdrawal leaving behind a significant quantum of spectrum with existing TSPs.
3. That said, more importantly, we would like to submit that spectrum reforming as proposed by these stakeholders is untenable under both policy and license. Under NTP-99, licenses are for a term of 20 years, with the express provision of extension by 10 year periods thereafter. As per clause 4.1 of the UAS/CMTS License extension is to be on mutually agreed terms. Needless to say, such extension is both expedient and in the public interest. Also admittedly, until now spectrum and licenses are bundled together and delinking is only in respect of future licenses. It is, therefore, evident that the TSPs with the current assignment in the 900 MHz band have a legal right to extension along with the allocated spectrum (including 900 MHz). Based on the legal right of extension of the license along with presently assigned spectrum, and continuity of business beyond 20 years, the TSP allotted these spectrum assignments have made significant investments towards network infrastructure and other costs.
4. It is also submitted that these licenses have been allocated through a competitive bidding process and are bundled with spectrum. It is, therefore, evident that the extension of the existing licenses on expiry of initial term would also include the corresponding extension of the bundled spectrum allocated to the licensee in both the 900 MHz/1800 MHz band.



5. Withdrawal of any portion of the presently assigned spectrum in the 900 MHz band from the existing TSPs will result in major coverage gaps, quality of service issues and more importantly, inconvenience to the existing subscribers served in these bands. Re-planning of the network will mean unwarranted wastage of existing investments and added capex and opex in new infrastructure, which is neither in national nor the public interest. The associated techno-economic issues have been provided in our submission, which, we are confident that the TRAI has considered in its entirety.
6. Also, without prejudice to our contention that there is no such thing as a prescribed limit under license, these stakeholders ignore that the Government has already communicated its decision in its Press Release dated 15 February 2012 that existing licenses will be extended along with spectrum upto the prescribed limit. This decision does not at all indicate any variation in the spectrum bands, but only refers to a limit on the quantum of spectrum.

E-GSM Band Aspects

7. It is also surprising to note that several of the respondents are opposing the TRAI's proposal to free up and auction E-GSM spectrum, especially considering that this spectrum can be made available with the least overall adverse impact. Their concern that their allocated spectrum will be forcibly withdrawn is misplaced in the proposal of E-GSM, the amount of spectrum these operators have is being ensured to them in the same band itself. The suggestion is only reconfiguration of certain frequency spots so as to free up 10 MHz of precious national resource to serve the higher demand for 900MHz spectrum, which in fact is coming from those very stakeholders who are opposing efforts to make more 900MHz available. Also any overlap into the E-GSM allocations should be addressed through mutual negotiation and discussion and if necessary, compensation to vacate this spectrum. We reiterate that this will provide the maximum benefit to the largest cross section of all pertinent stakeholders.
8. However, these respondents on one side believe that the E-GSM proposal will be a hindrance in their service, though the same amount of spectrum in the same band is being ensured to them, whereas, when it comes to the operators holding 900 MHz band, they feel that 900MHz should be refarmed and retention of 2.5 MHz of spectrum with these operators would be sufficient with no assurance of any more spectrum in the auction. Such discriminatory approach of these respondents needs to be shelved immediately and we are confident that the TRAI will exercise its discretion based on maximum public gain accordingly.
9. It is observed that the concerns submitted regarding the adverse impact on a subscriber base of 75 million CDMA subscribers, does not hold suitable conviction when compared with the overall national benefit that will impact the most substantial part of the existing subscriber base of 500 million consumers on 900 MHz band.
10. We believe that given the declining numbers of CDMA users (28% year -on-year), the shrinking minutes of use (an average decline of 10% year-on-year over the past three years), the lack of interest in acquiring CDMA spectrum (nearly 70% unsold), the apparent



desire by one operator to surrender spectrum and the greater interest in 900MHz, there is a strong case to reconfigure the 800MHz band plan, auction the released spectrum as E-GSM, and harmonize India with the majority of Europe, the Middle East and Africa and the Asia Pacific region.

11. Regarding continuity of services to the subscribers present on the 900 MHz band, these stakeholders have suggested that MNP will take care of them. However, they have completely ignored the fact that the same argument of availability of MNP will also be available to the CDMA subscribers presently being served by 800 MHz band. We suggest that TRAI undertakes a study/estimation of the MNP trend of CDMA subscribers moving to avail GSM services in the last two years, as well as the net additions on CDMA vis-à-vis GSM.
12. It is known to all that there is technical feasibility of frequency configuration in the same band. To implement the E-GSM proposal, the CDMA operators will need to reconfigure their BTS with alternate CDMA frequencies. This is possible through software configuration from the OMCR/OSS platform as a majority of deployed BTSs support configuration of the CDMA frequency within the complete 20 MHz band (870 MHz to 890 MHz). This adds to the consideration of least disruption and ease of reconfiguration within the same band.
13. As per the estimates, the reconfiguration will be required for approximately 75 blocks out of 165 blocks presently allocated. A change/retuning of CDMA TX filters may be required to avoid interference on E-GSM side by restricting their transmission to 879 MHz. The cost of retuning of filters would be negligible as compared to the benefits of unlocking this spectrum from the 800 MHz band. Further, the guard band of 1 MHz should be provisioned for CDMA and E-GSM network to co-exist. This guard band will ensure the minimum requirement of special CDMA filters assuming an average of 100m inter-site distance between CDMA & GSM sites.
14. It has been claimed that harmonization will adversely impact the subscriber base of PSU operators. We would support the Authority's view that the number of subscribers of PSUs being served on 800MHz band is very small and hence the PSUs can be asked to vacate this spectrum. It is also learned that the both PSUs have already stopped all kinds of expansion of the CDMA network and are in a process of closing these networks.
15. Some of the respondents have stated that the E-GSM plan will impact some other users presently in the downlink band of 925-935 MHz. We believe that this would not pose a major problem in getting the E-GSM band as we believe that the captive users would be using it either for point to point or point to multipoint connectivity with at most one transceiver. Regarding the 7 MHz being used by Defence, they might not be using it for cellular networks or any network having pan India presences and would be using it only in some confined areas. In case, it is not possible to shift these assignments, then the Government may choose to exclude these spots from the auction. Such practice is even adopted in other frequency bands such as 1800 MHz/2100 MHz where the spectrum assigned is not available in some of the areas of LSA.
16. It is also important to note that auction of the E-GSM spectrum as 900 MHz band will meet the following national objectives:



- a. It will lead to more efficient utilization of spectrum.
- b. Ensure availability of more spectrum in the 900 MHz band to cater to increased demand for this resource.
- c. It will provide an opportunity to interested TSPs to acquire the sub 1 GHz band spectrum.
- d. Contribute to enhancing investor interest and attract investments in the sector.

The operators whose licenses are coming up for extension have already stated that they are willing to pay a market-related price for the extension of their license.

17. These stakeholders have stated that NTP 2012 recognizes introduction of new technologies for telecom applications in the 900 MHz band. We submit that the realignment of India specific CDMA spectrum to E-GSM band would increase the availability of spectrum in the 900 MHz band from 25 MHz to 35 MHz while retaining more than adequate assignment for the market requirements which amount to within 10 MHz of spectrum in the 800 MHz band for ensuring continuity of services for the existing (but fast shrinking) consumer base. Moreover, since License coupled with spectrum is technology neutral, TSPs can use spectrum in both 800/900 MHz band for any technology, i.e. 2G, 3G, LTE, etc. This will enable the GSM operators to migrate to 3G/WCDMA in their 900 MHz band and the CDMA operators to provide 3G/WCDMA or 4G/LTE in their existing 800 MHz band.

Liberalization

18. Regarding the issue of liberalization, some of the stakeholders state that the spectrum bands were allocated with restrictive channel plan and can be deployed only for providing 2G services using GSM or CDMA technology. And for using these bands for advanced technologies, there is a need to liberalize these bands upon payment of the market determined price. However, it is surprising and contrary to present market behavior/services offered by them, they are projecting the fact that technology neutrality has not been in practice by them which in fact has always been an intrinsic part of the license agreement and has been enshrined in the existing policy and licensing regime since 1999 and the same has been repeatedly stated, confirmed, clarified, reconfirmed by the Government itself on several occasions.
19. We would also like to point out that contrary to the stance of these stakeholders that spectrum given in bands of 800, 900/1800 MHz is for use in specific technology i.e. CDMA and TDMA (GSM) respectively; the same set of dual spectrum operators have been offering 3G EVDO services in the 800 MHz band. If indeed, it is incumbent under the license that 800 MHz can only be used for CDMA, it is extremely surprising that dual technology operators have been providing 3G EVDO services in the same band, without paying any additional cost but now they want the other operators having spectrum in their assigned bands to pay the market determined price to provide such liberalized/advanced services. Thus, it is evident that the arguments made by these stakeholders are not consistent with their own actions and need to be viewed in the context of their market practices, which are self-contradictory and display a lack of conviction.
20. On one hand, these operators state that there should not be any reservation of spectrum and on the other hand, they talk about reservation of spectrum in the 800 MHz as well as



1900 MHz band. It only goes to prove that their arguments are ill-conceived and lack consistency and do not contribute to the larger good of serving the consumers, who should be the actual beneficiaries of these efforts.

Allegation of Cartelization

21. Some stakeholders have advanced the premise that some Operators had cartelized not to bid in the Auction. It is difficult to conceive that in a market with the highest number of operators and in an auction that was open to all including foreign investors, such an allegation can be made. It is also pertinent to note that these allegations are being made by those stakeholders, who themselves did not participate in the auction/did not bid and whether it can be inferred that by making these comments they were referring to themselves.

Reserve Prices

22. Some of the respondents have responded that the 3G auction based pricing should be used for pricing spectrum in the 1800 MHz band. Their primary reasons are:

- a. The tariff rates have gone up by 40-50%. TSP's have seen an uptrend in ARPUs.
- b. Competition has substantially reduced from 10-12 operators per circle to 6-8 operators only.
- c. New Service providers, who have bought spectrum at such so called high price, are already running EBITDA positive in some of the circles

Firstly, such a position disregards the severely deteriorating financials of the sector, which have even been noted by TRAI.

23. Apart from the above, we submit that, the reasons cited above are factually incorrect and also misleading:

- a. In no circle, have tariffs gone up by 40%-50%. While there is a marginal increment in voice ARPM (4%-5%), as reported by operators in the last quarter, it is much lower than inflation levels in the country. If adjusted for inflation, the industry has witnessed (and has been witnessing) negative real growth in prices and revenue (industry AGR) in the last 2 years (in FY13 industry AGR growth was ~5% while YoY WPI was at 6.84% in March 2013 resulting in a -2% real growth).
- b. Also, all operators have cut the data pricing substantially both on 2G and 3G in last one year.
- c. We believe keeping the spectrum prices high to reduce the competition is not beneficial for the Government and consumers and cannot be a desired approach to spectrum pricing. If anything, we should lower the prices and hence the entry barriers to allow the players who lost the license to rebid and re-enter the market or enable new entrants.
- d. High prices paid for the said spectrum doesn't show the impact at the EBITDA level.
- e. While it is true that some of the new players have been able to achieve EBITDA positive level after more than 5 years of winning the spectrum in 2008 and that too,



only in some circles, they are reeling under a heavy debt burden and are under investing in the network.

Valuation for all circles versus only 4 unsold circles

24. We note that only one operator has submitted that prices are already discovered for 18 circles, for balance 4 they are suggesting 3G discovered prices be applied. It is first reiterated that operators who participated in the last auction, picked up spectrum under duress and should not be seen as market determined pricing. Our main concerns are that the reserve prices offered in November 2012 and March 2013 are unsustainable and:

- a. If reserve prices are not reduced, we will run the risk of another failed auction. As it was seen in last 2 auctions, there is no interest in spectrum at such high prices.
- b. Operators, who are primarily suggesting not to cut prices, did not feel pricing was viable few months back and did not pick any spectrum at those prices in any of the circles.
- c. Government objectives of selling the spectrum and discovering the market price will not be met if reserve prices are not reduced.
- d. The objective of this consultation will not be achieved and spectrum resources will be wasted. We run the serious risk of wasting a lot of time and effort which has been going in this deliberation/consultation exercise.
- e. Even the operators who participated in last auctions are also asking for a reduction in reserve prices.

It appears that the operators suggesting that there should be no reduction in reserve prices are not interested in participating in the auctions but are intent on driving up the costs for their competitors.
