

August 21, 2013



The Secretary
Telecom Regulatory Authority of India
Mahangar Doorsanchar Bhavan
Jawaharlal Nehru Marg
New Delhi 110 002

**Sub: Counter comments on Consultation Paper No. 06/2013
"Valuation and Reserve Price of Spectrum"**

Dear Sir
Attn: Sr. Rajeev Agrawal

Further to our responses to the above Consultation Paper No. 06/2013, we enclose herewith our counter comments for your review and consideration and inclusion in the consultative process.

With best personal regards
Yours sincerely

[Handwritten Signature]
21 Aug 2013

Brijendra K. Syngal

cc: Shri Arvind Kumar
Advisor (Networks, Spectrum and Licensing)
TRAI

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COUNTER COMMENTS BY DUA CONSULTING

ON THE

CONSULTATION PAPER NO. 06/2013 ON
VALUATION AND RESERVE PRICE OF SPECTRUM (JULY 23, 2013)

1. The Consultation Paper bearing no. 6/2013 titled as Valuation and Reserve Price of Spectrum issued on July 23, 2013 (“**Consultation Paper**”) issued by the Telecom Regulatory Authority of India (“**TRAI/Authority**”), addresses the following issues:
 - (a) Availability of Spectrum;
 - (b) The Valuation of Spectrum;
 - (c) Reserve Price Estimation.
2. The most important issue which needs reconciliation is that of the “Availability of Spectrum”. This issue has both historical as well as futuristic connotations. First, is the historical perspective, which revolves around E-GSM, 900 MHz, re-farming, reserving spectrum for re-farming etc. Second, the possibility in future of spectrum availability in newer bands like 700MHz, and possible release of additional spectrum in the existing bands by the current users like Defence, Department of Space and others. Finally, though, most importantly is the quantum of spectrum vacated by the Supreme Court judgement of 2nd February 2012 and subsequent supplementary judgements against various petitions.
3. Our view continues to be that the owners of E-GSM and 900 MHz are trying to protect their turf and in the process are contradicting the intent of re-farming, briefly why? E-GSM lobby says do not touch me, because they can provide data dongles on the sly (EVDO), but re-farm 900MHz. The 900 MHz lobby would want to continue with 900 MHz for all the obvious reasons continuity of service, protection of investments etc,
4. Our counter comment or view is that allowing E-GSM was a historical blunder for CDMA, why? WPC can explain. That blunder has to be corrected. Therefore, re-farming has to be in both bands with some spectrum left for continuation of services. Should they wish to own large chunks, they must participate in the auction and acquire these bands as part of auction. The end use of the band then is their choice i.e. new services or continuing with old services. This is what has been done elsewhere in the world. One does not have to be preached differently here. Therefore, authority must re-farm E-GSM and 900 MHz.
5. The other important question is “How much of spectrum got vacated by the Supreme court judgement”? Allow us to provide the answer and argue the reasoning later. The spectrum vacated by Supreme Court judgement is 674 MHz and above, and not 473 MHz. We have adequately discussed our view in the main submission, but would like to offer additional reasons, the issue of an unfair, illogical, ambiguous and convenient interpretation by Department of Telecommunications, various ministries of the Government and even judicial precedents of the Supreme Court of India.
6. For the sake of convenience, the sequence of events is given below:
 - (a) 2003 policy of 4 players



- Additional players to be inducted on the basis of need, timing and availability of spectrum after meeting the requirements of the existing 4 operators.
 - No administrative allocation of spectrum either for licenses bundled with spectrum or just spectrum
 - Auction to be on the same lines as in 2001 for the 4th license
- (b) Treating GSM and CDMA as two different services and choices to be made upfront for allocation of applicable technology spectrum.
- (c) 2005 policy of a UASL license, but no guarantee of spectrum, introduction of the First Cum First Served (FCFS), a plain vanilla license to provide Telecomm services under the Indian Telegraph Act of 1885. CMTS licenses were abolished April 2007 reference to TRAI, and
- (d) The most flawed 2007 recommendations of the Authority:
- No auction of 2G spectrum on some flimsy grounds of level playing field
 - No cap on the number of players, but also no solution should demand exceed supply. Authority took no action to stem the rot that had set in
 - Most flawed, combination of technology for faster roll out in rural India and in the name of aam admi

7. Stated below is a snapshot of how the telecom licenses were issued since 2004:

- (a) 28 licenses in 2004 in complete compliance of the 2003 policy to complete 4 GSM pan India licenses and none beyond;
- (b) 22 Licenses in 2006 and 1 license in 2007, in complete violation of the 2003 policy. They were all either fifth or sixth GSM licenses. Fortunately, they never got spectrum allocation, because of leaks in the press, resulting in the April 2007 referral to the authority
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- (c) 122 licenses as a result of the 2007 recommendations, and
- (d) 34 licenses as result of the 2007 recommendations of the authority under the so called "Combination of Technology", much against the existing concept of 10% cross holding and upfront choice of technology GSM or CDMA
- (e) The number of licenses could have been more, but for artificially putting a cap by bringing forward the cut off date

8. All the above except 28 licenses of 2004 (1 above) were allocated spectrum post 10th January 2008. The proof of that is already available in the public domain. . Then why just 122 licenses were cancelled and not 179 licenses by the Hon'ble Supreme Court?
9. The 122 licenses have been cancelled along with quashing of the allocation of spectrum as a result of the Supreme Court judgement of February 2, 2012, but the remaining 57 licenses continue their operations till date. They include Aircel (14 licenses), Idea (2 licenses), Vodafone (7 licenses), Reliance (15 licenses) and Tata (19 licenses).
10. The moot question is why and how can such operators continue operations when they were in violations of all policies since 2003, received spectrum post 10th January 2008, were included as a part of the group of licenses to whom the press release of 10th January 2008 was applicable and were those who received licenses on or before 25th September 2007 and under



the combination of technology regime? It must be clearly understood that the 2007 recommendations, especially relating to 2G spectrum, of the Authority have been severely indicted upon in the Supreme Court Judgement of 2nd February 2012. How can there be selective picking of these recommendations i.e. someone picking these recommendations as valid and others not, how?

11. These 57 licenses should have been cancelled alongside the 122 licenses already cancelled, because the Judgement deals with cancellation of licenses and allocation of spectrum separately. The Department of Telecommunications should have quashed the spectrum allocation of these 57 as well, but not cancelled the licenses, because as per the smart tweak in the introduction of UASL no spectrum was guaranteed, was to be available when able and that too after consultation with authority (a la 2003 policy), and on the contrary for the 122 licenses as well they only needed to quash the spectrum allocation giving them an option to continue operations without spectrum. The issue at stake is spectrum, but just not license. The judgement therefore deals with that separately. They could easily have said 122 licenses cancelled, why and subsequent allocation of spectrum is quashed. The spectrum is the issue not license.
12. In effect to a query one of the Chairman's of the Authority had even responded that under UASL we never guaranteed spectrum. You provide services by using copper, fibre whatever. I am sure DOT would confirm. But these 57 licenses are all UASL.
13. Of these 57 licenses, the combination of technology holders such as Reliance and Tata are claiming that the existing licenses were only modified to provide GSM services, why then pay up the license fee of Rupees 1658 Crores or whatever? They are just creating smoke screens and throwing wool here and there to confuse various policies of the government.
14. Had all these 57 licenses been valid as claimed by and supported by the Government, why did they have to await 2007 recommendations, because they were in violation of the 2003 policy being 5th and 6th licenses. Hence, are completely invalid, liable to be cancelled.
15. Be that as it may, where is the much bandied level playing field for the likes of Idea, Telenor, Videocon and MTS, being the 5th and 6th on the same starting line with spectrum at multiple times compared to these 57 licensees, sounds, reads, completely illogical and severely anomalous? These 57 licensees have to be treated the same way as those of Idea, Telenor, Videocon and MTS. The Authority in the Consultation Paper at paras 3.86 and 3.87 has appropriately used the phrase "distress purchases", which they have had to resort to protect their enormous investments and loyalty of customers who reposed faith in their services.
16. The Authority should have taken *suo motu* action as per Section 11 (a) (viii) Chapter III of the TRAI Act of 1997 as amended in 2010 to stop the proposed auctions of 2012 and 2013 until the above issues were addressed, because of violation of inefficient management of spectrum. In any case, all allocations in 2008 were provisional, conditional and subject to the out come of various court cases.
17. Many letters have been addressed to various sections of the regime, but they have regrettably behaved like Gandhian Monkeys. Hope that in the present consultative process better, equitable, logical and right sense would prevail, which is cancel these 57 licenses to bring all post 2004 licenses at par with those of "distress purchases".
18. The other comment we have is on comparisons being made and examples offered on what happens in countries like Guatemala, Romania, and Czech Republic etc. These countries are not even equal to some of the NCR sub cities like Gurgaon, Faridabad, Thane, Kalyan around Mumbai etc.



19. One must understand that the frequency reuse in India is some 80 times that of in these countries because of much larger geographical areas and even bigger addressable markets. Therefore, any comparisons to be drawn are erroneous, misleading and misplaced. Let us not forget that in US 34 billion \$ worth of spectrum was sold in the time frame of 2007-08 for Advanced Wireless Services akin to our Broadband Wireless Access.
20. It is time that authority takes a holistic view on all matters relating to spectrum pricing like excess spectrum held by operators and resolving the unfair treatment to some as enumerated above before another contentious litigation starts on the basis of inequality under exactly similar circumstances, because of "distress purchases".

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