



VIDEOCON
mobile services

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February 15, 2012

Shri Sudhir Gupta
Pr. Advisor (MS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi - 110002

Dear Sir,

Subject: Response to Pre-Consultation on "Allocation of Spectrum in 2G band in 22 Service Areas by auction" dated February 3, 2012

Dear Sir,

Please find enclosed our response to the Authority's Pre Consultation Paper on "Allocation of Spectrum in 2G band in 22 Service Areas by auction."

This is for your kind information and records.

Thanking You.

With regards

for Videocon Telecommunications Limited

K.L. Jain
Head- Regulatory

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RESPONSE TO THE PRE-CONSULTATION PAPER ON ISSUE OF FRESH LICENCES AND ALLOCATION OF SPECTRUM IN 2G BAND IN 22 SERVICE AREAS BY AUCTION

1. Introduction

- 1.1 The Telecom Regulatory Authority of India (“**TRAI**”) has invited comments from stakeholders in respect of issue of fresh licences and Allocation of Spectrum in 2G Band in 22 Service Areas by Auction, pursuant to Press Release No. 16 of 2012 dated February 3, 2012 which had been issued consequent to the direction in paragraph 81(iii) of the Hon’ble Supreme Court’s judgment in W.P (C) 423 of 2010 and W.P. (C) 10 of 2011 (“**Judgment**”).
- 1.2 This response is being made by Videocon Telecommunications Limited (“**Videocon**”), without prejudice to any rights and contentions that Videocon may have before any court of law/authority in connection with the Judgment. .

2. Principles for grant of license and auction of spectrum

- 2.1 To promote and increase competition, new telecom players should be permitted to enter the landscape with level playing field.
- 2.2 The licensees whose licenses have been quashed (the “**Quashed License**”) pursuant to the Judgment, should be provided a fair chance to re-enter the market and compete in the market, following the due process laid down by the government on the recommendations of the TRAI pursuant to the Judgment.
- 2.3 The holding of a Quashed License should not debar or restrict the holders of a Quashed License (that may be in force at the time of auction) and their respective shareholders to participate in the auction process.
- 2.4 TRAI is duty bound under and pursuant to the Judgment¹, while keeping in view the decision of the Central Government in 2011, to make fresh recommendations for issue of fresh licenses for 2G and allocation of spectrum in 2G band by auction to such fresh licensees.
- 2.5 In compliance with the Judgment, the Central Government would need to take appropriate decision (after considering the recommendations of TRAI) within next one month of TRAI recommendation for issue of fresh licenses and allocation of spectrum in 2G band by auction to such fresh licensees. Therefore, to comply with the Judgment, the Central Government needs to “**issue fresh licenses for 2G and allocate spectrum for the same by auction**”.
- 2.6 The recommendation of TRAI and the issue of licenses by the Central Government, in terms of the Judgment, are to be made only for “issue of new licensees and allocation of spectrum for the same by auction” for larger public good, amongst similarly placed eligible parties including the holders of a Quashed License.
- 2.7 The TRAI and the licensor to maintain a level playing field between the existing operators that hold more than 4.4 Mhz of GSM spectrum in each licensed service area and the new entrants.

¹ Paragraph 81(iii) of the Judgment.

- 2.8 Monopolization of the spectrum to be carefully and strictly avoided as per the GOM Recommendations dated October 30, 2003.
- 2.9 To create a spectrum pool for auction which should include all spectrum becoming available consequent to the Judgment, and the currently available GSM and CDMA spectrum as on the date of the Judgment. Such spectrum pool may also include the spectrum which has been allocated to incumbent operators beyond the contracted limit of 6.2 Mhz for which no additional fee has been charged by the licensor. Keeping this in mind, all excess GSM spectrum beyond 6.2 Mhz held by any service provider should be vacated and put into the spectrum pool for auction. This would ensure that the principle of equality is maintained while new entrants and fresh licensees are invited to participate in the auction to create a healthy and competitive environment. However to ensure that no customer is put to any hardship due to such process, this can be also achieved without actually removing such free of cost spectrum used by incumbent operators but making the same available in the auction pool on deemed basis.

3. Recommendations

- 3.1 **Participants:** The participation in the proposed grant of fresh licences and allocation of spectrum by auction in 2G band should be open to all eligible parties including the Quashed License holders but excluding the incumbent operators and their shareholders as they are not eligible to apply for fresh license due to their respective existing licenses. This will promote and increase competition by permitting new telecom players to enter the landscape. This will also facilitate the reduction in tariffs as tariffs have gone up by 20 % in the last months and are expected to go up further by 30% as per recent media reports based on statements by incumbents. It may be noted that as per TRAI's consultation paper on "Review of Policy of Forbearance in Telecom Tariffs" dated February 6, 2012, it has been stated that the tariffs have been increased by six service providers between July and August, 2011. At Para 1.22 it has been stated that there is a possible prevalence of co-ordinated price activity. Therefore, there is a need to ensure that only new eligible entrants be allowed to bid in the auction for 2G GSM spectrum.
- 3.2 **No or Low Reserve Price:** In the Judgment, the Supreme Court has not recommended any reserve / base price but has desired that the appropriate value of the spectrum must be discovered through the process of fair and transparent auction², therefore no reserve / base price should be fixed to discover the right price.

If at all it is considered necessary to fix the reserve / base price for pan-India 2G Spectrum, then the same could be set low and market competition be allowed to discover the right price.. A higher reserve / base price runs the risk of being a policy devise to keep higher tariff, opportunity for super profit by the incumbent operators at the cost of the customers and restrict competition for incumbent operators which may be subject to scrutiny by the Competition Commission of India. In any case the reserve / base price should not exceed the last discovered price of the pan India 2G spectrum, i.e. Rs. 1,659 Crores in 2001, (for 6.2 Mhz of spectrum including access license entry fees) for the proposed 2G auction, segregated respectively circle-wise. The contention that the base price should not exceed the last discovered price of Rs. 1659 crores is further strengthened by the fact that all licenses and spectrum have been granted in 2004, 2006 and 2007 at the same base price of 2001 i.e. Rs. 1659 crores whilst those which were granted in

² Paragraphs 73 and 76 of the Judgment.

2008 have been quashed in terms of the Judgment. The TRAI may note that this base price was the same for allocation of dual spectrum in October 2007 just a few months before the allocation of licenses which have been quashed in terms of the Judgment. Therefore, the same price should apply as a reserve price for the upcoming auctions without which new entrants would be unfairly and unequally treated in the competitive landscape of Indian telecom.

3.3 **Process of Auction:** The process of auction of spectrum may be considered to be carried out in the following phases:

(a) **Phase I:** In this phase, auction should be only for fresh licensees for spectrum upto 4.4 Mhz for GSM in each licensed service area. Participation in this phase should be restricted to new entrants which would include the Quashed License holders as well as any new entrant who is not ineligible by virtue of ownership by an existing licensee.

(b) **Phase II:** In this phase, auction should be held for spectrum beyond 4.4 Mhz and upto 6.2 Mhz for GSM in each licensed service area. The eligibility criteria in this phase should be for operators that hold spectrum only upto 4.4 Mhz in GSM.

(c) **Phase III:** In this phase, auction should be held for spectrum beyond 6.2 Mhz for GSM in each licensed service area upto the maximum cap as recommended by TRAI in May, 2010. The eligibility criteria in this phase should be for operators that hold spectrum beyond 6.2 Mhz in GSM. In this phase, 1 Mhz block of GSM spectrum should be auctioned for those licensees who are holding 6.2 Mhz of GSM spectrum.

3.4 **No changes to the License Agreement:** The terms and conditions as specified in the existing License Agreement could remain the same as for incumbent operators including the duration of license (i.e. duration of 20 years from the date of allocation of the spectrum after completion of the auction). However, it may be considered to amend the license agreement to include within its ambit (only for those licensees who got spectrum by auction)- spectrum sharing within a licensed service area, intra-service roaming and inter-service roaming irrespective of whether the spectrum is held by the licensee in that licensed service area or not and active infrastructure sharing should be permitted.

3.5 **Set-off / Refund of License Fees:** The license fee as well as other payments made in terms of the Quashed Licenses already paid by the Quashed License holders in 2008 and thereafter till the date of issue of fresh licence and allocation of spectrum by auction towards such fresh licences, should be allowed to set-off against the fee for grant of fresh licenses and the allocation of spectrum by auction. If such available credit is short for set-off, such short payment should be allowed to be paid within a period of thirty days of grant of license or, as the case may be, allocation of the spectrum after completion of the auction. Similarly, any excess credit available for set-off should be refunded back to the respective Quashed License holder within thirty days of a communication of the Quashed License holder that either it is not participating in further process or it has not succeeded in procuring fresh license(s) and / or spectrum, as the case may be. Pursuant to this, neither party should have any recourse against the other in relation to the alleged/perceived non-compliance of the license agreement granted in 2008.

3.6 **Transfer of Assets:** If a Quashed License holder is unwilling to participate in the process any more or is unsuccessful in either procuring license and / or spectrum in the auction, it should be allowed to sell its assets, infrastructure and transfer its employees, which will ensure continuity of

employment for the employees as well as facilitate the successful licensee to effectively meet its roll-out obligations in terms of the unified access service license agreement by utilizing the existing infrastructure.

- 3.7 **Customer Contracts:** Any existing customer contract of a Quashed License holder who is successful in obtaining a new license should be allowed to be continued on such terms as maybe agreed.
- 3.8 **License Obligations:** As the Judgment has held that the Quashed Licenses were granted pursuant to an illegal and unconstitutional policy of the Central Government, obviously all the obligations (including roll-out obligations) attached with such Quashed Licenses should be recognized to be not enforceable against any Quashed License holder. Consequently all the penalties, etc. imposed by the Central Government for any alleged failure to roll-out or for any other obligation should stand reversed and, if already recovered by the Central Government, must be refunded back along with interest. Similarly any revenue shared with the Central Government by any of the Quashed License holder should be immediately refunded back to respective Quashed License holder to reduce their losses which they might have suffered for inappropriate policy of the Central Government as so held by the Supreme Court.
- 3.9 **Statutory Permissions to be migrated to new licenses:** The holders of Quashed Licenses should be allowed to transfer MW Access & Backbone Spectrum allocations, SACFA clearances, Points of Interconnect already established in relevant service areas.