



Association of Unified Telecom Service Providers of India

AUSPI/12/2009/ 166

19th November 2009

Dr. J S Sarma,
Chairman,
Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
Jawaharlal Nehru Marg,
New Delhi.

Sub: Counter comments to Responses of stakeholders to TRAI CP No.6/2009 on 'Overall Spectrum Management and Review of license terms and conditions'

Dear Sir,

We are extremely pleased to have been given an opportunity to submit 'Counter Comments' on some of the points in the responses of stake holders pertaining to the above mentioned TRAI consultation paper.

2) At the outset, we would like to submit that all the incumbent GSM operators and COAI have taken shelter in the DOT Second Spectrum Committee report **which are highly inclined in their favour and hence their support and observations are not a correct replica of the industry and cannot be viewed from a neutral point of view.** AUSPI, time and again, have been bringing out the bias of the DOT's 2nd Spectrum Committee in connection with its recommendations. The contention of the incumbent GSM operators be rejected as it only reflects their self interest pleas.

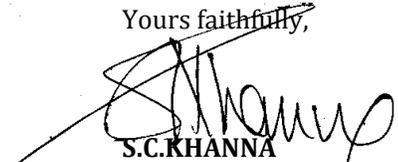
3) Many of the incumbent GSM operators have suggested implementation of international business model for deciding the quantum of spectrum as well as number of operators in a service area. However, there have been enormous benefits to the consumers with the entry of new GSM operators through many innovative market plans.

4) **Sir, you may be aware that Indian business model in telecom sector has been a successful one and well accepted as a role model by many.** In many of the countries, spectrum is being reformed as has been suggested in our response to bring out competition, efficient services and affordability to the '*aam aadmi*'. In view of this, there is no necessity of taking foreign model as role model for India.

Our observation on some of the responses are enclosed for your consideration.

Thanking you,

Yours faithfully,



S.C.KHANNA
SECRETARY GENERAL

Encl: As above

Copy to :

- 1) Shri R. Ashok, Member, TRAI
- 2) Shri R. N.Prabhakar, Member, TRAI
- 3) Prof. N. Balakrishnan, Member, TRAI
- 4) Dr. Rajiv Kumar, Member, TRAI
- 5) Shri R.K.Arnold, Secretary, TRAI
- 6) Shri Sudhir Gupta, Advisor (MN), TRAI

AUSPI'S COUNTER COMMENTS ON RESPONSES OF STAKE HOLDERS TO CONSULTATION PAPER NO.6/2009 ON 'OVERALL SPECTRUM MANAGEMENT AND REVIEW OF LICENSE TERMS AND CONDITIONS'

1) MAXIMUM LIMIT OF SPECTRUM PER ENTITY

The considerations for spectrum allocation should include ensuring optimal utilization of a scarce national resource coupled with enhancing coverage, subscriber base and affordability for end consumers. Further, the considerations should be formulated with a view to prevent hoarding, making adequate spectrum available to licensed operators, facilitating a conducive competitive atmosphere and ensuring a technology neutral level playing field.

The mobile sector has incumbents' network which are having GSM spectrum allocated beyond the contracted amount of 2 x 6.2 MHz for GSM. They also have this spectrum in 900 MHz which is quite advantageous from the CAPEX point of view. New network operators have been denied full quota of 2 x 6.2 MHz of contracted amount of spectrum as per license agreement. Here it is clearly favouring the incumbent operators at the cost of new operators which need to be corrected.

The maximum spectrum per entity should be determined based on the principle of ensuring fair distribution of spectrum amongst all operators. The spectrum policy should prevent hoarding especially by allocation of spectrum beyond contractual limits else it will lead to market cartelization/ monopolization. There should be a spectrum cap of 2 X 5 MHz for CDMA and 2 X 6.2 MHz for GSM; out of which 2 X 2.2 MHz of GSM spectrum should be capped in the 900 MHz band. It is also pertinent to mention here that an operator does not need more than 2x4.4 MHz in rural and urban districts; whereas the incumbent operators have been allocated up to 10-12 MHz in the complete circle. Therefore, we reiterate that more than 2x4.4 MHz of GSM spectrum allocated to incumbent operators in the rural and urban districts be withdrawn and allocated to new operators in these districts as startup spectrum.

Many of our member service providers and even member of COAI including Etisalat DB, Unitech Wireless have clearly stated in their responses that generally GSM operators do not need spectrum beyond the contracted amount of 2 x 6.2 MHz which make it amply clear that our contention of 2 x 6.2 MHz spectrum is sufficient for operation of GSM service. **With the help of GSM spectrum efficiency enhancement technology features such as SAIC, Progressive Power control, Antenna Hopping, ICC/ STIRC, Synchronization, DFCA/ IBCA, AMR packing unpacking, Robust AMR signaling result in decreasing the interference and increasing the soft capacity to make the services affordable with 2 x 6.2 MHz of GSM spectrum.**

All the incumbent operators' response do not have clear indication that there is a spectrum constrain and their responses are in generality. It is very clear from the responses that the incumbent operators, after consolidating their spectrum are now trying to garner further spectrum through Auction and Merger and Acquisition route and their sole aim is to aggregate the spectrum for trading and monopolization of the telecom service market.

Earlier, these GSM operators as well as COAI have been advocating inefficiency of GSM technology to garner spectrum from the Government of India. The service provisioning by the new operators clearly indicate that **GSM technology with the advanced GSM spectrum efficiency enhancement technology can easily achieve efficiency equivalent to CDMA technology or even more and hence more number of subscribers can be accommodated by GSM for the same amount of spectrum as that of CDMA.**

Many of the GSM incumbent stake holders have responded that in any service area, there be limitation of 25% of the spectrum allocated to all operators in that service area. Most of the stakeholders have spectrum much more than the contracted amount and therefore, the 25% limit has no basis at all. The liberal spectrum cap like 25% of total spectrum does not tend to force service providers into using more spectrally efficient technologies. Society will be is better when the inefficient service provider is forced to become more efficient. The 25% cap ploy is being used to hoard spectrum. The incumbent operators have already hoarded spectrum beyond contractual limit, holding almost 100% more efficient spectrum in 900 MHz band and now wish to extend the hoarding to 25% of the total assigned spectrum.

Given the size of the Indian cellular market, the vibrant competition which has benefited Indian consumers should not be allowed to be consolidated to an extent that 25% of the spectrum that can be held by a single entity. The 25% cap can reduce the number of operators. Further we have spectrum in very few bands and at this stage we cannot think of a cap across all spectrum bands. At this stage only 2G spectrum is available and therefore band wise spectrum cap has to be prescribed. Therefore no entity should be allowed more than 2x6.2 Mhz.

Usually, as mentioned above, it will lead to monopolization and cartelization of telecom access service and hence this limit should in no way be considered.

Recent development in the telecom service market proved that affordability, spread and coverage are due to the introduction of competition propelled by the new operators. If 25% limit is there, sufficient spectrum for allocation of 2 x 6.2 MHz for GSM and 2 x 5 MHz for CMDA spectrum will not be available to all the players in the market and it will create cartelization and monopolization. 25% limit of 2G GSM spectrum advocated by many of the stakeholders in the responses are without any genuine reason. Nowhere in the competitive world telecom service market this limit exists.

Priority should be to ensure that all operators receive the spectrum as per contractual obligations. As the available spectrum is scare, this may warrant spectrum re-farming from operators who are holding spectrum in excess of these limits

2) DE-LINKING OF SPECTRUM FROM THE UASL

In India, spectrum has already been granted to the existing UASL subject to rollout obligation. Delinking of spectrum from existing licensees should not be there.

Incumbent GSM operators have suggested in their responses that delinking of spectrum can accommodate more operators, which proposition, if accepted, would seriously distort the level playing field condition. New operators have the fundamental right to get 2 x 6.2 GSM spectrum like incumbent operators, who have a tendency of misleading the authorities and the general public. Incumbent operators are always saying that spectrum is a scarce resource because they are hoarding spectrum and making it artificially scarce so the new operators do not get contracted spectrum of 2 x 6.2 MHz GSM spectrum and 2 x 5 MHz CDMA spectrum which is their fundamental right.

The incumbents have submitted innumerable lessons to be learned from experience internationally to support their claim on more spectrum. Incumbents, who have already cornered spectrum more than the contractual limits often state that India should follow the purported example of other nations in allowing service providers to obtain significantly more than 2x6.2 MHz GSM spectrum yet they fail to recognize the fundamentally different conditions that exist in these foreign and Indian markets.

Comparison with the international market regarding number of operators in a service area is not relevant because in India, number of subscriber to be served by each operator is much

more than these countries. India has a huge population of approximately 1.2 Billion with an area of 3,287,240 Sq km where as countries like UK or Germany are much smaller in size where 2 to 4 operators are sufficient to serve smaller number of subscribers. Therefore, in the Indian context, more than 10 operators are necessary to maintain competition and affordable services to the customers.

It is recommended that the spectrum be delinked from the UAS licenses to be granted in the future.

In India, as spectrum has already been contracted to all existing UAS licensees and is subject to roll-out obligations, delinking of spectrum from existing licensees should not be favored due to the following reasons:

- Certain new operators have declared that their break-even periods have become as high as 25 years in light of the recent reduction in tariffs which have made the service more affordable to the common man. Hence, their current spectrum commitment of 20 years needs to be expanded to ensure that these operators remain in business
- Existing players as well as recent entrants have entered the industry based on business plans that are based on the awarding of spectrum along with the License. Any modification to the same, within the 20 year period, would adversely impact the business plan.

3) ONE TIME CHARGE FOR SPECTRUM ALLOCATED BEYOND COMMITTED THRESHOLD

The current spectrum limit is recommended to be specified in line with the contractual commitments (2 X 6.2 MHz for GSM and 2 X 5 MHz for CDMA) .Any additional spectrum available with operators, above the limit should be taken back. Further, the availability of additional spectrum would have provided a competitive edge to the operator in terms of capital cost, faster roll-out and capability to offer lower tariffs. Since the additional spectrum was allocated without payment of any market linked fee, the operator should be charged for the use of the additional spectrum on a retrospective basis – i.e. from the time of the initial assignment of the additional spectrum till the spectrum is withdrawn. These incumbent operators have enjoyed huge benefit in terms of profits year after years. The Government has every right to take a just share of these profit by levying one time charge based on the years the benefit has accrued to the operator.

In the future it is recommended that priority be given to allocation of spectrum to fulfill the contractual obligations. All subsequent spectrum allocations are recommended to be auctioned and subject to applicable usage charges.

4) MERGER & ACQUISITION ISSUE

Incumbent operators' response clearly shows that they are trying to garner spectrum through Merger and Acquisition route which will lead to cartelization and monopolization of telecom services in India. The whole idea is to achieve economies of scale through aggregation of spectrum so that no new operators could match them and in long term kill the competition. The response of one of the incumbent operators shows that after acquisition of spectrum through M & A route, they want to trade it. This attitude of the incumbent operators is making it amply clear that spectrum distribution and allocation should go to private hands in the near future. This will also lead to a situation where the country's defense sector should also need to apply for allocation of spectrum from these operators and wait for their mercy at the cost of national security.

The incumbent operators have failed to realize that Indian sector should not imitate foreign countries to allocate large amount of spectrum as in India the competition is sustainable with much

lesser spectrum and consumers are getting services at most affordable rates. We therefore, strongly suggest that M & A should be allowed only with the safeguards suggested by AUSPI.

5) VALIDITY OF SPECTRUM IF ALLOCATED MIDWAY FOR A DIFFERENT TECHNOLOGY

Incumbent operator's views on this issue are biased and Authority is requested to reject the same. Since full entry fee for allowing GSM technology track (under dual technology policy) was demanded by the DoT and paid for by the dual technology operators, GSM technology track should have the validity of 20 years as is applicable in respect of the new UAS licenses which are issued on the payment of same entry fee.

DoT issued policy guidelines in October 2007 permitting the use of dual technology for providing cellular mobile services under the existing / new UAS licenses subject to the payment of another entry fee of Rs. 1651 Crores for pan-India operations. In line with these policy guidelines, the UAS licenses of some of the telecom operators were amended permitting the use of GSM technology in addition to the existing CDMA technology. For this, the telecom operators had to pay a fresh entry fee of the same amount as is applicable to a new UAS license i.e. Rs. 1651 Crores for pan India operations.

However, while issuing the amendment for dual technology operations, the DoT did not make the validity of the dual technology track i.e. the GSM technology, as 20 years even though the operators had paid the same fee for dual technology operations as is applicable to the new UAS licenses. The new licenses are valid for a period of 20 years.

The action of the DoT in not amending the UAS license for dual technology track (i.e. GSM track in case of CDMA operators) for 20 years validity is unfair because of the following:

- a. Since full entry fee for allowing GSM technology track (under dual technology policy) was demanded by the DoT and paid for by the dual technology operators, GSM technology track should have the validity of 20 years as is applicable in respect of the new UAS licenses which are issued on the payment of same entry fee.
- b. The DoT had issued a number of new UAS licenses at the same time when dual technology operations were approved for the dual technology operators and both the new UAS licensees & Dual technology operators have paid the same amount of entry fee. While the validity of the new UAS licenses is kept as 20 years, the validity of dual technology track of the dual technology operators has been kept the same as of its original license. The validity of dual technology track cannot be co-terminus with the original license while a new license will be having 20 years validity even though both were issued at the same time after paying the same entry fee. The new UAS licensee, if it goes for dual technology operations straightaway by paying the entry fee as envisaged, the dual technology track in this case will be valid for 20 years, thus, creating anomaly.
- c. If the validity of dual technology track is allowed to be co-terminus with the existing UAS licenses, it will lead to a situation where the various dual technology licenses issued to different operators will expire at different intervals of time even though all have paid the same entry fee again and their licenses have been amended at the same time since their original UAS licenses were issued at different intervals of time. Thus, various operators will use dual technology track for varying time periods while they have paid the same entry fee at the same time for dual technology operations.

The policy guidelines issued by the DoT for 3G/BWA spectrum also envisage the amendment of the existing UAS licenses for operators getting 3G/BWA spectrum but the validity of 3G/BWA track has been determined as 20 years. In this case, the DoT has not kept the validity of 3G/BWA spectrum co-terminus with the original validity of the UAS license.

Thus, the treatment meted out to the dual technology operators vis-à-vis 3G/BWA operators and a new operator is discriminatory. This is brought out so that the Authority may consider to make its recommendations to the DOT on the following lines:

Option 1: The validity of dual technology track (GSM spectrum) of the dual technology operators should be 20 years from the date of amendment of the license.

Option 2: In case the excess amount cannot be refunded, same may be adjusted against future license fee and spectrum charges payable against the licensed operations.

6) ANNUAL SPECTRUM CHARGES

Incumbent operators suggestion to have flat spectrum charges are illogical and does not merit consideration. The current policy of escalating spectrum charges for higher allocation of spectrum was adopted to discourage substitution of physical infrastructure by spectrum when spectrum is assigned based on administratively determined subscriber thresholds. Lower flat spectrum usage charge across all operators irrespective of their spectrum holding will not only create a non-level playing field between new and established operators but also enormous loss to the exchequer. Operators holding larger chunk of spectrum at one hand will be saving on capital investment and on the other hand will be encouraged to hoard spectrum and throw new competitors out of business.

Incumbent operators suggestion for flat spectrum fee is anti-competition, anti-consumer, anti-efficient utilization of scarce national resources.

We suggest the annual spectrum charges to be technology neutral but not uniform irrespective of the quantum of spectrum. The technology neutrality in spectrum must be allowed, in line with global practices as there is a trend towards adopting a policy of technology and service neutral licenses.

The quantum of spectrum on the other hand, has a major role to play in providing better services to the consumer without incurring additional capital expenditure to provide a comparable level of services with lower spectrum. This, in turn, would positively impact the ARPU of the operator and could provide an unfair advantage to the holder of the larger quantum of spectrum. Accordingly, annual spectrum charge should be directly dependent on the total quantum of spectrum held by an operator.

The charges should continue to be the way they have been currently defined. But beyond 2 X 6.2 MHz in GSM and beyond 2 X 5 MHz in CDMA, there should be a steep increase in the annual spectrum charges.

Conclusion:

For the foregoing reasons, AUSPI requests the Authority to reject incumbent operators self interest pleas. Their suggestions if accepted will scuttle competition, lead to aggregation of spectrum, foreclose competition by blocking allocation of spectrum to new entrants.

The consumers have benefited from entry of new operators in GSM arena through many innovative offerings. AUSPI suggestions will push level playing field, promote competition and equitable distribution of spectrum.