



भारतीय दूरसंचार विनियामक प्राधिकरण  
TELECOM REGULATORY AUTHORITY OF INDIA  
भारत सरकार / Government of India



**No.103-4/2017-NSL-II**

Date: 15<sup>th</sup> December, 2017

To  
**The Secretary,**  
**Department of Telecommunications,**  
20, Ashoka Road, Sanchar Bhawan,  
New Delhi-110 001.

**Subject: Seeking TRAI comments on Amendments to Spectrum Trading Guidelines dated 12.10.2015 - reg.**

DoT, through its letter dated 24<sup>th</sup> November 2017 (copy enclosed), requested The Authority to submit its considered opinion on the issue whether the entire amount received from the Spectrum Trading should be part of AGR or only the profit/gain arising out of Spectrum Trade should be part of AGR for charging the Licence Fee/SUC considering the previous TRAI's recommendations dated 28.01.2014 as well as the response back dated 21.05.2015 and the IMG report dated 31.08.2017.

2. As rightly pointed out by the DoT, the recommendations on "Working Guidelines for Spectrum Trading" were sent to it by the Authority on 28<sup>th</sup> January 2014. Through its back reference dated 27<sup>th</sup> April 2015, some of the recommendations were referred back by DoT to the Authority seeking clarifications/reconsidered recommendations. Among others, DoT mentioned as follows:

*"It is understood that the amount received from trading shall be part of AGR for the purpose of License Fee."*

3. In its response dated 21<sup>st</sup> May 2015, the Authority, inter alia, clarified that the amount received from trading shall form part of AGR for the purpose of Licence Fee.

4. Subsequently, on 12<sup>th</sup> October 2015, DoT issued "Guidelines for Trading of Access Spectrum by Access Service Providers", which, inter-alia, contains as under:

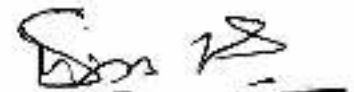
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*"The Amount received from trading shall be part of Adjusted Gross revenue (AGR) for the purpose of levy of Licence fee and Spectrum Usage Charges (SUC)"*

5. DoT had already examined the Authority's recommendations dated 28<sup>th</sup> January 2014, made a back-reference dated 27<sup>th</sup> April 2015 and, in turn, the Authority had sent back its response dated 21<sup>st</sup> May 2015. Having completed the entire process as stipulated in the TRAI Act, the Authority has nothing more to add on the same subject.

6. In keeping with practice, a copy of this letter is being placed on the website of TRAI ([www.trai.gov.in](http://www.trai.gov.in)).

Encl: As above



**(U.K. Srivastava)**

**Pr. Advisor**

(Network, Spectrum & Licensing)

Tel: 23233291

Government of India  
Ministry of Communications & Information Technology  
Department of Telecommunication  
(WPC Wing)

No.L-14005/01/2017-NTC

Dated: 24.11.2017

To,

The Secretary  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawahar Lal Nehru Marg (Old Minto Road)  
New Delhi-110002

**Subject: Seeking TRAI Comments on Amendments to Spectrum Trading Guidelines dated 12.10.2015**

**1. Introduction:**

The Telecom Commission in its meeting held on 8.9.2017, considered the report of Inter Ministerial Group (IMG) on 'Financial stress in Telecom Sector'. The Telecom Commission, among others, directed Department of Telecommunication to seek the legal opinion on amendments to para 26 of the Guidelines for Trading of Access Spectrum dated 12.10.2015. The para 26 of the Guidelines dated 12.10.2015 stipulate that:

*"Para 26: The amount received from trading shall be part of Adjusted Gross Revenue (AGR) for the purpose of levy of License fee and Spectrum Usage Charges (SUC)."*

The Telecom Commission directed to obtain legal opinion whether profit or the gain arising out of trade of spectrum could constitute as a part of revenue for the purpose of calculation of AGR (Aggregate Gross Revenue) and not the total transaction value as mentioned above in para 26 of the guidelines dated 12.10.2015.

**2. Background:**

2.1 It may be recalled that TRAI made its recommendations on "Working Guidelines for Spectrum Trading" dated 28.01.2014 on request of the Department. The TRAI, in its recommendations dated 28.1.2014, among others, recommended that:

*Para 2.17:*

*A non-refundable transfer fee of one percent (1%) of the transactional amount or one percent (1%) of the prescribed market price, whichever is higher shall be imposed on all spectrum trade transactions. The transfer fee shall be paid by the buyer (transferee) to the Government.*

2.2 The recommendations were examined by a Committee constituted by DoT and the report of the Committee was considered by the Telecom Commission on 22.04.2015. The Commission, among others, recommended that a reference may be sent to TRAI for clarifying the following in respect of the above recommendation.

- (e) rationale for recommending 1% transaction fee.*
- (f) definition of "transaction amount" and the methodology of ascertaining transaction amount*
- (g) definition and calculation for ascertaining the "market price"*
- (h) it is understood that the amount received from trading shall be part of AGR for the purpose of License fee.*

Accordingly, a back reference was sent on 24.4.2015.

2.8 The TRAI's reconsidered recommendations were received on 21.05.2015, recommended. The reconsidered recommendations were examined by the Committee in DoT and the report of the Committee was considered by the TC on 11.06.2015.

2.9 The reconsidered recommendations of TRAI, followed by observations of DOT Committee and decision of Telecom Commission on the above issue are as under:

*(i) TRAI's recommendations:*

*(a) The transaction fee is being imposed to cover the administrative charges which will be incurred by the Government in servicing the trade. Therefore, the Authority has recommended the transfer fee at a nominal amount of one per cent of the transaction amount.*

*(b) Transaction amount refers to the amount payable by the buyer to the seller to purchase the rights to use the spectrum block. It will be decided exclusively by the buyer and the seller.*

*(c) The market prices are to be assessed by the Government. It may be on the lines similar to the existing clauses in the relevant NIAs for liberalising the spectrum holding.*

*(d) The amount received from trading shall be part of AGR for the purpose of License fee.*

**(ii) DOT Committee Observations:**

*The Committee recommends that the recommendation of TRAI as in para 2.17 may be agreed to i.e. A non-refundable transfer fee of one percent (1%) of the transactional amount or one percent (1%) of the prescribed market price, whichever is higher shall be imposed on all spectrum trade transactions. The transfer fee shall be paid by the buyer (transferee) to the Government, where transaction amount and market price is as defined by TRAI in its reconsidered views. However, AGR, as applicable, shall prevail.*

**(iii) Decision of Telecom Commission:**

*The Commission accepted the recommendation of the DOT Committee with the modification that the amount received from trading shall be part of AGR for the purpose of License fee and Spectrum Usage Charges (SUC)*

2.10 The Telecom Commission, in its meeting held on 11.6.2015, had directed that the matter may be placed before the Union Cabinet with the recommendations of the TC.

2.11 As per the recommendations of Telecom Commission, a Cabinet Note on Spectrum Trading was placed before the Cabinet. The Cabinet in its meeting held on 09.09.2015 approved the proposals for Spectrum Trading. Based on the Cabinet decision, Guidelines for Trading of Access Spectrum by Access Service Providers were issued on 12.10.2015.

2.12 The para 26 and 30 of the "Guidelines for Trading of Access Spectrum by Access Service Providers" dated 12/10/2015 as approved by Cabinet stipulate that:

*"26. The amount received from trading shall be part of Adjusted Gross Revenue (AGR) for the purpose of levy of license fee and Spectrum Usage Charges (SUC)".*

*30. Licensor reserve the right to modify the guidelines from time to time as it may deem fit."*

It does not specify that only profit from sale of spectrum asset is to be part of AGR but the amount received from spectrum trading. For deferred payment option also full value of spectrum is to be counted as for upfront payment option.

2.8 Based on the spectrum trading guidelines dated 12.10.2015, access spectrum trading in 800 MHz, 1800 MHz and 2300 MHz bands has so far been taken place. Details of the accepted spectrum trading are given below:

- (d) Spectrum Trading between M/s RCOM (Seller) and RJIL (Buyer) in 800 MHz band in 13 service areas i.e. AP, Delhi, Gujarat, Kolkata, Maharashtra, Punjab, UP (E), UP (W), Tamil Nadu, Karnataka, Rajasthan, Kerala and West Bengal. A total of 47.5+47.5 MHz spectrum was traded. An amount of about Rs 41.97 Crores, as transfer fee, has also been received at the rate of 1% of transaction amount.
- (e) Spectrum Trading between M/s Videocon Telecommunications Limited (Seller) and M/s Bharti Airtel Limited (Buyer) in 1800 MHz band in 6 service areas i.e. Bihar, Gujarat, Haryana, Madhya Pradesh, UP (East) and UP(West). A total of 30.0+30.0 MHz spectrum was traded. An amount of about Rs 46.53 Crores, as transfer fee, has also been received at the rate of 1% of transaction amount.
- (f) Spectrum Trading between M/s Aircel Limited/Dishnet Wireless limited (Seller) and M/s Bharti Airtel Limited (Buyer) in 2300 MHz band in 8 service areas i.e. Andhra Pradesh, Assam, Bihar, Jammu & Kashmir, North East, Orissa, Tamil Nadu and West Bengal. A total of 180.0 MHz spectrum was traded. An amount of about Rs 36.0 Crores, as transfer fee, has also been received at the rate of 1% of transaction amount.

3. It may also be noted that TSPs were given two options - Full upfront payment, and Deferred payment - for making payment for auction acquired spectrum through auctions held in November 2012, March 2013, February 2014, March 2015 and October 2016.

- (c) Under Full upfront payment option, winners will have to pay full payment within 10 days of declaration of final price.
- (d) Under Deferred payment option, winners will have to pay a certain percentage of the final bid amount within ten (10) calendar days of issue of Demand Notice as an upfront payment and the balance amount will be recovered in 10 equal annual instalments after a moratorium of 2 years.

Extract of the NIA dated 8.8.2016 issued for auction of spectrum held in October 2016 is at Annexure-I.

3.1 It may be noted that full upfront payment was the only option in the spectrum auction held in 2010 for auction of spectrum in 2100 MHz and 2300 MHz bands. Winners of this auction had paid full amount within prescribed time limit. In the remaining auctions, TSPs are free to choose any one of the payment options.

3.2 There are the cases of spectrum trading, where seller had opted for deferred payment options and traded its spectrum. Spectrum Trade took place between M/s Videocon Telecommunications Limited (Seller) and M/s Bharti Airtel Limited (Buyer) in 1800 MHz band in 6 service areas i.e. Bihar, Gujarat, Haryana, Madhya Pradesh, UP (East) and UP(West) falls under this category. The other two cases, as mentioned at (a) and (c) of para 2.9 above, come under full upfront payment category (in (a) spectrum traded after liberalization and in (c) spectrum traded after acquiring in 2010 auction).

4. As per decision of Committee of Secretaries (CoS) on "Stress in balance sheet in Select Sectors" in its meeting held on 29th March 2017, an Inter-Ministerial Group (IMG) was constituted on 16.05.2017. The terms of Reference (ToR) of the IMG are as follows:

- To examine systemic issues affecting viability and repayment capacity in telecom sector and furnish recommendations for resolution of stressed assets,
- Policy reforms and strategic interventions for Telecom sector.

4.1 The IMG held consultations with all the major TSPs and the Banks. Based on consultations and other sectoral data IMG analyzed the nature and extent of financial stress in the telecom sector. The IMG submitted its report on 31.8.2017. The IMG, among others, reviewed the provisions of the Guidelines for Trading of Access Spectrum by Access Service Providers dated 12.10.2015 and recommended amendments to the para 26 of the guidelines. The analysis of the IMG on proposed amendments to Spectrum Trading Guidelines is given below:

*"Amendments to Spectrum Trading Guidelines:*

59. *The para 26 of the Guidelines for Trading of Access Spectrum by Access Service Providers dated 12/10/2015 as approved by Cabinet states that:*

*"The amount received from trading shall be part of Adjusted Gross Revenue (AGR) for the purpose of levy of license fee and Spectrum Usage Charges (SUC)".*

*This implies that LF and SUC will be levied on the complete transaction value of the Spectrum trade. The definition of Gross Revenue as per the License Agreement is as follows:*

*Definition of Gross Revenue as per License Agreement (UASL Clause 19)<sup>2</sup>*

*"19.1 The Gross Revenue shall include all revenues accruing to the licensee on account of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc."*

*60. The calculation of AGR, therefore, includes the revenue from various telecommunication services as well as 'miscellaneous revenue' which include all other items which are generally recognized as revenue in the Profit and Loss account. The receipts of capital nature like equity infusion, loans from financial institutions, inflow from issue of debentures etc. are excluded from the purview of the AGR calculation. The spectrum holding is an asset of capital nature held by the licensee. Its sale value is a capital receipt hence should be excluded from the purview of the AGR calculation. However, the profit or the gain arising out of this sale constitutes part of revenue under Accounting Standard (AS)-10 and therefore becomes part of 'miscellaneous revenue' for the purpose of calculation of AGR.*

*61. In view of the above IMG recommends that it may be clarified that the profit or the gain arising out of trade of spectrum shall constitute as a part of revenue for the purpose of calculation of AGR and not the total transaction value as per the extant guidelines. Necessary amendments may be considered by DoT"*

5. In this connection, it is pertinent to mention that during the course of hearing of AGR case remitted by the Hon'ble Supreme Court to TDSAT, the discussion on the specific head in respect of gain on sale of fixed assets was also took place wherein Ld. ASG, appearing on behalf of Union of India, submitted that it is only gain on sale of fixed assets that is to be considered as revenue. The Ld. ASG also clarified that it is not the entire sale proceeds but the gain from sale of the capital

<sup>2</sup> Similar clause exists for Access Service authorization under Unified License (Clause 3.1).

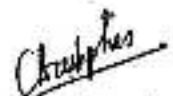


assets that is to be taken into account for computation of revenue since gains are effected in the profit and loss account under the head 'Other Income'.

6. The IMG report on 'Financial Stress in Telecom Sector' was placed before the Telecom Commission in its meeting held on 8.9.2017. The TC recommended, among others, that Department may obtain legal opinion whether such an amendment can be made to the spectrum trading guidelines. Accordingly, the case sent for legal opinion on the subject. Legal Adviser, DOT advised that in the first instance comments of the TRAI may be obtained as the Guidelines for Trading of Access Spectrum by Access Service Providers dated 12.10.2015 is based on the TRAI's recommendations.

7. In view of the above, TRAI is requested to submit its considered opinion on the issue whether the entire amount received from Spectrum Trading should be part of AGR or only the profit/gain arising out of Spectrum Trade should be part of AGR for charging the License Fee/SUC considering the previous TRAI recommendations dated 28.01.2014 as well as the response back dated 21.05.2015 and the IMG report dated 31.08.2017.

Encl: As above.



(V. J. Christopher)  
Sr. Deputy Wireless Adviser

**Section 6.**

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**6.1 Payment Terms**

Successful Bidders shall make the payment (in Indian Rupees) in any of the following two options:

- (a) Full upfront payment within 10 days of declaration of final price or pre-payment of one or more annual instalments; or
- (b) Deferred payment, subject to the following conditions:
  - (i) An upfront payment of 50% in the case of 1800 MHz, 2100 MHz, 2300 MHz, & 2500 MHz bands, and 25% in case of 700 MHz, 800 MHz and 900 MHz bands of the final bid amount shall be made within ten (10) calendar days of issue of Demand Notice by WPF Wing of DoT.
  - (ii) There shall be a moratorium of 2 years for payment of balance amount of one time charges for the spectrum, which shall be recovered in 10 equal annual instalments.
  - (iii) The 1<sup>st</sup> instalment of the balance amount shall become due on the third anniversary of the scheduled date of the first payment. Subsequent instalment shall become due on the same date of each following year. Prepayment of one or more instalments will be allowed on each annual anniversary date of the first upfront payment, based upon the principle that the Net Present Value (NPV) of the payment is protected.

Illustration regarding maintaining Net Present Value (NPV) of pre-payments made:-

Suppose 1000 = value of each instalment,

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2= number of years by which a particular instalment is being pre-paid,

*Since the interest rate being applied is 9.3%*

*So the amount to be pre-paid in respect of that instalment -*  
 $1000/(1+9.3/100)^2 = 837.07$

- (iv) If there are more than one instalments to be pre-paid, the total amount to be pre-paid would be sum total of each of such calculated amounts for each of the instalments, in accordance with the number of years by which each of these instalments are being pre-paid.
- (v) An indicative schedule of payments is given in Tables D1 and D2 respectively of **Annexure D of Section 12.4** to this NIA:
- (vi) The successful bidder shall securitize the annual instalment for the deferred payment through a Financial Bank Guarantee (FBG) of an amount of one annual instalment. On payment of 1<sup>st</sup> instalment and each instalment thereafter, the FBG shall be renewed for a further period of one year and submitted at least one month prior to the date of expiry of validity of the FBG submitted earlier. In case of non-renewal, the FBG will be encashed and the amount kept as non-interest bearing deposit with the DoT till such bank guarantee is renewed and instalment due is paid. Payment of due instalment and renewal of FBG shall be done by the successful bidder as per the schedule without the necessity for the DoT to raise any Demand Notice for the same.
- (vii) Along with the upfront payment, the successful bidder will have to submit an FBG equal to the annual instalment

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which shall be valid for three (3) years to the VPP Wing of DoT. The format for the FBG is at **Annexure 1 of Section 12.11.**

- (viii) In case of overdue payments, penal interest shall be charged on the delayed amount from the due date at the **Prime Lending Rate(PLR)** of the State Bank of India (SBI), applicable on the due date, plus 2% (compounded monthly); and a part of the month shall be reckoned as a full month for the purpose of calculation of interest.
- (ix) If due payments are not received within the due date plus a grace period of ten (10) days, the sum shall be recovered by encashing the FBG.
- (x) In the event of default in payment of instalments, in addition to the action as provided in the paras above, DOT may terminate the license and spectrum allotment/assignment, in which case, the allotted/assigned spectrum will revert back to DoT. The FBGs/PBGs in such cases will be encashed. This would be without prejudice to any other remedy DOT may decide to resort to.

Successful Bidders shall deposit the Successful Bid Amount i.e. full amount or upfront payment amount in case of deferred payment option within ten (10) calendar days of the issue of Demand Notice by DoT, failing which the EMD shall stand forfeited. In case of the date of payment being Saturday, Sunday or a public holiday, the effective date for payment to be considered as next working day.

All payments will need to be made by the successful bidders through Real Time Gross Settlement (RTGS) into the designated account that shall be specified by DoT in its website.