

Dated 12th November 2009

The Secretary,
Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi- 110002

Subject: Response on TRAI Consultation Paper No.6/2009 on “Overall Spectrum Management and review of license terms and conditions.”

Dear Sir,

Our responses on the questions raised by the Authority in the aforesaid Consultation Paper are attached herewith.

For consideration please.

Thanking you,

Yours faithfully
For S Tel Private Limited

Shamik Das
Chief Executive Officer

Enc: a/a

S TEL PRIVATE LIMITED

Chapter 1

Spectrum requirement and availability

1. Do you agree with the subscriber base projections? If not, please provide the reasons for disagreement and your projection estimates along with their basis?

Yes, we are in agreement with the subscriber base projections made by the Authority.

2. Do you agree with the spectrum requirement projected in ¶ 1.7 to ¶1.12? Please give your assessment (service-area wise).

We are of the view that TRAI should consider and base its recommendations on projected spectrum in the various bands identified for wireless/mobile services.

3. How can the spectrum required for Telecommunication purposes and currently available with the Government agencies be re-farmed?

We are of the view that this exercise would be initiated and pursued at highest level, preferably through an Empowered Group of Ministers set up for this specific objective.

4. In view of the policy of technology and service neutrality licences, should any restriction be placed on these bands (800,900 and 1800 MHz) for providing a specific service and secondly, after the expiry of present licences, how will the spectrum in the 800/900 MHz band be assigned to the operators?

No, we are of the view that all services be allowed as per technology & service neutrality licenses. Since the UAS Licenses are already extendable in perpetuity, the extension / reallocation be allowed for 20 years.

5. How and when should spectrum in 700 MHz band be allocated between competitive services?

We are of the view that the spectrum in 700 MHz band be allocated in alignment with International Standards / trends which will help in putting a uniform policy on Customer Premises Equipment and standardisation of equipments for Broadband / HDTV etc.

6. What is the impact of digital dividend on 3G and BWA?

There seems no clarity on allocation of digital dividend spectrum to enable us to assess the impact of the same at present.

Chapter 2

Licensing issues

7. Should the spectrum be delinked from the UAS Licence? Please provide the reasons for your response.

No. We are of the firm view that keeping in mind the objectives of National Telecom Policy and industry practice since beginning, the spectrum up to 6.2 MHz be reserved /earmarked with the licenses as is being given to all licensees to ensure the level playing field.

8. In case it is decided not to delink spectrum from UAS license, then should there be a limit on minimum and maximum number of access service providers in a service area? If yes, what should be the number of operators?

The Authority should take into account the availability of spectrum under various bands to arrive at the decision on number of access providers in a service area, however the recommendation of the Authority on this question should not be made applicable on any decision / order in the pending matters before the Courts on issue of UAS Licenses.

9. What should be the considerations to determine maximum spectrum per entity?

10. Is there a need to put a limit on the maximum spectrum one licensee can hold? If yes, then what should be the limit? Should operators having more than the maximum limit, if determined, be assigned any more spectrum?

We are of the view that a maximum of 15 MHz spectrum be allocated per entity per circle under all the frequency bands put together. A Licensee should not hold more than 15 MHz of spectrum per circle.

11. If an existing licensee has more spectrum than the specified limit, then how should this spectrum be treated? Should such spectrum be taken back or should it be subjected to higher charging regime?

It should be taken back and put to common pool for auction.

12. In the event fresh licences are to be granted, what should be the Entry fee for the license?

The terms of award of licence should not be altered to ensure level playing field.

13. In case it is decided that the spectrum is to be delinked from the license then what should be the entry fee for such a Licence and should there be any roll out condition?

We are of the firm view that the spectrum should not be delinked from the UAS Licenses hence no response is suggested to this question.

14. Is there a need to do spectrum audit? If it is found in the audit that an operator is not using the spectrum efficiently what is the suggested course of action? Can penalties be imposed?

We are of the view that there is absolutely no requirement for carrying out a spectrum audit as long as the criterion for allocation of spectrum is prudent which we firmly believe that it is.

15. Can spectrum be assigned based on metro, urban and rural areas separately? If yes, what issues do you foresee in this method?

We are of the view that it would neither be practical nor useful for spectrum to be assigned separately for urban and rural areas given the teledensity targets to be achieved both in Urban and rural areas.

16. Since the amount of spectrum and the investment required for its utilisation in metro and large cities is higher than in rural areas, can asymmetric pricing of telecom services be a feasible proposition?

We are of the view that the competitive scenario has intensified significantly since rising of the sector and hence micro management / regulatory intervention in respect of tariffs neither necessary nor desirable.

M&A issues

17. Whether the existing licence conditions and guidelines related to M&A restrict consolidation in the telecom sector? If yes, what should be the alternative framework for M&A in the telecom sector?

We are of the view that M&A should be allowed on Circle License specific instead of Company as a whole and the Authority should recommend the Government that the circle specific mergers be approved by the Licensor subject to holding of spectrum of maximum up to 15 MHz in a circle.

18. Whether lock-in clause in UASL agreement is a barrier to consolidation in telecom sector? If yes, what modifications may be considered in the clause to facilitate consolidation?

No.

The existing lock-in clause is in the benefit of the sector in long run. The existing lock-in regime also indicates that only serious players who will meet the roll out obligations can operate.

19. Whether market share in terms of subscriber base/AGR should continue to regulate M&A activity in addition to the restriction on spectrum holding?

We are of the view that both the factors viz; Market share in terms of subscriber base as well as spectrum holding should continue to be the prime consideration for deciding / allowing M&A activity.

20. Whether there should be a transfer charge on spectrum upon merger and acquisition? If yes, whether such charges should be same in case of M&A/transfer/sharing of spectrum?

21. Whether the transfer charges should be one-time only for first such M&A or should they be levied each time an M&A takes place?

The transfer charges should be levied in all cases whether in case of M&A, transfer or sharing of spectrum and the same should be pegged at a level that does not deter/discourage such M&A, transfer or sharing of spectrum.

22. Whether transfer charges should be levied on the lesser or higher of the 2G spectrum holdings of the merging entities?

We are of the view that the transfer charges be levied based on the agreed quantum of 2G Spectrum of the merging entities under various bands.

23. Whether the spectrum held consequent upon M&A be subjected to a maximum limit?

Yes, the spectrum held consequent upon M&A be subjected to a maximum of 15 MHz under 2G.

Spectrum Trading

24. Is spectrum trading required to encourage spectrum consolidation and improve spectrum utilization efficiency?

We are of the view that spectrum trading would lead to hoarding of spectrum and will disturb the market dynamics in Indian Scenario. We suggest the Authority to recommend to Licensor that entire spare / unutilised spectrum by any operator should be asked to surrender back to the Government unless the entity enters into M&A activity.

25. Who all should be permitted to trade the spectrum?

26. Should the original allottee who has failed to fulfill “Roll out obligations” be allowed to do spectrum trading?

27. Should transfer charges be levied in case of spectrum trading?

28. What should be the parameters and methodology to determine first time spectrum transfer charges payable to Government for trading of the spectrum? How should these charges be determined year after year?

Please refer our reply to question No. 24.

29. Should such capping be limited to 2G spectrum only or consider other bands of spectrum also? Give your suggestions with justification.

We are of the view that maximum cap on 2G Spectrum band should be up to 15 MHz per entity per circle. In another bands such as 3G the maximum cap of up to 5 MHz be specified.

30. Should size of minimum tradable block of spectrum be defined or left to the market forces?

31. Should the cost of spectrum trading be more than the spectrum assignment cost?

Please refer our reply to question No.24.

Spectrum sharing

32. Should Spectrum sharing be allowed? If yes, what should be the regulatory framework for allowing spectrum sharing among the service providers?

33. What should be criteria to permit spectrum sharing?

Yes, the spectrum sharing be allowed subject to prescribing an appropriate regulatory framework for spectrum sharing.

34. Should spectrum sharing charges be regulated? If yes then what parameters should be considered to derive spectrum sharing charges? Should such charges be prescribed per MHz or for total allocated spectrum to the entity in LSA?

As recommended by the DoT Committee, we are of the view that while sharing charges may be prescribed on a per MHz basis, they should be levied/applied on the smaller of the two spectrum blocks being shared when two operators share spectrum and in case three operators share spectrum, sharing charges should be levied on the smaller two spectrum blocks being shared.

35. Should there be any preconditions that rollout obligation be fulfilled by one or both service provider before allowing the sharing of spectrum?

We believe that fulfilment of rollout obligations should not be made a condition precedent for sharing of spectrum.

36. In case of spectrum sharing, who will have the rollout obligations? Giver or receiver?

The meeting of roll out obligations should be the responsibility of original allottee of the spectrum.

Perpetuity of licences

37. Should there be a time limit on licence or should it be perpetual?

38. What should be the validity period of assigned spectrum in case it is delinked from the licence? 20 years, as it exists, or any other period.

The licenses are already extendable in perpetuity. The extension may be made for 20 years.

39. What should be the validity period of spectrum if spectrum is allocated for a different technology under the same license midway during the life of the license?

Since the spectrum is co-terminus with the license under which the said spectrum has been allocated and the validity of the spectrum assignment will cease with the expiry of the license whereafter the said license and spectrum will have to be extended, whether together or separately. As pointed out above, the DoT Spectrum Committee has also noted that as per the current policy, spectrum rights assigned to licensees are co-terminus with the period of license and they all have validity upto the same date, i.e., upto the expiry of UASL.

40. If the spectrum assignment is for a defined period, then for what period and at what price should the extension of assigned spectrum be done?

We are of the view that it should be linked with the perpetuity period of the license.

41. If the spectrum assignment is for a defined period, then after the expiry of the period should the same holder/licensee be given the first priority?

Yes. Otherwise it will disturb level playing field.

Uniform License Fee

42. What are the advantages and disadvantages of a uniform license fee?

We are of the opinion that existing license fee based on the type of licensing area (categories) is based on social justice and hence should be continued.

43. Whether there should be a uniform License Fee across all telecom licenses and service areas including services covered under registrations?

See our response to Q42. In addition the Uniform License fee should be fixed keeping in mind the licensees who only have licenses in Category “C” circles where difficult terrain, high cost on network and economically weaker section of the society persists.

44. If introduced, what should be the rate of uniform License Fee?

We are of the view that existing License Fee regime should continue.

Chapter 3

Spectrum assignment

45. If the initial spectrum is de-linked from the licence, then what should be the method for subsequent assignment?

We do not support the view on delinking of initial spectrum from the licenses as it will disturb the level playing field.

47. In case a two-tier mechanism is adopted, then what should be the alternate method and the threshold beyond which it will be implemented?

The spectrum attached with License of up to 6.2 MHz be earmarked / reserved and beyond 6.2 MHz it can be through Auction methodology.

46. If the initial spectrum continues to be linked with licence then is there any need to change from SLC based assignment?

We are of the view that no change is required for initial spectrum allocation of up to 6.2 MHz. The present SLC based assignment should continue.

48. Should the spectrum be assigned in tranches of 1 MHz for GSM technology? What is the optimum tranche for assignment?

Beyond 6.2 MHz, the 2G spectrum can be assigned in tranches of 1MHz.

49. In case a market based mechanism (i.e. auction) is decided to be adopted, would there be the issue of level playing field amongst licensees who have different amount of spectrum holding? How should this be addressed?

The Authority should ensure level playing field in deciding the market based mechanism for allocation of spectrum beyond 6.2 MHz in 2G band.

50. In case continuation of SLC criteria is considered appropriate then, what should be the subscriber numbers for assignment of additional spectrum?

We reiterate that up to 6.2 MHz spectrum be earmarked / allocated with License and beyond 6.2 MH the SLC criterion should continue.

51. In your opinion, what should be the method of assigning spectrum in bands other than 800, 900 and 1800 MHz for use other than commercial?

All commercial use other than 800,900 and 1800 MHz bands be auctioned.

Spectrum pricing

52. Should the service providers having spectrum above the committed threshold be charged a one time charge for the additional spectrum?

We are in agreement with the recommendations given by the DOT committee that has recommended a flat/ uniform spectrum usage charge of 3% of AGR and that UAS/ CMTS licensees who have obtained additional 2G spectrum beyond 6.2 MHz in a circle prior to 17.01.08 should be given the option of paying an upfront charge for the spectrum beyond 6.2 MHz based on the 3G auction price pro-rated per MHz for the remaining period of spectrum assignment from the date when annual spectrum usage rates become uniform or a subsequent date from which they exercise the option.

53. In case it is decided to levy one time charge beyond a certain amount then what in your opinion should be the date from which the charge should be calculated and why?

54. On what basis, this upfront charge be decided? Should it be benchmarked to the auction price of 3G spectrum or some other benchmark?

55. Should the annual spectrum charges be uniform irrespective of quantum of spectrum and technology?

Please refer to our reply to question No.52.

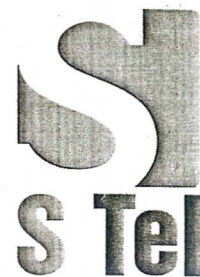
56. Should there be regular review of spectrum charges? If so, at what interval and what should be the methodology?

- a) No.
- b) We believe that while the benchmark/reserve price for the auction may be reviewed from time to time, depending upon market conditions, demand for and supply of spectrum, extent of competition, etc., the annual spectrum usage charges should be stable and predictable over the long term.

Structure for spectrum management

57. What in your opinion is the desired structure for efficient management of spectrum?

The Authority should align its recommendation based on international best practices on efficient management of spectrum.



30th November 2009

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Dr. Shri J.S. Sarma,
Chairman,
Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg,
Next to Zakir Hussain College,
New Delhi- 110002

Subject: Request for stipulating / recommending Uniform License Fee @6% only on the Adjusted Gross Revenue under Unified Access Service Licenses,

Dear Sir,

We, the S Tel Private Limited is having Unified Access Service Licenses only in "6" Category 'C' Circles. We deeply appreciate that the Authority in its Consultation Paper on " Overall Spectrum Management and review of license terms and conditions" dated 16th October 2009, inter-alia, discussed on Uniform License Fee in telecom sector under Chapter 2.

In this regard, we would like to bring the following for your kind consideration before issue of recommendations on the Consultation Paper to the Government of India (DOT)-

1. The S Tel is having UAS Licenses ONLY in six "C" Circles i.e. Orissa, Bihar, HP, Assam, North East and J&K and hence we do not have the privilege of being a Pan India operator. All other UAS Licensees are having Pan India Licenses which gives them an added advantage in their business.
2. At present the License Fee for Category 'C' circles is fixed @6% p.a on the Adjusted Gross Revenue. S Tel is having UAS Licenses only for "C" circles, the entire business model of the Company is made based on the revenue outgo on account of License Fee @6%.
3. Any decision for fixing Uniform License Fee over and above 6% pa will be highly detrimental to the Company's business interest and will disturb the level playing field vis-a-vis the operators who are having Pan India operations.
4. The revenue earning trend in the sector has declined to a great extent where the ARPU's have now fallen as low as Rs.70-100 per user per month. In the circumstance, S Tel having operations only in "C" circles with difficult terrain, high network costs and economically weaker segment to be served upon, it is highly unwarranted for the Company to pay License Fee of more than 6% level pa on AGR.



5. In addition, we would again like to bring to the Authority's notice that the Company has also not yet been earmarked the initial spectrum frequencies in major DHQ/towns of J&K, Assam and North East service areas which is an another hindrance in doing business.

Sir, keeping in mind the above submissions, it would be highly un-justifiable if the License Fee on AGR under the UAS Licenses is derived / or recommended for more than 6% in the garb of bringing uniformity across the licences & service areas.

We appreciate the Authority on its various decisions / recommendations taken in parlance with the objectives enshrined in the TRAI Act which inter-alia, stipulates that the Authority will ensure orderly growth of the telecom sector and to protect the interest of the service providers.

Thus, we are sure that the Authority will consider our above submissions keeping in view the fact that S Tel is having UAS Licenses only in 6 category "C" Circles in India. This request is in addition to our response made to the Consultation Paper on various other issues.

Thanking you,
Yours faithfully,
For S Tel Private Limited

A handwritten signature in black ink, appearing to read 'Shamik Das'.

Shamik Das
Chief Executive Officer

Copy also forwarded to:

1. The Secretary- TRAI
2. Advisor (MN)- TRAI
3. Advisor (Economic)- TRAI
4. Principal Advisor (FA & IFA)- TRAI

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