

Bharti Airtel's Counter Response to TRAI's Consultation paper on "Auction of Spectrum"

Pursuant to the Consultation paper on "Auction of Spectrum", Bharti Airtel submitted its comments to TRAI on 21-03-2012, post which TRAI has published the comments received from all the stakeholders. In reference to the comments made by various stakeholders, our submissions are as under:

1. Redistribution of 900 MHz Spectrum:

"The vacated 900MHz spectrum band should be allocated in blocks of 2.2MHz to existing operators on auction discovered price for 1800MHz at 1.5 times". (Reliance Communications Limited's submission)

As submitted in our response to the Consultation paper, the refarming of spectrum poses immense challenges and complexities on various aspects viz.- legal, commercial, technical, existing & future investments, customers, environmental, operational etc. Hence, we requested TRAI to release a separate, detailed and focussed consultation paper on this issue.

While reiterating the above, we are perplexed and astonished to see the suggestions made by one of the operators for "equal distribution of 900MHz spectrum" among existing operators to the extent of 2.2 MHz. The spectrum allocations in 900MHz bands are the results of the fair & transparent bidding / auction process held in the past and in due compliance to the regulatory policies. Now, the proposal for "equal distribution" attempts to negate the past allocation made pursuant to auction, despite knowing that in all past auctions/ bidding, the concerned operator participated and chose not to acquire the 900MHz spectrum.

The proposal for "equal distribution" will undoubtedly push us back to a regulatory regime where policy can be reversed to rectify the business decisions taken in the past by one of the operator. If this proposal is allowed, this will call for redistribution of spectrum at every additional/new operator entering the foray and thus, it will be a never ending process. . Further, the obvious questions which remain unanswered are;

- What is the justification and logic behind 2.2 MHz proposed?
- Why the proposed 2.2MHz should not be further reduced to 1MHz if the new entrants also ask for their share in 900MHz later?

- Why the existing block of 2100MHz or 2.3GHz should not be further reduced for redistribution if any operator wants to provide some services in these bands? When and where will this stop?

The Government policy should ensure that the rules of acquiring the spectrum are the same for all rather than equalizing the spectrum among the operators.

Hence, the proposal for “equal distribution” of spectrum should be outrightly rejected as it fundamentally tends to undermine the spectrum allocated in the past via fair & transparent auction process and regulatory policies.

Reference is also drawn towards the submissions made by AUSPI and MTS which represent the CDMA operators:

“With the deterioration in the CDMA ecosystem, the value of 800 MHz spectrum for CDMA is not the same as the value for the 900 MHz for the GSM operators” (AUSPI’s submission)

“Disadvantages of 800 MHz are lower adoption rate, weaker ecosystem, higher prices for equipment and devices priced, lower ARPU, smaller market for international roaming, etc. The above could be seen even in 2007, when there were no takers for 800 MHz of spectrum.” (MTS’s submission)

The above submissions by the Association representing CDMA operators and the CDMA operator themselves, indicates that CDMA technology has no future path for evolution. There is a visible decline in the growth of CDMA subscribers which has resulted in some of the CDMA operators holding more spectrum than their eligibility as per “Subscriber Linked Criteria”. Further, the very fact that the CDMA operators have been able to carve out spectrum for the provision of 3G (EVDO) services out of the 800 MHz spectrum allocated to them for provision of 2G services, also suggests that the existing allocation of 800 MHz for CDMA services is more than adequate and the spectrum not meeting the Subscriber Lined Criteria for 2G services be immediately withdrawn and any further allocation should be stopped. Considering the attractiveness of GSM technology it is suggested to harmonise the frequencies allocated to the CDMA operators and make available the **eGSM band** for the provision of services using GSM technology. This would release around 10 MHz of spectrum in 900 MHz band which can be allocated and used for GSM Technology.

2. Limiting the auction up to the prescribed limit:

Adequate 2G spectrum is put for auction in each LSA to ensure that the existing players can have up to the prescribed limit of 8/10MHz... (Reliance Communications Limited's response)

TRAI in its recommendations dated 3rd November 2011, while placing the administrative limit of 8/10MHz, also stated specifically that this limit does not preclude the licensee from acquiring additional spectrum in the open market should there be an auction of spectrum or in terms of consolidation through mergers.

Subsequently, vide its Press Release dated 15 February 2012, the DoT has also stated *"Licencee can acquire additional spectrum beyond prescribed limit, in the open market, should there be an auction of spectrum subject to the limits prescribed for merger of licences."*

It is therefore submitted that TRAI & DoT has already taken the policy decision to allow the existing operators to acquire additional spectrum during any auction process including the upcoming auction. Hence, the above proposal needs to be rejected out rightly.

3. Single Auction for Spectrum

We do not agree with the submissions made by some operators including the new operators that the auction be conducted in phases wherein the first phase is restricted to participants bidding for grant of start-up spectrum. Any reservation / discrimination in the auction process tend to defy the sole objective of conducting an auction in a fair and equitable manner. Therefore, we suggest a single stage auction including the new as well as existing operators (including quashed licensees) for the fair determination of the market price of the spectrum.

In our view, the following must be ensured to comply with the principles laid down by the Hon'ble Supreme Court:

- a. **Equal opportunity for participation in the auction:** All existing UAS/CMTS licensees, licensees whose licenses have been cancelled and all potential new entrants should be allowed to participate in the auction. Moreover, since 1994, the auction / bidding have always been opened for everyone.
- b. **Single Auction:** A single auction should be carried out for the 2G spectrum, where both the existing operators as well as the potential new entrants participate jointly.

This will help in ensuring provision of equal opportunity to all in a non-discriminatory manner and consequently result in revenue maximization for the Government. Even in a single auction, no spectrum should be reserved for new entrants.

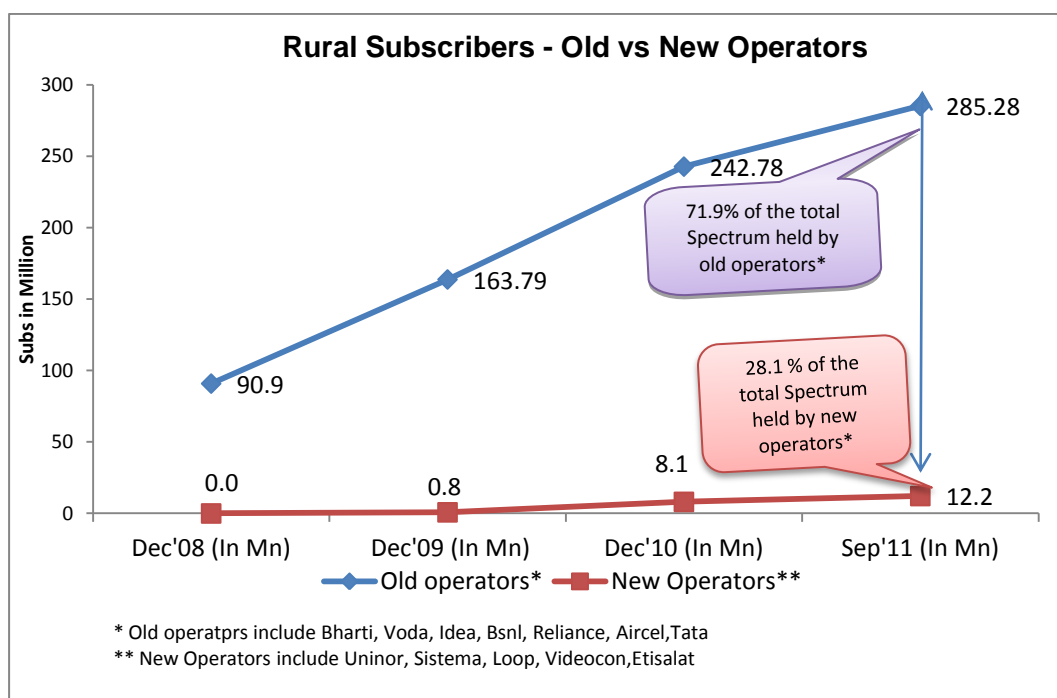
- c. **Auction of all available spectrum:** All available spectrum i.e. returned spectrum from quashed licences and unallocated spectrum should be put up for auction. No artificial scarcity of spectrum should be created by holding back the available spectrum especially when the Government is likely to release more spectrum for telecom sector.
- d. **Block Size:** The spectrum block size for which the bids are to be submitted should be the same for all the bidders.
- e. **Cap on Spectrum:** The overall spectrum holding for each operator should be limited to 25% of the 2G spectrum i.e. 800MHz, 900MHz and 1800 MHz put together in the respective service area.

We would also like to draw the attention of the Authority that the justification for “*phased auction*” put forward by some of the operators under the guise of “*Affordability*” and “*Level playing field*” is far from reality. The following facts will help in ascertaining the fallaciousness in the argument of “*level playing field*” put forth by the operators :-

A. New entrants’ contributions to tele-density versus old operators (Level Playing Field):

- a) Many of the operators, who were allocated licenses along with Spectrum in 2008 at the prices of 2001, have not even rolled out the services, even after the lapse of 4 years from the date of grant of license. Out of the 122 licenses granted in 2008, 38 licenses have less than 1000 subscribers in a particular service area as of December 2011. One of the new entrants holding National Licence **has not even commenced their telecom services in eight service areas** and has **less than 500 customers in 10 service areas**. This clearly indicates that the said licensees have not even rolled out the services, leave aside provision of services in rural and remote areas.

- b) The performance of some of the operators have been so dismal that TRAI had to recommend for the cancellation of 69 telecom licences – the first such move in the Indian telecom history.
- c) Other operators, who had been granted licenses in 2008 and have rolled out the services, have concentrated on the urban areas only. The below graph indicates the contribution to rural teledensity by the old operators viz-a-viz the new operators. It can be clearly seen that the new operators have focused their network roll out in the urban areas only:



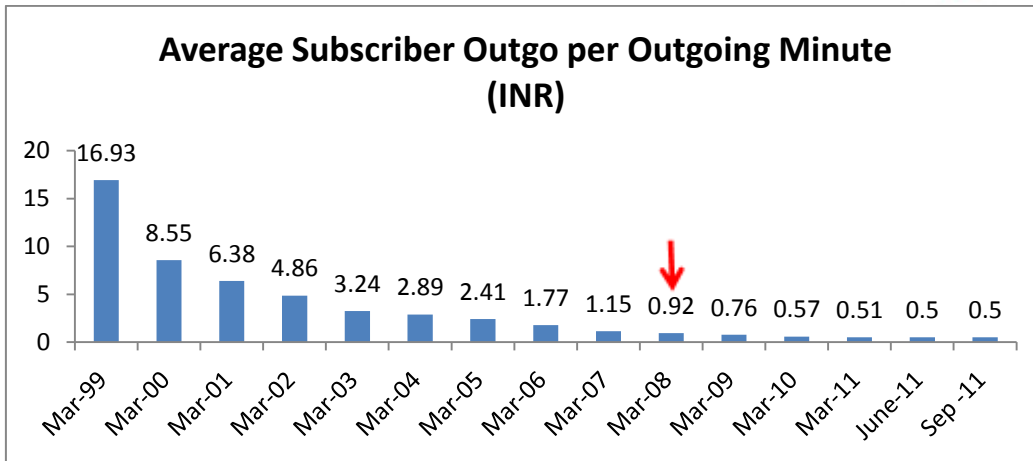
Source: TRAI

- It is to be noted that it is the old operators, who have made significant investments in rural India, running into thousand of crores and are meeting the Government's objectives of inclusive growth even with limited spectrum. On the contrary, the new entrants who have been holding on precious spectrum, have hardly done anything for the growth of telecom in rural India. For instance, the top two private operators who are holding only **18.95%** of the total allocated 2G spectrum, have more than **48%** market share in rural India (*active subscriber base*);

- On the contrary, the six new entrants, who holds 26.41% of the total allocated 2G spectrum, holds merely 3.05% market share (*active subscriber base*) in rural India;
 - Out of these six new entrants, the three new entrants, who holds 15.4% of the total allocated 2G spectrum, holds 0% market share in rural India.
- d) The old operators, who have been serving the *rural market consistently*, are significantly contributing to the exchequer by paying hundreds of crores for usage of the same spectrum for which the new entrants are hardly paying. For instance, as per TRAI's own data:
- The two old private operators, who holds 18.95% of the total allocated 2G spectrum pays 56.6% of the total spectrum payouts in the form of spectrum usage charge to the Government;
 - On the contrary, the new six entrants who hold 26.41% of the total allocated 2G spectrum, pays 2.41% of the total spectrum payouts to the Government
 - Dual technology/ CDMA operators who hold 22.03% of the total allocated 2G spectrum pay only 12.28% of the total spectrum payouts to the Government.
- e) Thus, any attempt to conduct the auction in phases and restrict the existing operators from bidding, would lead to discriminatory and favourable regime to one set of operators which may result in lower revenues to the exchequer without any corresponding advantage towards the telecom growth.

B. Enhanced Competition to ensure Affordable telecom services:

The Average Subscriber Outgo Per Minute (ASOPM) had also fallen more steeply till March 2008 compared to its decline after the entry of new operators.



Source: TRAI

It can be seen from the graph that during the period from 1999 to 2008, there had been a substantial drop in tariffs whereas the drop in tariffs have been negligible since the entry of new operators in 2008. Therefore, the argument that the entry of new operators only have led to a decline in tariffs is incorrect.

In view of the above, the argument that the auction be done in phases with the existing operators not allowed in the first phase to ensure level playing field does not merit any consideration. It is therefore submitted that the auction design should ensure that everyone has the equal participation in the auction process.

We would request the Authority for:

- Equal and fair opportunity to all the operators in auction and no favourable treatment towards any set of operators.
- “Level playing field” between all operators at all times instead of it being used against the old operators.

4. Spectrum Usage Charge:

In our response to the Consultation paper, we have already apprised TRAI regarding the ongoing regulatory arbitrage between the “dual technology operators” and “GSM operators” over spectrum usage charge.

In addition to the same, we would also like to highlight one more issue of regulatory arbitrage which tends to favour the CDMA operators vis-a-vis the GSM operators in terms of Spectrum Usage Charges:

- a. The present “spectrum usage charge regime” mandate each operator to pay enhanced spectrum usage charge (by 1%) for each additional spectrum block allocated based on subscriber-linked criteria (SLC). For instance, the GSM operators are required to pay 3% of their revenue at 4.4MHz, 4% at 6.2MHz, 5% at 8.2MHz etc.
- b. However, the current policy of escalating spectrum usage charges inappropriately favours the CDMA operators, as they are not required to pay any additional spectrum usage charge for first two additional spectrum blocks allocated on the basis of SLC. For instance, the CDMA operators pay 3% of their revenue for the initial spectrum block of 2.5MHz and continue to pay the same even after allocation of two additional blocks i.e. when they hold 3.75 MHz and 5 MHz of spectrum. This anomaly is shown in detail in the following table:

Spectrum allocation GSM	Total GSM Spectrum held	Spectrum Charges as % of AGR*	Incremental Spectrum Usage Charges %	Spectrum allocation CDMA	Total CDMA spectrum held	Spectrum Charges as % of AGR*	Incremental Spectrum Usage Charges %
Startup Spectrum	Upto 2 x 4.4 MHz	3	-	Startup Spectrum	Upto 2 x 2.5 MHz	3	-
Additional block of 1.8 MHz	Upto 2 x 6.2 MHz	4	1	Additional block of 1.25 MHz	Upto 2 x 3.75 MHz	3	0*
Additional block of 1.8 MHz	Upto 2 x 8.2 MHz	5	1	Additional block of 1.25 MHz	Upto 2 x 5.0 MHz	3	0*
Additional block of 2 MHz	Upto 2 x 10.2 MHz	6	1	Additional block of 1.25 MHz	Upto 2 x 6.25 MHz	4	1
Additional block of 2 MHz	Upto 2 x 12.2 MHz	7	1	Additional block of 1.25 MHz	Upto 2 x 7.5 MHz	5	1
Additional block of 3 MHz	Upto 2 x 15.2 MHz	8	1	Additional block of 2.5 MHz	Upto 2 x 10 MHz	6	1

Source: DoT’s Order No. P-11014/18/2008-PP dated 25th Feb, 2010

- c. As per the estimate the Government tends to lose **Rs. 110 Crores per year** on account of less Spectrum Usage charges paid by the private CDMA operator.

TRAI is therefore requested to take note of this anomaly and recommend its removal in its final recommendations.

5. Upfront Payment:

Since the 3G & BWA spectrum, the spectrum auction has become one of the major revenue sources for reducing the fiscal deficit. Further, it has also expedited the process of refarming of spectrum from various Government agencies for commercial usage due to incentives to build alternate media.

In the current budget, the Finance Ministry has projected around Rs. 40,000 crores from the spectrum auction. Further, as stated in our main response, TRAI should ensure that any proposal for “deferred payment” should apply and extend to all upfront payments for all spectrum including extension of spectrum/ license, auction for 1800MHz, 700MHz spectrum, and any future spectrum auction to ensure level playing field.

We are sure that any proposal for “deferred payment” will consider its impact on the current budget projections while also ensuring that it does not derail the refarming process for telecom sector.

6. Spectrum Trading:

We reiterate that the spectrum trading should be allowed on the following grounds:

Firstly, the spectrum trading should be allowed with built in safeguards to address the apprehensions regarding spectrum concentration rather than rejecting it wholly.

Secondly, in case of an apprehension with regards to “reduced competition”, the Government may decide the minimum number of operators. For instance, for 3G, the minimum number of operators may be kept at 3 including the Government operator.

Thirdly, the operators currently hold spectrum in various bands i.e. 800MHz, 900MHz, 1800MHz, 2100MHz or 2.3GHz under the same licence. The present M&A policy, inter-alia, contemplates the merger or acquisition of the whole licence and not spectrum in a particular band per se. Hence, it does not give any way out if an operator wants to exit from a particular spectrum/technology only.

For instance, if any 2G licensee wants to sell its 3G or BWA spectrum and/or its related assets, even without upsetting the “minimum number of operators” criterion, it cannot do so unless he agrees to sell its 2G spectrum business as well. Briefly, the current policy compels the operator to either sell the licence along with spectrum in all bands or continue to stay with all, rather than allowing them partial exit.

Such a policy was justified in the past as operators had one licence and one type of spectrum. Presently, as the operators hold spectrum in different bands under the same licence, the policy should give egress to operators, who are not to invest further in a particular spectrum band / technology after winning through auction, due to some business decisions

Any apprehension of windfall gains might be valid for spectrum given administratively but not for auctioned spectrum. As stated above, there might be cases where after winning the spectrum in auction, the winner is unable to invest or continue with that technology / spectrum further. Hence, the policy should allow such operators to sell their spectrum allocated through auction, who can infuse more investment in that particular technology / spectrum band.

Such policy will not only ensure that the spectrum remains in the hands of the serious operator but will also lead to its most efficient & effective utilization in the larger public good.

7. Spectrum sharing:

There is no rationale for allowing sharing of 2G spectrum while prohibiting sharing of 3G & BWA spectrum when the same has been allocated to the operators after paying huge upfront amounts. The principles of equity warrants that the spectrum sharing should be allowed for all spectrum including 3G & BWA spectrum.

At the time of releasing the 3G NIA, the spectrum sharing as a policy was not allowed even for 2G spectrum . Since, now the sharing of 2G spectrum has been allowed, the same should also be extended for 3G & BWA spectrum and there should not be any restrictions on sharing of any spectrum allocated through auction.