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RJIL/TRAI/2020-21/53

03<sup>rd</sup> June 2020

To,

**Shri Syed Tausif Abbas**  
**Advisor (NSL-II)**  
**Telecom Regulatory Authority of India**  
**Mahanagar Doorsanchar Bhawan**  
**Jawahar Lal Nehru Marg, New Delhi 110002**

**Subject: Comments on Consultation Paper on "Methodology of applying Spectrum Usage Charges (SUC) under the weighted average method of SUC assessment, in cases of Spectrum Sharing" dated 22.04.2020.**

Dear Sir,

Please find enclosed comments of Reliance Jio Infocomm Ltd. on Consultation Paper on "Methodology of applying Spectrum Usage Charges (SUC) under the weighted average method of SUC assessment, in cases of Spectrum Sharing" dated 22.04.2020.

Thanking You,  
For Reliance Jio Infocomm Limited,

**Kapoor Singh Guliani**  
Authorised Signatory



Enclosure: As above.



**Reliance Jio Infocomm Limited**, CIN : U72900GJ2007PLC105869

Correspondence Address : D-7, Dhawandee Building, 6 Jantar Mantar Road, New Delhi - 110001, India.

Tel : 011-43523795, Fax : 011-23340453

Registered Office : Office - 101, Saffron, Nr. Centre Point, Panchwati 5 Rasta, Ambawadi, Ahmedabad-380006, Gujarat, India.

Tel : 079-35600100

www.jio.com

**Reliance Jio Infocomm Ltd.'s (RJIL) Comments on TRAI's Consultation Paper on  
"Methodology of applying Spectrum Usage Charges (SUC) under the weighted average  
method of SUC assessment, in cases of Spectrum Sharing"**

1. At the outset we welcome opportunity extended by the Authority to comment on Consultation Paper on "Methodology of applying Spectrum Usage Charges (SUC) under the weighted average method of SUC assessment, in cases of Spectrum Sharing".
2. The continued rise in mobile data traffic requires access to additional spectrum to meet the growing demand. Spectrum sharing arrangement is of great consequence as part of spectrum demand can be met by allowing two licensees to combine part or all of their spectrum and use that more efficiently.
3. Technology upgradation is a continuous process in telecom sector. Carrier aggregation was not common when these guidelines for spectrum sharing were issued but today it is a very common practice as equipment to support four different bands are available for 4G technology.
4. Although there are lots of benefits of spectrum sharing for consumers as well as service providers, but spectrum sharing cannot succeed unless there is an enabling regulatory framework which encourages spectrum sharing. The issue raised in the consultation paper is based on different interpretation of unambiguous clause by some sections.
5. The spectrum sharing guidelines dated 24<sup>th</sup> September 2015 ("Guidelines") provide that (i) Spectrum sharing is permitted between two TSPs having Access authorization in same LSA and utilizing the spectrum in the same band. (ii) the Spectrum Usage Charge (SUC) rate of each of the licensees post sharing increases by 0.5% of Adjusted Gross Revenue (AGR) and (iii) for purpose of SUC it will be considered that entire spectrum holding in the particular band has shared. The reading of these provisions lead to only one interpretation that incremental SUC rate is applicable to the shared band and not on the entire spectrum holding. Similarly, the TRAI Recommendations dated 21<sup>st</sup> July 2014 and response to back reference dated 25<sup>th</sup> April 2015 (Collectively referred as "Recommendations" hereinafter), on which the Guidelines are based, nowhere indicate that the incremental SUC is to be levied on entire spectrum holding of a licensee.
6. In fact, what is easily and clearly inferable from the Recommendations is that since every spectrum sharing proposal is a separate proposal, which is specific to a spectrum band and Licensed Service Area (LSA), the incremental SUC of 0.5% applies to that particular spectrum band in the specified LSA, as has also been acknowledged by the Authority in the Consultation Paper. We submit that this along with the combined reading of para 2, 3 and 12 of the DoT Guidelines is sufficient to remove any residual ambiguity in understanding of applicability of incremental 0.5% charge. Needless to add





here that had either the Authority or DOT intended to apply incremental SUC on the entire spectrum holding, the same would have reflected explicitly in Recommendation and Guidelines like the unambiguity in the provision stating that *“for the purpose of SUC it will be considered that entire spectrum holding in the particular band has shared”*. Clearly, the absence of such provision itself establishes that such implementation was never intended.

7. We further submit that on 31<sup>st</sup> Oct 2014, DOT introduced weighted average rate concept to calculate SUC rate with a weightage of spectrum holding in each of the band, where licensee obtained different band with different SUC. This was subsequently amended on 12<sup>th</sup> Aug 2016 to include all the spectrum band whether assigned administratively or through auction or through trading for calculating weighted average rate. This order also specifies the details of the slab rates of SUC as applicable for various spectrum holdings and rate of SUC applicable on spectrum acquired through auction conducted in 2010, 2012, 2013, 2014 and 2015. Pertinently enough, this order, though subsequent to Guidelines, does not specify applicability of incremental SUC rate in case of sharing. Thus, clearly there is a need to remove the ambiguity in DOT, as noted in para 2.11 of the Consultation Paper.
8. Broadening of incremental SUC rate specified for shared spectrum band to complete spectrum holding i.e. even for spectrum bands which are not shared not only amounts to a policy change retrospectively imposing huge additional cost and making spectrum sharing arrangements unviable but points to policy and regulation instabilities against the ease of doing business.
9. It is submitted that there is a significant difference in cost of sharing of spectrum under two option viz. (i) incremental 0.5% SUC rate is applied on the specific shared spectrum band and (ii) incremental 0.5% is applied to the overall Weighted Average Rate of SUC, which has been derived from all bands. The option (ii) has not been rightly specified either in Guidelines or in any other SUC related order or Recommendations as that is not the intent or interpretation and the issue has emerged only when few Offices of CCAs have applied incremental SUC rate on the entire spectrum holding. Thus, imposition of SUC based on option (ii) not only put disproportional cost on TSPs but is also legally untenable.
10. RJIL has calculated the impact of application of two methodologies of applying SUC under the weighted average method of SUC assessment in cases of Spectrum Sharing in a sample service area where it is sharing spectrum with Reliance Communications Limited (RCOM). It is found that SUC outgo post sharing of spectrum increases by 3.2% under option (i) i.e incremental 0.5% SUC is applied only on the shared 800 MHz spectrum band, while increase in SUC outgo under option (ii) is 16% i.e when



incremental SUC rate is applied on the overall weighted average SUC rate of entire spectrum holding. Similar exponential impact on the outgo is easily discernible from the sample calculation of weighted average SUC rate applied post sharing as annexed with the CP

11. Evidently, the cost of spectrum sharing under option (ii) far exceeds the benefit of spectrum sharing and defeats the basic objective of using spectrum more efficiently and improve quality of service. The spectrum sharing would never be a viable under Regulatory framework with SUC charging as per Option (ii) and would be a big deterrent in wider adoption of spectrum sharing, which has anyways not found wide adoption as also noted by the Authority.
12. We submit that lack of adoption of spectrum sharing, despite of it being a major industry demand for many years, indicates to the inherent flaws in the policy. As noted by the Authority, the policies need to be pragmatic and future oriented to support innovation and help deploy newer technologies. The Authority has wisely noted that effective adoption of infrastructure sharing including the spectrum sharing will be critical for the launch of 5G technologies, as sufficient spectrum will be the first requirement to launch 5G technology. Thus, simplification in spectrum sharing policies is imperative to promote new technologies.
13. The **National Digital Communications Policy, 2018**, under the mission "Connect India" aims to **further liberalize the spectrum sharing, leasing and trading regime** in order to optimize availability and utilization of spectrum. We submit that to achieve this, simplification of the Spectrum sharing regime is imperative and the first step to make this policy pragmatic by doing away with the incremental SUC levy. The spectrum sharing policy can be further refined by taking cues from the global innovations and similar domestic policies.
14. A close parallel to spectrum sharing is Intra Circle Roaming where also one operator uses spectrum of another operator to provide services. The Intra Circle Roaming is purely a commercial arrangement between two operators and no additional Government levy is charged. In case revenue is increased due to Intra Circle Roaming, correspondingly Government revenue share also increases. The enabling Regulatory framework of Intra Circle Roaming Arrangements has resulted much wider adoption of Intra Circle Roaming compared to Spectrum Sharing.
15. SUC is ideally an administrative charge, payable to the Government towards the administrative cost for the management of the spectrum. As the TSPs are already paying SUC for the spectrum allotted to them as a percentage of AGR, the sharing of spectrum may not necessarily justify additional SUC burden on them. Given the change





in the sector market dynamics, even if there is an increase in the revenue for the TSPs, as a result of sharing of spectrum, the existing SUC rate will still result in higher payable SUC for the TSPs; as the parties are already paying SUC as a percentage of AGR and thus the Government will continue to get higher SUC revenue even if no additional SUC is charged. Hence we submit that, to promote sharing of spectrum, there should not be any additional/incremental SUC for the TSPs.

16. In case, Authority still decides to apply incremental SUC, it is submitted that incremental SUC rate should be applicable only on the spectrum band in which sharing is permitted. The incorrect interpretation by certain CCA offices is neither consistent with Guidelines and Recommendations nor legally tenable therefore a clarification to this effect should be issued immediately. Further, it is more than clear that incremental SUC post sharing of spectrum is a deterrent for TSPs in entering into spectrum-sharing arrangements for efficient utilization and should be abolished completely.

17. RJIL's detailed question-wise response is as below.

**Q1. Do you agree that as per the existing Spectrum-Sharing Guidelines dated 24th September 2015, post sharing of spectrum, increment of 0.5% on SUC rate should apply on the spectrum holding in specific band in which sharing is taking place and not on the entire spectrum holding (all bands) of the TSPs. Please justify your answer.**

**RJIL Response**

1. Yes, as per the existing Spectrum-Sharing Guidelines dated 24<sup>th</sup> September 2015, post sharing of spectrum, increment of 0.5% on SUC rate should apply on the spectrum holding in specific band in which sharing is taking place and not on the entire spectrum holding (all bands) of the TSPs.
2. The Spectrum Sharing Guidelines dated 24<sup>th</sup> September 2015, TRAI's recommendation dated 21<sup>st</sup> July 2014 on Guidelines on Spectrum Sharing and DOT's order dated 12<sup>th</sup> August 2016 on Weighted Average Rates of SUC of different spectrum bands do not provide anywhere that post sharing of spectrum, increment of 0.5% on SUC rate is applicable on the entire spectrum holding. The relevant provisions are considered below to establish that increments SUC Rate is applicable only on spectrum band which has been shared.

**Guidelines for Spectrum Sharing of Access Spectrum by Access Service Providers dated 24<sup>th</sup> September 2015**



- (i) As per clause (2) of the Guidelines sharing of spectrum is permitted between two Service Providers utilizing the spectrum in the same band. The clause (3) of these Guidelines further specifies that spectrum sharing is not permitted when both the licensees are having spectrum in different bands. It has been further provided in clause (12) of Guidelines that, for the purpose of Spectrum Usage Charges (SUC) it shall be considered that Licensees are sharing their entire spectrum holding in a particular band in the entire Licensed Service Area. The clauses (2), (3) and (12) of spectrum sharing guidelines are reproduced below:

*(2) Spectrum sharing is permitted between two Telecom Service Providers utilizing the spectrum is the same band.*

*(3) Spectrum Sharing is **not** permitted when both the licensees are having spectrum in different bands. Leasing of spectrum is not permitted.*

*(12) For the purpose of charging Spectrum Usage Charges (SUC), it shall be considered that the licensees are **sharing their entire spectrum holding in the particular band in the entire LSA**.*

- (ii) The combined reading of clauses (2) and (3) makes it absolutely clear that sharing of spectrum is permitted only and only in the same band. Thus, clearly the incremental SUC rate can be imposed only on the spectrum bands that are proposed to be shared.
- (iii) The clause (12) leaves no doubt that incremental 0.5% SUC rate post sharing is applicable only on a particular band which is being shared. Charging incremental SUC of 0.5% on entire spectrum holding amounts to the fact that entire spectrum in all bands is being shared which makes clause (2) & (3) redundant as it may be the case that both licensee have spectrum in different bands which is not permitted to be shared.
- (iv) Further, in case there was any intent of applying incremental SUC rate post sharing of spectrum on the entire spectrum holding then clause (12) should have provided that, "for purpose of charging SUC it shall be considered that the licensees are sharing their entire spectrum holding" and clause (2) & (3) would not have been there. However, clause (12) simply provides that, for purpose of charging SUC it shall be considered that the licensees are sharing their entire spectrum holding in the particular band in the entire LSA.





- (v) Thus, Spectrum Sharing Guidelines without a shadow of doubt provide that Incremental SUC rate post Sharing of Spectrum is only applicable for spectrum band which is shared and not the entire spectrum holding.

**TRAI recommendations on Guidelines on Spectrum Sharing dated 21<sup>st</sup> July 2014**

- (i) When TRAI issued recommendation on Guidelines of Spectrum Sharing, the concept of weighted average SUC was not prevalent. The SUC rate for administratively allocated GSM and CDMA spectrum were specified separately. The SUC rates for spectrum auctioned in 2010, 2012 and 2013 were also specified band-wise. Thus, when TRAI recommended that the SUC rate of each of the licensees post-sharing shall increase by 0.5% of AGR, it was specifically for the band which is shared, as all SUC rates were band specific and the concept of weighted average was not even there.
- (ii) The example given in para 12 of the reconsidered opinion of TRAI dated 21<sup>st</sup> May 2015 on the recommendations for Guidelines for Spectrum Sharing refers to SUC for the same band as 900MHz and 1800 MHz was treated as same band for all purposes including rate of SUC. SUC rate for 2100 MHz were not specified separately if not held as standalone, and the rate applicable for 900/1800 MHz were to be charged. The reconsidered opinion nowhere specify that post sharing in 900/1800/2100 MHz band, SUC for 800 MHz or 2300 MHz, if held by any licensee will also increase by 0.5% of AGR. The reliance on this example to increase SUC post sharing on all the spectrum bands held by the Licensees is incorrect.
- (iii) In case incremental SUC rate post sharing of spectrum was intended to be applied on the entire spectrum holding then TRAI would have sent a specific recommendation on weighted averages of SUC rates as the concept of weighted averages was unknown. However, the mere fact that TRAI reiterated its recommendations even post introduction of the weighted average concept indicates that the imposing the incremental SUC on entire spectrum holding was not even under discussion.
- (iv) Even in the current consultation paper in para 2.15 it has been mentioned that TRAI recommendation **of Spectrum Sharing were to increase the SUC rate for the spectrum band being shared.** The extract of para 2.15 is given below:

*2.15 As already discussed, TRAI recommended to increase the SUC rate for the spectrum band being shared by 0.5% for both the licensees.*



- (v) Thus, it is beyond any doubt that TRAI's recommendation on incremental SUC rate post sharing of spectrum was specific for the band which has been shared.

**DoT's Order Dated 12<sup>th</sup> August 2016 on Weighted Averages of SUC Rates of Different Bands**

- (i) The latest weighted averages order dated 12<sup>th</sup> August 2016 stipulate that weighted average rate across all spectrum assigned to an operator in all Access Bands shall be applied for charging SUC and the weighted average is to be derived from sum of product of spectrum holdings and applicable SUC rate divided by total spectrum holding. The methodology of weighted average SUC rate given in the order is only with regard to weighted average of SUC rates of individual spectrum bands. Nowhere it has been specified that incremental SUC rate post sharing is to be added to the weighted average of SUC rates of all spectrum bands and not to the individual SUC rate of spectrum band which is shared.
- (ii) The concept of applicability of incremental SUC rate post sharing on total weighted average of all bands also fails for the reason that 2300 MHz band was not included in the weighted averages of all spectrum bands till 12<sup>th</sup> August 2016. Thus, any spectrum sharing of 2300 MHz band prior to 12<sup>th</sup> August 2016 would have inevitably resulted in application of incremental SUC rate on this band only as 2300 MHz was not included in weighted average.
3. Thus, neither of Spectrum Sharing Guidelines, TRAI Recommendations on Spectrum Sharing nor DoT orders on weighted averages specify that increment of 0.5% on SUC rate will apply on the spectrum holding on the entire spectrum holding (all bands) of the TSPs.
4. Hence as per the existing Spectrum-Sharing Guidelines dated 24<sup>th</sup> September 2015, post sharing of spectrum, increment of 0.5% on SUC rate should apply on the spectrum holding in specific band in which sharing is taking place and not on the entire spectrum holding (all bands) of the TSPs

**Q2. Do you think that increment in SUC rate is a deterrent for TSPs in entering into spectrum-sharing arrangements? Further, do you also think that in order to facilitate the spectrum sharing, there should not be any increment in SUC rate post sharing of spectrum? Please justify your answer.**

**RJIL Response**





1. Yes, increment SUC rate is a deterrent for TSPs in entering into spectrum-sharing arrangements. It has been explained above that spectrum sharing of just one carrier of 2x1.25 MHz band in one sample Service Area increases SUC liability by 3.2%. With such huge cost of sharing, Spectrum Sharing cannot succeed as cost outweighs benefit arising out of Spectrum Sharing.
2. Spectrum acquisition involves payment of auction bids in addition to annual Spectrum Usage Charges as a percentage of AGR. As TSPs are already paying spectrum acquisition cost and revenue share there is no justification for additional levy in form of incremental SUC rate post spectrum sharing.
3. As noted by the Authority, the Government revenue share remain fully protected even in case there is no increment SUC rate as Government revenue share also increases with increase revenue arising due to spectrum sharing.
4. A close parallel of spectrum sharing is Intra Circle Roaming arrangement where under one operator uses spectrum as well as infrastructure of another operator to provide services. The Intra Circle Roaming is purely a commercial arrangement between two operators and no additional Government levy is charged. In case of any increase in revenue, there is a corresponding increase in Government revenue share. The enabling Regulatory framework of Intra Circle Roaming Arrangements has resulted much wider adoption of Intra Circle compared to Spectrum sharing.
5. **In view of the above it is submitted that the incremental SUC charge is a major deterrent to spectrum sharing and there should not be any increment in SUC rate post sharing of spectrum.**

**Q3. What other changes are required in the Spectrum-Sharing Guidelines to facilitate spectrum sharing? Please provide detailed explanation and justification for your suggestions.**

**&**

**Q4. If there are any other issues/suggestions relevant to the subject, stakeholders may submit the same with proper explanation and justification.**

#### **RJIL Response**

The following changes are suggested in the Spectrum Sharing Guidelines which will facilitate Spectrum Sharing:

- (i) There should not be any incremental SUC rates post sharing of spectrum.



- (ii) Spectrum Sharing of Liberalised spectrum may be allowed like Intra Circle Roaming on commercial arrangement basis and there should not be any requirement of prior Government approval for Spectrum Sharing.
- (iii) Spectrum Sharing should be allowed across all bands as inter-band carrier aggregation technology makes spectrum sharing possible across different spectrum bands and utilise it more efficiently.
- (iv) The shared spectrum should not be counted for calculating spectrum Cap as the spectrum sharing is required on immediate basis when additional spectrum through auction is not available. However, when licensees participate in actual auctions then shared spectrum may act as a barrier as 50% of shared spectrum is considered towards spectrum caps.
- (v) It is suggested that with spectrum trading being permitted, leasing of spectrum, as per mutual commercial arrangements between the two licensees should also be allowed as this medium also enhances efficiency of spectrum usage. In addition, leasing may generate additional revenues to the Government post receipt of auction proceeds as lease rental would also be subject to revenue share.

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