

November 12, 2009

**The Chairman,**  
**Telecom Regulatory Authority of India**  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg, New Delhi – 110 002.

**Kind Attn. : Dr. J.S.Sarma**

**Subject : TRAI consultation paper dated 16<sup>th</sup> October 2009 on overall  
spectrum management & review of license terms & conditions.**

Dear Sir

IDEA Cellular welcomes the TRAI Consultation Paper. Overall, we believe the policies of the Government have been subjected to so many ad-hoc stresses, that further band-aiding is difficult, and a new approach is called for. We concur with the view of the DoT Committee Report of May 2009 that the policy must strike a balance between spectral efficiency on the one hand, and full competition on the other, in an environment which moves away from 'command and control' to a greater market driven mechanism.

We wish to add that it is very desirable that at least the broad contours of the final policy emanating from this Consultation Paper be known before actual bidding for 3G Auctions. This would be a pre-requisite for an international standard auction.

Our specific answers are provided against individual questions.

Thanking you,

**For IDEA Cellular Limited**

**Rajat Mukarji**  
**Chief Corporate Affairs Officer**

Encl. : A/a

## **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?**

**A.** Broadly, yes. The projections include multiple SIM ownership, but that is a feature already present.

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

We respectfully disagree with the spectrum requirement projections. This is contrary to our actual experience and the experience of our partners across the world, where the per operator average is closer to 20 MHz. Even the DoT Committee has arrived at a threshold of 12 MHz for GSM spectral efficiency. There has been a tendency in India in recent times to justify spectral inefficiency. With respect, it should be recognized that eventually, the price of spectral inefficiency is paid by society, not the operators.

We concur with the DoT Committee's threshold estimate, duly calibrated for GSM and CDMA bands.

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

**A.** We concur with the response given by the COAI in this regard.

**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?**

- A.** The current CMTs /UAS licenses permit all types of access services, internet services, and triple play. Further, 3G services are already being offered by some operators.

Therefore, no restriction is necessary.

It may however be noted that the flawed allocation of 2 separate tranches of both CDMA and GSM spectrum under 'dual technology' has resulted in some operators already having surplus CDMA spectrum which they are using to offer 3G services. This is contrary to the principle of level playing field, and undermines the forthcoming 3G auction. This anomaly should be corrected.

Further, the current license comes allied with spectrum. The license provides extension for 10 years at a time, on mutually agreed terms. Hence the question of assignment of spectrum in the 800/900 MHz band does not arise.

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

- A.** The digital dividend should be exploited by the country, and the 698-806 MHz band thus vacated should be utilized for mobile broadband.

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

- A.** The digital dividend has major implications on supply and demand of spectrum for both 3G and 4G. This outline is required for an informed auction process. This outline is the basis to ensure that the country makes the appropriate long term deployment of investments and assets.

**Licensing issues**

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

- A.** Yes, the spectrum should be delinked from the license.

We concur with the views of the Authority vide their recommendations of Aug 28, 2007, and the views of the DoT Committee of May 2009.

However, any change in the licensing regime should be faithful to the reason for the change, which is, that while there is no harm in providing a license in perpetuity, a country may not like to provide spectrum, which is a sovereign resource and capable of unexpected capability in the distant future, in perpetuity. Therefore, while spectrum could be delinked, such a change should not aim to be disruptive at the end of the spectrum term, or to introduce considerations which are inimical to the original intent.

- 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?**

- A.** In the hypothetical and undesirable situation that spectrum and license are not delinked, the minimum number of operators could be 4, including the public sector operators. No stipulation of maximum is called for because the number of licenses per service area already exceed any sustainable maximum number.

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

- A.** We concur with the DoT Committee recommended cap of 25% of spectrum assigned in a service area. So long as there is room for at least 4 more operators, the purpose of competition is fully served, and market forces should be allowed to prevail for sector efficiency.

- 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?**

**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?**

**A.** We have already concurred with the DoT Committee recommendation that the maximum spectrum per operator should not exceed 25% of total assignable spectrum. This limit ensures full competition. This also determines the maximum.

As the situation of an operator already holding more than the maximum does not exist, so the question is moot. However, if the spectrum has been allocated as per policy, then the question of taking back or any other punitive treatment, does not arise.

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

**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?**

**A.** The chief value of the Entry Fee for the license is the value of the spectrum which comes allied with the license. In case the 2 are delinked, then the Entry Fee for license alone should be a modest figure, but not lower than the Entry Fee for NLD /ILD licenses.

The TRAI in 2005 has already recommended a methodology for arriving at a suitable Entry Fee for License without spectrum.

**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?**

**A.** We see no purpose in the Spectrum Audit. Market forces themselves will be the best audit.

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

**A.** This is completely impractical for technology, finance, and consumer reasons. There is no merit in the suggestion.

**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?**

**A.** Based on the answer to Q15, this is equally impractical. Even a simple thing like the USO fund has remained unutilized for years for this same reason. Mobile telephony is by nature integral.

### **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?**

**A.** Yes, the current M&A regulations are a relic from the duopoly regime, and anyway are riddled with inconsistencies. They should be scrapped. In the interest of efficiency, M&A should be immediately liberalised.

The suggested framework would be to allow M&A, and with spectrum travelling with the entity, subject to the cap that the resultant entity holds no more than 25% of the total assigned spectrum in the service area.

Having capped maximum spectrum holding at 25%, the present requirement that the merged entity holds no more than 40% market share is unnecessary. First, the definition of market share is imprecise, the share itself is dynamic, and with India divided into 22 Circles, there is always the possibility that the tail may wag the dog. This requirement should be dispensed.

It is also suggested that licensees who have spectrum but no customers, should be allowed to surrender GSM and microwave spectrum, if they wish, against refund of 70% of Entry Fee without interest, and with release of their guarantees. The Govt will be able to put the surrendered spectrum to better use. This is an option which should be immediately put in use. If necessary, the Govt may stipulate that it reserves the right to say No, to guard against future abuse.

**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?**

**A.** The origin of lock-in relates to the era of duopoly. The only remaining purpose, was to check arbitrage-seeking by licensees who have obtained spectrum at administered price, which anyway has not been achieved.

If M&A rules are liberalised as suggested, then the lock-in serves no purpose.

**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?**

**A.** No. We have already answered this in reply to Q.17.

**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?**

**A.** We endorse the view of the DoT Committee that the Transfer Charge should be a one-time levy, only for the first such transfer /merger, and only when spectrum has been assigned without an upfront charge. Spectrum assigned through auction, or spectrum received through auction of UAS /CMTS license, or spectrum for which market price is paid or agreed to be paid, will not attract any charge when transferred. For the sake of clarity, spectrum over 6.2 MHz for which an upfront fee is levied to be exempt from transfer /sharing fee.

It may be observed that market conditions today are closer to the intrinsic value, rather than the bubble days of 2007-08. The Transfer Charge should be moderate, otherwise it will obstruct the larger goal of M&A of taking the country to a more efficient paradigm. We recommend Transfer Charge for all India spectrum should be under Rs. 100 cr per 1 MHz combined for all 22 Service Areas.

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

**A.** We agree with the views of the DoT Committee that the Transfer Charge would be payable on the lesser of the spectrum holdings of the merging entities. This is logical, and this should be the basis, irrespective of the legal /financial structure of M&A.

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

**A.** Yes, 25% of total assigned spectrum.

**Spectrum Trading**



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

A. Yes. This is a logical conclusion.

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

A. Any access service licensee.

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

A. The original allottee should not be stopped from trading in spectrum, because that would only keep spectrum out of productive use. If yet trading by such an allottee is to be discouraged, then it is all the more desirable to have a policy for surrender of spectrum to the Govt as explained in para 4 of our answer to Q.17.

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

A. Transfer Charge should be levied in the case of spectrum trading as in the case of M&A, as both routes can achieve the same end result.

**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?**

A. The Transfer Charge should be moderate, so as not to abort M&A. The heady bubble prices of 2007-08 should not be a benchmark. We recommend Transfer Charge for all India spectrum should be under Rs. 100 cr per 1 MHz combined for all 22 Service Areas.

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

**A.** As spectrum bands are eventually fungible, the rules should apply to all bands.

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

**A.** The block size should be left to the market. For convenience, minimum block could be 1.0 MHz.

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

**A.** To be left to market forces to decide.

### **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?**

**A.** We concur with the recommendations of the DoT Committee reproduced below :

*“Sharing of 2G spectrum amongst UAS/CMTS licensees will become feasible if the annual spectrum usage charges are made uniform for all bands irrespective of amount of spectrum held. The Committee is of the view that if annual spectrum charges are made uniform as recommended in Chapter V, Government may permit sharing of spectrum also, along with transfer of spectrum through sale or merger. Sharing of spectrum is not permitted amongst UAS/CMTS licensees who opt not to pay an up-front charge for additional spectrum assigned to them prior to 17. 1.2008*

*beyond 6.2 + 6.2 MHz. Sharing should be permitted on payment of sharing charges' to the Government for the quantity of spectrum shared, in the same manner and of like amount as applicable in case of transfer or merger of the spectrum.*

*Sharing makes economic sense only when the full spectrum is shared between the operators in a service area. It should, therefore, be permitted only when two or three GSM or CDMA operators share their entire spectrum holding in a license area. When two operators share spectrum, sharing charges shall be levied on the smaller of the two spectrum blocks being shared. In case three operators share spectrum, sharing charges shall be levied on the smaller two spectrum blocks being shared.*

*Since spectrum sharing arrangements may sometimes unravel, the policy may also provide for retention of sharing charges only to the extent leviable for the actual period (part of the year will be taken as full year) of the sharing on a prorata basis, and refund of the difference. In case of subsequent sale or merger of the spectrum, transfer charges or merger charges as the case may be will be payable, prorata on the balance period of the spectrum assignment.*

*In case of sharing of spectrum, each licensee will have the benefit of the aggregate shared spectrum. For the purpose of assessing the total 2G spectrum holding of a UAS/CMTS licensee, the total shared spectrum will be counted in the hands of each licensee. In case one of the licensees sharing spectrum has already fulfilled the roll-out obligations, there will be no further penalties on any of the licensees sharing spectrum. In the case where none of the licensees has fulfilled the rollout obligations, penalties for unfulfilled rollout obligations will be applicable on each licensee separately.*

*The Wireless Advisor is required to monitor compliance with the various technical conditions of the spectrum license such as interference, power limits and transmission within assigned frequencies. In case of sharing it will be necessary to prescribe responsibility jointly and severally for compliance of license conditions of the entire shared spectrum.”*

**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?**

**A.** The Sharing Charges should be the same as Transfer Charges for M&A, levied as per lesser of the spectrum blocks being shared and having the same exceptions / exemptions as applicable in case of Transfer Charges.

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

**A.** At least 1 of the entities sharing the spectrum must fulfill roll-out obligations. This is only to guard against spectrum squatting.

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

**A.** Either.

### **Perpetuity of licenses**

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

**A.** There is a logic for the spectrum not being in perpetuity, being a sovereign resource capable of unknown capabilities. There is no reason for any time limit for the license, once spectrum is delinked.

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

A. Spectrum assignment should be for 20 years. Renewal should be non-disruptive in the normal course, as visualised in the license agreement.

**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?**

A. All spectrum assigned so far is co-terminus with the license. While issuing the in-principle approval for dual technology, the DoT has stipulated this. This condition has to stay.

**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?**

A. In the normal course, renewal should be non-disruptive, as visualised in the license agreement.

**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?**

A. Yes, and in a non-disruptive manner with moderate fee. The licensees make their investments, and consumers repose their faith, on this assumption.

### **Uniform License Fee**

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

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

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

**A.** There are 2 very major advantages of a Uniform License Fee.

The first is that License Fee in competitive terms is akin to Sales Tax or Excise Duty. In any truly competitive sector, it is incomprehensible that competitors can have differential Sales Tax rates. This distorts competition.

Second, a uniform rate excludes the possibility of arbitrage seeking between different services. We already know the controversies surrounding this area. The TRAI has also noted this point in past recommendations.

Given the high incidence of total taxation in the telecom sector, the uniform License Fee should be 1%. Separately, the USO contribution @ 5% is very high and is perversely obstructing rural roll out instead of encouraging it. As earlier committed, the USO figure should be dropped immediately to 3% for licensees who have achieved 95% development block roll-out in the given service area.

**Spectrum assignment**

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

**A.** We concur with the view of the DoT Committee. Further assignments should be through auction. License Fee rate should be uniform. UAS /CMTS licensees who have spectrum beyond 6.2 MHz prior to 17.1.2008 could have an option to pay an upfront charge to avail the lower License Fee rate.

We however disagree with the Committee view that the Upfront Charge should be indexed to the 3G auction pro-rated price. This is because the spectrum beyond 6.2 MHz is chiefly in the 1800 MHz band which is not capable of providing 3G services. Secondly, the 3G auctions are happening in an environment of a contrived scarcity of slots. There can be no equality of unequal situations. The Upfront Charge can be 40% of the 3G reserve price. The DoT Committee recommendation on this score is

again influenced by bubble prices of 2007-08, and therefore unrealistically high and impractical .

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

**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?**

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

**A.** The SLC has undergone too many ad-hoc changes, and with the arrival of data traffic is now a relic.

**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?**

**A.** Different spectrum holding is a consequence of the policies of the past, which were based on a logic that was then appropriate. There is nothing unusual or unfair. As long as level playing field was observed at all times, this is a non-issue.

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

**A.** It is difficult to give an answer as to what the criterion should be, should SLC be continued. SLC, apart from ignoring data usage, is prone to abuse because subscribers and traffic can, and have been achieved through free minutes, to qualify for higher tranches. If the continuation of SLC still remains in place, it will require a separate discussion.

**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?**

A. Spectrum being used for commercial services should be auctioned. In other cases, e.g. microwave and backbone spectrum, allocation and methodology to be based on fair usage charges.

### **Spectrum pricing**

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

**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?**

A. Since all spectrum has been allocated as per prevailing policy, and the price for spectrum extracted through the AGR mechanism, and given that all operators have spectrum far below international standards, and below spectral efficiency threshold, there is no logical or legal basis for the question.

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

A. The optional Upfront Charge for spectrum beyond 6.2 MHz to avail of the lower Uniform License Fee should be no more than 40% of the 3G Reserve Price per MHz. Please see para 2 of our reply to Q.45..

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



**A.** The DoT Committee has provided reasons and basis for a uniform spectrum usage charge, and we concur with the same.

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

**A.** No.

**Structure for spectrum management**

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

The answer to this will involve a comprehensive relook of the powers and roles of different institutions. We are not attempting a half-baked recommendation.

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