

VTL/Reg/TRAI/1203/3013

March 21, 2012

Shri Sudhir Gupta
Pr. Advisor (MS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg,
New Delhi - 110002

Subject: Response to consultation paper on 'Auction of Spectrum'
Reference: Authority's Consultation Paper No. 04/2012 dated 7th March 2012

Dear Sir,

This is with reference to the Authority's Consultation Paper on 'Auction of Spectrum' issued on 7th March 2012. We are pleased to attach our comments on the issues raised vide Consultation Paper referred above.

We hope the Authority will consider our response favorably and open house discussions on the same will be conducted at the earliest.

Thanking You,

Yours Sincerely,

For **Videocon Telecommunications Limited**



KL Jain
Head - Regulatory

Enclosure: As Stated Above

**RESPONSE TO CONSULTATION PAPER NO. 4/2012 DATED MARCH 7, 2012 ON
AUCTION OF SPECTRUM**

1. Introduction

- 1.1 The Telecom Regulatory Authority of India (“**TRAI**”) has invited comments from stakeholders on the Consultation Paper No. 4 of 2012 dated March 7, 2012 on Auction of Spectrum (“**Consultation Paper**”). The Consultation Paper has been prepared by the TRAI in view of the directions given by the Hon’ble Supreme Court at Para 81 (iii) in the judgment dated February 2, 2012 in W.P. (C) 423 of 2010 and W.P. (C) 10 of 2011 (“**Judgment**”).
- 1.2 This response is being made by Videocon Telecommunications Limited (“**Videocon**”), without prejudice to any rights and contentions that Videocon may have before any court of law/authority in connection with the Judgment.

2. Overview

- 2.1 The Telecom industry in India has undergone a revolution during the past few years with tremendous growth in the telecom subscriber base. Globally, India has one of the largest subscriber bases in the world which is at 936 million as on 31st January 2012, making it one of the fastest growing and one of the largest telecommunication networks in the world. Analysts have taken a view that the subscriber base has a direct correlation to the number of telecom players which exist in an economy. This view is further corroborated by the table given below:

S No.	Country	No. of Operators	Subscriber Base (in Million)
1	Brazil	8	246
2	France	4	63
3	Germany	8	114
4	Greece	4	15
5	Hong Kong	5	11
6	Mexico	6	93
7	Russian Federation	11	228
8	Sweden	4	13
9	United Kingdom	4	76
10	United States of America	15	339
11	Vietnam	6	137
12	Denmark	6	8
13	Ireland	4	5
14	India	12-13	936

- 2.2 Competition brings down the tariffs, which is proven with the experience since 2001. Tariffs have consistently fallen to 30 paise per minute even though inflation has gone for all essential commodities and the subscriber base has increased over 10 folds. (Table 2 below)

Year	Rupee per Minute	Subscribers (in Million)
2001	Upto 6 Rs/Min	5
2006	1 Re/Min	147
2008	1 Re/Min	346
2010	1 Paisa / Sec	752
2011	½ Paisa / Sec	936

- 2.3 Recently tariffs have gone up by 20% already. There have been recent media reports (quoting some senior executives of incumbents) suggesting a further rise in tariffs by 30%. With the apprehension of removal of the licenses which have been quashed pursuant to the Judgment (“**Quashed License**”) from the market, the impetus to keep the tariffs competitive will be lost, hence they may rise further. Each 10 paisa per minute increase in tariffs will put an additional burden of more than Rs. 1,000 Crores per month on subscribers at the current MoU levels. Hence, there is a need to ensure that the current auction should encourage new entrants to participate and enter the market and the holders of Quashed Licenses should be provided a fair chance to re-enter the market and compete in the market, following the due process laid down by the government on the recommendations of the TRAI pursuant to the Judgment.
- 2.4 Monopolization of spectrum, a scarce resource should be avoided which is also the view taken by the Group of Ministers in September, 2003. Allowing incumbents to garner undue gains by occupying further spectrum will only strengthen their capacity to cater to more subscribers to the detriment of the subscriber, since they will continue to be hostage to potentially coordinated increase in prices.
- 2.5 In the Judgment, the Supreme Court has not recommended any reserve / base price but has desired that the appropriate value of the spectrum must be discovered through the process of fair and transparent auction¹, therefore no reserve / base price should be fixed to discover the right price.
- If at all it is considered necessary to fix the reserve / base price, then the same could be set low and market competition be allowed to discover the right price. A higher reserve / base price runs the risk of being a policy device to keep higher tariff, opportunity for super profit by the incumbent operators at the cost of the customers and restrict competition for incumbent operators which may be subject to scrutiny by the Competition Commission of India. The last discovered price of the pan India 2G spectrum being Rs. 1,659 Crores in 2001, (for 6.2 MHz of spectrum including access license entry fees) may be considered as the reserve price for the proposed 2G auction.
- It is pertinent to mention that the base price in 2001 2G auction was discovered as the highest bid price of the 1st round for subsequent rounds. A similar practice may be considered.
- 2.6 Till date, the 4th Cellular license auction held in 2001, was the most sanctimonious process which has neither been challenged nor questioned so far. The same process involving elimination by rounds should be followed.

¹ Paragraphs 73 and 76 of the Judgment.

- 2.7 In order to encourage competition in the market, it should be ensured that the spectrum is made available freely. Hence, the spectrum to be auctioned in 2G band should consider the following:
- (a) All spectrum available with the WPC in 800 and 1800 MHz till 2nd February 2012
 - (b) All spectrum vacated by holders of Quashed Licenses.
 - (c) All excess spectrum held by any operator.
 - (d) Spectrum to be vacated by Defence/any other organisation should be considered as and when vacated for additional spectrum requirements.
- 2.8 To meet the mandated auction and spirit of the Judgment the process should be timely and a tried and tested one like the 4th Cellular license auction. The main difference between the 4th Cellular license auction and the 3G & BWA auctions is opening the market for competition Vs opening the market for new services. The 4th Cellular license was auctioned to foster competition in an already existing services market. In contrast the 3G and BWA spectrum were auctioned to create new services. Hence, we feel that aim of 2G and 3G auction processes are not alike.
- 2.9 The judgment refers to level playing field and allocation of natural resources between similarly placed operators (in para 69 and 72). This objective will be met by equating the auction process to the correct technology and service – i.e. 2G.
- 2.10 Our main focus should be to create competition in the 2G auction hence, the 4th Cellular Auction process is well suited to meet the objectives in a timely manner.

3. Response to the Consultation Paper

- 3.1 Our response to the issues stated in the Consultation Paper in seriatim order are given below for your kind consideration:
- 1. How can the various principles outlined by the Hon'ble Supreme Court in various observations brought out in para above be sufficiently incorporated in the design of spectrum auction?**
- 1.1 In the present circumstances and in terms of the Judgment, the main focus should be on allocation of fresh licenses and spectrum in 2G band in 22 Service Areas by auction in a timely manner in relation to the Quashed Licenses.
- 1.2 The various principles outlined in the Judgment may be sufficiently incorporated if the auction is designed keeping in mind the key principles stated below:

(a) **Encourage Competition**

New entrants should be encouraged to participate in the auction of spectrum to foster competition and avoid the market being dominated by incumbent mobile operators. Adequate amount of spectrum should be available for auction, so that new entrants can enter the market and provide quality services to compete with existing players in the market place. India is one of the largest telecom markets globally with 936 million telephone connections across 22 service areas. It is pertinent to mention that monopolization of spectrum to garner larger market power is very much possible even

with 6 operators present. Hence, more participants should be encouraged to participate in the auction of spectrum in order keep the market competitive.

(b) Level Playing Field

The auction for spectrum should be designed in a manner to ensure public good by making it transparent, such that eligible participants feel encouraged to participate which in turn will facilitate competition in the market place. The Judgment (at Paras 69 & 72) mentions equality between similarly placed players, hence, the auction must follow the principle of equality between similarly placed operators and hold the auction sequentially in phases as suggested below:

Phase I: In this phase, auction should be only for fresh licensees for spectrum upto 4.4 MHz for GSM in each licensed service area. Participation in this phase should be restricted to new entrants which would include the Quashed License holders as well as any new entrant who is not ineligible by virtue of ownership by an existing licensee.

Phase II: In this phase, auction should be held for spectrum beyond 4.4 MHz and upto 6.2 MHz for GSM in each licensed service area. The eligibility criteria in this phase should be for operators that hold spectrum only upto 4.4 MHz in GSM.

Phase III: In this phase, auction should be held for spectrum beyond 6.2 MHz for GSM in each licensed service area upto the maximum cap as recommended by TRAI in May, 2010. The eligibility criteria in this phase should be for operators that hold spectrum beyond 6.2 MHz in GSM. In this phase, 1 MHz block of GSM spectrum should be auctioned for those licensees who are holding 6.2 MHz of GSM spectrum.

(c) Public interest

Public interest would be better served by striking a balance between government revenue and affordability of services by the consumer. The aim of the auction should be to maximize public good by bringing in more competition rather than maximising revenue for the Government of India. Affordable services and ease of access can only be provided if the resources and thereby tariffs are reasonably priced.

(d) Non – arbitrary & Transparent Process

The auction should be designed in a manner that it is non-arbitrary and should follow a transparent process. The views of the stakeholders must be considered while framing the design of the various phases of auction as suggested above.

2. What are the key objectives to be kept in mind in the auction of the spectrum?

2.1 The timeframe for conclusion of the auction for Phase I (as stated above) should be as per the Judgment i.e. within four months from the date of the Judgment.

- 2.2 The key objective of the auction should be to create fair competition by encouraging new entrants to participate in the vast Indian telecom market. This will ultimately be beneficial to the subscriber by keeping the tariffs low and competitive and avoid threats of price coordination.
- 2.3 Spectrum availability being one of the key drivers, it should be ensured that no artificial scarcity for spectrum be created in the market place. Hence, all available spectrum should be auctioned together. All spectrum held beyond the contracted limit may be vacated and then put up for auction in Phase III as suggested above.
- 2.4 Auction should be carried out in a manner that it does not create monopolization and subsequent hoarding of spectrum by the incumbent operators.
- 2.5 As suggested above, all incumbents and existing licensees holding at par or more than the contracted limit of 6.2 MHz/5MHz (GSM/CDMA) spectrum should only be allowed to participate in the auction only in Phase III until a level playing field is established and ensuring that the auction occurs between similarly placed operators.

3. What should be the amount of spectrum which should be auctioned?

- 3.1 All available spectrum should be auctioned i.e. all spectrum vacated by holders of Quashed Licenses and all available spectrum with the WPC/DOT before the auction date should be available for auction for Phase I only.
- 3.2 Subsequently, spectrum beyond contracted limit should then be vacated and put up for auction in Phase II and III post the completion of Phase I.

4. Should the spectrum be liberalized before it is put to auction?

The purpose of the Consultation Paper is to invite comments on the auction of spectrum. The Hon'ble Supreme Court of India in the Judgment has directed that TRAI shall make fresh recommendations for grant of licence and allocation of spectrum in 2G band in 22 Service Areas by auction, within certain timelines. Thus, the liberalization of spectrum may be taken up at a later stage.

5. For the refarming of 800 and 900 MHz bands from the existing licensees, which of the three options given above should be adopted? Please elaborate with full justification.

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6. What are the issues that may arise in the above mentioned refarming process?

Refarming of spectrum is a separate issue and should not be linked to the Judgment. In the interest of timely completion of auction, such issues should be discussed in a separate consultation process. It is therefore requested that such issues should be deferred for the time being, so that they do not result in any delay in holding of the auction for spectrum.

7. For new technologies e.g. UMTS/LTE, 5 MHz is the minimum amount of spectrum required. Certain licensees have only 4.4 MHz spectrum in 900 MHz band and 2.5 MHz spectrum in 800 MHz band. What are the possible options in case of such licensees?

It may be prudent to take up the issue of 4G technology at a later stage in the interest of time. For UMTS/LTE, a new consultation process may be initiated.

- 8. Some GSM spectrum allocations may be interleaved between operators; to avoid fragmentation, reconfiguration between operators may be required. Whether frequency reconfiguration is required and what are the challenges and possible solutions?**

It may be noted that all spectrum vacated by holders of Quashed Licenses is not majorly fragmented, hence, reconfiguration should be considered after the auction in 2G band is completed. To maintain a level playing field 4.4 MHz block of spectrum only should be auctioned in Phase I.

- 9. Should the refarming of spectrum in 800/900 MHz bands be dealt independently or should a comprehensive approach be adopted linking it with the availability and auctioning of 700 MHz band?**

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- 10. Which of the two approaches outlined above be adopted?**

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- 11. When should 700 MHz spectrum be auctioned?**

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- 12. Should the auction in 700 MHz band be linked with the granting permission for the liberalized use of 800/900 MHz band?**

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- 13. How much spectrum in 700 MHz band should be put to auction initially and what should be the amount of spectrum which a licensee should be allowed to win in that auction?**

For questions 9 to 13 our view is below:

The issue of LTE / UMTS in 700 MHz band should be dealt with independently and post the auction of 2G spectrum bands.

- 14. What should be the structure of the auction process?**

The structure of the Auction Process may be considered to be as follows:

- (a) The auction process should be conducted in three phases i.e. Phase I (for new entrants and Quashed Licensees), Phase II (for spectrum beyond 4.2 MHz and upto 6.2 MHz) and Phase III (for spectrum beyond 6.2 MHz). ’
- (b) The auction for Phase I should be completed at the earliest and definitely before June 2, 2012.
- (c) The Auction should be Licesned Service Area (“LSA”) wise in multistage informed ascending bid as was followed in 2001 auction for 4th Cellular license in 1800 MHz band
- (d) Market feasibility report for each LSA should be provided to all new entrants.
- (e) Shadow companies should not be allowed to bid.

15. Should auction be held in single stage or multi stage?

- 15.1 The auction can be held on the same lines as the 4th Cellular License. The bidding process in 2001 was designed for elimination round by round. The impending auction for 4.4 MHz should happen in a similar manner.
- 15.2 To maximize public benefit, it is most respectfully submitted that the auction should be held in 3 phases and the auctions for Phase I should be completed at the earliest and definitely before June 2, 2012. Each phase should be a separate multi stage auction. The Auction should be conducted in the phases as mentioned below:
- (a) Phase I: In this phase, auction should be only for fresh licensees for spectrum upto 4.4 MHz for GSM in each licensed service area. Participation in this phase should be restricted to new entrants which would include the Quashed License holders as well as any new entrant who is not ineligible by virtue of ownership by an existing licensee.
 - (b) Phase II: In this phase, auction should be held for spectrum beyond 4.4 MHz and upto 6.2 MHz for GSM in each licensed service area. The eligibility criteria in this phase should be for operators that hold spectrum only upto 4.4 MHz in GSM.
 - (c) Phase III: In this phase, auction should be held for spectrum beyond 6.2 MHz for GSM in each licensed service area upto the maximum cap as recommended by TRAI in May, 2010. The eligibility criteria in this phase should be for operators that hold spectrum beyond 6.2 MHz in GSM. In this phase, 1 MHz block of GSM spectrum should be auctioned for those licensees who are holding 6.2 MHz of GSM spectrum.

16. Should there be a simultaneous auction for spectrum in 800 and 1800 MHz bands?

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17. What should be the block size of the spectrum?

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18. Should the block size be dependent on the frequency? If so, what should be the block size in each band?

For Questions 16, 17 and 18, our response is given below:

- (a) Auction in 800 and 1800 MHz can be held simultaneously for each phase.
- (b) The block size of spectrum should be fixed based on the actual requirement for each addressable phase. 4.4 MHz block size for new entrants and quashed licenses, 1.8 MHz block size for all that hold 4.4 MHz and finally 1 MHz block size for each operator holding 6.2 MHz.
- (c) We strongly feel that the auction should be conducted in 3 phases. Phase details have been provided in '1' and '15' above. Our suggestion for block size for each phase of auction is given below:

- Phase I: There should be atleast 3-4 block sizes of 4.4/2.5 MHz for new GSM/CDMA licenses or at least the same number of 4.4 MHz blocks vacated by Quashed Licenses.
- Phase II: All remaining spectrum in the pool should be auctioned in a block size of 1.8MHz/2.5 MHz for all licensees holding upto 4.4 MHz/2.5 MHz of GSM/CDMA spectrum.
- Phase III: All excess spectrum and other spectrum held by any other PSU, Government Body should be auctioned in a block size of 1 MHz allowing a licensee to hold upto the TRAI recommended limit of 8/10 MHz. This should be open to all licensees holding 6.2 MHz/5MHz GSM/CDMA spectrum. Each bidder should only be allowed to bid for 2 block of 1 MHz in the first instance of phase III. Subsequent additional blocks may be allowed if found appropriate and feasible when phase II auction is designed.

19. Should there be a cap on amount of spectrum one can bid? If so, what should it be?

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20. Should there be a separate cap on the total amount of spectrum one can hold; if so, what amount should it be?

- (a) We have already suggested a 3 Phase auction model which takes into account needs of all telecom service providers. This would also ensure compliance with the Judgment and take care of the need for resources of existing operators in a phase wise manner. Ensuring level playing field would be of paramount importance at this stage.
- (b) This will also maximize public benefit.
- (c) New entrants and Quashed license holders bidding for new unified access license/unified license may be allowed to bid only for one slot of 4.4/2.5 MHz in each LSA in the auction process.
- (d) Existing operators having 5 MHz/ 6.2 MHz for CDMA /GSM and above spectrum in circle and metros respectively should be brought in to participate in phase III of the auction as proposed in '1' and '15.'

21. Should there be a cap on the amount of spectrum one can hold in respect of sub-GHz spectrum? If so, what should it be?

The issue of a cap on the amount of spectrum one can hold in respect of sub – GHZ band is a separate issue to be discussed at a later stage after the auction of 2G spectrum has been completed.

22. Who all should be eligible to participate in the auction?

- a. Only licensees whose licences have been cancelled;**
- b. Only eligible applicants as on 10.01.2008;**
- c. Only licensees whose licences have been cancelled and all new eligible entrants at the time of auction; or**
- d. Open to all including the existing Licensees.**

In our view, the participants mentioned at (c), should be eligible to participate in the auction in phase I. However, in order to address the interest of all existing operators and to ensure a level playing field we have already suggested that the auction be held in 3 phases. The details have been provided in '1' and '15.'

23. What should be reserve price per MHz of spectrum in the year 2012 for 1800 MHz band?

- a) As suggested earlier in our response, the Reserve Price should encourage aggressive participation from new entrants to increase competition.
- b) The highest price discovered in the last 2G GSM auction like the 4th Cellular license should be kept as the reserve price for the upcoming auction. I.e; Rs. 1659 Crores for 6.2 MHz GSM spectrum. This is the most credible price available in the market today.
- c) The block size of the spectrum should be kept at 4.4 MHz pan India/LSA wise for new entrants and quashed licensees.
- d) This will facilitate the market to discover the true market value of 2G spectrum.
- e) TRAI may also consider to follow the process of setting the reserve price as the highest bid value in the first round for all subsequent rounds as was done for the 4th Cellular license auction in 2001.

24. What should be the reserve price per MHz of spectrum in the 700/800/900 MHz bands.

It is requested that such issues be deferred for the time being so that they do not result in delaying of the 2G band auction for new entrants and Quashed Licensees.

25. Whether the reserve price should be uniform across the country or service area wise?

The reserve price should be set for 4 categories in a descending manner

- i) Metros
- ii) A Circles
- iii) B Circles
- iv) C Circles

26. What should be the roll out obligations linked to the auctioned spectrum?

As the spectrum is being acquired through market price discovery, there should not be any roll out obligations since the acquirer pays for the spectrum based on its business case.

Notwithstanding above any roll out obligation if imposed should be liberal and exempted for those who have already met with their roll out obligations till 2nd June 2012.

27. What should be the annual spectrum usage charge for the spectrum being auctioned?

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28. Should the spectrum usage charge be in line with present criteria of escalating charge with the amount of spectrum holding or a fix percentage as was done for 3G and BWA spectrum?

Our view is that any spectrum acquired through the market route should not be levied any spectrum usage charge. Even if a view is taken to levy an annual spectrum usage charge, then a nominal 1% spectrum usage charge per annum may be applied on the Adjusted Gross Revenue of such a licensee.

**29. What should be the period of validity of spectrum?
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30. What should be the period of price of spectrum?

Keeping in mind the fact that the ROI (return on investment) period is very high in telecom sector, as the investment is very high, validity and price of spectrum should be for 20 years.

31. Should the government allow deferred payment schedule of the spectrum auction fee, or should the payment be upfront in nature?

The payment should be upfront in nature. Deferred payment schedule does not allow for a true market discovery of the spectrum price. It encourages bidders to bid higher value than the potential business case. In the past the experience of 1st and 2nd Cellular license was also similarly placed. However, the business case was soon found deficient and finally the Government had to bear a huge loss by migrating all such licensees to a Revenue Sharing Regime in 1999 causing a huge loss to the national exchequer.

32. Should Spectrum trading be allowed in India?

Spectrum trading requires a separate consultation which should be discussed at a later stage.

33. (a) Among the various models discussed above, in your opinion which model of spectrum trading is best suited for India?

(b) In your opinion is there any other model which can be implemented in India? If yes, please describe.

- Spectrum trading should be discussed at a later stage.

34. What should be the eligibility criteria to trade the spectrum?

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35. Whether the spectrum assigned for 3G and BWA services be allowed to trade? If yes, give reasons.

This issue should be addressed through a separate exercise as the context of the current consultation is the judgment.

36. Can spectrum be allowed to be mortgaged for raising capital for telecom purposes?

- 36.1 Spectrum should be allowed to be mortgaged for raising capital for telecom purposes as spectrum is a primary asset for any telecom operator and it is essential requirement for any operator to implement its business.
- 36.2 As spectrum is classified as an intangible asset, the banks provide funds for business plan and bank guaranty as unsecured loans, and holding unsecured asset on the bank books have several implications like lower ratings, higher provisioning etc.
- 36.3 As future spectrum may be priced at higher level like in the case of 3G spectrum, the banks may not fund these plans considering its unsecured nature. Hence it is suggested that spectrum fees may be considered as tangible asset and it should be allowed to be mortgaged for raising capital for telecom purposes.

4. Additional Points for consideration

- 4.1 **No changes to the License Agreement:** The terms and conditions as specified in the existing License Agreement could remain the same as for incumbent operators including the duration of license (i.e. duration of 20 years from the date of allocation of the spectrum after completion of the auction). However, it may be considered to amend the license agreement to include within its ambit (only for those licensees who got spectrum by auction)- spectrum sharing within a licensed service area, intra-service roaming and inter-service roaming irrespective of whether the spectrum is held by the licensee in that licensed service area or not and active infrastructure sharing should be permitted.
- 4.2 **Set-off / Refund of License Fees:** The license fee as well as other payments made in terms of the Quashed Licenses already paid by the Quashed License holders in 2008 should be allowed to set-off against the fee for grant of fresh licenses and the allocation of spectrum by auction. If such available credit is short for set-off, such short payment should be allowed to be paid within a period of thirty days of grant of license or, as the case may be, allocation of the spectrum after completion of the auction. Similarly, any excess credit available for set-off should be refunded back to the respective Quashed License holder within thirty days of a communication of the Quashed License holder that either it is not participating in further process or it has not succeeded in procuring fresh license(s) and / or spectrum, as the case may be. Pursuant to this, neither party should have any recourse against the other in relation to the alleged/perceived non-compliance of the license agreement granted in 2008.
- 4.3 **Transfer of Assets:** If a Quashed License holder is unwilling to participate in the process any more or is unsuccessful in either procuring license and / or spectrum in the auction, it should be allowed to sell its assets, infrastructure and transfer its employees, which will ensure continuity of employment for the employees as well as facilitate the successful licensee to effectively meet its roll-out obligations in terms of the unified access service license agreement by utilizing the existing infrastructure.
- 4.4 **Customer Contracts:** Any existing customer contract of a Quashed License holder who is successful in obtaining a new license should be allowed to be continued on such terms as maybe agreed.

- 4.5 **License Obligations:** As the Judgment has held that the Quashed Licenses were granted pursuant a illegal and unconstitutional policy of the Central Government, obviously all the obligations (including roll-out obligations) attached with such Quashed Licenses are recognized to be not enforceable against any Quashed License holder. Consequently all the penalties, etc. imposed by the Central Government for any alleged failure to roll-out or for any other obligation would stand reversed and, if already recovered by the Central Government, must be refunded back along with interest. Similarly any revenue shared with the Central Government by any of the Quashed License holder should be immediately refunded back to respective Quashed License holder to reduce their losses.
- 4.6 **Statutory Permissions to be migrated to new licenses:** The holders of Quashed Licenses should be allowed to transfer MW Access & Backbone Spectrum allocations, SACFA clearances, Points of Interconnect already established in relevant service areas.
- 4.7 **Reassignment of originally assigned spectrum slot for Quashed License Holder:** If a license holder whose license is quashed wins in the auction, then he should assigned the same block of the spectrum to allow for continuity of services.