



Counter Comments

Consultation Paper On Spectrum Valuation and Reserve Price

Counter Comments on Consultation Paper on Valuation and Reserve Price of Spectrum

1. Reliance Communications Ltd (RCOM) hereby submits counter comments on some of the responses received on TRAI's consultation paper on "Spectrum Valuation and Reserve Price".
2. RCOM's comments on issues raised in the consultation paper are led by the principles of reducing cost of operations for all operators across the industry, improving efficiency of use of spectrum, ensuring level playing field, promoting competition, maximizing benefits for consumers and protecting government revenues.
3. On the other hand, comments of major GSM operators and their association COAI are suggesting an approach led by a desire to move to a collusive oligopolistic market structure where operators with small spectrum holding struggle to be viable and are forced to exit the market. The arguments put forth by these GSM operators and COAI completely ignore well established norms of fair play by suggesting such as creation of 880-890 MHz EGSM band, perpetuating their own right over use of 900 MHz spectrum band even after expiry of license, flat spectrum usage charges etc.
4. The Authority has all along embraced policies that support open competition and uphold consumer interest. RCOM is confident that TRAI will reject submissions from major GSM operators to push a pro-consumer and pro-competition approach.
5. In addition to the counter comments RCOM is also submitting its following suggestions for kind attention of the Authority:
 - (i) **Payment terms of spectrum:** The Government in November, 2012 and March, 2013 auction had provided an option of deferred payment subject to the condition that an upfront payment of 33% in case of 1800 MHz band and 25% in case of 900 MHz and 800 MHz bands of the final bid amount and the balance payment after a moratorium of two years in 10 equal installments. **It is requested that upfront payments limit may be reviewed as there is a sudden reduction in valuation of rupee which has surpassed Rs 64 to a dollar and interest rates continue to be very high and the banks are hesitant to extend loans to TELCOs. The**

revision of upfront payment limits to 15% for 1800 MHz spectrum band and 10% for 900/800 MHz bands would encourage healthy completion in the auction and may also result in higher revenues for the Government exchequer.

- (ii) **M&A of service Providers with 3G/BWA spectrum:** NIA conditions for the auction of 3G / BWA spectrum does not permit holding of more than one block of 3G / BWA spectrum by any operator even in case of M&A. However, in the interest of market consolidation, the **TRAI may like to recommend the holding of up to two blocks of 3G / BWA spectrum in case of M&A by amending the conditions laid down in the NIA for the auction of 3G and BWA spectrum.** In case, it is not possible to allow the holding of more than one block of 3G / BWA spectrum, the **TSPs may be provided the facility to surrender the excess spectrum back to the DoT at pro rata rates for the remaining period of the validity of the spectrum, giving credit at 9.75% interest rate.** The DoT may either refund the entire money at the time of surrender of spectrum or adjust it against the future license fee and spectrum charges payable by the operator in one or maximum two years time frame.

RCOM's Counter Comments

6. RCOM's counter comments cover following major issues:

- (i) Refarming of 900 MHz Spectrum band
- (ii) Creation of 880-890 MHz as EGSM band.
- (iii) Pricing of 800 MHz and 900 MHz spectrum bands
- (iv) Spectrum valuation and fixing of reserve price for sold/unsold LSAs
- (v) Spectrum usage charges
- (vi) Spectrum trading
- (vii) Liberalisation of spectrum

I. Reframing of 900 MHz Spectrum Band

- (i) Major GSM operators led by COAI have responded in favour of continued use of 900 MHz spectrum even after the expiry of their license period.
- (ii) The operators holding 900 MHz spectrum have also cited various reasons against refarming such as increase in Capex and Opex, deterioration of quality parameters, threat of increase in tariffs.

RCOM counter comments

- (iii) The claim of some GSM operators led by COAI that they have a legal right over the 900 MHz spectrum allocated to them for the initial license validity as well as post-license validity period is absolutely ridiculous. For the post-license period, the government has the absolute right to allocate such spectrum on a renegotiated terms and conditions based on auction discovered pricing. In this regard Para 4.1 in the license agreement deals with the extension of the license and is reproduced below for reference:

"4.1 The LICENSOR may extend, if deemed expedient, the period of LICENCE by 10 years at one time, upon request of the LICENSEE, if made during 19th year of the Licence period on terms mutually agreed. The decision of the LICENSOR shall be final in regard to the grant of extension"

- (iv) It is a well known fact that 900 MHz spectrum delivers significant advantages in terms of reach and inbuilding coverage. Thus premium 900 MHz spectrum reduces cost of operations, improve coverage and provide better quality of service. Bharti Airtel, Vodafone & Idea hold nearly 75% of the spectrum in 900 MHz band and therefore they have a strong competitive edge over others. After expiry of their licenses, level playing field must be created between operators by providing an equal opportunity to all Access Providers in the current auction to acquire 900 MHz spectrum.
- (v) As per COAI, Vodafone, Idea & Bharti's own comments, in order to continue providing the services to their existing consumers using spectrum in 1800 MHz band in place of 900 MHz spectrum, the existing TSPs will have to rollout new sites. As per their estimates cost of refarming and migrating their network to 1800 MHz band is over Rs. 54,739 Crs towards capex and an additional Rs. 11,762 Crs. towards annual opex. Thus as per COAI and their members own claim the annual benefit available with users of 900 MHz band is:

Annual Depreciation:	Rs 7714 crores (with 7 years life)
Annual Cost of Capital	Rs 8210 crores
Annual Opex	Rs 11,762 crores

**Annual Benefit for 900 MHz
Over 1800 MHz band**

Rs 27687 crores

**Total benefit of 900 MHz band over
entire validity of spectrum**

Rs 5,73,442 crores

- (vi) The above quantification of 900 MHz band benefits shows that the annual benefit available for holders of 900 MHz band is Rs 27,687 crores and for the validity of license it is around Rs 5,73,442 crores. Thus operators holding 900 MHz spectrum for the last 20 years have been benefited immensely in terms of Capex and Opex savings and had an undue competitive advantage over the other operators who did not have access to 900 MHz spectrum.
- (vii) **In view of the above the Authority is requested to reject the contention of Bharti and Vodafone that they have legal right to use 900 MHz spectrum band. The future right to use 900 MHz spectrum band after expiry of license should only be decided through auction.**

II. Creation of 880-890 Mhz as EGSM band.

- (i) A number of operators led by COAI have supported creation of EGSM 880-890 MHz band by transferring the existing CDMA operators to 870-880 MHz band.

RCom counter comments

- (ii) RCOM does not agree with COAI and some of its member operator's contention regarding adoption of EGSM band in India. The Authority may kindly note that the CDMA operators have a legitimate right of CDMA spectrum in 869-889 MHz band for 20 years of their licensing period and any dislocation in between will be violation of the license conditions
- (iii) EGSM proposal is nothing but refarming of spectrum which cannot be carried out atleast till the expiry of license. The proposal to relocate operations in alternative frequencies etc will make the Government contract unreliable and would also raise number of other legal issues.
- (iv) COAI had fought tooth and nail to oppose co-existence of CDMA and GSM operations in 1900 MHz spectrum band but surprisingly now they have no issues what so ever on co-existence of these technologies in the 800 MHz band.
- (v) **Some of the leading operators have gone to the extent of writing detailed guidelines on migration so that the CDMA subscribers are not affected in terms of QoS. The same operators are citing almost similar reasons against their own migration from 900 MHz to 1800 MHz band. They specifically submit that vacation of 900 MHz spectrum band**

would disrupt their existing and well established network. They simply forget that both 900 and 1800 MHz spectrum bands are globally harmonised for GSM based cellular mobile services. The same is not true in respect 880-890 MHz spectrum band.

- (vi) We request the Authority to take note of contradictory submissions of COAI and leading GSM operators and not to take any action under pressure from them to change the spectrum spots of the CDMA operators. The GSM lobby is simply trying to use it as a pressure tactics against the decision of the Government to refarm 900 MHz spectrum.
- (vii) Any dislocation in the spectrum band of the CDMA operators will lead to premature death of the CDMA technology, which has been giving a very tough competition to the GSM operators so far and has been largely successful in bringing down the tariffs, which were sky high before the introduction of CDMA services in the country.
- (viii) It may be noted that 880-890 MHz is also not a globally harmonized EGSM band. This band is being used for GSM services mainly in those countries where CDMA spectrum was lying idle. Any attempt to create 880-890 MHz as GSM band as by transferring the existing operators to 870-880 MHz band will completely place the existing CDMA operations in jeopardy as the support from vendors have diminished due to declining trend of CDMA services.
- (ix) It may also be noted that in spite of repeated requests in the last few years and even after the recommendations of the Authority, DOT has not provided any alternate spectrum in either 1900 MHz or 450 MHz bands for expansion of CDMA services.
- (x) **It is thus requested to reject contention of COAI and no attempt should be made to create EGSM band by dislocating the CDMA services availed by more than 75 million subscribers.**

III. Pricing of 800 MHz and 900 MHz spectrum bands

- (i) A few GSM operators have submitted that there is advantage towards better coverage and quality of service and for valuation of 800/900 MHz spectrum over 1800 MHz, they have suggested the same value ratio for 800 and/900 MHz of 1.2 over 1800 MHz.

RCOM Counter Comments

- (ii) RCOM does not agree with the comments from leading GSM operator that 800 MHz and 900 MHz spectrum bands have similar valuation and command same premium over 1800 MHz spectrum band.
- (iii) COAI, Bharti and Vodafone have themselves submitted in their comments that in order to continue providing the services to their existing consumers using spectrum in 1800 MHz band in place of 900 MHz spectrum, the existing TSPs will have to rollout new sites. The cost of migrating 900 Mhz network to 1800 MHz spectrum is over Rs. 54,739 Crs. towards capex and an additional Rs. 11,762 Crs. towards annual opex. Thus annual benefit available with users of 900 MHz band is given below:

Depreciation:	Rs 7714 crores
Cost of Capital	Rs 8210 crores
Annual Opex	Rs 11,762 crores
Annual Benefit	Rs 27687 crores

- (iv) The above quantification of 900 MHz band which has been provided by leading GSM operators themselves clearly establishes that with annual saving of Rs 27,687 crores is available with users of 900 MHz band. The total saving over validity of spectrum is Rs 5,73,442 crores.. Thus the premium to be paid for 900 MHz over 1800 Mhz has to be atleast 2 times if not more. It may also be noted that around 75% of 900 MHz spectrum is held by Bharti, Vodafone and Idea.
- (v) On the other hand the eco system for CDMA and GSM technologies are quite different resulting in entirely different valuation of 800 MHz spectrum and 900/1800 MHz spectrum bands. Due to poor ecosystem, absence of any growth path for CDMA services, lower CDMA ARPUs, expensive CDMA devices and infrastructure, lower adoption rate of only 15% against 85% for GSM, the valuation of CDMA spectrum in 800 Mhz is fraction compared to the valuation GSM spectrum. The lower 800 MHz spectrum valuation has also been established in the previous auction.
- (vi) In view of the above it is requested to reject the suggested spectrum value ratio of 1.2 for 800 MHz over 1800 MHz. The 900 MHz spectrum band should be priced atleast twice the 1800 MHz spectrum band. The valuation of 800 MHz spectrum band is only around 20% of 1800 MHz spectrum band.

IV. Spectrum valuation and fixing of reserve price for sold/unsold LSAs

- (i) GSM operators have submitted that a majority of spectrum sold during November 2012 and March 2013 was a result of “distress buying” for continuity of services and adjustment of entry fee by those operators whose licenses were cancelled by the orders of Hon’ble Supreme Court of India. Thus the price discovered through the “distress buying” in November 2012 and March 2013 cannot be termed as the market discovered prices. Therefore new reserve price would have been decided for all circles.

RCOM Counter Comments

- (ii) GSM operators are misleading by stating that that November, 2012 auction for 1800 MHz spectrum band was a result of “distress buying” for continuity of service and adjustment of entry fee by those operators whose licenses were cancelled by the orders of Hon’ble Supreme Court of India. On the contrary, established operators such as Vodafone and Bharti, bid by choice and they together bought 60 MHz (24 block) of spectrum. The details of their successful choice bids are given in the following table. The table below nullifies the fabricated theory of 1800 MHz spectrum being bought under distress in November, 2012 auction.

Name of Service Provider	Successful Bids (Circles)	Number of Blocks
Vodafone South	Assam Bihar Haryana Himachal Pradesh Jammu and Kashmir Kerala Madhya Pradesh Maharashtra North East Orissa Punjab Uttar Pradesh (East) Uttar Pradesh (West) West Bengal	2 2 2 1 2 1 2 1 2 1 1 2 2
Bharti Airtel	Assam	1

- (iii) There is no need to again determine reserve prices for all the 18 circles as spectrum value for 1800 MHz spectrum band has already been discovered in

Nov'2012 auction i.e all circles except Delhi, Mumbai, Karnataka and Rajasthan.

- (iv) Any reduction in the price already discovered in auction would cause unwarranted loss to the government and legal complications and gain to a few selected operators. **Any attempt to reduce prices in these 18 circles would lead to a demand of refund of spectrum fees** from the successful bidders of November, 2012 auction and **the same is evident from the comments of Uninor, MTS and Videocon.**
- (v) It may be kept in mind that spectrum value for Delhi and Karnataka is available for 800 MHz spectrum band. The discovered price for 1.25 MHz block in 800 MHz for Delhi and Karnataka is Rs 450.49 crs and Rs 214.58 crs respectively. **Admittedly, GSM spectrum in 1800 MHz spectrum band is of much higher value compared to CDMA 800 MHz spectrum and therefore spectrum value for Delhi and Karnataka has to be higher than that was discovered for CDMA.**
- (vi) **The Authority should not attempt to reduce prices of metro cities like Delhi and Mumbai as it would mean subsidizing the GSM spectrum prices for the Metros at the cost of B & C circles subscribers, where the teledensity continues to be far lower than in Metros.**
- (vii) In view of the above we suggest to reject the submission of leading GSM operators and COAI that reserve price should be re-determined for all circles. The Authority should only decide reserve price for Delhi, Mumbai, Karnataka and Rajasthan. It should be ensured that prices in Delhi and Karnataka is multiple of 800 MHz spectrum band value discovered for these circles in previous auction due to relative value for these technologies..

V. Spectrum Usage Charges

- (i) Cellular operators possessing spectrum much above the contracted value of 6.2 MHz above have suggested flat spectrum usage charge of 1% to 3% .

RCOM Counter Comments

- (ii) RCOM opposes comments supporting flat spectrum usage charges as it would discourage efficient utilization of spectrum, seriously distort competition, encourage spectrum hoarding and disturb level playing field. In addition, the flat spectrum usage charges would cause an approximate loss of 54,000 crores to the Government exchequer.

- (iii) The flat spectrum usage charges would provide enormous regulatory benefit for selected group of operators holding larger chunks of spectrum.
- (iv) Escalating SUC was part of previous 2 auctions. A total of 127.5 MHz of GSM spectrum and 30 MHz of CDMA spectrum has already been acquired by 5 operators in the auctions held in November, 2012 and March, 2013. **The flat spectrum charges at this stage would amount to giving benefit to winning bidders in previous auctions as they had factored graded SUC in their bids.** Any move towards a flat SUC would be clearly seen as post auction benefits to the selected operators at the cost of government revenues.
- (v) **As per the Ministry of Communications and Information Technology press release dated 3.8.2012, the existing slab rate system for Spectrum Usage Charges as recommended by EGoM, has been approved by the Cabinet.**
- (vi) The policy of escalating SUC for higher quantum of allocated spectrum has strong scientific and technical rationale. The relationship between the incremental amount of spectrum and the capacity of the network to carry additional traffic is non-linear i.e. the traffic increases in a greater proportion than the proportion of increase in spectrum. As per the Authority findings in its recommendation dated 10.5.2010 the capacity enhancement in case of increase of spectrum is given in the following table:

	4.4 MHz	6.2 MHz	8 MHz	10 MHz
Capacity(Erlg)	17.22	39.34	61.28	96.95
Capacity per MHz (Erlg)	3.91	6.34	7.66	9.69

- (vii) In view of the above we suggest that any comments of flat spectrum usage charges should be rejected. The Authority is requested to recommend the continuance of existing escalating Spectrum Usage Charges so as to ensure efficient use of spectrum, protection of Government revenues and the sanctity of previous auctions.

VI. Spectrum Trading

- (i) A number of operators and few individual have commented in favour of trading under the plea that it will improve spectrum efficiency leading to proper utilization of the spectrum. Some of the leading operators have **asked for exit route and not actually trading in spectrum.**

RCOM Counter Comments

- (ii) Some respondents have given examples of countries that have favoured spectrum trading. However, none of the responses have indicated whether any trading of mobile services spectrum has actually taken place in the last 3 years or not in any of these countries.
- (iii) **Further, most respondents have argued that trading will provide flexibility to take additional spectrum from other operators in case of need and on the other hand same respondents have indicated that the spectrum allotment in India is a small fraction of the International average and the operators are already spectrum starved. In the situation of small spectrum holdings in India, it is not understood as to how the spectrum trading will take place in the country.**
- (iv) **The reading in fine prints will indicate that many stakeholders are really asking for exit route and not actual trading in spectrum.** Some of the leading operators have given examples that they have both 3G and BWA spectrum and they do not need both of them in some of the circles and as such should have the opportunity to either surrender the spectrum or to sell it to some other operators on mutually agreed terms.
- (v) It may kindly be noted that the NIA conditions for the auction of 3G / BWA spectrum do not permit holding of more than one block of 3G / BWA spectrum by any operator even in case of M&A. **However, in the interest of market consolidation, the TRAI may like to recommend the holding of up to two blocks of 3G / BWA spectrum in case of M&A by amending the conditions laid down in the NIA for the auction of 3G and BWA spectrum.** In case, it is not possible to allow the holding of more than one block of 3G / BWA spectrum in case of merger, the operators may be provided the facility to surrender the excess spectrum back to the DoT at pro rata rates for the remaining period of the validity of the spectrum, giving credit at 9.75% interest rate. The DoT may either refund the entire money at the time of surrender of spectrum or adjust it against the future license fee and spectrum charges payable by the operator in one or maximum two years time frame.

VII. Liberalisation of Spectrum

- (i) Some telecom operators have submitted that their licenses and spectrum are both technology neutral and liberalized.

RCOM counter comments

- (ii) Bharti and Vodafone are misrepresenting by making statements that their existing UASL and spectrum is liberalised. It may be noted that only the license is technology neutral and not the spectrum.
- (iii) The allocation of spectrum has been based on the GSM/CDMA/3G/BWA services in the specified bands of 900/1800/800, 2100, 2300 MHz respectively. Such spectrum holding by the operators today do not allow them to use the spectrum in a liberalised mode of operation. It seems that liberalized use of 2G spectrum for 3G services is being asked in place of failed and illegal ICR arrangements by these operators. It may be noted that Service Providers cannot use their existing spectrum for 3G services unless they pay the market determined rates for the spectrum.
- (iv) The DoT in Queries & Responses to NIA to the Auction of Spectrum in 1800MHz and 800MHz Bands has also clarified that "existing spectrum holding in 900MHz band, 1800MHz band and 800MHz band is not liberalized.
- (v) In view of the above it is submitted that the liberalised use of spectrum can be allowed only after level playing field is achieved through payment of higher license/spectrum charges applicable for 3G/4G service.**

Review of Upfront Payment terms

- (i) The DoT has prescribed the following payment terms at the time of auctioning of spectrum in November, 2012 and March, 2013 :
 - Full payment within 10 days of declaration of final price or pre-payment of one or more annual installments
 - OR**
 - Deferred payment subject to following conditions : An upfront payment of 33% in case of 1800 MHz band and 25% in case of 900 MHz and 800 MHz bands of the final bid amount within 10 days and the balance payment after a moratorium of two years in 10 equal installments.
- (ii) Since the last two auctions, the value of Indian Rupee had depreciated to Rs.64 to a Dollar, which was about Rs. 54 in November, 2012 and the interest rates continue to be very high. The banks are reluctant to lend money to the Indian Telecom operators.
- (iii) In these changed circumstances, it is requested that upfront payment of only 15% in case of 1800 MHz band and 10% in case of 900 and 800 MHz bands may be insisted within 10 days and the balance payment after a moratorium of two years in 11 to 12 equal installments.**

