

**Consultation Paper No. : 6/2012**



|सत्यमेव जयते|

## **TELECOM REGULATORY AUTHORITY OF INDIA**

### **Consultation Paper**

**on**

**Amendment in the ISP Licence Agreement for  
incorporating the terms and conditions mentioned in  
Notice Inviting Applications (NIA) dated 25.02.2010 for  
use of Broadband Wireless Access (BWA) spectrum.**

15<sup>th</sup> March, 2012

Mahanagar Doorsanchar Bhawan

Jawahar Lal Nehru Marg

New Delhi-110002

W e b - s i t e : [w w w . t r a i . g o v . i n](http://www.trai.gov.in)

1. Telecom Regulatory Authority of India (TRAI) received letter No. 820-964/07-LR dated 27<sup>th</sup> December, 2011 from Department of Telecommunication (DoT) (Annexure-I) seeking TRAI's recommendations for amendment in the ISP Licence Agreement to incorporate the terms and conditions mentioned in Notice Inviting Applications (NIA) dated 25.02.2010 for use of Broadband Wireless Access (BWA) spectrum.
2. DoT issued the NIA No. P-11014/13/2008-PP<sup>1</sup> on 25<sup>th</sup> February 2010 for allotting the rights to use certain specified radio spectrum frequencies in the 2.1GHz band (the "3G Spectrum") and in the 2.3GHz band (unpaired) (the "BWA Spectrum") by means of auction in various telecom service areas in India. DoT auctioned BWA spectrum in June 2010 in accordance with the terms and conditions mentioned in the aforesaid NIA. Terms and Conditions mentioned in NIA (Annexure-II) for use of BWA spectrum, inter-alia, are as follows:

**(i) Roll-out obligations for BWA Spectrum**

Metro service area

*The licensee to whom the spectrum is assigned shall be required to provide required street level coverage using the BWA Spectrum in at least 90% of the service area within five years of the Effective Date.*

Category A, B and C service areas

*The licensee to whom the spectrum is assigned shall ensure that at least 50% of the rural SDCAs are covered within five years of the Effective Date using the BWA Spectrum. Coverage of a rural SDCA would mean that at least 90% of the area bounded by the municipal/ local body limits should get the required street level coverage.*

*The Effective Date shall be the later of the date when the right to use awarded spectrum commercially commences and the date when the UAS licence or the ISP category 'A' licence, if and as applicable, is granted to the operator.*

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<sup>1</sup>[http://www.dot.gov.in/as/Auction%20of%20Spectrum%20for3G%20&%20BWA/3G%20&%20BWA%20Auctions\\_Notify%20Inviting%20Applications.pdf](http://www.dot.gov.in/as/Auction%20of%20Spectrum%20for3G%20&%20BWA/3G%20&%20BWA%20Auctions_Notify%20Inviting%20Applications.pdf)

If the licensee does not achieve its roll out obligations, its spectrum assignment shall be withdrawn.”

**(ii) Spectrum Usage charges**

“A spectrum usage charge (over and above the spectrum auction price and the applicable licence fees) as a percentage of the Adjusted Gross Revenue (“AGR”) shall be payable by Successful Bidders as per rules notified by the Government from time to time.”

“Licensees using BWA Spectrum need to pay 1% of AGR from services using this spectrum as annual spectrum charge irrespective of the licence held by them. Such revenue would be required to be reported.”

The following Schedule provides details for the applicable annual spectrum charges payable by different licence holders that are successful in the 3G Auction or the BWA Auction:

Auction type	Current spectrum allocation/ licence category			
	<i>UAS/ CMTS with GSM only</i>	<i>UAS with CDMA only</i>	<i>UAS with dual tech (GSM + CDMA)</i>	<i>ISP</i>
<i>3G Auction (frequency in 2.1GHz band)</i>	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule A to apply	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule B to apply	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule A & Schedule B to apply	Na
<i>BWA Auction (frequency in 2.3GHz band)</i>	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)

*The following shall be considered while computing the annual spectrum charges:*

- *Applicable AGR shall be computed in accordance with the provisions of the relevant service licence;*
- *3G/ BWA Spectrum to be assigned in the two Auctions shall not be counted for calculating the slab of the total spectrum holding by a licensee for levy of spectrum usage charges;*
- *Revenues from services using the BWA Spectrum shall not be included in the AGR of the licensee, for the limited purpose of determining spectrum charges on spectrum other than BWA Spectrum;*
- *Annual spectrum charges shall be applicable from the date of award of right to use allotted spectrum commercially. However, there shall be a moratorium of one year from this date on the payment of spectrum charges for the standalone 3G as well as stand-alone 3G + BWA operators (i.e. winners of 3G/BWA Spectrum who do not hold 2G spectrum);*
- *For BWA Spectrum, no annual spectrum charge shall be payable in the first year from the date of award of right to use allotted spectrum commercially.*

**(iii) Duration**

*“The right to use the BWA Spectrum shall be valid for 20 years from the Effective Date unless revoked or surrendered earlier, subject to the operator continuing to have a UAS/ CMTS/ ISP-category ‘A’ licence. In case the UAS/ CMTS/ ISP-category ‘A’ licence it holds is cancelled/ terminated for any reason, the spectrum usage rights shall stand withdrawn forthwith.*

*If the period of an existing UASL/ CMTS/ ISP-category ‘A’ licence of an operator expires before the expiry of the right to use the BWA Spectrum awarded by means of the current Auction, then the validity of the UAS/ CMTS licence with respect to the BWA Spectrum, if applicable, shall be extended to 20 years from the Effective Date on existing terms without any commercial charges. This extension shall be done on the application of the licensee made in the 19th year of the UAS/CMTS licence for extension of the period to make it co-terminus with the validity of the right to use the BWA Spectrum period.*

*The ISP licence, if applicable, shall be extended for 5 years at a time for a period extending up to 20 years, from the Effective Date on existing terms.*

*However, extension, if any, of the right to use any spectrum other than BWA Spectrum associated with the licence and the terms thereof, shall be specified in due course.”*

**(iv) Breach, revocation and surrender**

*“The spectrum assignment may be revoked, withdrawn, varied or surrendered in accordance with applicable licence conditions or any other applicable laws, rules, regulations or other statutory provisions.*

*The spectrum assignment may also be revoked if the Government determines the user of the spectrum to be in serious breach of any of the conditions of the award of the spectrum (including adherence to the Auction Rules) and the consequent obligations.*

*In case of less serious breaches, the Government may impose penalties at its discretion. Seriousness of the breach shall be determined by the Government at its sole discretion. In case neither the Successful Bidder nor any of its Associated Licensees has the relevant service licence for a service area where it has been declared a Successful Bidder, it must apply for, or otherwise acquire the relevant service licence in the service area in accordance with the terms of this Notice, within three (3) months of it being declared a Successful Bidder, failing which the Government shall have the right to revoke the spectrum.*

*The operator may surrender the spectrum, by giving notice of at least 60 calendar days in advance. In that case, it shall also notify all its customers of consequential withdrawal of service by giving 30 calendar days notice to each of them. The operator shall pay all fees payable by it until the date on which the surrender of the spectrum becomes effective. The effective date of surrender of the spectrum shall be the later of the dates of expiry of the two notices mentioned in this clause.*

*If at any stage, the spectrum allocation is revoked, withdrawn, varied or surrendered, no refund will be made.”*

3. As mentioned in DoT's letter, the terms and conditions of the NIA are to be included in the licence agreements of those ISPs, who have successfully obtained BWA spectrum through the auction process. DoT has already included the terms and conditions of NIA in the licence agreements of those UAS licencees who have obtained BWA spectrum during auction process.
4. DoT has sought TRAI's recommendations on the above issue under section 11(1)(a) of the TRAI Act. Accordingly this consultation process has been initiated.
5. **It is proposed that all the terms and conditions related to licence conditions mentioned in the NIA No. P-11014/13/2008-PP dated 25<sup>th</sup> February 2010, may be incorporated in the licence agreements of the ISPs, who have obtained BWA spectrum through the auction process.**
6. Stakeholders are requested to send their comments on the above issue by 26<sup>th</sup> March 2012. The comments may be sent, preferably in electronic form, to Mr Rajkumar Upadhyay, Advisor (BB & PA) on the e-mail address: [advbbpa@trai.gov.in](mailto:advbbpa@trai.gov.in) or [bbpa@trai.gov.in](mailto:bbpa@trai.gov.in).

820-964/07-LR  
Government of India  
Ministry of Communications & IT  
Department of Telecommunication  
Sanchar Bhawan, 20-Ashoka Road, New Delhi-110001  
(DS Cell)

To,

Secretary,  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg  
New Delhi.

Dated : 27/12/2011

**Sub:- Amendment in the Licence Agreement for provision of Internet Services (ISP) to incorporate the terms and conditions for use of Broadband Wireless Access (BWA) Spectrum**

Terms and Conditions for use of Broadband Wireless Access (BWA) Spectrum, as specified in the Notice Inviting Applications (NIA) No. P-11014/13/2008-PP dated 25.02.2010 for "Auction of 3G and BWA Spectrum", have to be incorporated in the ISP Licence Agreement. Accordingly the ISP licence is required to be amended for the successful bidders of BWA Auction.

2. Unified Access Service Licence Agreement (UASL) for the successful bidders of BWA auction holding UAS Licence has already been amended to incorporate the terms and conditions specified in the NIA dated 25.02.2010 for the use of BWA Spectrum. The same is enclosed herewith (Amendment dated 31/08/2010 and 1/09/2010).

3. It is also to mention that the provisions of NIA dated 25.02.2010 regarding spectrum usage charges are same for ISP and UAS licencees. However the definition of Adjusted Gross Revenue (AGR) is different in both the licencees.

3.1 Para 3.5 of NIA pertains to **Spectrum Usage Charges**. As per this, licensee using BWA Spectrum has to pay 1% of applicable Adjusted Gross Revenue (AGR) from BWA Services as annual spectrum usage charge (with such revenue to be reported separately) and applicable AGR is to be computed in accordance with the provisions of relevant service licence.

3.2 Definition of **Adjusted Gross Revenue (AGR)** in ISP licence is reproduced below-

**"18. Definition of 'Adjusted Gross Revenue':**

**18.1 Gross Revenue:** The Gross Revenue shall be inclusive of revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects etc., revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense etc

18.2 For the purpose of arriving at the "Adjusted Gross Revenue (AGR)" the following shall be excluded from the Gross Revenue to arrive at the AGR:

- (i) Charges from pure Internet service, activation charges from pure internet subscribers. Pure Internet Services shall mean any method / device / technology to provide access to Internet unless explicitly prohibited and all content available including web-hosting, web-colocation which is available on internet without access restriction.
- (ii) Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.
- (iii) Roaming revenue actually passed on to other eligible/entitled telecom service provider."

3.3 Definition of Adjusted Gross Revenue (AGR) in UAS Licence is reproduced below-

*"19. Definition of 'Adjusted Gross Revenue':*

*19.1 Gross Revenue;*

*The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.*

*19.2 For the purpose of arriving at the "Adjusted Gross Revenue (AGR)" the following shall be excluded from the Gross Revenue to arrive at the AGR:*

- I. PSTN related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;*
- II. Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;*
- III. Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax"*

4. In view of above, I have been hereby directed to seek the recommendations of Telecom Regulatory Authority of India, under Section 11(1)(a)(ii) of TRAI Act, on the amendment to the terms and conditions of ISP Licence Agreement signed with the successful BWA bidders, in order to incorporate the provisions of NIA dated 25.02.2010.

Enclosure-

- (i) UASL Amendment No. 20-271/2010-AS-I dated 01.09.2010
- (ii) UASL Amendment No. 20-271/2010-AS-I dated 31.08.2010

  
(Ritu Pande)  
Dir(DS-III)

No. 20-271/2010-AS-I-UASL  
Government of India  
Ministry of Communications & IT  
Department of Telecommunications  
(Access Services Division)  
1203, Sanchar Bhavan, Ashok Road, New Delhi-110001.

31<sup>st</sup> August, 2010

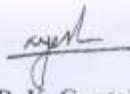
To  
All the UAS Licensees Company

Subject: Amendment of Unified Access Services (UAS) Licence Agreement regarding  
Format of Statement of Revenue and Licence Fee.

In pursuance of Condition 5.1 of the UAS licence agreement(s), the LICENSOR hereby substitutes the 'APPENDIX-II TO ANNEXURE-II - Format of Statement of Revenue and Licence Fee' of the Unified Access Services (UAS) Licence Agreement with the 'APPENDIX-II TO ANNEXURE-II - Format of Statement of Revenue and Licence Fee' as annexed to this amendment with effect from 01.09.2010.

2. All other terms and conditions of the UAS licence agreement including amendments and instructions issued from time to time shall remain unchanged.
3. Please acknowledge receipt.

Encls.: As above.

  
(R. K. Gupta)  
Director (AS-I)

For and on behalf of the President of India  
Ph.No.2303 6284

Copy To:

1. Administrator USOF/ Wireless Advisor/ Sr.DDG(TEC)
2. JS(T)/ DDG(Security)/ DDG(Security-Term)/ DDG(CS)/ DDG(DS)/ DDG(LF-I)/ DDG(LF-II)/ DDG(WPF)
3. Secretary, TRAI
4. Director (IT) may kindly arrange to upload this letter on the website of DoT.

**APPENDIX-II TO ANNEXURE-II**

**Format of Statement of Revenue and Licence Fee**  
 \_\_\_\_\_ (Name and address of operator)  
 Unified Access Services in \_\_\_\_\_ (Service Area)  
**Statement of Revenue and Licence Fee for the Quarter**  
 .....  
**of the financial year.....**

*(AMOUNT IN RUPEES)*

S.N.	PARTICULARS	ACTUALS FOR THE PREVIOUS QUARTER	ACTUALS FOR THE CURRENT QUARTER	CUMULATIVE UPTO THE CURRENT QUARTER.
<b>1</b>	<b>Revenue from services</b>			
<b>A</b>	<b>Revenue from wireline subscribers:</b>			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			
(vii)	Service charges			
(viii)	Charges on account of any other value added services, Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from wireline subscribers.			
<b>B</b>	<b>Revenue from WLL subscribers : (Fixed)</b>			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			

*mgd*

(vii)	Service charges			
(viii)	Charges on account of any other value added services, Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from WLL subscribers.			
<b>C</b>	<b>Revenue from WLL subscribers : (handheld)</b>			
(i)	Rentals			
(ii)	Call revenue within service area			
(iii)	National LONG DISTANCE CALL revenue			
(iv)	International LONG DISTANCE CALL revenue			
(v)	Pass thru revenue for usage of other networks (give OPERATOR-wise details)			
(vi)	Service tax			
(vii)	Service charges			
(viii)	Charges on account of any other value added services, Supplementary Services etc.			
(ix)	Any other income / miscellaneous receipt from WLL subscribers.			
<b>D</b>	<b>Revenue from Mobile Services:</b>			
<b>D (a)</b>	<b>Revenue from GSM and 3G spectrum based Mobile Services:</b>			
<b>D(a) 1.</b>	<b>Post paid options:</b>			
i.	Rentals			
ii	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
vii	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from			

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	post paid options.			
<b>D(a) 2.</b>	<b>Pre-paid options:</b>			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from pre-paid options.			
<b>D(a) 3.</b>	<b>Revenue from Mobile Community phone service</b>			
i.	including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.			
<b>D (b)</b>	<b>Revenue from CDMA based Mobile Services:</b>			
<b>D(b) 1.</b>	<b>Post paid options:</b>			
i.	Rentals			
ii.	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
vii.	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from post paid options.			
<b>D(b) 2.</b>	<b>Pre-paid options:</b>			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from pre-paid options.			

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D(b) 3.	Revenue from Mobile Community phone service including full value of all components charged therein.			
i.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.			
D (c)	Revenue from BWA Services:			
D(c) 1.	Post paid options:			
i.	Rentals			
ii.	Activation Charges			
iii.	Airtime Revenue			
iv.	Pass through charges (provide operator-wise details)			
v.	Service Tax			
vi.	Roaming charges			
vii.	Service charges			
viii.	Charges on account of any other value added services. Supplementary Services etc.			
ix.	Any other income/ miscellaneous receipt from post paid options.			
D(c) 2.	Pre-paid options:			
i.	Sale of pre-paid SIM cards including full value of all components charged therein.			
ii.	Any other income/ miscellaneous receipt from pre-paid options.			
D(c) 3.	Revenue from Mobile Community phone service including full value of all components charged therein.			
i.				
ii.	Any other income/ miscellaneous receipt from Mobile Community phone service.			
E	Revenue from Voice Mail /any other value added			

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	<b>service</b>			
<b>2</b>	<b>Income from trading activity (all including of sales tax)</b>			
(i)	Sale of handsets			
(ii)	Sale of accessories etc.			
(iii)	Any other income/ miscellaneous receipt from trading activity.			
<b>3</b>	<b>Revenue from roaming.</b>			
i.	Roaming facility revenue from own subscribers.			
ii.	Roaming revenue from own subscriber visiting other networks including STD/ISD/pass thru charges for transmission of incoming call during roaming.			
iii.	Roaming Commission earned.			
iv.	Roaming revenue on account of visiting subscribers from other networks (provide operator-wise details).			
v.	Service Tax if not included above.			
vi.	Any other income/miscellaneous receipt from roaming.			
<b>4</b>	<b>Income from investments</b>			
(i)	Interest income			
(ii)	Dividend income			
(iii)	Any other miscellaneous receipt from investments.			
<b>5</b>	<b>Non-refundable deposits from subscribers</b>			
<b>6</b>	<b>Revenue from franchisees /resellers including all commissions and discounts etc. excluding the revenues already included in IA&amp;IB</b>			

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7	Revenue from sharing/ leasing of infrastructure			
8	Revenue from sale/ lease of bandwidth, links, R&G cases, turnkey projects etc.			
9	Revenue from other OPERATORS on account of pass through call charges (provide operator-wise details).			
10	Revenue from other OPERATORS on account of provisioning of interconnection (provide operator-wise details)			
11	Miscellaneous revenue			
AA	GROSS REVENUE OF THE LICENSEE COMPANY: (Add 1-11)			
BB	DEDUCT:			
1	Charges actually paid to other SERVICE PROVIDER(s) (OPERATOR- wise)			
2	Roaming revenues actually paid to other CMSPs And GMPCS service providers. (operator-wise)			
3	Service Tax paid to the Government			
4	Sales Tax paid to the Government			
BB	TOTAL DEDUCTIBLE REVENUE (1+2+3+4)			
CC	ADJUSTED GROSS REVENUE (AA-BB)			
	REVENUE SHARE @ ----- ----- OF ADJUSTED GROSS REVENUE			

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**Auction of 3G and BWA Spectrum – Notice Inviting Applications**

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**3.4 Roll-out obligations**

The licensee to whom the spectrum is assigned shall have a network rollout obligation as detailed in this section. The obligation reflects the need both to ensure the efficient use of spectrum and provide a reasonable level of service to a wide cross-section of customers.

**3.4.1 Roll-out obligations for 3G Spectrum**Metro service area

The licensee to whom the spectrum is assigned shall be required to provide required street level coverage using the 3G Spectrum in at least 90% of the service area within five years of the Effective Date.

Category A, B and C service areas

The licensee to whom the spectrum is assigned shall ensure that at least 50% of the District Headquarters (“DHQ”) in the service area will be covered using the 3G Spectrum, out of which at least 15% of the DHQs should be rural Short Distance Charging Areas (“SDCA”)<sup>6</sup>, within five years of the Effective Date. Further:

- the operator shall be permitted to cover any other town in a District in lieu of the DHQ;
- coverage of a DHQ/ town would mean that at least 90% of the area bounded by the municipal/ local body limits should get the required street level coverage;
- the DHQ shall be taken as on the Effective Date;
- the choice of DHQs/ towns to be covered and further expansion beyond 50% of DHQs/ towns shall lie with the operator.

The Effective Date shall be the later of the date when the right to use awarded spectrum commercially commences and the date when the UAS licence, if applicable, is granted to the operator.

If the licensee does not achieve its roll out obligations, it shall be allowed a further period of one year to do so by making a payment of 2.5% of the Successful Bid Amount (i.e. spectrum acquisition price) per quarter or part thereof as liquidated damages. If the operator does not complete its roll out obligations even within the extended period of one year, the spectrum assignment shall be withdrawn.

## Auction of 3G and BWA Spectrum – Notice Inviting Applications

### **3.4.2 Roll-out obligations for BWA Spectrum**

#### Metro service area

The licensee to whom the spectrum is assigned shall be required to provide required street level coverage using the BWA Spectrum in at least 90% of the service area within five years of the Effective Date.

#### Category A, B and C service areas

The licensee to whom the spectrum is assigned shall ensure that at least 50% of the rural SDCAs are covered within five years of the Effective Date using the BWA Spectrum. Coverage of a rural SDCA would mean that at least 90% of the area bounded by the municipal/ local body limits should get the required street level coverage.

The Effective Date shall be the later of the date when the right to use awarded spectrum commercially commences and the date when the UAS licence or the ISP-category 'A' licence, if and as applicable, is granted to the operator.

If the licensee does not achieve its roll out obligations, its spectrum assignment shall be withdrawn.

### **3.5 Spectrum usage charges**

A spectrum usage charge (over and above the spectrum auction price and the applicable licence fees) as a percentage of the Adjusted Gross Revenue ("AGR") shall be payable by Successful Bidders as per rules notified by the Government from time to time.

The following schedules indicate annual spectrum charges payable quarterly in advance by GSM and CDMA operators that are successful in the 3G Auction as per the licence conditions:

#### **Schedule A: Charges for GSM operators**

<b>Spectrum slab</b>	<b>Annual spectrum charges (as a percentage of AGR)</b>
Up to 4.4 MHz	3
Up to 6.2 MHz	4
Up to 8.2 MHz	5
Up to 10.2 MHz	6
Up to 12.2 MHz	7
Up to 15.2 MHz	8

## Auction of 3G and BWA Spectrum – Notice Inviting Applications

### Schedule B: Charges for CDMA operators

Spectrum slab	Annual spectrum charges (as a percentage of AGR)
Up to 5 MHz	3
Up to 6.25 MHz	4
Up to 7.5 MHz	5
Up to 10 MHz	6
Up to 12.5 MHz	7
Up to 15 MHz	8

Licenseses using BWA Spectrum need to pay 1% of AGR from services using this spectrum as annual spectrum charge irrespective of the licence held by them. Such revenue would be required to be reported separately.

The following Schedule provides details for the applicable annual spectrum charges payable by different licence holders that are successful in the 3G Auction or the BWA Auction:

Auction type	Current spectrum allocation/ licence category			
	<i>UAS/ CMTS with GSM only</i>	<i>UAS with CDMA only</i>	<i>UAS with dual tech (GSM + CDMA)</i>	<i>ISP</i>
<i>3G Auction (frequency in 2.1GHz band)</i>	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule A to apply	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule B to apply	Revenues from these services to be added to applicable AGR and spectrum charges as per Schedule A & Schedule B to apply	Na
<i>BWA Auction (frequency in 2.3GHz band)</i>	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)	1% of applicable AGR from BWA services (with such revenue to be reported separately)

## **Auction of 3G and BWA Spectrum – Notice Inviting Applications**

The following shall be considered while computing the annual spectrum charges:

- Applicable AGR shall be computed in accordance with the provisions of the relevant service licence;
- 3G/ BWA Spectrum to be assigned in the two Auctions shall not be counted for calculating the slab of the total spectrum holding by a licensee for levy of spectrum usage charges;
- The spectrum charge for the 3G Spectrum shall be payable on total AGR of 2G and 3G services taken together;
- Revenues from services using the BWA Spectrum shall not be included in the AGR of the licensee, for the limited purpose of determining spectrum charges on spectrum other than BWA Spectrum;
- Annual spectrum charges shall be applicable from the date of award of right to use allotted spectrum commercially. However, there shall be a moratorium of one year from this date on the payment of spectrum charges for the stand-alone 3G as well as stand-alone 3G + BWA operators (i.e. winners of 3G/ BWA Spectrum who do not hold 2G spectrum). The moratorium of one year shall not be applicable to operators holding 2G + 3G Spectrum;
- Slab rate for standalone 3G operators shall be equal to the lowest slab rate in Schedule A i.e. 3% of AGR;
- For BWA Spectrum, no annual spectrum charge shall be payable in the first year from the date of award of right to use allotted spectrum commercially.

### **3.6 Duration**

#### **3G Spectrum**

The right to use the 3G Spectrum shall be valid for 20 years from the Effective Date unless revoked or surrendered earlier, subject to the operator continuing to have a UAS/ CMTS licence. In case the UAS/ CMTS licence is cancelled/ terminated for any reason, the spectrum usage rights shall stand withdrawn forthwith.

If the period of an existing UAS/ CMTS licence of an operator expires before the expiry of the right to use the 3G Spectrum awarded by means of the current Auction, then the validity of the UAS/ CMTS licence with respect to the 3G Spectrum only shall be extended to 20 years from the Effective Date on existing terms without any charges. The extension shall be done on the application of the licensee made in the 19<sup>th</sup> year of the UAS/ CMTS licence for extension of the period to make it co-terminus with the validity of the right to use the 3G Spectrum.

However, extension, if any, of the right to use any spectrum other than 3G Spectrum associated with the licence and the terms thereof, shall be specified in due course.

## **Auction of 3G and BWA Spectrum – Notice Inviting Applications**

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### *BWA Spectrum*

The right to use the BWA Spectrum shall be valid for 20 years from the Effective Date unless revoked or surrendered earlier, subject to the operator continuing to have a UAS/ CMTS/ ISP-category 'A' licence. In case the UAS/ CMTS/ ISP-category 'A' licence it holds is cancelled/ terminated for any reason, the spectrum usage rights shall stand withdrawn forthwith.

If the period of an existing UAS/ CMTS/ ISP-category 'A' licence of an operator expires before the expiry of the right to use the BWA Spectrum awarded by means of the current Auction, then the validity of the UAS/ CMTS licence with respect to the BWA Spectrum, if applicable, shall be extended to 20 years from the Effective Date on existing terms without any commercial charges. This extension shall be done on the application of the licensee made in the 19<sup>th</sup> year of the UAS/ CMTS licence for extension of the period to make it co-terminus with the validity of the right to use the BWA Spectrum period.

The ISP licence, if applicable, shall be extended for 5 years at a time for a period extending up to 20 years, from the Effective Date on existing terms.

However, extension, if any, of the right to use any spectrum other than BWA Spectrum associated with the licence and the terms thereof, shall be specified in due course.

### **3.7 Breach, revocation and surrender**

The spectrum assignment may be revoked, withdrawn, varied or surrendered in accordance with applicable licence conditions or any other applicable laws, rules, regulations or other statutory provisions.

The spectrum assignment may also be revoked if the Government determines the user of the spectrum to be in serious breach of any of the conditions of the award of the spectrum (including adherence to the Auction Rules) and the consequent obligations. In case of less serious breaches, the Government may impose penalties at its discretion. Seriousness of the breach shall be determined by the Government at its sole discretion.

In case neither the Successful Bidder nor any of its Associated Licensees has the relevant service licence for a service area where it has been declared a Successful Bidder, it must apply for, or otherwise acquire the relevant service licence in the service area in accordance with the terms of this Notice, within three (3) months of it being declared a Successful Bidder, failing which the Government shall have the right to revoke the spectrum.

The operator may surrender the spectrum, by giving notice of at least 60 calendar days in advance. In that case, it shall also notify all its customers of consequential withdrawal of service by giving 30 calendar days notice to each of them. The operator shall pay all fees payable by it until the date on which the surrender of the

## **Auction of 3G and BWA Spectrum – Notice Inviting Applications**

spectrum becomes effective. The effective date of surrender of the spectrum shall be the later of the dates of expiry of the two notices mentioned in this clause.

If at any stage, the spectrum allocation is revoked, withdrawn, varied or surrendered, no refund will be made.