



BSNL EMPLOYEES UNION

P. Abhimanyu
General Secretary

Recognised Union in BSNL
(Registered Under Indian Trade Union Act 1926. Regn No. 4896)

No.BSNLEU/600(NT)

dated 20.03.2012

To

Sri Sudhir Gupta
Principal Advisor (MS)
Telecom Regulatory Authority of India
Jawaharlal Nehru Marg
New Delhi-110002

Sir,

Sub: - Response from BSNL Employees Union to the TRAI's Consultation Paper No. 4/2012 dated 07.03.2012 on the auction of spectrum as per the Supreme Court's judgment - Reg.

With reference to the TRAI's Consultation Paper No.4/2012 dated 7-3-2012, the response of the BSNL Employees Union, the recognized union in BSNL, is sent here with for favour of your consideration.

Thanking you,

Yours Sincerely,

(P. Abhimanyu)
General Secretary

DA: As above

Central Head Quarters

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Response from BSNL Employees Union to the TRAI's Consultation Paper No. 4/2012 dated 7-3-2012 on the auction of spectrum as per the Supreme Court's judgment

- Q1.** 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?
- Q2.** What are the key objectives to be kept in mind in the auction of the spectrum?
- Q4.** Should the spectrum be liberalised before it is put to auction?
- Q5.** For the re farming 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.
- Q7.** 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?
- Q9.** Should the re farming 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?
- Q9.** Should the re farming 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?
- Q10.** Which of the two approaches outlined above be adopted?
- Q11.** When should 700 MHz spectrum be auctioned?
- Q12.** Should the auction in 700 MHz band be linked with the granting permission for the liberalised use of 800/900 MHz band?

We are submitting our answer to all the above questions together.

- a)** People are the owners of the spectrum and Government is the trustee managing it on behalf of the people. Hence the principle should be people first, and revenue to the Government next. To this extent, it is necessary to treat the PSU operators as instruments in the hands of the Government to serve the people and hence they should get the preferential treatment. The principle of equality is applicable among the private operators only and not between the PSUs and private operators since the reasons for the existence of PSU is different from the reasons for the existence of Private operators. Para 69 of the Supreme Court judgment on cancellation of the 2G licenses directs the State not to discriminate "between similarly placed private parties". Hence the principle of equality in allocating the natural resources is applicable in the case of allocation to similarly placed private parties and there is no bar against the preferential treatment to public sector in the interest of the people.
- b)** All the licenses and 2G spectrum allocations granted during 2001 to 2008 on the basis of the FCFS (First Come First Served) principle during 2001 to 2008 should be cancelled, in addition to the 122 licenses cancelled by the Supreme Court, in order to implement the principle of equality enshrined by the Supreme Court judgment for the similarly placed private parties. In the alternative, such licensees should be asked to pay the balance amount of the spectrum price that would be arrived in the auction following the Supreme Court's judgment. This is

essential in order to avoid the discrimination between the operators granted 2G license on the basis of the FCFS principle.

- c) The 800/900 MHz band spectrum should be liberalized immediately to enable the telecom operators to provide advanced IMT services (wireless broadband services etc) by utilizing these bands so that the capacity of these bands is fully utilized without restricting them for 2G services only. This is necessary in view of the necessity for utilizing the natural resources efficiently for the benefit of the people. The license period of 20 years is expiring for some of the private operators having the 900 MHz band spectrum by 2014 to 2016 whereas the license period in case of the PSUs BSNL and MTNL would be over by 2020 since the license for mobile services was denied to them for a long time, until 2000. Therefore all the existing operators having 900/800 MHz band spectrum be allowed immediately to provide the advanced services besides the 2G services, for the balance period of their license. For this, additional amount be collected from the private operators for the enhanced value of the spectrum. Since the initial start up spectrum was granted free of cost to BSNL and MTNL being the national operators, they should be allowed to provide the advanced services on 900 MHz band with them without any payment to the Government for it.
- d) The spectrum available with the existing operators over and above 5 MHz in 900 MHz band may be diverted to the common pool since minimum 5 MHz is required to provide IMT advanced services. The 900/800 MHz band thus available in the common pool and all the existing operators not having 900/800 MHz band spectrum may be allowed to participate in the auction for the spectrum of these bands. For the 700 MHz band spectrum which is not yet allotted to any operator and which can be utilized for providing advanced IMT services, all the operators, whether existing or new, may be allowed to participate in the auction.
- e) In China, the PSU operators were allotted spectrum free of cost in the interest of providing cheaper services to the people. On similar grounds, the PSU operators in India should be provided the spectrum in all bands free of cost, recognizing them as instrumentalities in the hands of the State for utilizing the natural resources efficiently in the interest of the people. For this purpose, the PSU operators must be allowed to procure the equipment without any delay and discrimination and keeping their present financial condition in view, they should be allowed to procure loans from banks with Government's guarantee. Pending all the controversies, litigations, insurmountable difficulties in allotting spectrum in all bands equitably between the private operators, this preferential treatment to PSUs will help in the efficient utilization of the natural resource of spectrum for the best benefit of the people, in line with the judgment of the Supreme Court. Moreover, the fact that the DoT/BSNL and MTNL were prevented from providing the mobile services until 2002 and hence severely discriminated and were put at a disadvantage should be recognized and they should now be allowed to provide the advanced services on their existing spectrum bands without paying any amount to the Government for that purpose. No payment be collected from BSNL/MTNL for the spectrum allocated to them in any band and in any quantity.
- f) The important fact to be taken note is that the Supreme Court judgment ordered for the auction for allocation of spectrum in 2G band only and hence the question of liberalizing the spectrum now does not arise in case of the private operators. Since there is no bar for the

liberalization of spectrum in case of the PSU operators (the equality issue is the issue pertaining between the private operators only), and since such liberalization is an immediate necessity for the benefit of the people, it is necessary at least to allow the PSU operators to provide advanced services on the existing spectrum bands.

Other questions

- a)** The incumbent operators having the minimum 4.4 MHz spectrum should not be allowed to participate in the initial phase of the auction. In the next phase of auction, those having less than 6.2 MHz spectrum be allowed to participate. In the final phase, all may be allowed. This is necessary to avoid monopoly and to see that sufficient competition is there. Allowing sufficient competition is one of the guidelines in the Supreme Court's judgment. There should be a cap on the quantity of spectrum an operator can have in each band and also as a whole. The proposal of TRAI for allowing spectrum in a service area to an operator up to 25 per cent and the market ceiling up to 35% automatically and up to 60 per cent with the recommendation of thee TRAI, is anti-competitive. The merger of AT&T and T-mobile is not allowed in USA on the ground that the combined entity will have 44 per cent of the market share and it will lead to monopoly.
- b)** Since spectrum is a scarce natural resource, the private operators should not be allowed to lease/share/trade it for their profit. The sharing of active net work also should not be allowed.
- c)** There should be rollout obligations, even after the auction of the spectrum.

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