

CHAPTER I: Spectrum requirement and availability

1. Para 1.42 (6.1)

TRAI should be entrusted with the task of carrying out a review of the present usage of spectrum available with government agencies. The objective of this exercise will be:

- *to identify the spectrum actually in use by them;*
- *to assess the efficiency of spectrum use;*
- *to identify possible alternative solutions;*
- *to examine the creation of a separate defence band;*
- *to draw up a suitable schedule for release of spectrum for Telecommunications.*

Views of the DoT

TRAI may carry out review and make its recommendations, on the present usage of spectrum available, either suo moto or on request from the Licensor as per Section 11 (1) (a) (viii) of the TRAI Act, 1997 (as amended from time to time), on the “efficient management of available spectrum”. However, public consultations shall be limited to the usage by licenced telecom service providers and government agencies not related to defence / security.

Response of TRAI

The Authority has noted the concern of the Government regarding limiting the public consultation to the usage by licensed telecom service providers and Government agencies not related to defence / security.

In view of the DoT endorsing the Authority’s recommendation, TRAI is initiating the exercise of carrying out a review of the present usage of spectrum available with Government agencies. However, as this exercise would involve several Government Departments, who are not service providers as per the TRAI Act,

DoT is requested to convey the decision formally through a Government order at the earliest. This function can be entrusted to TRAI under section 11(1)(d) of the TRAI Act. TRAI would make appropriate recommendations to the Government.

2. Para 1.61 (6.2)

- 585-698 MHz may be earmarked for digital broadcasting services including Mobile TV.
- 698-806 MHz be earmarked only for IMT applications.

Views of the DoT

Government has released National Frequency Allocation Plan (NFAP)-2008 which is effective from 1st April 2009. The frequency band 585-806 MHz has been earmarked as per IND 37 as reproduced below:

“IND 37 In the context of frequency band 585-806 MHz, bearing in mind that the band is predominantly for broadcasting services which include mobile TV, requirements of IMT and Broadband Wireless Access (BWA) subject to availability of spectrum in the frequency band 698-806 MHz may be considered for coordination on case by case basis, as appropriate.”

WPC wing of the DoT is currently reviewing the National Frequency Allocation Plan (NFAP)-2008. However, before the introduction of IMT 2000 in frequency band 698-806 MHz, spectrum used by the Ministry of I&B for Broadcasting is to be refarmed. Matter is being examined by DoT & I&B ministry.

A decision on the use of 698-806 MHz for IMT applications may be taken separately after examination of the issue.

Response of TRAI

The Authority in Paras 1.47 to 1.61 of the May 2010 recommendations has dealt with the significance of the 700 MHz band as well as the issues involved. India has lagged behind in the introduction of 3G and needs to catch up with the rest of the world in 4G/LTE for which the 700 MHz band offers immense potential. While refarming of the spectrum being utilised by other agencies in this band can be part of the

exercise contemplated in Para 1.42 above, there is adequate spectrum in this band that can be put to commercial use immediately. The Authority reiterates its recommendations in Para 1.61.

3. Para 1.73 (6.3)

Spectrum in 800 and 900 MHz bands should be refarmed at the time of renewal of the licenses. For holders of spectrum in 900 MHz band, substitute spectrum should only be assigned in 1800 MHz band and for licence holders of 800 MHz band, spectrum should be assigned in 450 / 1900 MHz bands.

Para No. 1.74 (6.4)

The Authority will carry out a separate consultation process on the issues involved in the refarming of 800/900 MHz spectrum and shall endeavour to give its recommendations before the licences come up for renewal.

Para 1.90 (6.5)

The Authority would undertake the refarming exercise, at the end of which it would work out and recommend the process and timeframe for refarming.

Views of the DoT

Can be examined on receipt of recommendations of TRAI on refarming subject to availability of spectrum in 1800 MHz band.

Access Services licences shall become due for extension from 2014 onwards. The recommendations of TRAI on refarming exercise would be required in a time bound manner well in advance before the licences are due for extension

Response of TRAI

The need for refarming of the spectrum in 800/900 MHz bands has been explained in Paras 1.62 to 1.72 of the May 2010 recommendations. As explained therein, spectrum in these two bands needs to be utilised for the IMT services. Also, commercial exploitation of these bands would result in substantial revenues, in tens of thousand crore rupees, accruing to the Government. The Authority is, at the same time, conscious of the concerns of

certain service providers who hold the spectrum in these bands. The Authority is separately initiating a consultation process regarding the issues involved in refarming and expects to give its recommendations well in time. It will also consider, as part of this exercise, the feasibility of liberalisation of spectrum along with limiting the auction of spectrum in the 700 MHz band initially to those not holding spectrum in the 800/900 MHz bands, subject to the condition that holders of 800/900 MHz spectrum would pay the market price. This is so as to establish a level playing field. It would be necessary therefore that the Government should at least bring out the need for refarming of the spectrum in these bands as part of the New Telecom Policy 2011 with the proviso that the details will be worked out in consultation with TRAI .

4. Para 1.93 (6.6)

A specific fund for spectrum refarming be created and that 50% of the realisation from all proceeds from spectrum including from the auction proceeds as well as from the Spectrum Usage charges should be transferred to this fund.

Views of the DoT

Most of this refarming will have to be done from the Government agencies including Defence and Department of Space. As the spectrum assigned to these agencies is being used for some specific purposes, either an alternate media like optical fibre or some other non-commercial alternate spectrum band will have to be provided and the incumbents will have to replace/ upgrade their equipment so as to work with the alternate media. This will require considerable expenditure on the part of the existing users. As this exercise is being done to vacate the spectrum and employ it for commercial uses, it is necessary to meet the required expenditure. However, no support is envisaged for private sector.

The expenditure for vacation of spectrum should be met from the Consolidated Fund of India, as per the present practice.

Response of TRAI

The first paragraph of the DOT's response, barring the last sentence, is in consonance with Para 1.92 of the May 2010 recommendations. While the Authority has noted the last sentence i.e. not extending support to the private sector, it is suggested that no firm view be taken at this stage pending the recommendations resulting from the consultation process on refarming of the spectrum in 800/900 MHz bands.

The Authority is however not in agreement with the statement that the expenditure for vacation of spectrum should be met from the Consolidated Fund of India, as per the present practice. The Authority is of the view that solely depending on the

Consolidated Fund of India may delay the process of refarming. For the entire refarming process to go on smoothly and for the telecom services to have access to required amount of spectrum in the next few years, it is essential that investments are made in a time bound manner. The refarming process holds significant potential from the point of view of both sectoral development as well as generation of revenues to the Government, which can be of the order of a few lakh crore rupees. It is absolutely necessary, therefore, that there should be a dedicated fund at the disposal of the Department of Telecommunications for making the requisite investments. One concern could be that the funds would be lying idle in case of suboptimal progress of work. The remedy for this should lie in designing adequate safeguards and structures to ensure timely execution of work including appropriate oversight. Drawing funds from the Consolidated Fund of India through the normal budgetary process carries with it the risk of procedural delays in the release of funds and consequential uncertainty/delays in the pace of work.

The Authority therefore reiterates its recommendation made in Para 1.93 of the May 2010 recommendations.

5. Para 1.98 (6.7)

The Authority would undertake regular spectrum audit through appropriate means. The details of the audit procedure and frequency of the exercise would be finalised through a separate consultation process.

Views of the DoT

TRAI may undertake regular spectrum audit for efficient management of available spectrum in terms of section 11 (1) (a) (viii) of the TRAI Act 1997 (as amended from time to time). (para 1.42 also refers)

Response of TRAI

The Authority is separately initiating the consultation process for audit of spectrum usage by all users and service providers so as to ensure its efficient management.

Chapter II: Licensing related issues

6. Para 2.51 (6.9)

Keeping in view the scarcity of spectrum and the need to provide the contracted spectrum to the existing licensees, the Authority recommends that no more UAS licence linked with spectrum should be awarded.

Para 2.52 (6.10)

The Authority would therefore like the Government to note that the recommendation made by the Authority in Para 2.51 above is subject to the court decisions in this regard. The applicants will however be free to apply for or opt for a Unified licence, which is being recommended for future licences separately.

Views of the DoT

From the deliberation in Para 2.52 of the TRAI recommendation, it has been observed that on reference dated 22.07.2009 of DoT, TRAI has made this recommendation in respect of the 343 pending applications for grant of new UAS licences and that this recommendation is subject to the court decision in this matter.

TRAI may recommend the Unified Licence guidelines at the earliest including, inter-alia, recommendations on First Come First Serve (FCFS), entry/eligibility conditions, PBG, FBG etc.

A draft Unified licence agreement may also be recommended by TRAI.

Response of TRAI

The Authority would like to clarify that the recommendation made in Para 2.51 of the May 2010 recommendations was in view of the position detailed in the preceding Paras 2.48 to 2.50. Besides, in Para 2.62, the Authority had recommended that all future licences should be unified licences and that spectrum should be delinked from the licence. This is the firm view of the Authority.

In so far as the 343 pending applications are concerned, the Authority had dealt with this issue in Para 2.52 of the May 2010 recommendations and had stated that the recommendations made in Para 2.51 i.e. that no more UAS licence linked with spectrum should be awarded, is subject to court decisions in regard to the pending applications. In the light of this, the conclusion of the DOT that the recommendations in Para 2.51 is in the context of the pending applications is not correct. It is only the recommendation in Para 2.52 that is linked with the pending applications.

The Authority is separately drawing up the detailed conditions of a Unified licence and, through an appropriate consultation process, expects to furnish the guidelines before the end of December, 2011. Even as the detailed conditions are being drawn up, the Authority reiterates its recommendation regarding all future licences being Unified licence and delinked from spectrum and also recommends that the Government announce the policy, since adequate details are already given in the May 2010 recommendations.

7. Para 2.62 (6.11)

All future licences should be unified licences and that spectrum be delinked from the licence.

Views of the DoT

A final view for implementation would be taken only after receipt of guidelines from TRAI for Unified Licences and its scope and migration path for all existing licence(s) covered under the scope of proposed Unified Licences.

Response of TRAI

The Authority is separately drawing up the detailed conditions of a unified licence and, through an appropriate consultation process, expects to furnish the guidelines before the end of December, 2011. Even as the detailed conditions are being drawn up, the Authority reiterates its recommendation regarding all future licences being Unified licence and delinked from spectrum and also recommends that the Government announce the policy, since adequate details are already given in the May 2010 recommendations.

8. Para 2.103 (6.14)

IP-I category be also brought under the licensing regime with immediate effect.

Views of the DoT

TRAI may recommend the guidelines including, inter-alia, entry/eligibility condition and migration path and methodology for bringing existing IP-I providers under licensing regime.

Response of TRAI

The Authority in Paras 2.101 and 2.102 of its recommendations of May 2010, has indicated the rationale for bringing IP-I providers under the licensing regime. Some of the reasons listed in Para 2.102 were

- By licensing them, they can also be permitted to provide both passive and active infrastructure, independent of the service providers. This will facilitate faster roll out and reduction in the capital expenditure on the part of the service providers.**
- Currently, tower providers are facing restrictions from different local bodies and are being subjected to local regulations which are not uniform. Bringing them under the licensing regime would facilitate a more orderly development.**
- The scope for arbitrage will be significantly reduced.**

In its recommendations dated 12.4.2011 on Telecom Infrastructure Policy, the Authority recommended that Infrastructure providers should be permitted to install and share active network limited to antenna, feeder cable, Node B, Radio Access Network (RAN) and transmission system, provided they are brought under the Unified Licensing regime. It was also recommended that they should also be permitted to possess and maintain wireless telegraphy equipment as well as assigned spectrum for providing backhaul through microwave system. There is thus need to bring the IP-I providers under Unified

licensing, so as to enable them to play their role fully in the Telecom sector.

In Para 2.186 of the May 2010 recommendations, it has been recommended that Unified licence would cover, among other services, the IP-I providers (infrastructure providers). Accordingly, the existing IP-I providers would be required to take the unified licence as soon as the same comes into being. Government may consider bringing this regime into being from April 2012 onwards or even earlier. The conditions in the unified license will apply to the IP provider too. The current registration under which the IP-I provider functions will cease to be valid from the reference date i.e. April 2012 or earlier. As indicated earlier, the Authority is preparing a detailed guidelines for unified licence, which will cover the infrastructure providers too and shall communicate its recommendations before the end of December 2011.

In the light of the above, it is recommended that the Government should announce this as a policy immediately.

9. Para 2.110 (6.15)

The Authority recommends the reintroduction of the 'C' Category licence with a District-wide jurisdiction to enable small operators including the cable operators to offer Internet service along with other services.

Views of the DoT

TRAI may recommend the Licence guidelines at the earliest including, inter-alia, recommendations on First Come First Serve (FCFS), entry /eligibility conditions, validity period, PBG, FBG etc.

A draft licence agreement may also be recommended by TRAI.

In view of recommendation in para 2.62 & 2.186, TRAI may also recommend the category of this licence under the frame work of new licensing regime.

Response of TRAI

This will be the same Unified licence. TRAI will work out the guidelines. But, DOT may announce this as a policy immediately.

10. Para 2.129 (6.18)

The licence fee for all the services viz. Basic/CMTS/UAS Licences in all the telecom service areas, NLD, ILD, ISP, ISP with IT and GMPCS and IP-I licences, PMRTS, Commercial VSAT, leftover IP-II licensees till their migration to NLD licence be finalized and IPLC, in all the service areas, will progressively be brought to a uniform 6% of AGR over a four-year period, as shown in the table 2.12 below.

Table 2.12 - Uniform license fee

Service providers	2010-11	2011-12	2012-13	2013-14
UASL/CMTS in Metro	10%	9%	8%	6%
UASL/CMTS in Category 'A'	9%	8%	7%	6%
UASL/CMTS in Category 'B'	7%	6%	6%	6%
UASL/CMTS in Category 'C'	6%	6%	6%	6%
ISP	4%	5%	6%	6%
IP-I	4%	5%	6%	6%

Views of the DoT

The need for Uniform Licence Fee for various Telecom Service Providers was mainly envisaged in the interest of simplicity, transparency, ending arbitrage in the rate of licence fee, expanding the licence fee base, and ensuring a level playing field between different services, with due consideration of the revenue receipts of the Government and the growth of telecom services in India.

As already recommended by DoT committee dt. 31-08-2009, in order to simplify the implementation and to protect the revenue of the government, it is viewed that a uniform licence fee of 8.5% of AGR

may be levied across all telecom licences, from a date to be decided, except for captive licences like VSAT and CMRTS licences etc., for which fixed licence fee conditions apply.

Response of TRAI

TRAI is of the view that there should be a uniform licence fee regime for various telecom services to check arbitrage which the service providers may resort to by shifting revenue from high licence fee services / areas to lower licence fee licence fee services / areas. Uniform licence fee will also be simpler and more transparent. In its recommendations dated 11.05.2010, the Authority has recommended that the licence fee should progressively be brought to a uniform 6% of AGR over a four-year period, as shown in the Table 2.12 of the recommendations.

TRAI is of the view that the uniform licence fee of 6% would not adversely affect the Government revenues since the base on which licence fee is to be levied is being enlarged through the incorporation of other telecom services which are presently exempted or are not liable to pay licence fee. The Authority had also indicated the financial implications of the Recommendation no. 2.126 (Annex XII). It had been demonstrated in Annexure XII that the total revenue impact due to the licence fee changes would be a surplus of Rs. 369.92 crore for the four years 2010-11 to 2013-14 for which the projections had been made.

The Authority has examined the matter once again in the light of the present revenue trends and is satisfied that the revenues of the Government would not be adversely affected on account of the uniform licence fee of 6%.

Since the revised uniform licence fee is expected to come into force only from the year 2012-13, a fresh exercise has been carried out on the basis of available revenue figures of 2008-09, 2009-10, and 2010-11. Figures relating to AGR for the years

2008-09, 2009-10 and 2010-11 for Access Service, NLD, ILD and ISP-IT have been provided by the DoT. Based on the DoT data, average growth rate of AGR for the years 2008-09 to 2010-11 has been calculated and this forms the basis for projecting the revenue from 2011-12 to 2015-16. The revenue of ISP and IP-I services has been arrived on the basis of information submitted by the industry and growth rate has been similarly calculated for making projection of AGR from these services. Comparison of impact due to adoption of proposed uniform licence fee as against expected licence fees at existing rates has been done for the years 2012-13 to 2015-16, as we are already nearing the end of financial year 2011-12.

The revised projections and revenue impact are contained in the Statement-I to this response. As can be seen, the total revenue impact due to the proposed uniform licence fee regime would be a surplus of Rs. 3869.63 crore for the four years 2012-13 to 2015-16.

Since there is adequate surplus over the expected revenues in the current regime, the Authority examined the impact of fixing the licence fee for ISP and IP-I at 3% in the first year (instead of 4%) and ramping it upto 6% by the fourth year. The calculation in Statement-II to this response reveals that in such a case too, the revenues of the Government would not be adversely affected.

The Authority notes that in the preamble of the draft of the New Telecom Policy 2011, it is mentioned that *“In achieving the goals of National Telecom Policy 2011 revenue generation will play a secondary role.”* In any case, the proposed uniform licence fee at 6% would only bring additional revenues to the Government, besides the advantage of simplifying the licence fee regime.

In view of above, the Authority reiterates its recommendations that the licence fee for all the services viz. Basic/CMTS/UAS

Licences in all the telecom service areas, NLD, ILD, ISP, ISP with IT and GMPCS and IP-I licences, PMRTS, Commercial VSAT, leftover IP-II licensees till their migration to NLD licence be finalized and IPLC, in all the service areas, will progressively be brought to a uniform 6% of AGR over a four-year period, as shown in the table below.

Service providers	2012-13	2013-14	2014-15	2015-16
UASL/CMTS in Metro	10%	9%	8%	6%
UASL/CMTS in Category 'A'	9%	8%	7%	6%
UASL/CMTS in Category 'B'	7%	6%	6%	6%
UASL/CMTS in Category 'C'	6%	6%	6%	6%
ISP	3%	4%	5%	6%
IP-I	3%	4%	5%	6%

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Statement-I

Projections of AGR & Licence Fee with Uniform Licence Fee of 6% by 2015-16 (4 years comparison of impact 2012-13 to 2015-16)

Category	AGR & L. Fee 2008-09			AGR & L. Fee 2009-10			AGR & L. Fee 2010-11			AGR & L. Fee 2011-12			AGR & L. Fee 2012-13			AGR & L. Fee 2013-14			AGR & L. Fee 2014-15			AGR & L. Fee 2015-16		
	LF Rate (%)	Projected		LF Rate (%)	Projected		LF Rate (%)	Projected		LF Rate (%)	Projected		LF Rate (%)	Projected		LF Rate (%)	Projected		LF Rate (%)	Projected		LF Rate (%)	Projected	
		AGR	L Fee		AGR	L Fee		AGR	L Fee		AGR	L Fee		AGR	L Fee		AGR	L Fee		AGR	L Fee		AGR	L Fee
		(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)
Metro	10%	20,216.85	2021.69	18,799.27	10%	1879.93	18,060.03	10%	1806.00	17071.77	10%	1,707.18	16,137.59	10%	1,613.76	15,254.53	9%	1,372.91	14,419.79	8%	1,153.58	13,630.73	6%	817.84
A	10%	36,748.21	3674.82	33,739.58	10%	3373.96	35,685.26	10%	3568.53	35253.40	10%	3,525.34	34,826.76	9%	3,134.41	34,405.29	8%	2,752.42	33,988.92	7%	2,379.22	33,577.59	6%	2,014.66
B	8%	30,347.28	2427.78	29,200.46	8%	2336.04	31,052.98	8%	2484.24	31451.26	8%	2,516.10	31,854.65	7%	2,229.83	32,263.21	6%	1,935.79	32,677.01	6%	1,960.62	33,096.12	6%	1,985.77
C	6%	9,300.81	558.05	9,571.80	6%	574.31	10,918.70	6%	655.12	11845.98	6%	710.76	12,852.01	6%	771.12	13,943.48	6%	836.61	15,127.64	6%	907.66	16,412.36	6%	984.74
NLD	6%	11,373.03	682.38	15,457.83	6%	927.47	19,020.37	6%	1141.22	24627.90	6%	1,477.67	31,888.62	6%	1,913.32	41,289.92	6%	2,477.40	53,462.89	6%	3,207.77	69,224.65	6%	4,153.48
ILD	6%	4,299.14	257.95	3,620.54	6%	217.23	4,016.42	6%	240.99	3919.02	6%	235.14	3,823.97	6%	229.44	3,731.24	6%	223.87	3,640.75	6%	218.45	3,552.46	6%	213.15
ISP-IT	6%	16.62	1.00	397.92	6%	23.88	959.59	6%	57.58	2314.07	6%	138.84	5,580.40	6%	334.82	13,457.23	6%	807.43	32,452.30	6%	1,947.14	78,259.21	6%	4,695.55
ISP		6,779.55		8,140.69			8,849.86			10123.73			11,580.97	4%	463.24	13,247.96	5%	662.40	15,154.91	6%	909.29	17,336.35	6%	1,040.18
IP-I		16,200.00		20,736.00			23,582.00			26436.00			29,457.00	4%	1,178.28	32,823.23	5%	1,641.16	36,574.13	6%	2,194.45	40,753.68	6%	2,445.22
Total		135,281.49	9,623.66	139,664.09		9,332.81	152,145.21		9,953.67	163,043.12		10,311.04	178,001.97		11,868.21	200,416.08		12,709.99	237,498.34		14,878.19	305,843.14		18,350.59

% Growth							
	2009-10 over 2008-09	2010-11 over 2009-10	2011-12	2012-13	2013-14	2014-15	2015-16
	Actual	Actual	Projected	Projected	Projected	Projected	Projected
Metro	-7.01%	-3.93%	-5.47%	-5.47%	-5.47%	-5.47%	-5.47%
A	-8.19%	5.77%	-1.21%	-1.21%	-1.21%	-1.21%	-1.21%
B	-3.78%	6.34%	1.28%	1.28%	1.28%	1.28%	1.28%
C	2.91%	14.07%	8.49%	8.49%	8.49%	8.49%	8.49%
NLD	35.92%	23.05%	29.48%	29.48%	29.48%	29.48%	29.48%
ILD	-15.78%	10.93%	-2.43%	-2.43%	-2.43%	-2.43%	-2.43%
ISP-IT	2294.22%	141.15%	141.15%	141.15%	141.15%	141.15%	141.15%
ISP	20.08%	8.71%	14.39%	14.39%	14.39%	14.39%	14.39%
IP-I	28.00%	13.72%	12.10%	11.43%	11.43%	11.43%	11.43%
Total	3.24%	8.94%	6.09%	6.09%	6.09%	6.09%	6.09%

Computation of AGR & Licence Fee at existing rates

Category	AGR & L. Fee 2011-12			AGR & L. Fee 2012-13			AGR & L. Fee 2013-14			AGR & L. Fee 2014-15			AGR & L. Fee 2015-16			Revenue Impact (Rs in Cr.)					Total Impact (Rs in Cr.)
	Projected			Projected			Projected			Projected			Projected			2011-12	2012-13	2013-14	2014-15	2015-16	
	AGR	% L. Fee	L Fee	AGR	% L. Fee	L Fee	AGR	% L. Fee	L Fee	AGR	% L. Fee	L Fee	AGR	% L. Fee	L Fee						
	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)						
Metro	17071.77	10%	1,707.18	16,137.59	10%	1,613.76	15,254.53	10%	1,525.45	14,419.79	10%	1,441.98	13,630.73	10%	1,363.07	-	-	(152.55)	(288.40)	(545.23)	(986.17)
A	35253.40	10%	3,525.34	34,826.76	10%	3,482.68	34,405.29	10%	3,440.53	33,988.92	10%	3,398.89	33,577.59	10%	3,357.76	-	(348.27)	(688.11)	(1,019.67)	(1,343.10)	(3,399.14)
B	31451.26	8%	2,516.10	31,854.65	8%	2,548.37	32,263.21	8%	2,581.06	32,677.01	8%	2,614.16	33,096.12	8%	2,647.69	-	(318.55)	(645.26)	(653.54)	(661.92)	(2,279.27)
C	11845.98	6%	710.76	12,852.01	6%	771.12	13,943.48	6%	836.61	15,127.64	6%	907.66	16,412.36	6%	984.74	-	-	-	-	-	-
NLD	24627.90	6%	1,477.67	31,888.62	6%	1,913.32	41,289.92	6%	2,477.40	53,462.89	6%	3,207.77	69,224.65	6%	4,153.48	-	-	-	-	-	-
ILD	3919.02	6%	235.14	3,823.97	6%	229.44	3,731.24	6%	223.87	3,640.75	6%	218.45	3,552.46	6%	213.15	-	-	-	-	-	-
ISP-IT	2314.07	6%	138.84	5,580.40	6%	334.82	13,457.23	6%	807.43	32,452.30	6%	1,947.14	78,259.21	6%	4,695.55	-	-	-	-	-	-
ISP	10123.73		-	11,580.97		-	13,247.96		-	15,154.91		-	17,336.35		-	-	463.24	662.40	909.29	1,040.18	3,075.11
IP-I	26436.00		-	29,457.00		-	32,823.23		-	36,574.13		-	40,753.68		-	-	1,178.28	1,641.16	2,194.45	2,445.22	7,459.11
Total	163,043.12		10,311.04	178,001.97		10,893.51	200,416.08		11,892.35	237,498.34		13,736.05	305,843.14		17,415.44	-	974.70	817.64	1,142.14	935.15	3,869.63

Assumptions for calculations:-

- Growth rates are as per AGR growth rates (DOT data) 2008-09, 2009-10 and 2010-11-averaged
- 2008-09, 2009-10, 2010-11 data for Access, NLD and ILD as per DOT letter no. 1-103/2011/ LF dated 24.10.11 and 1-103/2011/LF dated 29.10.2011.
- 2008-09,2009-10 and 2010-11 data for ISPs nad IP I are as per industry figures
- For ISP-IT, growth rate has been taken same as 2010-11 over 2009-10

Statement-II

Projections of AGR & Licence Fee with Uniform Licence Fee of 6% by 2015-16 (4 years comparison of impact 2012-13 to 2015-16)

Category	AGR & L. Fee 2008-09			AGR & L. Fee 2009-10			AGR & L. Fee 2010-11			AGR & L. Fee 2011-12			AGR & L. Fee 2012-13			AGR & L. Fee 2013-14			AGR & L. Fee 2014-15			AGR & L. Fee 2015-16		
	LF Rate (%)	AGR	L Fee	AGR	LF Rate (%)	L Fee	AGR	LF Rate (%)	L Fee	Projected			Projected			Projected			Projected			Projected		
	(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)	(Rs in Cr.)	% L. Fee	(Rs in Cr.)	(Rs in Cr.)	% L. Fee	(Rs in Cr.)	(Rs in Cr.)	% L. Fee	(Rs in Cr.)	(Rs in Cr.)	% L. Fee	(Rs in Cr.)	(Rs in Cr.)	% L. Fee	(Rs in Cr.)
Metro	10%	20,216.85	2021.69	18,799.27	10%	1879.93	18,060.03	10%	1806.00	17071.77	10%	1,707.18	16,137.59	10%	1,613.76	15,254.53	9%	1,372.91	14,419.79	8%	1,153.58	13,630.73	6%	817.84
A	10%	36,748.21	3674.82	33,739.58	10%	3373.96	35,685.26	10%	3568.53	35253.40	10%	3,525.34	34,826.76	9%	3,134.41	34,405.29	8%	2,752.42	33,988.92	7%	2,379.22	33,577.59	6%	2,014.66
B	8%	30,347.28	2427.78	29,200.46	8%	2336.04	31,052.98	8%	2484.24	31451.26	8%	2,516.10	31,854.65	7%	2,229.83	32,263.21	6%	1,935.79	32,677.01	6%	1,960.62	33,096.12	6%	1,985.77
C	6%	9,300.81	558.05	9,571.80	6%	574.31	10,918.70	6%	655.12	11845.98	6%	710.76	12,852.01	6%	771.12	13,943.48	6%	836.61	15,127.64	6%	907.66	16,412.36	6%	984.74
NLD	6%	11,373.03	682.38	15,457.83	6%	927.47	19,020.37	6%	1141.22	24627.90	6%	1,477.67	31,888.62	6%	1,913.32	41,289.92	6%	2,477.40	53,462.89	6%	3,207.77	69,224.65	6%	4,153.48
ILD	6%	4,299.14	257.95	3,620.54	6%	217.23	4,016.42	6%	240.99	3919.02	6%	235.14	3,823.97	6%	229.44	3,731.24	6%	223.87	3,640.75	6%	218.45	3,552.46	6%	213.15
ISP-IT	6%	16.62	1.00	397.92	6%	23.88	959.59	6%	57.58	2314.07	6%	138.84	5,580.40	6%	334.82	13,457.23	6%	807.43	32,452.30	6%	1,947.14	78,259.21	6%	4,695.55
ISP		6,779.55		8,140.69			8,849.86			10123.73			11,580.97	3%	347.43	13,247.96	4%	529.92	15,154.91	5%	757.75	17,336.35	6%	1,040.18
IP-I		16,200.00		20,736.00			23,582.00			26436.00			29,457.00	3%	883.71	32,823.23	4%	1,312.93	36,574.13	5%	1,828.71	40,753.68	6%	2,445.22
Total		135,281.49	9,623.66	139,664.09		9,332.81	152,145.21		9,953.67	163,043.12		10,311.04	178,001.97		11,457.83	200,416.08		12,249.28	237,498.34		14,360.90	305,843.14		18,350.59

% Growth

	2009-10 over 2008-09	2010-11 over 2009-10	2011-12	2012-13	2013-14	2014-15	2015-16
	Actual	Actual	Projected	Projected	Projected	Projected	Projected
Metro	-7.01%	-3.93%	-5.47%	-5.47%	-5.47%	-5.47%	-5.47%
A	-8.19%	5.77%	-1.21%	-1.21%	-1.21%	-1.21%	-1.21%
B	-3.78%	6.34%	1.28%	1.28%	1.28%	1.28%	1.28%
C	2.91%	14.07%	8.49%	8.49%	8.49%	8.49%	8.49%
NLD	35.92%	23.05%	29.48%	29.48%	29.48%	29.48%	29.48%
ILD	-15.78%	10.93%	-2.43%	-2.43%	-2.43%	-2.43%	-2.43%
ISP-IT	2294.22%	141.15%	141.15%	141.15%	141.15%	141.15%	141.15%
ISP	20.08%	8.71%	14.39%	14.39%	14.39%	14.39%	14.39%
IP-I	28.00%	13.72%	12.10%	11.43%	11.43%	11.43%	11.43%
Total	3.24%	8.94%	6.09%	6.09%	6.09%	6.09%	6.09%

Computation of AGR & Licence Fee at existing rates

Category	AGR & L. Fee 2011-12			AGR & L. Fee 2012-13			AGR & L. Fee 2013-14			AGR & L. Fee 2014-15			AGR & L. Fee 2015-16			Revenue Impact (Rs in Cr.)					Total Impact (Rs in Cr.)
	Projected			Projected			Projected			Projected			Projected			2011-12	2012-13	2013-14	2014-15	2015-16	
	AGR	% L. Fee	L Fee	AGR	% L. Fee	L Fee	AGR	% L. Fee	L Fee	AGR	% L. Fee	L Fee	AGR	% L. Fee	L Fee						
	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)	(Rs in Cr.)		(Rs in Cr.)						
Metro	17071.77	10%	1,707.18	16,137.59	10%	1,613.76	15,254.53	10%	1,525.45	14,419.79	10%	1,441.98	13,630.73	10%	1,363.07	-	-	(152.55)	(288.40)	(545.23)	(986.17)
A	35253.40	10%	3,525.34	34,826.76	10%	3,482.68	34,405.29	10%	3,440.53	33,988.92	10%	3,398.89	33,577.59	10%	3,357.76	-	(348.27)	(688.11)	(1,019.67)	(1,343.10)	(3,399.14)
B	31451.26	8%	2,516.10	31,854.65	8%	2,548.37	32,263.21	8%	2,581.06	32,677.01	8%	2,614.16	33,096.12	8%	2,647.69	-	(318.55)	(645.26)	(653.54)	(661.92)	(2,279.27)
C	11845.98	6%	710.76	12,852.01	6%	771.12	13,943.48	6%	836.61	15,127.64	6%	907.66	16,412.36	6%	984.74	-	-	-	-	-	-
NLD	24627.90	6%	1,477.67	31,888.62	6%	1,913.32	41,289.92	6%	2,477.40	53,462.89	6%	3,207.77	69,224.65	6%	4,153.48	-	-	-	-	-	-
ILD	3919.02	6%	235.14	3,823.97	6%	229.44	3,731.24	6%	223.87	3,640.75	6%	218.45	3,552.46	6%	213.15	-	-	-	-	-	-
ISP-IT	2314.07	6%	138.84	5,580.40	6%	334.82	13,457.23	6%	807.43	32,452.30	6%	1,947.14	78,259.21	6%	4,695.55	-	-	-	-	-	-
ISP	10123.73		-	11,580.97		-	13,247.96		-	15,154.91		-	17,336.35		-	-	347.43	529.92	757.75	1,040.18	2,675.27
IP-I	26436.00		-	29,457.00		-	32,823.23		-	36,574.13		-	40,753.68		-	-	883.71	1,312.93	1,828.71	2,445.22	6,470.57
Total	163,043.12		10,311.04	178,001.97		10,893.51	200,416.08		11,892.35	237,498.34		13,736.05	305,843.14		17,415.44	-	564.32	356.93	624.85	935.15	2,481.25

Assumptions for calculations:-

- Growth rates are as per AGR growth rates (DOT data) 2008-09, 2009-10 and 2010-11-averaged
- 2008-09, 2009-10, 2010-11 data for Access, NLD and ILD as per DOT letter no. 1-103/2011/ LF dated 24.10.11 and 1-103/2011/LF dated 29.10.2011.
- 2008-09,2009-10 and 2010-11 data for ISPs nad IP I are as per industry figures
- For ISP-IT, growth rate has been taken same as 2010-11 over 2009-10

11. Para 2.130 (6.19)

Infrastructure providers – IP-I and the ISPs be levied a uniform licence fee which would be scaled upto 6% progressively over a three-year period, as shown in the table below. The Authority would however like the Government to examine the issues of double taxation, if any.

Views of the DoT

In view of para 2.129 above, IP-I and ISPs should pay the uniform annual licence fee of 8.5% of AGR. AGR from ISPs shall include all types of revenue from internet services, from a date to be decided.

TRAI may recommend the issues involved with regard to double taxation, if any, considering the need for revenue neutrality and outsourcing model being used by various operators.

Response of TRAI

In May 2010, the Authority had recommended that ISP and IP-I should be brought under the Unified licence regime and charged licence fee which would be scaled up to 6% progressively over a four-year period.

In Para 2.130, the Authority had indicated that the Government may examine the issue of double taxation, if any. This was because the Authority had not examined this issue and felt that this may be examined by the Department of Telecommunications in consultation with the Ministry of Finance. Now that the DOT had suggested that TRAI may recommend the issues involved with regard to double taxation if any, the matter has been examined by the Authority. Normally, the issues relating to double taxation arise in respect of situations involving the territory of more than one state -- cross-border situations. Bringing the IP-I under the licensing regime and consequential charge of licence fee will not give rise to the issue of double taxation under the Indian Income Tax Act. As per

the existing tax provisions, the payments made by the Telecom service providers, to the IP-I companies/persons for infrastructure services, are deductible expenditure from their income and such receipts are taxable in the hands of IP-I persons as their income. Therefore, there appears to be no issue of double taxation under the Indian income tax law. However, the Department of Telecommunications might also consult with the Ministry of Finance and take a final decision.

The Authority is of the view that in the present licensing regime it would not be justifiable to allow either the Access providers or the IP-I providers to deduct rental charged for leasing of towers and dark fibre from their Gross Revenue for the purpose of arriving at AGR. ISPs and NLDs also take the last mile/bandwidth on lease from other service providers, and are not eligible for such deduction. If rental for leasing of towers / dark fibre is made eligible for deduction, a claim for similar deduction would also arise from ISPs and NLDs. Further, many of the Access providers are resorting to outsourcing of different kinds of infrastructure and ancillary services, and stretching the argument further, claims may arise in future for deduction of almost any of these types of expenditures. DoT may however, need to examine, in consultation with TRAI, the details of items which would constitute the AGR of IP-I category.

12. Para 2.143 (6.21)

The existing roll out obligations in the CMTS/UAS licences be replaced by the following roll out obligations for all the service areas except the Metros. The rollout obligations for metros would continue to be in force.

Roll out obligations

<i>Time</i>	<i>Habitation >10000</i>	<i>Habitation 5000- 10000</i>	<i>Habitation 2000-5000</i>
<i>2 years from effective date</i>	<i>100%</i>	<i>50%</i>	<i>-</i>
<i>3 years from effective date</i>	<i>100%</i>	<i>100%</i>	<i>50%</i>
<i>4 years from effective date</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

In the above roll out obligations, coverage of 90% or above habitations will be taken as compliance of the obligation.

Para 2.144 (6.22)

A licensee may be allowed to cover the habitations having a population between 2000-5000 through intra service area roaming, subject to the condition that at least one third of the habitations shall be covered by its own network.

Para 2.145 (6.23)

For the existing licensees, who have already completed more than 4 years but have not achieved the roll out obligations, the Authority recommends that they should be given one more year to complete the roll out in required number of habitations.

Para 2.146 (6.24)

Failure to fulfil the rollout obligations would entail penalty in the form of additional spectrum usage charge at the rates indicated in Para 2.140 above.

Para 2.140: In order that the roll out obligations are properly fulfilled, it is essential that the monitoring is strict. The Authority would propose that in the event a service provider, who has already completed five years from the effective date of licence, fails to fulfil the rollout obligations as indicated above, it will be charged spectrum usage charges (as proposed in Chapter-III) at the next slab every successive year. In other words, if a service provider with 6.2MHz spectrum, and liable to pay the Spectrum Usage Charges at 3.1% of AGR, failing in its rollout obligations will be charged 4.8% or 6.9% in the successive years. In so far as operators who have not yet completed five years, failure to fulfil the rollout obligations would entail an additional spectrum usage charge of 0.5% of AGR every successive year.

Para 2.150 (6.26)

Those licensees who have covered 50% of the habitations with a population of 500-2000 be given a reduction of 0.5% in the annual licence fee. And those licensees who have covered 100% (90% & above to be treated as 100%) of the habitations with a population of 500-2000 should be given a 2% discount in the annual licence fee.

Para 2.151 (6.27)

The Universal Service Obligation Fund be utilised by the government for provision of telecommunications facilities in habitations having a population of less than 500 and to provide broadband to all the villages having a population of more than 1000 to start with and later extend the same to all habitations having a population of 500 and above.

Para 2.152 (6.28)

In order to provide a level playing field between the old and new service providers the Authority recommends that the reduction in the licence fee shall be applicable only with effect from 1.4.2012 i.e. four years from the grant of licence to the new service providers.

Views of the DoT

Para 2.143 to 2.146 and 2.150 to 2.152

It is not clear whether:

- (i) The additional roll out are prescribed by TRAI for those Access Services Providers (UASL) who have already completed the existing roll out period of 3 years under the licence agreement.

or

- (ii) This roll out is to be applied for new UAS licenses to be given in future.

In case of (i) above, it may be examined by TRAI whether enforcing additional roll out obligation is legally tenable.

It may also be noted that TRAI has recommended all future licences to be in the category of Unified Licence category only.

Response of TRAI

In May 2010, the Authority had already indicated that the present roll out obligations are very lenient and are urban centric. The result is that even after more than 15 years since the introduction of mobile service in the country, the rural tele-density is still around 35.

The recommendation of the Authority in Para 2.143 was that the existing roll out obligations should be replaced by the roll out obligations as shown in the Table therein. It is therefore clear that what was being suggested is not an additional roll out obligation.

As per the draft of New Telecom Policy 2011, increase in rural teledensity from the current level of around 35 to 60 by the year 2017 and 100 by the year 2020 is one of the key objectives.

It is imperative that the modified roll out conditions be applied to all existing UAS/CMTS licensees. It is clarified that the roll out obligations given in Para 2.143 of the May 2010 recommendations are for all existing CMTS/UAS licensees irrespective of the fact whether these licensees have already completed their existing roll out obligations or are in the process of meeting the same.

Regarding the legality of changing/modifying the rollout obligations for the existing licensees, clause 5.1 of the UAS Licence provides that *“The LICENSOR reserves the right to modify at any time the terms and conditions of the LICENCE, if in the opinion of the LICENSOR it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the telegraphs. The decision of the LICENSOR shall be final and binding in this regard.”*

Regarding Unified Licences, the Authority has in Para 2.201 of the recommendations has clearly recommended that there will be no rollout obligations in respect of unified licences. It is only if and when these licences acquire spectrum that the roll out obligations set in.

In view of the above, the Authority reiterates its recommendation regarding roll out obligations given in Para 2.143 of the recommendations. The question arises regarding the identity of ‘habitations’. Since what is being proposed is coverage of ‘habitations’ with a minimum population of 2000, these would be, by and large, only the big villages and are easily identifiable. The reason for suggesting a ‘habitation’ and not a ‘village’ is to avoid having to cover large tracts of land with no population. However, if for the sake of convenience, there is no

difficulty in using the term ‘village’, provided it is clearly understood that what needs to be covered is the habitations therein and not 90% of the entire village area (coverage normally means 90% street level coverage).

Accordingly, the recommendation given in Para 2.143 is modified as under.

Para 2.143 (6.21)

The existing roll out obligations in the CMTS/UAS licences be replaced by the following roll out obligations for all the service areas except the metros. The rollout obligations for metros would continue to be in force.

Roll out obligations

Time	Villages having population >10000	Villages having population 5000-10000	Villages having population 2000-5000
2 years from effective date	100%	50%	-
3 years from effective date	100%	100%	50%
4 years from effective date	100%	100%	100%

In the above roll out obligations, all the habitations (in the village) having a population of more than 500 persons should be covered. For example, in a village having a population of 3500, there may be more than one habitation. In such case, all habitations having a population of more than 500 persons must be covered. The Authority is not recommending coverage of the

entire village since it can mean covering large tracts of land in Forest/Mountain/desert areas.

The recommendations given in 2.145 have been slightly modified in terms of timelines. In order to further incentivise the service providers to roll out their services in rural habitations, the Authority has also modified its recommendations given in Para 2.150. The modified recommendations are given below:-

Para 2.145 (6.23)

For the existing Licensees, the Authority recommends that they should be given one more year to complete the two years roll out obligations and two years to complete the third and fourth year roll out obligations from 01.04.2012.

Para 2.150 (6.26)

Those licensees who comply with their roll out obligations will be given incentive as shown in the Table below.

On completion of (Roll out obligations)	Reduction in USOF component in annual licence fee
2 year roll out obligations	0.5%
3 years roll out obligations	1%
4 years roll out obligations	2%

In addition, those licensees who have covered 50% of the villages with a population of 500-2000 will be given a further reduction of 1% (totalling 3%) in the annual licence fee. Those licensees who have covered 100% (90% & above to be treated as 100%) of the villages with a population of 500-2000 should be given a further 1% (totalling 4%) discount in the USOF component in the annual licence fee.

Government may however stipulate that those licensees who are liable for liquidated damages or cancellation of licences on account of non-fulfilment of their rollout obligations under the current regime will continue to be so liable. The replacement of the roll out obligations will be without prejudice to the action to be taken by the Government.

13. Para 2.163 (6.29)

A licensee must apply for renewal 30 months before its expiry and that the licensor must convey its decision preferably within 3 months but not later than 6 months from the date of application.

Views of the DoT

A licensee must apply for extension at least 30 months and not earlier than 36 months before its expiry and that the licensor shall convey its decision preferably within 3 months from the date of application.

Response of TRAI

The Authority agrees with the views of the DoT.

14. Para 2.164 (6.30)

Existing UAS licences may be renewed for another 10 years at one time, as per the provisions of the existing licensing regime.

Views of the DoT

The validity of existing UAS licences may be extended for another 10 years at one time, as per the provisions of the existing licensing regime with suitable Terms & Conditions.

Existing CMTS and Basic Services licences may also be included.

Response of TRAI

The Authority agrees with the views of the DoT that since the original licence uses the term ‘Extension’, the same term may be used. However, it is significant that Clause 4 of UAS licence condition also stipulates that “*the LICENSOR may extend, if deemed expedient, the period of a 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.*” Therefore, there is neither the concept of automatic extension nor is it incumbent to extend the licence as it exists on the day of expiry of the current term. This extension is ‘if deemed expedient’ and ‘on terms to be mutually agreed upon’. This effectively renders the extension to be a renewal even if the term ‘extension’ is used.

15. Para 2.165 (6.31)

On renewal, the UAS licensee will be required to pay a Renewal fee which will be Rs. 2 crore for Metro and 'A' Circles, Rs. 1 crore for 'B' circles and Rs. 0.5 crore for 'C' circles. This Renewal fee does not cover the value of spectrum, which shall be paid for separately.

Para 2.173 (6.32)

While renewing the licence, the Government should assign spectrum only upto the prescribed limit or the amount of spectrum assigned by it to the licensee before the renewal, whichever is less. Spectrum assigned by the Government to the licensee in excess of the Prescribed Limit shall be withdrawn.

Para 2.174 (6.33)

The spectrum will be assigned at the current price, duly adjusted to the year of renewal. The Authority may review the situation and recommend to the Government the Current price from time to time

Views of the DoT

Present licences have provisions for extension of validity period of licence. Accordingly the term 'renewal' may be replaced by 'extension'.

(Comments in Chapter -III also refers).

Response of TRAI

Regarding the use of the term 'Extension' in place of 'Renewal', the remarks in the above Para may be seen.

On extension, there are two components of charges that the licensee will pay. One is the component of the licence fee, which in this case will be the renewal fee or now the 'extension fee'. The second is the spectrum value, which in the recommendation at Para 2.165, was clearly indicated as being payable separately.

There are no specific comments of DOT against Para 2.173 and as such it is assumed that DOT is in agreement with the recommendations.

It is not clear which comments of Chapter-III are being referred to. As such, the Authority would also invite DOT's attention to the response of TRAI to the DOT's views in Chapter-III.

16. Para 2.175 (6.34)

Keeping in view the value of 900 MHz spectrum, the Authority recommends that on renewal of the licence, spectrum held by a licensee in the 900 MHz band shall be replaced by assignment of equal amount of spectrum in 1800 MHz. In case sufficient spectrum in 1800 MHz band is not available with the Government to replace the 900 MHz, the licensee will be allowed to retain the 900 MHz band spectrum on a purely temporary basis subject to the condition, and an undertaking by the licensee, that on availability of spectrum in the 1800 MHz, the spectrum given in the 900 MHz will be taken back by the Government at 6 months' notice. Renewal of the licence will be subject to, inter alia, this express condition. Similar action would be taken in respect of the 800 MHz band spectrum which would be replaced by spectrum in 1900 MHz/450 MHz band.

Views of the DoT

Looking at the technical and implementation issues, it is observed that 6 months period may not be sufficient to migrate the network from 900MHz to 1800MHz band on extension of licence(s).

Also during the overlap period of migration (i.e. 6 months as recommended by TRAI), spectrum charges to be levied are to be recommended by TRAI because during this overlap period, the service providers could have spectrum more than the entitled allocation.

Criteria for allocation of spectrum in 1800 MHz band on extension of licences may be recommended by TRAI in case spectrum in 1800 MHz band is not sufficient to meet the requirement of all the licensees.

This may be reviewed by TRAI.

(Comments in Chapter –III also refers)

Response of TRAI

It was the Authority's assessment, in May 2010, that a period of 6 months should be sufficient. These are established networks and in any case, the decision regarding extension is being given at least 2 years in advance, which should give enough time for network planning. The only work to be done is ordering of equipment, its receipt and installation. The current licence conditions stipulate roll out obligations even in the first year when there is no network at all. In any case, as noted earlier in response to Para 1.73, the Authority is initiating a Consultation process on the issues involved in the refarming of 800/900 MHz spectrum. This issue will also be taken up for discussion and the requisite time line will be indicated.

Spectrum charges applicable to the 800/900 MHz band will be levied for the period that the Service provider enjoys the spectrum.

It is not clear which comments of Chapter-III are being referred to. As such, the Authority would also invite DOT's attention to the response of TRAI to the DOT's views in Chapter-III.

17. Para 2.186 (6.35)

The framework under the new licensing regime should be as follows:

- i) Unified licence covering UASL/CMTS, NLD, ILD, Internet, IP-I and GMPCS;*
- ii) Class licence covering VSAT services; and*
- iii) Licensing through Authorisation covering PMRTS, Radio Paging and Voice Mail/Audio Tex/Unified Messaging Service.*
- iv) Broadcasting licences*

Views of the DoT

(Para 2.62 refers)

TRAI may recommend detailed guidelines and licence conditions for all the 4 categories, including, inter-alia, recommendations on First Come First Serve (FCFS), entry fee, eligibility conditions, validity period, PBG, FBG etc. The scope of this licence shall cover voice, video and data services including internet telephony.

A draft licence agreement may also be recommended by TRAI in all the 4 categories. However 'Broadcasting Licences' may continue under purview of I&B Ministry as at present.

It is also noted that:

- i) The present entry fee for obtaining NLD / ILD licence is only Rs. 2.5 crore while the entry fee for the Unified Licence has been recommended as Rs. 20 crore.*
- ii) The entry fee for obtaining ISP licences (20 years) is also very minimal (Rs.30 lacs/Rs 15 lacs for Category 'A' (all India ISP Licence)/ Category 'B' (service area level ISP licence) respectively)*

TRAI may also recommend modalities & guidelines for enabling existing UAS/CMTS/ISP/NLD/ILD/GMPCS licensees including IP-I providers to migrate to National/Service Area level Unified Licence. Guidelines shall, inter-alia, include entry fee payable, eligibility, validity period of licence on migration, PBG, FBG etc.

Response of TRAI

From the comments of the DOT, it is evident that Government is in agreement with the recommendations. As indicated earlier, the Authority recommends that the government should take the policy decision regarding unified licence immediately and announce the same. A fair amount of detail has already been given in the May 2010 recommendations and this should suffice for Government to take and announce a policy decision. Further details will be worked out and guidelines furnished to the Government by the end of December 2011. This will include the modalities and guidelines including entry fee payable, eligibility, validity period of licence on migration, PBG, FBG, migration of existing Licensees to Unified licensing regime etc. The District level licence would also be included as part of the guidelines along with the Entry Fee.

FCFS principle does not seem relevant since the Unified licence does not come bundled with spectrum.

18. Para 2.187 (6.36)

A Unified licensee shall be permitted to offer any/all services covered under 'Class licence' and 'Licensing through Authorization' but not vice-versa. Such a licensing regime will be service and technology neutral and shall permit a unified license holder to offer any or all telecom services. Spectrum, if required, is to be obtained separately.

Views of the DoT

Terms & conditions for the additional services are to be specified in the Unified Licence also. These may be recommended by TRAI.

Response of TRAI

Please refer to the Authority's response at Para 2.186 above. The terms & conditions for additional services will be considered in the consultation process.

19. Para 2.188 (6.37)

There shall be two levels of Unified licence: National level and Service area level. National level unified licence shall permit the licensee to offer any or all of the above-mentioned services in any/all service areas. Service area level unified licence, on the other hand restricts this option to the specified service area/s for which licence is given. Such licensees would not be permitted to offer NLD & ILD services. Both these licences will carry an obligation to pay licence fee at 6% of the AGR.

Para 2.195 (6.38)

The Authority accordingly recommends an Entry Fee of Rs. 20 crore for Nationwide Unified licence. For Service area-wise licences, the Entry Fee may be Rs. 2 crore for the Metros and Category 'A' service areas, Rs. 1 crore for Category 'B' and Rs. 0.5 crore for Category 'C' service areas. In addition, Annual Licence fee of 6% on AGR will be levied.

Para 2.196 (6.39)

The V-SAT licence will continue to have an Entry Fee of Rs. 30 lakh and an annual licence fee of 6% of AGR. The Entry Fee for licences through Authorisation will entail an Entry Fee of Rs. 10,000 and an annual licence fee of 1% of the AGR.

Views of the DoT

(para 2.62 may also be referred)

As clarified by TRAI, Service Area level licence shall not include GMPCS.

Annual Licence fee shall be as per the decision to be taken on para 2.129.

Response of TRAI

The response of the Authority to DOT's views at Para 2.129 may be referred to.

20. Para 2.197 (6.40)

In case an existing licensee obtains a Unified License, the licensee shall surrender the old licence(s). However, in case of CMTS/UASL, the licensee will continue to retain the spectrum assigned for the validity period of the old license.

Views of the DoT

TRAI may also recommend modalities & guidelines for enabling existing UAS/CMTS/ISP/NLD/ILD/GMPCS licensees to migrate to National/Service Area level Unified Licence. Guidelines shall, inter-alia, include entry fee payable, eligibility, validity period of licence, PBG, FBG etc.

In addition, TRAI may also recommend modalities & guidelines for migration of Service Area level Unified Licence to National level Unified Licence.

Response of TRAI

As indicated earlier, TRAI would be working out the details regarding the migration of existing licences to Unified licence, and will be forwarding its recommendations to the Government. However, the Authority does not feel it necessary to work out the modalities and guidelines for migration of Service area level Unified licence to National level Unified licence. These are two separate licences and given the low fee for this licence, a service provider having a Service area level Unified licence need not migrate but take the National level Unified licence separately. Alternatively, the licensee fee already paid for the service area license may be deducted and balance collected for the National level Unified licence.

21. Para 2.201 (6.41)

In respect of the unified licences, there will be no roll out obligations. But from the second year of the effective date of the license, the licensee will pay the licence fee at the applicable rate, subject to a minimum of 10% of the Entry fee.

Views of the DoT

Rollout obligation on obtaining spectrum may be incorporated in Unified Licence(s)/Wireless operating licence(s) which shall be subject to date of allocation of spectrum. TRAI may recommend the Roll out Obligation provisions to be included in the relevant licence(s) taking into account the provisions of rollout in the existing licence(s) for migration to Unified Licence.

In addition, TRAI may also recommend presumptive AGR, on obtaining spectrum by operator, similar to Para 2.133.

Response of TRAI

As already indicated in the recommendations, there will be no roll out obligations in respect of the unified licence. However, the moment spectrum is given, the rollout obligations will come into force and these will be the same as what have been recommended for the present UAS licence.

The issue of presumptive AGR would not arise since spectrum for a Unified licence holder is expected to be available through auction. However, this would be taken up in the consultation process.

CHAPTER III: SPECTRUM ASSIGNMENT AND PRICING

22. Para 3.28 (6.42)

The limit on spectrum to be assigned to a service provider will be 2X8MHz for all service areas other than in Delhi and Mumbai where it will be 2X10MHz. Similarly for CDMA spectrum the Authority recommends that the limit on spectrum will be 2X5MHz for all service areas and 2X6.25 MHz in the Metro areas of Delhi and Mumbai. As concluded in chapter-II, the contracted Spectrum as per the license is 6.2MHz/5 MHz (GSM/CDMA) only. Therefore, even though the service provider will be assigned spectrum upto the prescribed limit, Spectrum assigned beyond contracted amount will be paid for at the current price. This will be equally applicable to the service providers who are already holding the excess spectrum and those who will be assigned beyond the contracted amount in future

Views of the DoT

Regarding current price, para 3.82 may also be seen.

TRAI has clarified various nomenclatures used for spectrum assignment as summarised below:

Nomenclature used	Amount of spectrum for GSM	Amount of spectrum for CDMA
Initial / Start up spectrum	2x4.4 MHz	2x2.5MHz
Contracted/Committed Spectrum	2x6.2MHz	2x5MHz
Prescribed Limit of Spectrum	2x8MHz (other than Delhi & Mumbai)	2x5MHz(other than Delhi & Mumbai)
Excess Spectrum	Beyond contracted spectrum	Beyond contracted spectrum
Additional Spectrum	Beyond initial Spectrum and includes excess spectrum	Beyond initial Spectrum and includes excess spectrum

TRAI has defined the quantum of spectrum contracted and spectrum beyond contracted spectrum has been defined as excess spectrum. TRAI may indicate the rationale for defining the prescribed limit of spectrum.

Response of TRAI

The Authority has recommended the prescribed limit of spectrum for GSM as 2X8MHz for all service areas other than in Delhi and Mumbai where it will be 2X10MHz and for CDMA as 2X5MHz for all service areas and 2X6.25 MHz in the Metro areas of Delhi and Mumbai. The rationale for arriving at this recommendation is given in detail in Paras 3.15 to 3.26 of the May 2010 recommendations. In Para 3.15, the Authority had stated that it "would not be in favour of placing an administrative cap on the amount of spectrum a licensee can hold. However, in view of the fact that presently there is a huge mismatch between the demand and availability of the spectrum in these bands (800, 900 and 1800 MHz) and that every licensee is entitled to certain amount of minimum spectrum to provide its subscriber connection service, the Authority is of the opinion that arriving at the level of 'adequate spectrum' in these bands would be desirable". Thus, the prescribed limit of spectrum is in terms of quantum of spectrum in the 2G bands (800, 900 and 1800 MHz) that can be assigned by the Government to any licensee. This does not preclude the licensee from acquiring additional spectrum in the open market should there be an auction of spectrum or in terms of consolidation through mergers.

23. Para 3.34 (6.43)

Spectrum beyond contractual quantity i.e. 2x6.2MHz may be assigned in the following tranches:-

- *For all the service areas, the additional spectrum may be assigned in a single tranche of 2x1.8MHz making a total 2x8MHz;*
- *For the metro service areas of Delhi and Mumbai, the additional spectrum may be assigned in two tranches; the first tranche of 2x1.8MHz, the making a total of 2x8MHz and then the second tranche of 2x2MHz making a total of 2x10MHz.*

Views of the DoT

Same as above in Para 3.28 above.

Response of TRAI

The views of DOT cannot be the same as those against Para 3.28 above, as DOT had therein asked for the rationale in defining the prescribed limit of spectrum. If the intention of DOT in this paragraph is that the Authority should provide the rationale for the recommendation, the Authority favours a continuation of the current practice of assigning spectrum from 6.2 MHz to 8 MHz and 8 to 10 MHz. In Para 3.33 of the May 2010 recommendations, it has been indicated that as design, planning and installation of network requires heavy investment of capital and time, it will be in the interest of service providers if spectrum is assigned in as large a block as possible. The Authority does not favour assigning spectrum in tranches of 1+1 MHz.

24. Para 3.43 (6.44)

The use of subscriber linked criteria be done away with for assignment of spectrum.

Views of the DoT

May be read with Para 3.52(6.48) & 3.54(6.49).

Response of TRAI

The rationale for recommending the discontinuance of the use of the subscriber linked criteria was given in Para 3.42. The comments of the DOT against Para 3.52 do not appear to be relevant in this context. The response of the Authority to the comments of DOT against Para 3.54 may be seen.

25. Para 3.46 (6.45)

The Authority concludes that it is not feasible to auction spectrum in the 800,900 and 1800 MHz bands.

Views of the DoT

This recommendation has been modified vide TRAI letter dated 08.02.2011 and has been considered in Para 3.82.

Response of TRAI

No comments.

26. Para 3.50 (6.47)

Government should bring additional blocks into 3G services at the earliest and offer the same at the highest price being discovered through the present auction to the remaining bidders in the order of bids. If, however, more than a year lapses from now for this exercise, a fresh auction needs to be conducted.

Views of the DoT

It is noted that the additional blocks in 3G have not become available within 1 year of the 3G auction.

Response of TRAI

No comments.

27. Para 3.52 (6.48)

The eligibility conditions for assignment of additional spectrum beyond the initial start up spectrum shall be as follows:

- *For assignment of spectrum beyond 2.5 MHz and upto 3.75 MHz of CDMA, the service providers should have made the commercial launch and have covered 25% of the district headquarters or any other town in the district in lieu thereof.*
- *For assignment of spectrum beyond 4.4 MHz and up to 6.2 MHz in respect of GSM as well as beyond/3.75 MHz and up to 5MHz in respect of CDMA, the service provider should have covered at least 50% of the District headquarters or any other town in a District in lieu of the District Headquarters. Coverage of a DHQ/town would mean that at least 90% of the area bounded by the Municipal limits should get the required street coverage. The assignment is subject to the condition that the service provider will complete the prescribed roll out obligations for 2 years, within a period of 6 months from the date of assignment of additional spectrum.*
- *For assignment of spectrum from 6.2 to 8 MHz in respect of GSM and from 5 MHz to 6.25 MHz in respect of CDMA, the service providers should have completed the two years' roll-out target. The assignment is subject to the condition that the service providers will complete the roll-out target prescribed for three years within a period of one year from the date of assignment of additional spectrum.*
- *In Delhi and Mumbai, the service provider would be entitled for additional GSM spectrum beyond 4.4 MHz upto 6.2 MHz on achievement of 90% street coverage of the Metro service area. Achievement of 5% and 10% of market share in the Metro service area would entitle the service provider for spectrum of 8 MHz and 10 MHz respectively. In respect of CDMA, the commercial launch*

and 90% street coverage would be the entitlement for spectrum from 2.5 MHz upto 3.75 MHz, and achievement of 5% and 10% of the market share in the Metro service area for 5 MHz and 6.25 MHz respectively.

Views of the DoT

Observations	Response of TRAI
<p>Present licensing regime does not envisage coverage of 25% of the district headquarters or any other town in the district in lieu thereof as part of either 1st year or 3rd year rollout obligations.</p>	<p>The eligibility conditions for assignment of additional spectrum beyond the initial start up spectrum are independent of the roll out obligations. It should not be difficult to verify the coverage of 25% of the DHQ or towns in lieu thereof. Besides, the eligibility conditions are being revised, removing the condition regarding fulfilment of roll out obligations within a certain period of assignment of additional spectrum. The revised eligibility criteria are given below.</p>
<p>There are also no provisions for monitoring 2nd year roll out in the present licences. Para 2.143(6.21) may also be seen.</p>	
<p>Moreover, having considered recommendation in Para 3.43(6.44), there is no tool/methodology recommended by TRAI to ensure satisfactory penetration after having covered the area as roll-out obligations for determining eligibility for further assignment of spectrum.</p>	
<p>TRAI has also raised concerns recently with DoT for unsatisfactory coverage of services in spite of meeting roll out criteria by the operators.</p>	<p>The recent recommendations by the Authority regarding cancellation of licences was precisely because the licensees</p>

	did not meet the roll-out obligations and this was amply explained in the references to the DOT.
Criteria of allocation for CDMA from 5MHz to 6.25 MHz in service areas other than Delhi/Mumbai prescribed by TRAI are not applicable as the prescribed limit is only 5MHz.	Agreed
It is noted that in respect of recommendations for assignment of additional spectrum beyond initial start up spectrum, in DELHI & MUMBAI service area, TRAI has recommended satisfactory coverage criteria also in terms of % of market share.	Yes. This is because 90% coverage is achieved in the initial stage itself.

Accordingly, it is viewed that:

View of DOT	Response of TRAI
(i)The recommendations may be considered for DELHI & MUMBAI service areas only. TRAI may examine to consider similar criteria for Kolkata & Chennai LSAs.	In case of Chennai metro, presently there are two types of licensees-(a) Licensees having separate licences for Chennai metro and Tamilnadu service area. (b) Licensees having single licence for Tamil Nadu including Chennai service area. As such, it is not possible to

	<p>prescribe criteria in terms of market share for Chennai metro as has been prescribed for Delhi and Mumbai service areas. However, the Authority agrees to similar criteria for allocation of additional spectrum in case of Kolkata service area.</p>
<p>(ii)Market share shall be as defined in M&A guidelines.</p>	<p>Noted.</p>
<p>(iii)It is further viewed that recommendations in respect of other service areas may be reconsidered by TRAI in the absence of suitable criteria to judge satisfactory penetration for the already assigned spectrum. TRAI may examine and reconsider criteria for service areas other than Delhi & Mumbai also on the same lines as in (i) above. (In this regard the views in Para 2.143-2.145 may be referred to.)</p>	<p>The Authority is of the view that unlike metro service areas of Delhi, Mumbai and Kolkata, which are homogeneous in nature and are purely urban, all other service areas have both urban and rural populations. Therefore, in case the spectrum allocation criteria is linked to market share in the service areas other than metros, it is possible that the service providers may achieve the required market share only by covering the urban population and thus defeating the very purpose of increasing the rural coverage. Besides, the criteria for judging satisfactory roll out obligation are very clear. Therefore, the Authority</p>

	<p>reiterates its earlier recommendations to replace the existing roll out obligations with those recommended by the Authority in Para 2.143.</p>
<p>(iv) For service areas other than Delhi & Mumbai, existing subscriber linked criteria shall continue till a revised criteria for allocation of additional spectrum is finalised.</p>	<p>As stated above and in Para 3.54, the existing subscriber linked criteria shall continue for six months. The Authority reiterates its recommendations in Para 2.143 of the May 2010 recommendations.</p>

The Authority recommends that the eligibility conditions for assignment of additional spectrum beyond the initial start up spectrum shall be as follows:

- **For assignment of spectrum beyond 2.5 MHz and up to 3.75 MHz of CDMA, the service providers should have made the commercial launch and should have covered at least 25% of the District headquarters or any other town in a District in lieu thereof. Coverage of a DHQ/town would mean that at least 90% of the area bounded by the Municipal limits should get the required street coverage.**
- **For assignment of spectrum beyond 4.4 MHz and up to 6.2 MHz in respect of GSM as well as beyond 3.75 MHz and up to 5 MHz in respect of CDMA, the service provider should have covered at least 50% of the District headquarters or any other town in lieu thereof. Coverage of a DHQ/town would mean that at least 90% of the area bounded by the Municipal limits should get the required street coverage.**

- **For assignment of spectrum from 6.2 to 8 MHz in respect of GSM the service providers should have completed the two years' roll-out target.**
- **In the three metros of Delhi, Mumbai and Kolkata the service provider would be entitled for additional GSM spectrum beyond 4.4 MHz up to 6.2 MHz on achievement of 90% street coverage of the Metro service area. In the metros of Delhi and Mumbai, achievement of 5% and 10% of market share in the Metro service area would entitle the service provider for spectrum of 8 MHz and 10 MHz respectively, while in metro of Kolkata, achievement of 5% of market share in the Metro service area would entitle the service provider for spectrum of 8 MHz. In respect of CDMA, in the three metros of Delhi, Mumbai and Kolkata the service provider would be entitled for additional spectrum beyond 2.5 MHz upto 3.75 MHz after the commercial launch and 90% street coverage. In the metros of Delhi and Mumbai, achievement of 5% and 10% of market share in the Metro service area would entitle the service provider for spectrum of 5 MHz and 6.25 MHz respectively, while in metro of Kolkata, achievement of 5% of market share in the Metro service area would entitle the service provider for spectrum of 5 MHz.**

28. Para 3.54 (6.49)

The subscriber linked criteria, as adopted by the Government in January 2008 be kept operational only for a period of six months to enable all operators who are already qualified for the additional spectrum based on the prevalent SLC or those who would be qualified within the next six months, to be assigned additional spectrum subject to availability and the Prescribed limit recommended earlier (Para 3.28). Assignment of additional spectrum to such service providers will be subject to the condition that they shall complete the 2 years' roll out obligation within a period of six months from the date of assignment of additional spectrum.

Views of the DoT

The subscriber linked criteria, as adopted by the Government in January 2008 be kept operational only for a period of six months to enable all operators who are already qualified for the additional spectrum based on the prevalent SLC or those who would be qualified within the next six months, to be assigned additional spectrum subject to availability and the Prescribed limit recommended in Para 3.28.

(Para 3.52 and 3.43 also refers.)

Response of TRAI

Agreed.

29. Para 3.61 (6.50)

The inter-se priority between the different categories of operators shall be as follows:

- (a) Licensees who have received the initial start up spectrum and have met the eligibility conditions for grant of additional spectrum up to 6.2/5 MHz will be given the top priority. The inter-se priority for such operators, subject to meeting the eligibility norms, would be the date of application for additional spectrum.*
- (b) Licensees who have been assigned the committed spectrum but are waiting to get additional spectrum- up to the maximum permissible limit will be next in priority. The inter-se priority between operators within this group, subject to meeting the eligibility norms, would also be the date of application for additional spectrum,*
- (c) Next in priority will be those who are waiting for the start up spectrum. The inter-se priority between such operators would be the date of UAS licence.*

Views of the DoT

TRAI has recommended a gap of 6 months for reference date for considering allocation. (Refer Para 3.57)

As per TRAI's recommendations, the licensee, who have not been allocated the contracted spectrum and are waiting for initial/start up spectrum shall be the last in priority after those who are seeking spectrum beyond the contracted spectrum. As per these recommendations of TRAI, it may so happen that licensee in category (c) may always be left out, in case spectrum chunk to be allocated is not sufficient to meet the demand of category (a) and (b). However licensee(s) in category (c) have the contractual right to obtain the spectrum.

It is also observed that there may be a scenario where the spectrum available for assignment is less than the tranche of spectrum to be allocated to the eligible operator. In such a scenario, the spectrum shall be assigned only after required tranche becomes available even though the spectrum may be sufficient to meet the demand of next eligible operator. Moreover, those operators, who have been allocated spectrum only in part of service area geographically, after being eligible, shall be on the first priority to get the spectrum in the remaining parts of the service area.

Referred back to TRAI for reconsideration in view of above.

Response of TRAI

The Authority reiterates its recommendations given in Para 3.61 subject to the following.

- (1) TRAI agrees with the comments of DoT that those operators, who have been allocated spectrum only in part of service area geographically, shall be on the first priority to get the spectrum in the remaining parts of the service area.**
- (2) It is understood that there are certain court decisions on the issue of allocation of spectrum to certain operators. Needless to say, in those cases, the court order will prevail over these recommendations.**

30. Para 3.69 (6.51)

- *Spectrum in bands other than 800, 900 and 1800 MHz could be considered for non-commercial use on a case by case basis, after due reference to and recommendation from TRAI. However, such assignment will be done very sparingly.*
- *Users of all spectrum assigned for the non-commercial usage in the identified commercial bands will be levied an annual spectrum usage charge comparable to the charge being paid for the commercial services.*

Views of the DoT

- It is an ongoing process and there are a large number of telecom services in bands other than 800, 900 and 1800 MHz commercial band.
- Non-commercial usage in commercial bands should not be encouraged in-principle. Current non-commercial users in commercial bands would, however, may continue till such time as they can be relocated to other bands.
- Annual spectrum usage charges for commercial bands are as % of AGR. TRAI may recommend the methodology for levy of annual spectrum usage charge for non-commercial services (including government users), comparable to the charges being paid for commercial services.

Response of TRAI

The Authority had given these recommendations in view of a specific reference from DoT, vide its letter dated 07th July 2009. The Authority has noted the observations of DoT regarding recommending a methodology for levy of annual spectrum usage charge for non-commercial services (including government users), comparable to the charges being paid for commercial services. The issue of annual

spectrum usage charge for non-commercial services will be addressed while carrying out a review of the present usage of spectrum available with the Government agencies.

31. Para 3.82 (6.52)

The 3G prices be adopted as the ‘Current price’ of spectrum in the 1800 MHz band. At the same time, Authority is separately initiating an exercise to further study this subject and would apprise the Government of its findings.

On further consideration, TRAI has made recommendations vide letter dated 8.2.2011 subsequently.

TRAI has further forwarded their clarifications on earlier recommendations vide letter dated 3rd May 2011.

It is observed that:

1. (a) TRAI, in its letter dt. 8.2.2011, has recommended that the “Current Price” of GSM spectrum in 1800 MHz be taken equal to the estimated price mentioned in the table given in para 5 of letter dated 8.2.2011. The “Current Price” of spectrum is in two parts:
 - (i) Upto 6.2 MHz (i.e. upto contracted Spectrum) in 1800 MHz band
 - (ii) Beyond 6.2MHz (i.e. beyond contracted Spectrum) in 1800 MHz band

This table is reproduced as below:

TABLE

Sl.no	Service Area	Category	In Rs. Cr		
			Entry Fee (in 2001)	Estimated Price of 1800 MHz spectrum (in 2010)	
				per MHz	per MHz upto 6.2 MHz
1	Delhi	Metro	27.53	149.78	249.73
2	Mumbai	Metro	32.85	101.11	157.34
3	Kolkata	Metro	12.58	49.48	47.60
4	Maharashtra	A	30.48	117.14	374.47
5	Gujarat	A	17.58	149.87	355.37
6	Andhra Pradesh	A	16.61	153.77	431.95
7	Karnataka	A	33.36	136.16	345.92
8	Tamil Nadu	A	37.58	187.38	426.05
9	Kerala	B	6.54	73.98	232.16
10	Punjab	B	24.48	72.86	180.56
11	Haryana	B	3.46	14.50	107.90
12	UP- East	B	7.30	151.76	318.76
13	UP-West	B	4.93	60.11	252.55
14	Rajasthan	B	5.20	106.03	278.84
15	Madhya Pradesh	B	2.81	87.71	254.45
16	West Bengal	B	0.16	44.79	216.96
17	Himachal Pradesh	C	0.18	9.34	28.12
18	Bihar	C	1.61	51.04	153.69
19	Orissa	C	0.81	24.33	73.26
20	Assam	C	0.81	10.40	31.33
21	North-east	C	0.32	10.61	31.95
22	Jammu and Kashmir	C	0.32	7.60	22.89
	All India		267.51	1769.75	4571.87

(b) In view of availability of spectrum envisaged by TRAI on cancellation of licences in Annexure A1 to A6 of letter dated 8.2.2011, TRAI has recommended to auction this spectrum. TRAI has further recommended that the current price mentioned in the above table be modified as relevant current price of spectrum beyond 6.2 MHz for given LSA based on the auction, provided auction is conducted within 12 months of decision by the Government on these recommendations.

(c) It is implied that in case of non-availability of spectrum in 1800 MHz band due to non cancellation/vacation by the existing licensee, and/or non-auction of spectrum due to any reason within 12 months

from the date of acceptance of these recommendations by Government, the estimated price mentioned in the table above shall remain as the Current Price of spectrum for GSM beyond 6.2 MHz(beyond contracted spectrum) in 1800 MHz band.

- (d) However, the Current Price upto contracted spectrum shall be equal to the estimated price upto 6.2MHz in 1800MHz band as recommended by the TRAI. Further, TRAI has clarified on 3rd May 2011(**para 7**) that “ The very concept of ‘current price’ is in respect of excess spectrum. As such the application of ‘current price’ to the contracted spectrum whether GSM or CDMA does not arise.” The Current Price of spectrum upto 6.2MHz in 1800 MHz band is recommended in case of extension of licences.
- (e) Further, as clarified by TRAI, **no current price** is to be charged from the existing operators for assigning spectrum upto 6.2MHz (contracted spectrum) in 1800 MHz band and upto 5MHz for CDMA (contracted spectrum) during the validity of existing licences held by them.

2.

- (a) Reading of para 3.28 of TRAI recommendations indicates that maximum spectrum (**prescribed limit**) is to be assigned as below:

2x10 MHz for GSM in Delhi & Mumbai
2x8 MHz for GSM in rest of Service Areas
2x6.25MHz for CDMA in Delhi and Mumbai
2x5 MHz for CDMA in rest of Service Areas

It is implied that as per TRAI recommendations, spectrum beyond the above prescribed limit is not to be assigned in any case except in case of consolidation/mergers. As already discussed by TRAI in para 2.47(6.8), contracted spectrum for GSM is 2x6.2 MHz and for CDMA is 2x5 MHz.

- (b) Reading of para 3.102 along with of letter dated 8.2.2011 indicates that this current price for GSM beyond 8 MHz in 1800 MHz band would be **1.3 times** of the current price of the spectrum in 1800 MHz.

(i.e. equal to 1.3 x current price of beyond 6.2 MHz GSM spectrum in 1800MHz band)

- (c) Further, TRAI has not recommended the current price for CDMA spectrum in recommendations dated 8-2-2011. However, for CDMA spectrum (beyond contracted spectrum), it is linked to para 3.91, 3.102 and 3.104 of recommendations dated 11-05-2010.

- (d) Reading of para 3.91, 3.102 and 3.104 alongwith letter dt. 8.2.2011 indicates that -

(i) the Current Price for CDMA spectrum per MHz in 800 MHz band beyond contracted spectrum **upto** prescribed limit would be **1.5 times** of 1800MHz GSM spectrum current price beyond 6.2 MHz.

(ii) the Current Price for GSM spectrum per MHz in 900 MHz band **upto** prescribed limit would be **1.5 times** of 1800MHz GSM spectrum current price beyond 6.2 MHz

(iii) the Current Price for CDMA spectrum per MHz in 800 MHz band **beyond** prescribed limit would be **1.3x1.5 times** of 1800MHz GSM spectrum current price beyond 6.2 MHz.

(iv) the Current Price for GSM spectrum per MHz in 900 MHz band **beyond** prescribed limit would be **1.3x1.5 times** of 1800MHz GSM spectrum current price beyond 6.2 MHz.

3. The recommendation in letter dt. 8-2-2011 read with para 2.175(6.34) indicates that TRAI has not recommended pricing of 1900MHz or 450MHz band at the time of renewal of licence held by operators using 800 MHz band. However, TRAI has clarified on 3rd

May 2011 that value of spectrum in these two bands shall be assessed separately.

4.

- (a) TRAI's recommendations in para 3.28 read with para 10 of letter dated 8.2.2011 and alongwith para 8 of clarification dated 3-5-2011 is regarding date of applicability of current price beyond contracted spectrum for existing and future allocations.

Para 3.28 of TRAI's Recommendations:

*".....Spectrum assigned **beyond contracted amount will be paid for at the current price.** This will be equally applicable to the service providers who are already holding the excess spectrum and those who will be assigned beyond the contracted amount in future."*

Para 10 of letter dt. 8-2-11:

*".....**these current prices be made applicable** from 1.4.2010, prorated for the remaining validity of the respective licence **while charging for excess spectrum.**"*

- (b) It is noted that TRAI vide recommendation dt. 8-2-2011 has recommended that the applicable date for current price in respect of GSM 1800MHz band spectrum as 1.4.2010 for excess spectrum (beyond contracted spectrum).
- (c) As clarified by TRAI, applicable date in respect of 800MHz (CDMA) & 900MHz (GSM) spectrum bands shall also be same as for 1800 MHz band i.e. 1.4.2010.
- (d) Further, it is noted that following stipulation was approved on 28-05-2008 by DoT and was part of subsequent spectrum allocations.

"Further allotment of spectrum is subject to:

(a) Pricing as determined in future for spectrum beyond 6.2+6.2MHz and

(b) The outcome of court orders.”

(for e.g. DoT order dt. 30-07-08, copy attached as Annexure-VI)

The allocations made operator/service area wise under the above conditions are annexed in **Annexure -VII**.

- (e) TRAI has now clarified on 3rd May 2011 that, wherever spectrum allocations have been made subject to explicit conditions for pricing the spectrum in future beyond contracted spectrum, Current price may be charged from the date of allocation in year 2008-09 and subject to outcome of various court cases.
- (f) There is some contradiction in these recommendations (refer (b) & (e) above). These are further deliberated in Para 3.99 (6.54) of this report. This may be considered after reconsidered recommendations of TRAI on para 3.99 (6.54).
5. While going through the estimated price of 1800 MHz 2G GSM spectrum as arrived by the experts appointed by TRAI, it is noted that the variations in the price of spectrum among various service areas is at variance with the price determined through the 3G auction. It is also noted that the expert committee of TRAI made various assumptions while arriving at these estimated prices.

TRAI while clarifying the issue in para 6 of letter dated 3rd May 2011, has stated that: “It may however be noted that the Authority also recommended that the charging of spectrum in 1800 MHz band beyond 6.2 MHz, on the basis of these estimated figures, should be unambiguously subject to the condition that the final price could be suitably modified as described in para 8 of the recommendations dated 8th February 2011.”

In para 8 of said recommendations, TRAI has mentioned that “.....In that event, it should be possible for the government to auction the surplus spectrum and treat this auction price as the relevant price of spectrum beyond 6.2 MHz for the given LSA, provided the auction is conducted within 12 months of the decision by the Government.....Government could consider appropriately modifying the estimated figure of a LSA to reflect the market price based on the auction price in the LSAs where auction was conducted.”

It is also noted that in para 10 of recommendations dated 8th Feb. 2011, TRAI has mentioned that these prices are for year 2010 and may be made applicable from 1.4.2010.

It is noted that it has to be kept in mind that auction, if any in future, would discover the market price of spectrum at that point of time and modifying the estimated price given by experts for year 2010 based on future auction price retrospectively would be very complex and would certainly require reconsidered recommendations of TRAI.

Determination of market price through auction of 2G spectrum may take more time due to non-availability of spectrum. Current price has to be made applicable now.

In view of the above, TRAI may reconsider the current price recommended and confirm.

Keeping in view the above, TRAI may reconsider the following:

- I. Government has publicly stated that all spectrum allocations not thus far allocated beyond 4.4 MHz is liable to be charged and priced for the existing licensees of access services. Further, spectrum already allocated from 4.4 MHz/2.5 MHz startup GSM/CDMA spectrum upto 6.2 MHz/5 MHz contractual

GSM/CDMA spectrum pursuant to the relevant access services licence(s) are not to be revisited for charging and pricing of spectrum beyond 4.4 MHz. Considering the above, TRAI may recommend the pricing of spectrum from initial to contracted quantum to be allocated in future. This also implies that price for initial/start up spectrum will also need to be worked out for future.

- II. Across the board applicability of assumptions made by TRAI for arriving at the proposed pricing formula is not evident. Appropriateness of the spectrum pricing suggested by TRAI, in cases where auction is not feasible, needs to be re-examined. In view of para 1 to 3 and 5 above, It is referred back to TRAI for reconsideration.
- III. For the purpose of extension of licence, per MHz price in 1800 MHz upto 6.2 MHz (contracted spectrum) as recommended by TRAI in letter dated 8.2.2011 shall be considered subject to reconsideration by TRAI as in I above.
- IV. TRAI may also recommend per MHz price for CDMA upto 5MHz (contracted spectrum) for the purpose of extension of licences.
- V. TRAI may recommend the Current Price for GSM and CDMA spectrum (upto contracted and beyond contracted) every year by 31st December which shall be valid for next financial year.
- VI. In case auction of spectrum is feasible and it turns out that the auction price is lower than the administered price, it needs to be clarified whether the administered price will have any applicability thereafter.

Response of TRAI

The Authority's response is being given first on some of the observations made in paragraphs 1 to 5 before proceeding to respond to the suggestions for reconsideration.

Paragraph 1 (d): It must be noted that the clarification given in paragraph 7 of the letter dated 3.5.2011 states as follows: "the very concept of current Price is in respect of excess spectrum. As such, the application of current price to the contracted spectrum, whether for GSM or CDMA does not arise. It is to be further clarified that this position does not apply to cases where there is an existing agreement to go by future prices for the contracted spectrum, ...". This is to cover cases where the DOT had already indicated that further allotment of spectrum was subject to pricing as determined in future for spectrum beyond 6.2 MHz and the outcome of court orders, as indicated in paragraph 4 (d) of the current reference from DOT.

Paragraph 2 (a): As indicated in TRAI's response to the comments against Para 3.28 above, the concept of 'prescribed limit' is with reference to the assignment by the Government and does not apply to acquisition of spectrum by the licensee either through auction or by way of mergers.

Paragraph 2 (b): The experts have estimated the value of spectrum in the 1800 MHz band in the year 2010 in two tranches viz., spectrum upto 6.2 MHz and beyond 6.2 MHz. Insofar as spectrum beyond 6.2 MHz is concerned, they have not indicated separate values for spectrum up to 8 MHz and from 8 to 10 MHz. Since the Authority has recommended that the Government may adopt the valuation given by the experts as the best available figure, Government may adopt one value for all spectrum beyond 6.2 MHz.

Paragraph 2 (d):

- (i) Yes.**
- (ii) Yes. The Current Price for GSM spectrum per MHz in 900 MHz band beyond contracted spectrum upto prescribed limit would be 1.5 times of 1800 MHz GSM spectrum Current Price beyond 6.2 MHz.**
- (iii) No. As explained in Para 2(b) above, the experts have not made a distinction between spectrum upto 8 MHz and beyond.**
- (iv) No.**

Paragraph 3: In the letter dated 3.5.201, in the clarification against paragraph 11, it has been stated that the value of spectrum in these two bands (1900/450 MHz) will need to be assessed separately. The need for assessing the value of the spectrum in these two bands will be contingent upon a decision to be taken on refarming and therefore will be examined as part of the consultation process for refarming which is being separately initiated.

The response of the Authority to the various suggestions for reconsideration by TRAI is as follows:-

Paragraph I: The Authority is not aware of any policy decision by the Government to the effect that spectrum allocation for the existing licensees beyond 4.4 MHz is liable to be priced. The Authority's view is that contracted spectrum is 6.2 MHz/5 MHz (GSM/CDMA). At the same time, attention is invited to paragraphs 3.105 to 3.109 of the May 2010 recommendations wherein the implications of grant of additional spectrum beyond 4.4 MHz to the existing licensees has been discussed. The Authority has concluded in Para 3.109 that : "This is, therefore, an issue on which the Government has to take a well considered policy decision. If the Government decides to

amend the licence conditions, then in the interest of level playing field and equity, the desirability and feasibility of collecting, with retrospective effect, the spectrum charges from all service providers who have received spectrum beyond a specified limit should equally be considered. All this has to be then viewed in the context of the need for orderly growth of the Telecom sector.” It is therefore upto the Government to take a decision if it wishes to modify the licence conditions. If the Government does so, then the Current Price, as estimated by the experts for spectrum upto 6.2 MHz, can be charged for spectrum beyond 4.4 MHz upto 6.2 MHz. In so far as initial spectrum i.e. up to 4.4 MHz is concerned, the question of its allocation to any licensee may not arise (unless under Court orders) since all future licences will be unified licence delinked from spectrum.

Paragraph II: No assumptions have been made by TRAI. It is the calculation given by the experts. However, the Authority in its recommendations dated 08.02.2011, had observed in Para 6 thereof that: “It is seen that in arriving at the price of the 1800 MHz spectrum, the experts not only relied on the data relating to various LSAs but also on certain assumptions, some of which, though inherent in an exercise of this nature, are nevertheless significant. The various assumptions made by them have been clearly brought out in the report. In the light of this, the Authority feels that while the figures given by the experts may be adopted, it should be done with the full realisation that these are estimated figures and may or may not always match the exact market price.” In Para 9 of the recommendations, it was clearly mentioned that “the Authority recommends that the price given by the experts be adopted as the best available figure.”

Paragraph III. TRAI will recommend the Current Price every year by 31st December, which will be valid for the next financial year.

Paragraph IV: As recommended in Para 3.91 of its recommendations, the per MHz price for the spectrum in the 800 MHz band will be same as that of spectrum in 900 MHz band, i.e. 1.5 times the Current Price of spectrum in 1800 MHz.

Paragraph V: Agreed.

Paragraph VI: In its recommendations of 08.02.2011, the Authority has clearly mentioned that “the Authority feels that while the figures given by the experts may be adopted, it should be done with the full realisation that these are estimated figures and may or may not always match the exact market price.” Further in Para 8 and 9 of these recommendations, the Authority has recommended auction of surplus spectrum in order to arrive at a market price of the spectrum and has also recommended that these estimated figures should be suitably modified based on the auction price. Therefore, it is clear that once the price of the spectrum is available through auction, then it will be the Current Price and the price estimated by the experts will no longer be relevant, irrespective of the fact that it is higher or lower than the auction price.

32. Para 3.91 (6.53)

The Current price of spectrum in the 900 MHz band be fixed at 1.5 times that of the 1800 MHz band. The Authority recommends that this be also fixed as the price of Spectrum in the 800 MHz band.

Views of the DoT

(Refer para 3.82)

What price will be charged from the holders of 900 MHz spectrum who do not refarm/surrender/return in the post refarm scenario due to any reason including non-availability of spectrum in other band? Would it be 1.5 times price of 1800 MHz beyond 6.2 MHz as recommended by TRAI or the price discovered after auction of spectrum in 900 MHz band, in case auction is feasible.

Response of TRAI

As recommended in Para 3.91, the price of spectrum in 900 MHz band is 1.5 times price of spectrum in the 1800 MHz band, unless auction is held for spectrum in 900 MHz band, in which case the auction price will prevail. If there is no auction in 900 MHz band or 800 MHz band, but auction is held for spectrum in 1800 MHz band, then the price of 800/900 MHz band spectrum will be 1.5 time the auction price of 1800 MHz spectrum.

33. Para 3.99 (6.54)

All the service providers having spectrum beyond the contracted quantum should pay excess spectrum charges at the Current price, pro-rated for the period of the remaining validity of their licence subject to a minimum of seven years. Service providers returning the excess spectrum shall be liable to return the 900 MHz spectrum if any and also pay the additional one-time charges at the Current price for a minimum period of three years.

Views of the DoT

1. TRAI, on 3rd May 2011, has clarified in response to query no. 8 (ii) of DoT letter dated 15.04.2011 that:

“It may be noted that the value given by the experts is for the year 2010 and is to be applied from 1.4.2010. Applying this figure from a retrospective date will not be correct. In view of this, the Authority, after careful consideration, has not indicated the 7 years.”

2. However, in response to query no. 8 (v) of the DoT letter cited, TRAI has further clarified that :

“Since, as indicated by the DOT, allocations have been made subject to explicit conditions, there should be no objection to the ‘current price’ being charged from the date of allocation. In giving this clarification, the Authority would like to point out that the DOT will naturally go by the orders of a court, if any.”

3. It is noticed that the clarification under para 8(v) (dated 3rd May 2011) differs in principle from the clarification under para 8(ii). If current price is charged from the date of allocation, this would amount to charging from a retrospective date in these cases (i.e. a date earlier than 1.4.2010), which is not in line with the TRAI clarification that applying the current price from a retrospective date

will not be correct. If charging from the date of allocation is recommended by TRAI, then as a matter of principle, there may not be any difficulty in stipulating a minimum period of 7 years as recommended by TRAI in the earlier instance(para 3.99 dt. 11-05-2010). In view of this, the matter is referred back to TRAI for reconsideration that:

“All service providers having spectrum beyond the contracted spectrum should pay the excess spectrum charges at the current price prorated for the period of remaining validity of the license subject to a minimum of 7 years.....”

(Para 3.99 of recommendation dated 11-05-2010)

or

All service providers having spectrum beyond the contracted spectrum should pay the excess spectrum charges at the current price w.e.f. the date of allocation of the excess spectrum. (Current price for the relevant years would also be required from TRAI.)

Response of TRAI

The observation of DoT that the clarification under Para 8(v) (dated 3rd May 2011) differs in principle from the clarification under para 8(ii) is not correct. The Authority had clarified on 03rd May 2011 that :

“It may be noted that the value given by the experts is for the year 2010 and is to be applied from 1.4.2010. Applying this figure from a retrospective date will not be correct. In view of this, the Authority, after careful consideration, has not indicated the 7 years.”

However, it was in response to a specific query of DoT that TRAI had replied in its letter of 3rd May 2011, that “since, as indicated by the DoT allocations have been made subject to explicit conditions, there should be no objection to the ‘current price’ being charged from the date of allocation. In giving this

clarification, the Authority would like to point out that the DoT will naturally go by the orders of a court, if any.”

As such, the above clarification of TRAI is applicable only for the spectrum allocated in 2008-09 with a specific condition i.e. it was a conditional assignment. In case of all other allocations of excess spectrum, the Authority’s recommendation, that the 2010 value of spectrum given by the experts is to be applied from 1.4.2010, holds good.

34. Para 3.102 (6.55)

The excess spectrum beyond 8 MHz would be charged at 1.3 times the current price.

3.104 (6.56)

Excess spectrum in 900 MHz band should be charged at 1.5 times that of excess spectrum in 1800 MHz band. It will equally apply in cases of 800 MHz band, if any.

Views of the DoT

(Refer para 3.82)

Response of TRAI

The response of the Authority to the comments against Para 3.82 may be referred to.

35. Para 3.122 (6.58)

Spectrum usage charges, both for GSM and CDMA spectrum, should be at the rate of 0.5% for every MHz up to the contracted spectrum and at the rate of 1% for every MHz in respect of spectrum beyond the contracted quantity, subject to a limit of 10% in respect of GSM and 7% in respect of CDMA. Resultantly, the spectrum usage charges would be as follows:

Table 3.10

Proposed Spectrum Usage Charges			
GSM		CDMA	
Amount of spectrum (in MHz)	Charge as % of AGR	Amount of spectrum (in MHz)	Charge as % of AGR
4.4	2.2	2.5	1.25
6.2	3.1	3.75	1.9
8	4.9	5	2.5
10	6.9	6.25	3.75
12.4	9.3	8.75	6.25
14.4	10	10	7

The Authority recommends that the changes effected on 25.2.2010 be suitably modified.

Views of the DoT

Spectrum Usage Charges were revised in 2010 (**Annexure – VIII**) by the Government and the matter is *sub judice*. May be examined after the matter is decided by the court.

Response of TRAI

Annexure-VIII has not been enclosed. Nevertheless, the view of DoT has been noted.

Chapter IV: CONSOLIDATION OF SPECTRUM

36. Para 4.81 (6.60)

The following should be the guidelines “intra service area Merger of Cellular Mobile Telephone Service (CMTS)/ Unified Access Services (UAS) Licences”:

- i. Prior approval of the Licensor shall be necessary for merger of the licence.*
- ii. Merger of licences shall be restricted to the same service area.*
- iii. Merger of licence(s) shall be permitted in the following category of licences:(i) Cellular Mobile Telephone Service (CMTS) Licence with Cellular Mobile Telephone Service (CMTS) Licence; (ii) Unified Access Services Licence (UASL) with Unified Access Services Licence (UASL); (iii) Cellular Mobile Telephone Service (CMTS) Licence with Unified Access Services Licence (UASL); and (iv) Unified licence with Unified licence.*

Merged licences in all the categories above shall be in UASL category only. In case of Unified licences, this shall not apply.

- iv. The relevant market for determining the market share will no longer be classified separately as ‘Wire line’ and ‘Wireless’. It will be defined in future as the entire access market.*
- v. For determination of market power, market share of both subscriber base and Adjusted Gross Revenue of licensee in the relevant market shall be considered*

Views of the DoT

As a broad guiding principle, it is viewed that the M&A policy of DoT should be simple and easy to implement with minimal conditions necessary to ensure a balance between facilitating consolidation,

ensuring competition and protecting consumer interest. It is also felt that the M&A regulations should be in harmony with other relevant legal and regulatory provisions. TRAI may review the recommendations on consolidation of spectrum with respect to conformity with the provisions of the Competition Act, especially those relating to the principles of market dominance.

Response of TRAI

The recommendations on guidelines for intra-service area merger of CMTS/UAS licences were part of the recommendations for consolidation of spectrum, given in May 2010. These were given against the background of the number of service providers in each service area being in the range of 12 to 14 as against the earlier figure of 6 to 7. The Authority noted that fragmentation of spectrum, a valuable but finite resource, was not desirable in the Telecom industry where size is increasingly becoming an advantage in the delivery of telecommunication services to the people. It therefore felt that consolidation of spectrum was something to be facilitated. At the same time, several service providers had been assigned spectrum only in the year 2008 and the Authority's recommendations of May 2010 were designed to enable players, including the new players, to be able to compete in the market by offer of services by themselves or by way of sharing the spectrum or by way of merger.

As at the end of December 2009, seven major players had a share of 98.65% of the Telecom market while six new players had a collective share of only 1.35%. Even as at the end of June 2011, the seven major players continue to enjoy a significant share of 93.82% while the six new players cumulatively have a share of only 6.18%. Simultaneously, it has been noticed that over the last two years, the Telecom industry is undergoing a certain stress. The Authority therefore feels that there is scope to liberalise the measures towards consolidation of spectrum.

Insofar as mergers are concerned, the Authority has also taken into consideration the prevailing practice in other countries as well as the provisions of the Competition Act. While some countries lay down market share limits, often in conjunction with the Concentration ratio of top 3 or 4 firms, several others examine the issue of market dominance with reference to HHI levels. With a view to ensuring that mergers are facilitated and that at the same time, there is no abuse of market power, the Authority recommends that the limits prescribed in May 2010 be treated as a 'Green line' or 'safe harbour' limit, below which the Government may clear the cases at its level. Beyond this limit, cases will not be rejected but will be examined on merits. The Government will decide all such cases only after receipt of a recommendation from TRAI, who would examine the case to ensure that there would be no possibility of abuse of market power by the resultant entity. This is akin to the grant of a new licence under the provisions of Section 11 (1) (a) of the TRAI Act. Mergers will not be allowed beyond a certain limit, which will be the Red-line.

Accordingly, the Authority recommends the following guidelines in respect of mergers of CMTS/UAS licences. In case of Unified licences, guidelines will be recommended separately alongwith the other guidelines.

- i. Prior approval of the Licensor shall be mandatory for merger of the licence. Merger of licences shall be restricted to the same service area. On merger of licence(s) for access services, the merged licences in all the categories shall be in UASL category only.*
- ii. The entire access market will be the relevant market for determining the market share, and will no longer be classified separately as 'Wire line' and 'Wireless'.*

- iii. Where the market share of the Resultant entity in the relevant market is not above 35% of the total subscriber base or the AGR in a licensed service area, the Government may grant permission at its level. However, where, in either of these criteria, it exceeds 35% but is below 60%, Government may decide the case after receipt of recommendations from the TRAI. Cases where the market share is above 60% shall not be considered.*
- iv. For determination of market power, market share of both subscriber base and Adjusted Gross Revenue of licensee in the relevant market shall be considered. Exchange Data Records (EDR) shall be used in the calculation of wireline subscribers and Visitor Location Register (VLR) data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base. The reference date for taking into account EDR/ VLR data shall be 31st December or 30th June of each year depending on the date of application. The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market.*
- v. Consequent upon the merger of licences in a service area, the total spectrum held by the Resultant entity shall not exceed 25% of the spectrum assigned, by way of auction or otherwise, in the concerned service area in case of 900 and 1800 MHz bands. In respect of 800 MHz band, the ceiling will be 10 MHz. In respect of spectrum in other bands, relevant conditions pertaining to auction of that spectrum shall apply.*

vi. The resultant entity shall be entitled to only one block of 6.2 MHz*/ 5MHz* (GSM/CDMA) for the Entry fee paid, either of the parties to the merger should pay the Spectrum price i.e. the difference between the Current Price of the spectrum, as a result of merger, beyond the above limit and the sum already paid, before permission for merger is granted. This shall not apply in case of spectrum obtained through auction, if any.

**In case of a specific decision that spectrum beyond 4.4MHz/2.5 MHz (GSM/CDMA) will be charged at Current Price, this should be read as 4.4.MHz / 2.5MHz. (GSM/CDMA)*

vii. A spectrum transfer charge, @5% of the difference between the transaction price between the parties and the total current price, shall be payable before permission is granted.

viii. If, as a result of the merger, the total spectrum held by the resultant entity is beyond the limits prescribed, the excess spectrum must be surrendered within one year of the permission being granted. Government may prescribe, after obtaining the recommendation of TRAI, the band/s of spectrum to be surrendered.

ix. All dues, if any, relating to the licence of the merging entities in a given service area, will have to be cleared by either of the two licensees before issue of the permission for merger of licences. This shall be as per the demand raised by the Government/licensor based on the returns filed by the company notwithstanding any pending legal cases or disputes.

x. If consequent to merger of licences in a service area, the Resultant entity becomes a “Significant Market Power” (SMP), then the extant rules & regulations

applicable to SMPs would also apply to the Resultant entity.

- xi. The substantial equity and cross holding of the Resultant entity shall be in conformity with the provisions of the UAS licence.*
- xii. The duration of licence of the Resultant entity in the respective service area will be equal to the higher of the two periods on the date of merger. This does not however entitle the Resultant entity to retain the entire spectrum till the expiry of licence period. The Authority recommends that while a fresh licence can be issued in the name of the Resultant entity, the Wireless operating licences will be issued separately for the two sets of spectrum retaining the respective validity.*

The licence condition in the UAS licence be amended to stipulate that in case of acquisitions involving UAS licences, the promoters whose net worth/equity has been taken into consideration for determining the eligibility of the licence shall not dilute their equity below 51% for a period of 5 years or till the roll-out conditions have been fully accomplished, whichever is earlier. Any reduction below 51% shall be with the prior and specific permission of the licensor.

Currently, permissions for M&A are given by the Department of Telecommunications as part of its activities as Licensor. Government may consider entrusting this function to TRAI under Section 11 (1) (a) of the TRAI Act.

37. Para 4.81 (6.60)

- vi. The market share of the Resultant entity in the relevant market shall not be greater than 30 % of the total subscriber base and/or the AGR in a licensed telecommunication service area.*
- vii. Exchange Data Records (EDR) shall be used in the calculation of wireline subscribers and Visitor Location Register (VLR) data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base.*
- viii. The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market.*

Views of the DoT

TRAI may recommend reference date for taking into account EDR/VLR data (in addition to duly audited AGR which would be 31st March of the preceding year).

Response of TRAI

The reference date for taking into account EDR/ VLR data shall be 31st December or 30th June of each year depending on the date of application.

38. Para 4.81 (6.60)

- ix. No M&A activity shall be allowed if the number of UAS/CMTS access service providers reduces below six in the relevant market consequent upon such an M&A activity under consideration.*

Views of the DoT

Refer para 4.81(i) to (v).

With respect to the requirement of minimum number of UAS/CMTS licences after any M&A activity as recommended by TRAI in para 4.81 (ix), TRAI may consider the possibility of separate dispensation for the requirement of minimum number of UAS/CMTS licences in a service areas based on its population.

Response of TRAI

This guideline will no longer be necessary in the light of the revised guidelines recommended above.

39. Para 4.81 (6.60)

- x. Consequent upon the Merger of licences in a service area, the total spectrum held by the post merger Resultant entity shall not exceed 14.4 MHz for GSM technology In respect of CDMA technology, the ceiling will be 10 MHz.*
- xi. As the resultant entity is entitled to only one block of 6.2 MHz/ 5MHz for the Entry fee paid, either of the parties to the merger should pay the Spectrum price i.e. the difference between the Current price and the sum already paid, before permission for merger is granted.*

Views of the DoT

1. TRAI, vide letter dated 3rd May 2011 has clarified in **Para 12** that “The spectrum price that the resultant entity is required to pay would be the current price for the spectrum which is being paid for minus the Entry fee paid by the licensee holding that spectrum prior to merger, irrespective of the year in which it was paid and the amount therefore any Indexation is fraught with serious difficulties.” It is evident that the merged entity shall pay Spectrum usage charge as per the spectrum held by the resultant entity.
2. TRAI has recommended that total spectrum which can be held by post merger resultant entity is up to a maximum of 14.4 MHz for GSM and 10 MHz for CDMA technology. However, prescribed limit in other cases is 8/10 MHz for GSM and 5/6.25 MHz in case of CDMA. TRAI may indicate the rationale for the wide variation between the limit of spectrum that can be acquired through M&A and by regular procedure. In case a variation is considered necessary for practical reasons, it may be indicated whether the higher limit for M&A is for a limited duration or for the entire licence period. Further, taking into account the possible operational/technical constraints in homogenizing the networks

after merger, TRAI may consider indicating a transition period after which the spectrum in excess of the prescribed limit applicable for any licensee (non-merger case) may be withdrawn.

3. TRAI may clarify the period for which the current price is to be paid in the proposition given in the example 4.51 in the recommendations:

“the sum to be paid will be 4.4MHz X current price/MHz of that service area- Entry fee originally paid for the service area.”

Example 4.51 is reproduced below.

Example: *In circle of ‘A’ category, if operator ‘X’ with 8 MHz has merged with operator ‘Y’ having 4.4MHz, the Resultant entity could be ‘X or ‘Y’ or a totally new entity ‘Z’. Either way, the Resultant entity is entitled to only one block of 6.2 MHz for the entry fee paid. The balance spectrum must be paid for at the Current price. If ‘X’ has already paid for the 1.8 MHz that was in excess of the contracted spectrum, the amount of spectrum for which payment is to be made would be $(8+4.4 =12.4) -(6.2+1.8 =8)= 4.4$ MHz. And the sum to be paid will be 4.4MHz X current price/MHz of that service area- Entry fee originally paid for the service area. Otherwise, the amount of spectrum for which payment will have to be made will be $(8+4.4=12.4)-(6.2) =6.2$ MHz.*

Regarding Current Price Para 3.82 may also be seen.

4. It may also be examined by TRAI whether such limit (14.4 MHz) may create an opportunity for arbitrage in terms of transaction price for those TSPs which hold small quantities of spectrum. While examining this, various aspects relating to efficient utilization of spectrum/spectral efficiency may be kept in view.

5. There may be a scenario where the merging entities may hold CDMA and GSM spectrum both. There is a possibility that either or both parties may have 3G/BWA spectrum. It may be examined by TRAI whether the modalities of merger of such entities will be different from those recommended in its recommendations of May, 2010. In either case, the principles governing the holding of spectrum in each of the technologies post merger may be recommended by TRAI.

6. In view of recommendations of TRAI in para 3.28 regarding prescribed limit of spectrum to a Service Provider, the recommendation of TRAI in para 4.81 (x) that consequent upon the Merger of licences in a service area, the total spectrum held by the post merger Resultant entity shall not exceed 14.4 MHz/ 10 MHz for GSM/CDMA technology, needs to be reconciled and harmonized.

Referred back to TRAI for reconsideration.

Response of TRAI

Paragraph 2: Refer to the Authority's response on Paragraph 2(a) of DoT's observation on Para 3.82 of TRAI's recommendations. As regards the time limit for return of excess spectrum in case of mergers, please see (vii) of the revised guidelines now being recommended and indicated above.

Paragraph 3: Please refer to xii of the revised guidelines now being recommended (same as XX of the earlier recommended guidelines) that in case of merger, the wireless operating licences will be issued separately for the two sets of spectrum retaining their respective validity. Therefore, in the example 4.51, the period for which the Current Price will have to be paid will depend on the relevant block of spectrum and its remaining validity.

Paragraph 4: The Authority has examined the observation of the DoT regarding possibility of creation of an opportunity for arbitrage in terms of transaction price for those TSPs which hold small quantities of spectrum. The Authority is of the view that even if two small operators, both having spectrum of 4.4 MHz merge, they will have to pay the Current Price on excess spectrum of 1.8 MHz beyond 6.2 MHz ((4.4+4.4-6.2)-entry fee paid). Moreover, the resultant entity will not be entitled to additional spectrum as it already has spectrum beyond the Prescribed limit except in case of Mumbai and Delhi. Assignment upto prescribed limit beyond the contracted spectrum is always on Current Price.

Paragraph 5: It is clarified that the Authority's recommendation regarding the total spectrum that the resultant entity can hold is applicable only for the spectrum assigned to the licensees by the Government. In case, a licensee acquires spectrum through auction, then the relevant conditions, if any, pertaining to the auction of that spectrum, such as those indicated in the NIA for 3G/BWA auctions will also apply.

Paragraph 6: : Refer to the Authority's response on Paragraph 2(a) of DoT's observation on Para 3.82 of TRAI's recommendations.

40. Para 4.81 (6.60)

- xii. The spectrum transfer charge, @5% of the difference between the transaction price and the total current price, shall be payable before permission is granted.*

Views of the DoT

1. TRAI has recommended spectrum transfer charge @ of 5% of the difference between the transaction price and the total current price. Rationale for recommending spectrum transfer charge and logic for quantum of charge as 5% may be clarified by TRAI.
2. Transaction price may be a sum total of transactions in form of equity/debt/preferential share/ tangible or intangible assets/ various other modes of trade-offs etc.) and also there is a possibility of negative transfer charge. In view of the above, TRAI may reconsider this recommendation for a suitable methodology which can be made applicable transparently. It is also mentioned that there may be scenarios involving 2G, 3G and BWA spectrum holders for M&A activity.
3. TRAI may also define 'Acquisition' with respect to the applicability of spectrum transfer charge e.g. acquiring a certain minimum % of equity of a licensed entity by any other entity.

Response of TRAI

The Authority reiterates its recommendations regarding levy of spectrum transfer charge.

41. Para 4.81 (6.60)

xiii. If, as a result of the merger, the total spectrum held by the resultant entity is beyond the limits prescribed, the excess spectrum must be surrendered. Discretion to choose the band to surrender the spectrum beyond the ceiling will be of the resultant entity.

Views of the DoT

1. As clarified by TRAI, limits prescribed for merger is 14.4MHz. TRAI may recommend the methodology to deal with the quantum of spectrum to be considered for allocation at the time of extension of merged licences.
2. If the spectrum held by a merged entity is more than the limits prescribed, e.g. 14.4 MHz for GSM, what should be the time frame for surrender of excess spectrum beyond 14.4 MHz.
3. TRAI has recommended that in the event of merger the resultant entity has to surrender any spectrum held beyond limits prescribed and discretion to choose the band to surrender the spectrum beyond the ceiling will be of the resultant entity. It is viewed that keeping in view the requirement of refarming the spectrum, the choice of surrender should not be left to the merged entity. Government may prescribe the band which will be required to be surrendered in accordance with the spectrum refarming policy. TRAI may review this recommendation

Response of TRAI

Paragraph 1: Refer recommendations at Para 2.173.

Paragraph 2: Please refer to the revised guidelines recommended above.

Paragraph 3: Agreed.

42. Para 4.81 (6.60)

- xiv. All dues, if any, relating to the licence of the merging entities in that given service area, will have to be cleared by either of the two licensees before issue of the permission for merger of licences.*

Views of the DoT

This would be as per the demand raised by the Government/licensor based on the returns filed by the company notwithstanding any pending legal cases or disputes.

Response of TRAI

Agreed.

43. Para 4.81 (6.60)

xv. If consequent to merger of licences in a service area, the licensee becomes a “Significant Market Power” (SMP) post merger, then the extant rules & regulations applicable to SMPs would also apply to the resultant entity.

Views of the DoT

Refer para (i) to (v)

Response of TRAI

Extant rules may keep changing and it is, therefore, necessary to have this provision.

44. Para 4.81 (6.60)

xvi. In so far as mergers that take place before 31.3.2011, the resultant entity will be required to pay, for the first year after merger, the spectrum usage charges at the rate applicable to the higher spectrum of the two merging entities at the time of merger. In the second year, the resultant entity will be liable to pay spectrum usage charges at a rate which is the average of the rate on the combined spectrum and the rate that was applicable to the higher spectrum of the two merging entities.

Views of the DoT

Not relevant now as the new M&A guidelines would be issued only after acceptance of this report which would be after 31.3.2011.

However, the existing condition as reproduced below shall continue (para 4.59):

“The annual license fee and the spectrum charge are paid as a certain specified percentage of the AGR of the licensee. On the merger of the two licenses, the AGR of the two entities will also be merged and the license fee will be therefore levied at the specified rate for that service area on the resultant total AGR. Similarly, for the purpose of payment of the spectrum charge, the spectrum held by the two licensees will be added /merged and the annual spectrum charge will be at the prescribed rate applicable on this total spectrum. However, in case of holding of spectrum for various technologies by the entity subsequent to M&A, spectrum charges & license fee etc. or any other criterion being followed by the licensor shall be applicable as in case of any other UAS/CMTS licensee”.

Response of TRAI

Agreed.

45. Para 4.81 (6.60)

- xvii. *The provisions relating to substantial equity and cross holding be in conformity with the provisions of the UAS licence which is that “no single company/ legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. ‘Substantial equity’ herein will mean ‘an equity of 10% or more’” and that a promoter company/ Legal person cannot have stakes in more than one LICENSEE Company for the same service area.”*

Views of the DoT

It is an existing condition of UAS licence. The terms ‘Associates’ and ‘Stakes’ as appearing in recommendation of para 4.81(xvii) regarding substantial equity clause, may be defined and the clause as a whole may be relooked/reframed so that competition is not compromised.

Response of TRAI

Please see the revised guidelines. As regards defining the terms ‘Associates’ and ‘Stakes’, these are part of the existing licence conditions and it is upto the DOT to define/interpret these terms with such legal advice as considered necessary by the DOT.

46. Para 4.81 (6.60)

- xviii. The stipulation regarding the minimum period of three years from the effective date of license for merger/acquisition be done away with.*

Views of the DoT

TRAI has suggested removal of lock-in period of three years on one hand and has recommended restriction in dilution of equity up to a period of 5 years in part (xix) of para 4.81. It appears that the objective of the recommendations given under Chapter IV is to have an enabling M&A policy regime. But this recommendation appears to be contrary to this objective.

Referred to TRAI for reconsideration and review this recommendation.

Response of TRAI

The Authority has given this recommendation in May 2010. However, this recommendation is no longer relevant as all the existing Licensees have completed three years from the effective date of licence.

47. Para 4.81 (6.60)

xix. The licence condition in the UAS licence be amended to stipulate that the promoters whose net worth/equity has been taken into consideration for determining the eligibility of the licence shall not dilute their equity below 51% for a period of 5 years or till the roll-out conditions have been fully accomplished, whichever is earlier. Any reduction below 51% shall be with the prior and specific permission of the licensor

Views of the DoT

Refer 4.81(xviii) above.

It is noted that presently there is no requirement of promoters equity being 51% for eligibility. However these recommendations may be accepted with the modifications as below:

The licence condition in the UAS licence be amended to stipulate that the promoters whose net worth/equity has been taken into consideration for determining the eligibility of the licence shall not dilute their equity below 51% of their original equity for a period of 5 years or till the roll-out conditions have been fully accomplished, whichever is earlier. It may also be ensured that no promoter during the above period, dilutes their equity amount below 10% of total paid up equity of the company on the effective date of the licence.

TRAI may recommend suitable transparent criteria for granting/withholding permission for reduction below 51% by promoters during the validity of the licence.

The above provision shall not be construed as dilution of roll out obligations as defined in the Access Services licence(s) in any manner.

Response of TRAI

The Authority reiterates its recommendation with the clarification that it would be applicable only in cases of acquisitions. Regarding recommending a suitable transparent criteria for granting/withholding permission for reduction below 51% by promoters during the validity of the licence, at least a few cases need to be examined by the Authority before any guidelines can be evolved.

48. Para 4.81 (6.60)

- xx. *The duration of licence of the resultant entity in the respective service area will be equal to the higher of the two periods on the date of merger. This does not however entitle the resultant entity to retain the entire spectrum till the expiry of licence period. The Authority recommends that while a fresh licence can be issued in the name of the resultant entity, the Wireless operating licences will be issued separately for the two sets of spectrum retaining the respective validity.*

Views of the DoT

1. TRAI has recommended that wireless operating license of one of the merged entity having lesser validity at the time of merger will be renewed for the remaining period of license of the merged entity when renewal becomes due. It is viewed that a stipulation can be made that when the renewal of wireless operating license becomes due, spectrum in a band which is specified for refarming should be surrendered and alternate band should be allocated. TRAI may accordingly review this recommendation.

2. TRAI may also clarify in example 4.80, the charges to be paid by merged entity for the extension of wireless operating licence of 'X' in the example since initially the entry fee was paid for a period of 20 years validity of licence. But now the validity of 'X' gets extended for a further period of 8 years in this example.

Example as in para 4.80 is reproduced below:

Example: If the validity of the licence and the spectrum of operator X is till 2012 and that of Y till 2020, the resultant entity will be given a licence to the year 2020 and two separate Wireless operating licences in the name of the resultant entity, one for the spectrum of X till 2012

and for Y's spectrum till 2020. The first Wireless operating licence will be renewed in 2012 for period of 8 years.

May be reconsidered by TRAI.

Response of TRAI

Paragraph 1: Agreed

Paragraph 2: For renewing/extending the Wireless operating Licence, the Licensee will pay the relevant Current Price of the spectrum *pro rata* for the period it is getting renewed/extended.

49. Para 4.81 (6.60)

xxi to xxiii

New items for review by TRAI on consolidation.

Views of the DoT

- xxi TRAI may confirm the recommendations in para 4.81 with respect to their applicability in cases of acquisition. (refer para 4.7)
- xxii TRAI may recommend guidelines for consolidation among Unified Licences, and between Unified Licence and UAS/CMTS/Basic licence.
- xxiii Modalities and detailed steps involved in merger and acquisition may also be recommended by TRAI.

Response of TRAI

Paragraph xxi: In case of acquisitions, the owner or the equity pattern changes but the licence and the spectrum remains the same. Please refer to the response of the Authority at para 4.81 above.

Paragraph xxii: As mentioned in Para 2.62, the Authority is separately drawing up the detailed conditions of a unified licence. It shall address the issue of consolidation among Unified Licences and between Unified Licence and UAS/CMTS/Basic licence at that time.

Paragraph xxii: DOT had first issued the M&A guidelines in February 2004 and later in April 2008. The specific difficulties encountered if any during the last few years and the nature of the modalities/steps involved may be indicated for the Authority to give its recommendations, after following the normal consultation process.

50. Para 4.118 (6.61)

The following guidelines be adopted for spectrum sharing:

- *(i) Spectrum sharing will be permitted but in each case, it will be in the same licence service area and will be with the prior permission of the licensor, strictly in accordance with the guidelines being laid out.*
- *(ii) Permission for spectrum sharing will be given for a maximum period of 5 years. There shall be no renewal.*

Views of the DoT

TRAI may indicate the rationale for placing restrictions on sharing of spectrum, i.e. for a maximum period of five years only. TRAI may also examine this aspect keeping in view the saving of scarce resources, impact on QoS, consumer satisfaction and share its analysis of the pros & cons of implementing a policy allowing spectrum sharing. TRAI may also indicate the specific reasons for placing restrictions on the entities that could be allowed to share spectrum based on the quantum of spectrum held

Response of TRAI

In its recommendations of May 2010, the Authority had essentially envisaged spectrum sharing between two new service providers with a view to enabling them to perform their licence conditions. In these recommendations, the Authority had mentioned that spectrum sharing would be a short term spectrum sharing - wherein two new service providers pool their spectrum resources to quickly roll out their services and enhance the coverage area while economizing on the cost of the network. The other method of spectrum sharing viz., Area specific spectrum sharing - when the spectrum sharing is employed by established service providers in areas where they

are facing congestion to provide better services. Was not provided for in the guidelines recommended in May 2010.

The Authority has noted that the circumstances in which the recommendations on spectrum sharing were given in May,2010 have changed significantly. Most of the new licensees who were allotted spectrum in 2008-09 have completed 3 years from the effective date of the licence. The Authority has already recommended for cancellations of licenses in respect of those who failed in fulfilling the rollout obligations.

In its May 2010 recommendations, the Authority had projected a requirement of 500-800 MHz of spectrum in the coming years. The Authority is of the view that Spectrum being a scarce resource, ensuring its efficient utilisation is a priority. Spectrum sharing has the potential to generate significant efficiencies by permitting better utilization of existing spectrum, enabling service providers to achieve lower costs of production and providing better quality of services to the subscribers. In its reference, DoT has mentioned that if the intention of the Authority is to encourage sharing of spectrum, putting a limit of 4.4 MHz spectrum may work as a disincentive to the spectrum sharing.

The Authority has re-examined its earlier recommendations. It continues to hold the opinion that spectrum sharing is, at least in the short run, an effective mechanism for consolidation of spectrum and should be facilitated. Keeping in view the factors mentioned in response at Para 4.81 above, the Authority recommends that the restriction to allow spectrum sharing only to those having 4.4 MHz of spectrum be removed. Accordingly, the Authority now recommends that the limit of total quantum of spectrum, post-sharing, will be equal to the limit that is being prescribed for merger of CMTS/UAS licenses.

As mentioned in its recommendations, sharing of spectrum by two licensees is a novelty in India and sharing of spectrum by more than two service providers would be too complex to administer in the absence of requisite experience. Therefore, initially only two participants may be allowed to share spectrum. Further, since spectrum sharing is a new phenomenon, there is always the likelihood of a mid-course review / correction. Hence, the Authority reiterates its view that to start with, a five-year tenure would be a reasonable period with a provision for renewal for a further period of five years.

Accordingly, the Authority recommends that the following guidelines be adopted for spectrum sharing:

- Spectrum sharing will be permitted but in each case, it will be in the same licence service area and will be with the prior permission of the licensor, strictly in accordance with the guidelines being laid out.
- Permission for Spectrum sharing will be permitted initially for a period of 5 years. Government may, in its discretion, renew the permission for a further one term of five years, on terms to be prescribed.
- Spectrum can be shared only between two spectrum holders. In other words, a non-licensee or licensee who has not been assigned access spectrum as yet cannot be a party to spectrum sharing.
- Spectrum sharing will be permitted subject to the condition, inter alia, that the total quantum of spectrum, as a result of the spectrum sharing, shall not be exceed the limit prescribed in case of mergers of licences.
- In respect of spectrum obtained through auction, spectrum sharing will be permitted only if the auction conditions provide for the same.

- **Parties sharing the spectrum will be deemed to be sharing their entire spectrum. In other words, even if the licensees are sharing partial spectrum, it will be taken as sharing of entire spectrum for the purpose of charging.**
- **Both the parties shall fulfil individually the roll out obligations prescribed under the licence.**
- **Both the parties, being licensees, shall fulfil individually the QOS obligations prescribed under the licence.**
- **Both the parties will pay to the Government the prorated Current Price for spectrum beyond 6.2/5 MHz (GSM/CDMA), in the ratio of the spectrum held by them individually.**
- **Spectrum usage charges will be levied on both the operators individually but on the total spectrum held by both the operators together. In other words, if an operator X having 4.4MHz of spectrum shares 4.4 MHz of spectrum of another operator Y, then both X and Y will be liable to pay spectrum usage charges applicable to 8.8 MHz of spectrum.**
- **Spectrum sharing would involve both the service providers utilising the spectrum. Leasing of spectrum is not permitted.**

51. Para 4.118 (6.61)

- *(iii) Spectrum sharing will be allowed only between parties each of whom does not have more than 4.4MHz /2.5 MHz (GSM/CDMA) of spectrum.*

Views of the DoT

It is noted that TRAI vide their recommendations dt 12-04-2011 on Infrastructure policy, in chapter 3B, have recommended that a Unified Licensee who does not have spectrum can be permitted to work as MVNO by sharing spectrum with MNO. This implies that there is no limit on the spectrum held by the MNO in context to the limit of 4.4 MHz mentioned in the recommendations herein.

In view of above, TRAI may reconsider spectrum sharing for licensees not holding even the initial 4.4 MHz GSM spectrum as well as those holding more than 4.4 MHz.

Response of TRAI

Refer TRAI's response as given above. The limit of 4.4 MHz is no longer relevant. An MVNO does not have its own spectrum. In Para 3.33 of the recommendations on Infrastructure dated 12th April 2011, the Authority had recommended that a Unified licensee ceases to be an MVNO if it is allocated spectrum for accessing the subscribers. The Authority reiterates its recommendations of 12.4.2011. The spectrum sharing between two access spectrum holders is totally different from an MNO-MVNO relationship.

52. Para 4.118 (6.61)

- *(iv) Sharing will be allowed only if there are at least six operators in the LSA, post-sharing arrangement.*

Views of the DoT

Shared operators be treated as one. For the purpose of rollout, operators have to meet individual rollout obligations.

Response of TRAI

The guideline relating to a minimum of six operators is no longer relevant in the light of the guidelines now being recommended. As regards the operators having to meet individual roll out obligations, this is already being provided.

53. Para 4.118 (6.61)

- *(v) Spectrum sharing will not be permitted among licensees having 3G spectrum.*

Views of the DoT

Intra Service Area roaming in 3G network where one of the operators does not have 3G spectrum shall not be treated as spectrum sharing.

Response of TRAI

The issue of Intra Service Area roaming in 3G network has been examined separately by the Authority and its views already communicated to the DOT.

54. Para 4.118 (6.61)

- *(vi) Spectrum sharing would involve both the service providers utilising the spectrum. Leasing of spectrum is not permitted.*

Views of the DoT

Refer para 4.118(i) & (ii) above.

Response of TRAI

The Authority reiterates its recommendation.

55. Para 4.118 (6.61)

- *(vii) Spectrum can be shared only between two spectrum holders. In other words, a non-licensee or licensee who has not been assigned access spectrum as yet cannot be a party to spectrum sharing.*

Views of the DoT

Para 4.118(iii) refers. TRAI may also recommend actions subsequent to allocation of spectrum beyond initial allocation/further allocation to one or both the licensees.

Response of TRAI

The stipulation of spectrum sharing being restricted to those having only 4.4 MHz has since been removed.

56. Para 4.118 (6.61)

- *(viii) Parties sharing the spectrum will be deemed to be sharing their entire spectrum. In other words, even if the licensees are sharing partial spectrum, it will be taken as sharing of entire spectrum for the purpose of charging.*

Views of the DoT

Refer para 4.118(i) & (ii) above.

Response of TRAI

The Authority reiterates its earlier recommendation.

57. Para 4.118 (6.61)

- *(ix) Both the parties will pay to the Government the prorated current price for spectrum beyond 6.2/5 MHz, in the ratio of the spectrum held by them individually.*

Para 4.118 (6.61)

- *(x) Spectrum usage charges will be levied on both the operators individually but on the total spectrum held by both the operators together. In other words, if an operator X having 4.4MHz of spectrum shares 4.4 MHz of spectrum of another operator Y, then both X and Y will be liable to pay spectrum usage charges applicable to 8.8 MHz of spectrum.*

Views of the DoT

Refer para 4.118(i) & (ii) above.

If the intention of the recommendation contained in para 4.118 is to encourage sharing of spectrum, then the recommendation contained in para 4.118 (x) may work as a disincentive to spectrum sharing. Therefore, the recommendation of para 4.118 (x) may be reconsidered.

Response of TRAI

The spectrum usage charges payable by the two licensees would only be a small portion of the benefit that would accrue to them from spectrum sharing. As such, the Authority reiterates its earlier recommendation. However, in order that payment of Current Price does not act as a disincentive, the Authority would be agreeable if the Government permits the licensees to pay the Current Price, applicable on the date of permission, on an annual basis instead of for five years at a time, and for this payment to cease if the sharing agreement is annulled midway. Payment will be upfront, in advance and shall not be refunded in

full or in part in the event of annulment of the sharing agreement.

58. Para 4.142 (6.62)

*Spectrum trading should not be allowed in India, at least at this stage.
This will be re-examined at a later date.*

Views of the DoT

Noted.

Chapter V: Spectrum Management

59. Para 5.11 (6.63)

TRAI be strengthened by placing the TERM units under its control, and enabling TRAI to carry some of the functions through the Wireless Monitoring Organisation (WMO), even as WMO continues to function under the control of WPC Wing of the DoT.

Views of the DoT

TERM cells are doing more of security related functions including LIM/LIS testing, coordination with LEAs, CAF verification and safety measures like radiation measurements etc. These functions cannot be transferred to TRAI. With regard to the requirement of TRAI to carry out some specific functions, WMO shall take up such request on case to case basis.

Under the TRAI Act, TRAI is to discharge various functions including ensuring compliance of the terms and conditions of licence and ensuring effective compliance of universal service obligations. Even if the TERM cells are not placed under the control of TRAI, DOT may consider enabling TRAI and its Regional offices to coordinate with the TERM cells in the performance of some of its tasks.

60. Para 5.12 (6.64)

WPC Organisation be suitably strengthened. A few suggested areas are:

- *Upgradation of the post of Wireless Advisor;*
- *Establishment of unmanned remote monitoring units in Central Business Districts and along coastal areas;*
- *Enhanced participation of WMO/WPC officials in ITU/APT;*
- *Augmentation of manpower in Regional Offices of Deputy Wireless Advisor.*

Views of the DoT

Noted.

61. New Other issues:

Views of the DoT

TRAI may recommend an exit policy for the licensees who want to exit from the provisioning of telecom Services under a licence.

Response of TRAI

Being a new reference, the Authority will need to carry out a consultation with the stakeholders. The recommendations on this subject will be sent in due course to the Government.