

Auction of Spectrum in 1800MHz and 800MHz Bands

Queries and Responses to NIA

**Government of India
Ministry of Communications & Information Technology
Department of Telecommunications**

12th October, 2012

No.	Query	Response
1.	<p>Clause 3.2 Page No. 24 (Associated Eligibility Conditions):</p> <p>Your attention is invited to sub clause (ix) and sub clause (x) of clause 3.2 (Associated Eligibility Conditions) of the Notice Inviting Applications, on page 24, which are reproduced herein below:</p> <p>(ix) For participating in auctions, the net worth requirement would be Rs 100 crore for each service area except for J&K and NE Service Areas, where it will be Rs.50 Crore for each service area. This net worth requirement is applicable in case of "new entrants". This net worth requirement is to be met at the time of application for participation in the auction.</p> <p>(x) For participation in the auction for allotment of spectrum, net worth of those promoters having at least 10% paid up equity holding in the applicant company shall also be taken into consideration.</p> <p>Clarification Required</p> <p>Kindly clarify that while calculating the net worth of Sistema Shyam TeleServices Limited (“SSTL”) for participation in the spectrum auction, can we include (i.e. add) the net worth of the promoters (having at least 10% paid up equity holding in SSTL) for meeting the net worth criteria stipulated for participation in the spectrum auction in case the net worth of SSTL by itself is not sufficient to meet the said net worth criteria for spectrum auction.</p>	<p>Please refer to section 4.2.3(d).</p>
2.	<p>Does Authorised Person (who is empowered to take all decisions connected with the 1800MHz Auction on the Bidder’s behalf and correspond behalf of the Applicant with the Government and the Auctioneer) has to be employee of bidder. NIA does not stipulate such a condition and states that only Power of Attorney has to be submitted for Authorised Person.</p>	<p>The bidders are free to take a decision in this regard.</p>

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3.	<p>Clause 2.3:</p> <p>“Existing Licensees will be allowed to use the additional spectrum block(s) allotted through this auction to deploy any technology by combining with their existing spectrum holding in the same band after converting their entire existing spectrum holding into liberalized spectrum in the same band as per the terms and conditions to be specified.” (emphasis supplied)</p> <p>There are existing operators having only 1800MHz spectrum which spectrum has been deployed for GSM technology. In such a case –</p> <ul style="list-style-type: none"> • Is it the Government’s view that the existing licensees will not be allowed to use the additional spectrum block(s) in 1800MHz allotted through this auction to deploy GSM, by combining their existing spectrum holdings in the 1800MHz band, unless their entire existing spectrum holding is converted into liberalized spectrum? ; or • Is it the Government’s view that the existing licensees will be allowed to use the additional spectrum block(s) in 1800MHz allotted through this auction to deploy GSM, by combining their existing spectrum holding in the 1800 MHz band, with no need to convert their existing spectrum holding into liberalized spectrum? 	<p>The existing licensees can use the 1800MHz band spectrum allotted in this auction along with the existing spectrum holding in 900MHz and/ or 1800MHz bands for deployment of GSM technology.</p>
4.	<p>There are existing operators having only 900MHz spectrum which spectrum has been deployed for GSM technology. In such a case –</p> <ul style="list-style-type: none"> • Is it the Government’s view that the existing licensees will not be allowed to use the additional spectrum block(s) in 1800MHz allotted through this auction to deploy GSM, by combining their existing spectrum holdings in the 900MHz band, unless their entire existing spectrum holding is converted into liberalized spectrum? ; or • Is it the Government’s view that the 	<p>The existing licensees can use the 1800MHz band spectrum allotted in this auction along with the existing spectrum holding in 900MHz and/ or 1800MHz bands for deployment of GSM technology.</p>

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	<p>existing licensees will be allowed to use the additional spectrum block(s) in 1800MHz allotted through this auction to deploy GSM, by combining their existing spectrum holding in the 900MHz band, with no need to convert their existing spectrum holding into liberalized spectrum?</p>	
5.	<p>There are existing operators having both 900MHz and 1800MHz spectrum which spectrum has been deployed for GSM technology. In such a case -</p> <ul style="list-style-type: none"> • Is it the Government’s view that the existing licensees will not be allowed to use the additional spectrum block(s) in 1800MHz allotted through this auction to deploy GSM, by combining their existing spectrum holdings in the 900MHz and 1800MHz bands, unless their entire existing spectrum holding is converted into liberalized spectrum? ; or • Is it the Government’s view that the existing licensees will be allowed to use the additional spectrum block(s) in 1800MHz allotted through this auction to deploy GSM, by combining their existing spectrum holding in the 900MHz and 1800MHz bands, with no need to convert their existing spectrum holding into liberalized spectrum? 	<p>The existing licensees can use the 1800MHz band spectrum allotted in this auction along with the existing spectrum holding in 900MHz and/ or 1800MHz bands for deployment of GSM technology.</p>
6.	<p>There are existing operators having only 800MHz spectrum which spectrum has been deployed for CDMA technology. In such a case -</p> <ul style="list-style-type: none"> • Is it the Government’s view that the existing licensees will not be allowed to use the additional spectrum block(s) in 800MHz allotted through this auction to deploy CDMA, by combining their existing spectrum holdings in the 800MHz band, unless their entire existing spectrum holding is converted into liberalized spectrum? ; or • Is it the Government’s view that the existing licensees will be allowed to use 	<p>The existing licensees can use the spectrum in 800MHz band allotted in this auction along with the existing spectrum holding in 800MHz band for deployment of CDMA technology.</p>

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	<p>the additional spectrum block(s) in 800MHz allotted through this auction to deploy CDMA, by combining their existing spectrum holding in the 800MHz band, with no need to convert their existing spectrum holding into liberalized spectrum?</p>	
7.	<p>What is the meaning of ‘same band’ in the above mentioned clause in NIA in context of 1800MHz spectrum auction? Does it mean existing spectrum holding in 1800MHz band or/and existing spectrum holding in 900MHz band or/and 900MHz and 1800MHz band?</p> <ul style="list-style-type: none"> Will “conversion of entire existing spectrum holding into liberalized spectrum” in the above referred clause of NIA include conversion of entire existing spectrum holding in 900MHz, 800MHz, 2100MHz and BWA spectrum bands? 	<p>‘Same band’ in this clause in NIA in context of 1800MHz spectrum auction, means existing spectrum holding in 1800MHz band.</p> <p>Existing CMTS/ UAS licensees can liberalise their existing spectrum holding in 1800MHz band after payment of auction determined price.</p>
8.	<p>In case, the Government is seeking conversion of entire existing spectrum holding into liberalized spectrum in any scenario, including scenarios not mentioned in queries above, then in such an event, for transparent auction, why is the Government not specifying the terms and conditions now? Is it not imperative for the Government to state the terms and conditions now for informed decision making by the prospective bidders?</p> <p>For the purpose of transparency and clarity we submit that in our view our existing spectrum holdings in any band are already liberalized as per the policy and license terms. We do not agree with the view expressed by the Government in NIA on Technology/ Spectrum Liberalization. These queries have been raised for the purpose of having complete clarity on the Government’s understanding of Clause 2.3 of the NIA.</p>	<p>Existing spectrum holding in 900MHz band, 1800MHz band and 800MHz band is not liberalised. Also please see the response to queries at sl. nos. 3 to 7 above.</p>
9.	<p>Associated Licensees</p> <p>There are companies, which are having a Common Parent and all these companies</p>	<p>For the purpose of any of the auctions, Associated Licensees corresponding to a</p>

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	<p>and the Common Parent presently hold UASL licenses for different non-overlapping service areas. If some of these companies (including the Common Parent) do not wish to participate in the auction, then in our view the remaining companies can participate in the Auction for some or all the service areas for which the said remaining companies hold licenses. In such case only the remaining companies which want to participate in the Auction will be the Associated Licensees and will authorize a Group Bidding Entity.</p> <p>For example, in case of Vodafone India, Vodafone India Limited is a Common Parent Company of seven other companies where each company holds UASL(s) for non-overlapping service areas. In case only two out of seven such other companies wish to participate in Auction then one such other company can be the Group bidding entity and the second company is the only Associated Licensee for the purpose of the bid. The companies which do not wish to participate, including the Common Parent Company, need not sign any nomination or undertakings as they are neither Associated Licensees nor intended participants in the bid in any manner.</p> <p>We understand that the above view is correct and request DoT to confirm the same by 12 October 2012. In absence of any confirmation from DoT, we will assume that DoT agrees to our view.</p>	<p>single Common Parent shall be required to nominate a single entity (either one of the Associated Licensees or the Common Parent) which shall be authorised to bid on their behalf (the “Group Bidding Entity”).</p>
10.	<p>Supreme Court vide its judgment of February 2, 2012 had cancelled the licenses granted and spectrum allocations made pursuant to the two press releases of 10.1.2008. The Supreme Court had ordered such cancellation along-with directions that the licenses and spectrum should now be granted by way of an auction similar to the 3G auction. Until date there is no communication to any operator or any formal notification listing the licenses/spectrum allocations which have been cancelled and hence DoT needs to clarify which all operators have to participate in auction to get back the quashed spectrum, if</p>	<p>Judgement of the Supreme Court is self-explanatory.</p>

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	they so desire.	
11.	<p>Para 3 on page no. 6 of NIA states as under- “However, it may be noted that the Government reserves the right to use any other means to allot the spectrum as it may deem fit without assigning any reason whatsoever.”</p> <p>We request the DoT to please clarify the rationale for putting this clause in NIA and what could be these other means as these will have implications on level playing field for participants in this Auction.</p>	<p>No change in the condition.</p>
12.	<p>In case a successful bidder exercises the deferred payment option, please advise whether he will be allowed to prepay the same at any point of time, if he wishes to do so? And if yes, what would be the mechanism for the same?</p> <p>We suggest that full or partial prepayment of the instalments should be allowed on each annual anniversary date of the first upfront payment based on the principle that the net present value of the payment at the specified rate of 9.75% is protected. This will enable the government to receive the payment earlier where the operator is able to prepay. We have given examples of mechanism of full or partial prepayment of instalments in Annexure-1 and Annexure-2.</p>	<p>Prepayment of one or more instalments will be allowed on each annual anniversary date of the first upfront payment, based upon the principle that the net present value of the payment is protected.</p>

13. Page 22 – Clause 2.3 states as under –

“The successful bidder shall provide details of the technology proposed to be deployed for operation of its services using spectrum blocks allotted through this auction within one month of obtaining the licence, if the technology happens to be other than GSM/CDMA/WCDMA. In case of change of technology, while rolling out the networks for compliance of roll out obligations, information regarding the new technology should be given at least one year before any new technology Base Station site is offered for testing.

Existing Licensees will be allowed to use the additional spectrum block(s) allotted through this auction to deploy any technology by combining with their existing spectrum holding in the same band after converting their entire existing spectrum holding into liberalised spectrum in the same band as per the terms and conditions to be specified.

Existing CMTS/ UAS licensees can liberalise their existing spectrum holding in 1800MHz band after payment of auction determined price.”

It is firstly stated that all existing spectrum allocations to existing licenses is technology neutral and thus the service provider is free to use it for any technology. Without prejudice to the same, the DoT may clarify the following that –

- a) The above seems to mention only 1800 MHz and is silent on 800 MHz. We assume it is a clerical error as there is no reason for different treatment of 800 MHz and 1800 MHz. Please confirm that this equally applies to 800 MHz.
- b) Does this imply that in case any of GSM / CDMA / WCDMA technologies are deployed, no details of technology need to be provided and the necessity of providing details arises only if we deploy a technology other than these?

Existing spectrum holding in 800MHz band is not liberalised. The existing licensees can use the 800MHz band spectrum allotted in this auction along with the existing spectrum holding in 800MHz band for deployment of CDMA technology.

Yes.

- c) What is a licensee supposed to do if he has not made a technology choice in the specified period of one month? It may be noted that the roll out obligations require phase 1 to be fulfilled within one year of the allotment of spectrum as per the roll out conditions in the NIA. Please also refer to Section 3.6.1 (xi) of the NIA.
- d) What will constitute a change of technology? Please see sections 2.3 and 3.6 of the NIA.
- e) The above highlighted portion of Para 2.3 has also erroneously forgotten to mention LTE, which is actually subsequently mentioned in Para 2.3 iii). Again we assume it is a clerical error. Please confirm if it is otherwise. No change in the condition. The first reference is with regard to TSTP for roll out obligations, whereas Para 2.3 (iii) pertains to study of interference in the same band or in the adjacent bands.

14. The indicative schedule of payment given on page no. 47 of the NIA appears to be wrong. Please note that the correct amount for the yearly instalment should be Rs. 129.93 instead of Rs. 142.60 as per NIA, because as per the example, the PV of all payments should be 1,000, which can either be achieved by deferring the payment by one year or adjusting the amount to 129.93. The following table explains this clearly (Table at Annexure 3)

The revised indicative schedule of payments is as below:

Instalment	Date of payment	Amount (Rs. Crore)
Upfront payment	25-12-2012	330.00
1 st	25-12-2015	129.93
2 nd	25-12-2016	129.93
3 rd	25-12-2017	129.93
4 th	25-12-2018	129.93
5 th	25-12-2019	129.93
6 th	25-12-2020	129.93
7 th	25-12-2021	129.93
8 th	25-12-2022	129.93
9 th	25-12-2023	129.93
10 th	25-12-2024	129.93

Accordingly, necessary corrections may please be made.

15. Page 26 – Point No. 13 states as under –

“On being successful bidder in the auction as new entrant, Unified License (Access Services) will enable the Licensee to deliver all services which are being provided by the current UAS Licensees under the scope of the licence. Such licensees will be eligible to migrate to final UL regime as and when it is announced, subject to such conditions as prescribed for such migration.”

We request the DoT to please clarify that the ability to offer “all services which are being provided by the current UAS Licensees under the scope of the licence” applies only to 1800 Mhz or 800 Mhz bands as applicable or applies to any band of spectrum. For example, a holder of BWA spectrum under an ISP license was not permitted to offer voice services. Does this imply a new entrant who holds BWA

The current auctions in 1800MHz/ 800MHz bands, and the earlier auction for BWA spectrum, are two independent auctions. The services provided using these bands will be governed by the conditions of respective auctions and licenses.

spectrum under ISP license who now participates in this auction of 1800 Mhz/ 800 Mhz band spectrum and after winning the same in the auction acquires a UL (Access Services) will be allowed to offer voice services on the BWA spectrum?

16. Page No. 48, Point No. 4.5 (b)(ix) states as under –

“In the event of default in payment of instalments, in addition to the action as provided in the paras above, DOT may terminate the license and spectrum allotment/ assignment, in which case, the allotted/ assigned spectrum will revert back to DOT. The FBGs in such cases will be encashed. This would be without prejudice to any other remedy DOT may decide to resort to.”

The conditions will be stipulated in the Tripartite Agreement (TPA).

It was stated by the government that spectrum can now be offered as security to Lenders. Please clarify that in what manner can the spectrum be offered as security to Lenders. We also request the DoT to please clarify, what will be the position of the Lenders in case the Spectrum has been given as security for funding and the spectrum holder defaults in payment of any instalment? What will be the rights of the Lenders (who hold this as security) and the DoT (to whom the spectrum is proposed to revert) inter se?

17. The term liberalized spectrum is used at various places (eg. Clause 4.10 and 5.4). The NIA also states that (page 22) “Existing CMTS/ UAS licensees can liberalise their existing spectrum holding in 1800MHz band after payment of auction determined price.” We request the DoT to please clarify on the following –

- a) What will be considered as the auction determined price in where Zero or Less than 8 slots are taken up for any one or more service areas in the auction, which implies that there is not enough demand at that price.
- b) How can the price determined in this auction be taken as the price applicable for liberalization when more than 50%

a) to d). It is premature to consider this at this stage.

of the available spectrum is not being auctioned thereby creating artificial scarcity of spectrum and artificial increase in price?

- c) What will be the applicable price for liberalization in case of liberalization after a gap of time following the auction?
- d) What will be the applicable price for liberalization of 900 Mhz?

18. On Page no. 60, it is stated that –

“In case excess demand is negative in Clock Round R, then the Provisional Winning Bidders from the previous Clock Round, R-1, in sequence of ranking will be considered to determine the Provisional Winning Blocks/ corresponding Bidders. If an Existing Licensee is a Provisional Winning Bidder for 2 blocks in Round R-1, and has not bid or revised his bid in round R, he will not be considered as a Provisional Winning Bidder if 7 blocks have already been allotted as Provisional Winning ones. This is as a consequence of the condition that an Existing Licensee who has bid for 2 blocks in a Clock Round, cannot be allotted less than 2 blocks as a Provisional Winning Bidder. In such cases, the bid of the next bidder in the Clock Round, R-1, in sequence of ranking, will be considered.”

Illustration given on Page no. 61 states that “Considering an example where in a Service Area, in sequence of their ranking, a New Entrant “A” has submitted his bid for 5 blocks, followed by an Existing Licensee “B” for 2 blocks, followed by another Existing Licensee “C” for 2 blocks, followed by another Existing Licensee “D” for 1 block and finally by another New Entrant “E” for 4 blocks. In this case, 5 blocks of “A” will be considered as Provisional Winning Blocks, and 2 blocks of “B” will also be considered as Provisional Winning Blocks. This leaves a balance of 1 block available to be determined as Provisional Winning Block out of the 8 blocks put up for auction. Since the bidder “C” has submitted his bid for 2 blocks, and he cannot be given 1, and only

the next ranked New Entrant Bidder (in sequence of ranking) will be considered as Provisional Winning Bidder, the next New Entrant in the sequence which is “E” will get the balance 1 block. As the provision of topping up is available to meet the requirements of the new entrants, the number of Blocks for “E” which will be considered as Provisional Winning Blocks will be 4.”

In the given example, the next bid pertains to D for 1 block, and thus as per rule mentioned in page 60, he should be allotted 1 block. We request the DoT to please clarify why “D” Has been ignored and “E” has been considered.

On Page 60, the two scenarios have been explained separately as in the case of where Excess Demand is Positive and also in the case where Excess Demand is Negative. It states that “In case excess demand is positive, in Service Areas where top-up blocks are available, the *next ranked New Entrant Bidder only* (in sequence of ranking) will be considered as Provisional Winning Bidder (and top-up blocks will be allotted to the New Entrant). In situations where there is no new entrant bidder ranked below, or where there are no to-up blocks available, there will be no Provisional Winning Bidder for one block in that round”.

Hence, in the given example, Bidder “E” has been considered as he is the next ranked New Entrant Bidder in that round where the excess demand is positive.

In the Illustration given on page no. 60-61 of the NIA, the ranking of the bidders in Round-R has been carried over to Round-R+1, even after the price increment in Round-R+1. As per our understanding of the auction rules, since the price has increased in Round R+1, the ranking of the earlier clock rounds cannot be carried over and the ranking in Round R+1 should be based on the Random Index Assignment. We request the DoT to please confirm that the Round R+1 ranking would be/are arrived based on Random Index Assignment only.

In the Illustration given on Page No. 60-61, the ranking of the bidders in Round-R have been carried over to Round-R+1. This is due to the fact that the excess demand in Round-R+1 is Negative (as total number of blocks for which bids have been submitted at the Clock Round Price of Rs. 101 is 7). The same has also been explained in Page No. 61 (Point a)

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| <p>19. Point no. 18 on Para 3.3 on key features of Unified License mentions about PBG amount of Rs 10 crores per service area. Para 3.6.1 (XIV), mentions about PBG of Rs 35 crores, although for existing it is mentioned to be Rs 21 crores. Such high value PBG was not required under present</p> | <p>No change in the condition. It is clarified that the PBG amount is for each Service Area.</p> |
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licensing regime and it would be unfair to have new entrants compete with existing players on different license terms. The DoT may kindly correct this anomaly.

20. “There are operators whose licenses and spectrum have been quashed, while they have already rolled out based on the current spectrum allocations. Hence, the allocation of spectrum should be made as under –

“When allocating the 4 contiguous blocks to an operator who is successful in the auction, the operator with maximum overlap with the spectrum held before quashing should be allotted that contiguous 5MHz frequency band.

No change in the condition.

Additionally for existing licensees who win 1.25 Mhz or 2.5 Mhz of spectrum, it may be possible to provide them the spectrum in a band which is contiguous with the existing spectrum held by them, while still providing contiguous spectrum to the new entrants who win in the auction.

In light of the above comments, it follows that the frequency allocation should be manual and not on random basis to optimize the allocation for maximum number of winners as suggested above.

The DoT is requested to kindly consider the above.

21. The Supreme Court has directed that the licenses and spectrum should now be granted by way of an auction similar to the 3G auction. In the 3G auction the spectrum was auctioned for the first time and it was clarified that the spectrum would not be counted for the purpose of determining the applicable slab for spectrum usage charges. The final price determined in the 3G auction was used as a basis to arrive at the reserve price for this auction. Considering the fact that the Supreme directed the auction to be similar to the 3G auction and the 3G price was used as a basis to arrive at the reserve price for this auction, it logically follows that the spectrum obtained in this auction should not be counted for the purpose of determining the applicable slab for spectrum usage charges. Please confirm.

No change in the condition.

<p>22. There is currently existing litigation with regard to spectrum usage charges. Please confirm that the spectrum usage charges indicated in NIA would be equally applicable to existing players, existing players who win additional spectrum in auction and new entrants.</p>	<p>The spectrum usage charges are applicable as per the orders issued by the Government from time to time.</p>
<p>23. The current auction is a Supreme Court mandated auction, arising out of the quashing of 2008 licenses. However some of the holder of quashed licenses like ourselves, who are serious operators, have invested in roll-out of extensive networks and currently provide services to millions of customers. However the Information Memorandum (IM) has now put such licensees on par with any new entrant (who has no current investment or existing subscribers).</p>	
<p>In case such a serious operator bids and wins in the auction, in order to ensure continuity of services to its customers, we had requested the DoT to confirm the following :</p>	
<p>a. All our current 1800 MHz spectrum allocation spots would remain unchanged.</p>	<p>a. This cannot be confirmed.</p>
<p>b. Existing roll-out obligations, if already met, would not need to be re-done.</p>	<p>b. & c. Holders of quashed licenses need to re-offer to TERM Cells the roll-out for testing.</p>
<p>c. All TERM cell roll-out certifications would remain valid.</p>	
<p>d. All backhaul spectrum – access and backbone, would remain unchanged.</p>	<p>d. The microwave access and backhaul spectrum is expected to remain unchanged unless any specific situations require a review.</p>
<p>e. All approvals such as SACFA, Deployments & Wireless Operating license would remain unchanged.</p>	<p>e. SACFA clearances are to be revalidated, wireless operating licenses are to be obtained afresh, deployment plans to be re-submitted and approvals obtained.</p>
<p>f. All Interconnect agreements and existing PoIs would remain unchanged and we would not be forced by large/ existing operators for any changes in existing agreements. Typically, we</p>	<p>f. The interconnect agreements would be governed by the relevant TRAI regulations/ directions/ guidelines.</p>

would not be forced to become interconnect seekers afresh and existing operating interconnect routes will not be disturbed.

- g. All our existing mobile number series, Signaling point codes, MNC codes allocations would remain unchanged.
- g. These resources are expected to remain unchanged unless any specific situations require a review.
- h. All other approvals from DOT / MHA / other Central and Local Government agencies like Lawful Interception, EMF Certifications, ROW, Site Clearances, pollution Control etc would remain valid.
- h. Same as above. However, the licensees may check themselves about the clearances relevant to the state/ Central Governments/ local bodies.

At the pre-bid meeting we were assured that that above issues would be considered favourably, in view of continuity of operations of bidders who were earlier holders of quashed licenses. However the NIA is not indicative of such changes. We request the DoT to kindly re-consider this issue positively.

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24. We had submitted the following question earlier for which DoT response was “Please refer to clause 1.1.3 of the IM.”

Question Submitted –

“Supreme Court vide its judgment of February 2, 2012 had cancelled the licenses granted and spectrum allocations made pursuant to the two press releases of 10.1.2008 The Supreme Court had ordered such cancellation along-with directions that the licenses and spectrum should now be granted by way of an auction similar to the 3G auction. In view of the same, kindly confirm the exact quantity of spectrum which has reverted to DoT consequent to quashing of licenses & spectrum issued pursuant to two press releases dated 10.01.2008. This clarity is critical to understand as to which all licenses/ spectrum allocations stand quashed (until date there is no communication to any operator or any formal notification listing the licenses/ spectrum allocations which have been cancelled) and hence which all operators have to participate in auction to get back the quashed spectrum, if they so desire.” (Question No. 167 as per Queries

Judgement of the Supreme Court is self-explanatory.

& Response)

25. Clause 1.1.3 of IM

“Recipients considering submitting applications to pre-qualify for the Auctions should note the following key points regarding eligibility:

- Holder of CMTS/ UAS licenses will be treated as ‘Existing Player’;
- Companies (Not an existing licensee) eligible for grant of Unified License (UL) OR a ‘Unified Access Service License’ which would be the present UASL without spectrum, will be treated as ‘New Entrants’ and will have to obtain a Unified License; and
- The companies/ licensees whose licenses are slated to be quashed as per the direction of Supreme Court will be treated as New Entrant.”

Question/Request: The above reference to the IM has not answered our query. We would again request the DoT to come up with a formal notification/list of the licenses/spectrum allocations slated to be quashed.

Judgement of the Supreme Court is self-explanatory.

26. We had submitted the following question earlier, however the DoT has not responded to the same.

Question Submitted –

“SUPREME COURT has mandated that “allocation of spectrum in 2G band in 22 Service Areas by auction, as was done for allocation of spectrum in 3G band”. The pan India reserve price for 3G auction for 5 MHz of spectrum was Rs.3,500 crores. However, in the proposed auction the price is Rs.14,000 crores. Reserve Price is meant to be a base price based on which an auction can be conducted and cannot be fixed at a level which is expected to be close to the final price. The spectrum which has been quashed was initially awarded at a price of Rs.1,658 crores in 2008. Hence, the reserve price should either be linked to the price at which these were earlier given in 2008 or be linked to the reserve price for 3G auction

with some indexation for the passage of time. However, in this case the reserve price is fixed at 4 times the reserve price for 3G auction. Hence, our view is that the reserve price of Rs.14,000 crores is not in accordance with Supreme Court directions and needs to be brought in line with the reserve price set for 3G auction with indexation. If this is not done, then please inform why is the Supreme Court directive not being complied with.”

Question/Request: We again request the DoT to please inform why the Supreme Court directive is not being complied with.

The Auctions are being conducted pursuant to Supreme Court judgement/ Orders.

27. We had submitted the following question on earlier for which DoT response was “Administrative allotment of spectrum through market determined price is under Presidential Reference.”

Question Submitted –

“Will the Government confirm that henceforth any spectrum allocation/ earmarking whether start-up/initial spectrum or additional or so called contractual spectrum (whether 4.4 or 6.2 MHz or 2.5 or 5 MHz) in 1800 MHz or 800 MHz band for existing and new operator , will always be allocated at the price and the terms derived in this auction. This clarity is essential before the auction starts as those who have eligibility to get spectrum based on subscriber linked criteria (SLC) - which is still operative, need to decide whether they should seek spectrum under the SLC or they should participate in the upcoming auction for fulfilling their spectrum requirements.” (Question No. 52 as per Queries & Response)

Question/Request: Clarity on spectrum allocation in future is required before the auction commences. Since the Supreme Court has already given decision on the Presidential Reference, we would like to understand the DoT's view on administrative allocation of spectrum going forward.

Allotment of spectrum in future will be governed as per the Guidelines issued from time to time.

28. We had submitted the following question on earlier, however the DoT has not responded
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for the same.

Question Submitted –

“The Supreme Court has directed that the licenses and spectrum should now be granted by way of an auction similar to the 3G auction. In the 3G auction the spectrum was auctioned for the first time and it was clarified that the spectrum would not be counted for the purpose of determining the applicable slab for spectrum usage charges. The final price determined in the 3G auction was used as a basis to arrive at the reserve price for this auction. Considering the fact that the Supreme directed the auction to be similar to the 3G auction and the 3G price was used as a basis to arrive at the reserve price for this auction, it logically follows that the spectrum obtained in this auction should not be counted for the purpose of determining the applicable slab for spectrum usage charges. Please confirm.”

Question/Request: We request the DoT to kindly provide the rationale for adopting a different SUC policy for the current auction, which makes the current auction not similar to the 3G auction.

Please see the response to query no. 22.

29. We had submitted the following question on earlier for which DoT response was “No change in the conditions of IM.”

Question Submitted –

The IM specifies 33% upfront payment for 1800 MHz and 25% upfront payment for 800 MHz. This is discriminatory and should be same for both the spectrum bands, particularly considering the fact that the minimum number of blocks that need to be acquired by a new entrant in 800 MHz auction is half (only 2 blocks) of that applicable to a new entrant in 1800 MHz auction (4 blocks). (Question No. 134 as per Queries & Response)

Question/Request: We request the DoT to provide the rational for differentiation in the payment terms.

No change in the conditions of NIA.

30. We had submitted the following question earlier however the DoT has not responded to the same
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Submitted Question –

This has reference to the disclaimer by way of an ‘Important Notice’ in the ‘Information Memorandum’ dated 27.08.2012 for Auction of Spectrum in 1800 MHz and 800 MHz band. It was confirmed at the pre bid conference that the “Notice Inviting Applications” (NIA) will be the final document and will be contractually binding. It was also mentioned at the pre bid conference that all queries submitted in writing will be responded to and published on the DoT website. It was further communicated that most of the responses to the queries will become part of the NIA and would thus be contractually binding. Our submission is that even if some responses do not become a part of the main NIA, but are addressed separately in the form of Questions and Answers or any similar document (Q&A), such a document should also be contractually binding.

Once the NIA and Q&A are brought in the public domain, there cannot be any doubt that the same are meant to convey the understanding of the DoT to the public at large. Large investment decisions are taken on the basis of these documents issued by the DoT. Having made the representations to the investors, operators and public at large regarding the details of the auction, the DoT is responsible for these documents and cannot disclaim any content and representations made in these documents. In view of the same, please confirm that the content of the NIA, Q&A and any other clarification issued by the Department of Telecom, would be binding on the DoT.

Question/Request: We request the DoT to please confirm that content of the NIA dated 28.09.2012, Queries and Responses dated 18.09.2012 and any other clarification issued by the Department of Telecom in connection with these documents and the auction, would be binding on the DoT, as these documents are the basis on which a prospective bidder makes an investment decision.

The NIA and clarifications issued to NIA will govern the Auctions.

31.	Could you please confirm that companies/ licensees whose licenses are slated to be quashed as per the direction of Supreme Court will be entitled to participate in the auction through an affiliate company and that in the event the affiliate company becomes a Winning Bidder, the licensee shall be permitted to transfer its customers and its business or any part thereof, either by acquisition of shares or through the sale of the business as a going concern, to the affiliate company and will be eligible to migrate to final UL regime as and when it is announced, subject to such conditions as prescribed for such migration.	(Reply for queries 31 to 35) For participation in the Auctions, please see eligibility conditions. The other issues raised will be governed by extant laws, rules and regulations and will be subject to the orders of the Supreme Court. Please also see the response to query no. 23 Migration to UL regime will be governed by the conditions that will be announced in due course.
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32.	Could you also confirm that upon completion of the transfer of the business to the affiliate company, in (31) above, the Government will transfer to the affiliate company, all resources and approvals accorded to the licensee for the conduct of its operations?	
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33.	Could you please confirm, with reference to (31) and (32) above, that the Government will, through appropriate clarifications in the NIA, layout a clear mechanism and steps for effecting the transfer of customers and all resources and approvals essential for the continuity of business to the affiliate from the licensee.	
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34.	Could you please additionally confirm, with reference to (31) and (32) above, that the Government will ensure that the interconnection agreement with other telecom operators are transferred and seamlessly to the affiliate company from the licensee and that the Government will issue an appropriate clarification in the NIA to require the other telecom operators to give effect to such transfer.	
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35.	Could you please also confirm, with reference to (31) and (32) above, that the Government will allow waiver of the testing of network by term cells against minimum rollout obligations already achieved by licensee and transferred to the affiliate company.	

36.	<p>Could you please confirm that the DoT will, within 30 days of issuing the Unified License to the affiliate company, return the financial and performance bank guarantees that were issued to the DoT by the quashed UAS Licensees?</p>	No.
37.	<p>3.5.1 of NIA</p> <p>“New Entrants – Foreign Entities”</p> <p>Query: Are 100% owned Indian subsidiaries of foreign entities allowed to participate in the auction, and subsequently qualify for Unified Licensee, given that foreign investors are permitted to participate in the auction directly in terms of Clause 3.5.1 of the Notice Inviting Applications.</p>	Yes. All conditions with respect to participation of foreign entities will apply.
38.	<p>3.2(xii) & 3.3 (6) of NIA:</p> <p><i>“The minimum paid-up equity and net worth requirements for obtaining UL (Access Services) including the additional paid up equity and net worth requirement prescribed for obtaining the spectrum shall be met and maintained till the validity period of the licence”</i></p> <p><u>Query:</u> Our understanding from above is that the applicant company upon obtaining spectrum and UL (Access Service) needs to maintain paid up capital of Rs 12.5 crore (10 crore + 2.5 crore) per service area. Please confirm.</p> <p><u>Query:</u> Our understanding from above is that applicant company will also need to maintain a net worth 102.5 crore (100 crore + 2.5 crore) per service area, of which the promoter’s net worth, who have at least 10% paid up equity holding in the applicant company, will be taken into account for satisfying 100 crore net worth criteria. Please confirm.</p>	<p>Yes.</p> <p>Yes. Please also see section 4.2.3(d) of the NIA.</p>
39.	<p>3.2 xiii) of NIA</p> <p>“Lock-in Conditions”</p> <p><u>Query:</u> Assuming a shareholder holds 10% or more in the bidding company at the time of applying for a UL and the net worth of such shareholders has not been taken into consideration for determining the eligibility for bidding for spectrum. Would such a</p>	No.

	shareholder (whose net worth has not been considered for determining eligibility) face any lock-in restrictions in terms of Clause 3.2(xiii) of the NIA?	
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40.	3.2 x) of NIA	
	<p><u>Query:</u> The term “promoters” is not defined in this clause. We request that while computing the net-worth of applicant company for participation in spectrum auction, the net worth of the promoter company/ companies which are parent company/ companies of applicant company (holding 10% or more equity) should be allowed. Kindly clarify.</p>	No change in the condition.

41.	3.3 (18) of NIA:	
	<p><i>“PBG for the licence shall be Rs 10 Crore per service area in addition to the PBG related to the rollout obligation.”</i></p>	
	<p><u>Query:</u> What is the purpose and tenor of PBGs for license?</p>	PBG is towards compliance of license conditions.

42.	3.6 .1 (xiv) b) of NIA:	
	<p><i>“The PBG may be released only after the complete testing/ verification of the compliance of the rollout obligations by the licensor and the recovery of the LD, if any, up to the last phase of rollout obligations”</i></p>	
	<p><u>Query:</u> Can the PBG may be released individually per service area as and when the complete testing/ verification of the compliance of the rollout obligations by the licensor has been done, even before the minimum period of six years as mentioned in 3.6.1(xiv) a.</p>	The PBG amount indicated in the NIA is for each service area. Regarding release of PBG, please see 3.6.1 (xiv) b) of NIA.

43.	4.2.4 of NIA:	
	<p><i>“The Bank Guarantee shall be from a Scheduled Commercial Bank, and be valid up to 30th April, 2013 and extendable for a further period of six months at the request of DoT, in the prescribed format as given in Section 9.3.2 (Annexures).”</i></p>	
	<p><u>Query:</u> The Bank Guarantee format requires validity of Bank Guarantee till October 31, 2013. It is inconsistent with the requirement mentioned in the clause. Please clarify.</p>	Please see para 3 of the EMD format.

44.	9.3.2 Point No. 4 of NIA:	<p><i>“Notwithstanding anything contained above, our liability, under the Guarantee shall be restricted to <Amount in figures> and our Guarantee shall remain in force until 31st October, 2013 from the date hereof. Unless a demand or claim under this Guarantee is made on us in writing within this date i.e. 31st October, 2013, all your rights under the Guarantee shall be forfeited and we shall be released and discharged from all liabilities there under.”</i></p> <p>Query: If validity date is specified then the words "from the date hereof" should be deleted and a full stop added before "Unless". Please clarify.</p>	No change.
45.	4.5 (iv) of NIA	<p><i>“Payment Terms - Indicative Schedule of Payments”</i></p> <p><u>Query:</u> Is 9.75% the applicable interest rate? Is it fixed or floating, is it for the full term of deferred payment?</p> <p><u>Request:</u> Request that detailed working of how the amounts are calculated under the table ‘Schedule of Payments’ on page 47 of NIA be provided.</p>	<p>9.75% is the applicable interest rate for the full period as prescribed.</p> <p>Please see the table given in response to query no. 14.</p>
46.	9.6 of NIA	<p><i>“Definitions and Glossary of Terms, Page 144”:</i> Net worth not defined.</p>	<p>Net Worth shall mean the sum total, in Indian Rupees of paid up equity capital and free reserves converted at the prevalent conversion rate indicated by the Reserve Bank of India on the date of the application.</p>
47.	9.3.1 of NIA	<p><i>“Application format Page 120-129”:</i> Checklist and NIA mention net worth of Applicant Company. There is no corresponding point in the application format.</p> <p>Query: Please clarify if Company needs to furnish a net worth certificate without mentioning the same in application?</p>	Please see amendments to the NIA.
48.	9.3 of NIA	<p><i>“Application Checklist Page 118-119”:</i></p>	

Checklist mentions many things to be certified by Company Secretary (only) while in application format these things can also be certified by authorized signatories.

Query: Should we read it as certified either by Company Secretary or authorized signatories as mentioned in the application format?

Please see the amendment to the NIA.

49. 4.2.3 b), 9.3.1 and 9.3.3 of NIA

4.2.3 b) Ownership restrictions, Page 44: “.....Similarly, for the purpose of bidding for spectrum by promoter holding 10% or more equity stake in a company whose license is slated to be quashed, common share holding shall be permitted.”

Query: In view of the above, what data such applicant needs to fill in Application points 7, 8 and 9 and also in undertaking to obtain Unified License (Access Services) point No. b?

Data as required in the application may be provided.
Para 9.3.4 (b) will not be attracted in cases where the provision of section 4.2.3 b) (last para) pertaining to common shareholding in respect of the bidding by the promoter of the Company whose license is slated to be quashed.

50. 4.7 of NIA

“New Entrants” Bullet Nos. 2 & 3

- The successful bidder will apply to DoT for grant of UL (Access Services) on prescribed format within seven calendar days of being declared successful in the auction. However, LoI issued by WPC Wing shall be submitted immediately after its receipt by the successful bidder;
- Upon the Successful Bidder obtaining a Unified License (Access Services) and fulfilment of conditions as may be specified, the allotment of spectrum shall be made in response to an application, on prescribed format, for such spectrum;”

Query: Formats of application for assignment of spectrum and for Unified License (Access Services) are not yet prescribed. When will DOT prescribe such format?

These will be provided in due course.

51.	4.7 of NIA “Announcement of pre-qualified Bidders” <u>Query:</u> Will all the information listed in section 4.3 (e.g. Details of all Bidders’ total Earnest Money Deposits and corresponding Initial Eligibility points; the EAS Manual; URL of the Auction; Login ID and Password; etc) be submitted to bidders on 28 Oct. 2012? From what date will the EAS be open for test-login?	Well before the Mock Auction.
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52.	5.3.4 of NIA “Activity Rule” <u>Query:</u> According to the second bullet on calculation of eligibility on page 58 “.....then the eligibility of the Bidder in the next Clock Round R+1 will be equal to its activity level in the Clock Round R divided by the Auction Activity Requirement, rounded down to the nearest whole number”. In the example (page 59, 1st paragraph, last sentence) “...then the eligibility of Bidder X in the Clock Round R+1, would be reduced to 63 points (50/80% rounded down to the nearest whole number)...”. 50/80% is 62.5, which after having rounded down should be 62 points, and not 63 points. Request to please clarify.	It will be rounded down to the nearest whole number. Hence, in the example, the eligibility of the Bidder X in the Clock Round would be reduced to 62 points.
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53.	5.5 of NIA “Information Policy” <u>Query:</u> If the last completed Clock Round was not the final Clock Round, bidders will be provided with information about "The rank of the Provisional Winning Bidder within the relevant Service Area at the end of last completed Clock Round" (page 71). Will it be the rank of the bidder or rank of the blocks (or both) that will be reported after a clock round? Request to please clarify?	Information on the bidder’s rank and corresponding number of blocks for which he is a Provisional Winning Bidder will be provided to that particular bidder.
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54.	<u>Query:</u> When would the UL (Access Services) draft be available.	The key features of Unified License (Access Services) have been provided in the NIA. The draft UL (Access Services) will be available in due course.

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55. External Commercial Borrowings (ECB): Any decision in this regard will be communicated. We request that the restrictions under ECB guidelines be relaxed considering the funding requirement in proposed auction. We kindly request that the following be included as part of the relaxation of the ECB guidelines:
- (i) *Permitting successful bidders to raise ECB in excess of USD 750 million under the automatic route:* Request that successful bidders in the auction should be permitted to raise ECBs under the automatic route to the extent of the amount that may be needed by it for payment of spectrum fee to the Government in the upcoming auction of spectrum in 1800 MHz and 800MHz bands. Accordingly, the prescribed limit of USD 750 million under the automatic route should not be applicable in the context of ECB raised purely for the purpose of payment of spectrum fee to the Government.
 - (ii) *A foreign equity holder to be eligible as “recognized lender” under the automatic route without the ECB-liability-equity ratio:* A foreign equity holder should be permitted as a recognized lender under the automatic route for the purpose of providing an ECB to an Indian entity for payment of spectrum fee to the Government in the upcoming auction of spectrum in 1800 MHz and 800MHz bands regardless of the ECB liability-equity ratio. This is critical given that the regulatory approvals necessary for the capitalization of the bidding company may not be in place by the time that spectrum fee ought to be paid to the Government.
 - (iii) *Approval for grant of an ECB by an indirect foreign equity shareholder:* An indirect majority shareholder should be permitted as a recognized lender under the automatic route, provided that the indirect equity holding by the foreign lender in the bidding company is at least 49 per cent.
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- (iv) *Approval for grant of an ECB by a foreign group company:* A company of the same group as the foreign equity holder should be permitted as a recognized lender under the automatic route, provided that the direct and indirect equity holding by the group in the Indian company is at least 49 per cent.

56.	Clause 4.5 – Payment Terms (Page 46-47) Schedule of Payments – Deferred Payment exceeds the NPV of the final winning price. (Example provided in their letter)	Please see the response to query at sl. no. 14.
57.	It is requested that:	No change in the conditions.
	(i) for the purpose of determining the net worth of the applicant company vis-a-vis eligibility for applying for the Unified License, net worth of those promoters having at least 10% paid up equity holding in the applicant company should be allowed to be taken into consideration as if allowed for determining the net worth for participation, in the auction for assignment of spectrum; and if such an amendment is not feasible, then	
	(ii) the date for meeting the eligibility criteria for obtaining Unified License should not be the same as the date for meeting the eligibility criteria for participation in the spectrum auction and for reasons stated above in paragraphs 3, 4, and 5, it would be just and reasonable to postpone the date for meeting the eligibility criteria (including the net worth requirement) for obtaining UL to a date which should be later of: the date of filing of the application for obtaining Unified License; or the date of allocation of the spectrum; or the date of start of the commercial operations.	Please see fourth bullet of 4.2.3(d) of the NIA.
	Further, we understand the Government is considering the option of allowing the foreign entities to participate directly in the auctions and comply with the requirements of setting up the joint venture at a later date. In this regard, we	

hereby request you to kindly allow a time period of at least ninety (90) days to the foreign entity from the date of that foreign entity being declared successful in the auctions for making an application for Foreign Investment Promotion Board (FIPB) approval as also to comply with the other applicable requirements for setting up a joint venture for obtaining the Unified License.

58. Clause 2.3 Page No. 22 (Technology)

Clause 2.3 conveys that “*Existing CMTS/ UAS licensees can liberalise their existing spectrum holding in 1800MHz band after payment of auction determined price.*”

We believe that the existing spectrum is already liberalized. However, without prejudice to our above submission, DoT may kindly clarify:

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|---|--|
| a) Whether the absence of similar provision for liberalizing the existing spectrum holding in 800 MHz mean that the existing spectrum held in 800 MHz band is liberalised spectrum and can be used for deployment of any technology such as 2G, 3G or 4G? or; | a) and b)
Existing spectrum holding is not liberalised. Services to be provided will be governed by the terms and conditions of the license under which the spectrum has been allotted. |
| b) Whether the existing operator holding spectrum in 800 MHz will be allowed to use the spectrum for 3G/ 4G services along with the spectrum being assigned through this auction? | |
| c) The roadmap/ terms and conditions for liberalization of 800 MHz band if the existing operator intends to use it in a liberalized manner? | c) At this stage, liberalisation of spectrum is applicable to spectrum holding in 1800MHz band only. |

59. Clause 2.3 Page No. 22 (Technology)

Vide Clause 2.3 it has been conveyed that “*Existing Licensees will be allowed to use the additional spectrum block(s) allotted through this auction to deploy any technology by combining with their existing spectrum holding in the same band after converting their entire existing spectrum*

holding into liberalised spectrum in the same band as per the terms and conditions to be specified.”

Without prejudice to our submission that the existing spectrum is already liberalised, DoT may kindly clarify;

Whether is it mandatory for the existing operator being allocated 1.25MHz/ 2.5 MHz via this auction to get the existing spectrum which is already liberalised even if it wishes to use the spectrum assigned through this auction for provision of GSM services?

Existing spectrum holding in 800MHz, 900MHz and 1800MHz bands is not liberalised. The existing licensees can use the spectrum in 1800MHz band allotted in this auction along with the existing spectrum holding in 900MHz and/ or 1800MHz bands for deployment of GSM technology.

60. Clause 2.3 Page No. 22 (Technology)

We believe that the spectrum is already liberalised as per the provisions of technology neutrality under the present UAS/ CMTS license. However, without prejudice to our above submission, vide Clause 2.3 it has been conveyed that *“Existing Licensees will be allowed to use the additional spectrum block(s) allotted through this auction to deploy any technology by combining with their existing spectrum holding in the same band after converting their entire existing spectrum holding into liberalised spectrum in the same band as per the terms and conditions to be specified.”*

a) If an operator is holding 6.2 MHz spectrum in 1800 MHz band and is also allocated 2.5 MHz of spectrum in 1800 MHz band via this auction. In this case, if the operator wants to use only 5 MHz of spectrum for deployment of 3G/ 4G network and continue to provide GSM (2G) services via the balance 3.7 MHz;

Entire spectrum holding in 1800MHz band needs to be liberalised.

DoT may please clarify, that in the above scenario, the operator will be asked to pay only for liberalizing 2.5 MHz of the existing spectrum holding?

b) If an operator is holding say 6 MHz in 900 MHz & 3 MHz spectrum in 1800 MHz band and is also assigned 2.5 MHz of spectrum in 1800 MHz band via this auction. In this case, if the

operator wants to use only 5 MHz of spectrum in 1800 MHz for deployment of 3G/ 4G network and continue to provide GSM (2G) services in the balance 6.5 MHz.

DoT may clarify;

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| i) Whether is it mandatory for the existing operator to get its entire spectrum holding in both 1800 MHz and 900 MHz band liberalised, even if it wishes to use only a part of the spectrum assigned in 1800 MHz in the so called liberalised manner? | Entire spectrum holding in 1800MHz band needs to be liberalised. |
| ii) Since, the 1800 MHz spectrum cannot be clubbed with the existing 900 MHz spectrum to make one continuous block of 5 MHz for providing 3G/ LTE services, DoT may clarify, if the operator will still be required to get its 900 MHz spectrum liberalised. | At this stage, liberalisation of spectrum is applicable to spectrum holding in 1800MHz band only. |
| iii) Similarly, would the existing operators holding spectrum in 800 MHz band also require to get their spectrum liberalised if they use it in a liberalised manner? | At this stage, liberalisation of spectrum is applicable to spectrum holding in 1800MHz band only. |
| iv) Post this auction, the government will have the auction determined price of spectrum in 1800 MHz and 800 MHz. Considering that the propagation characteristics of 900 MHz band is between 800 MHz band and 1800 MHz band, what would be the price applied for liberalization of 900 MHz band. Would it be the price of 1800 MHz band or 800 MHz or somewhere in between? | At this stage, liberalisation of spectrum is applicable to spectrum holding in 1800MHz band only. |

The answers to the above query are critical for the existing operators to take an informed decision in the present auction. We would therefore request DoT to provide due response to above.

The Clause states that: “A *spectrum usage charge in addition to the spectrum auction price as a percentage of the Adjusted Gross Revenue (AGR) shall be payable by the successful bidder as per the rates notified by the Government from time to time. The present spectrum usage charges are mentioned below* (Given in Annexure 4)

A new operator bidding for spectrum in 1800 MHz is required to pay a minimum Spectrum Usage charges @4% for 5 MHz spectrum allocated via auction, while a CDMA operator having 5 MHz of spectrum is required to pay @ 3%.

SUC slabs/ rates are as per Government decision from time to time.

In a technology neutral environment, DoT must impose the uniform/ similar Spectrum Usage Charge for the same quantum of spectrum held.

62. Clause 3.7 Page No. 34-35 (Spectrum Usage Charges)

DoT’s M&A 2004 policy states that if any merger takes place between GSM & CDMA operator then for the purpose of spectrum charge, the merged entity would have to pay such charge on combined spectrum. Further, M&A 2004 policy also stated that for the purpose of upper spectrum limit, both CDMA & GSM spectrum would be considered as “total spectrum”

TRAI in its recommendation on “*Recommendations on Review of license terms and conditions and capping of number of access providers*” dated 28th August 2007 also suggested the imposition of Spectrum Usage Charge basis the combined spectrum holding in GSM and CDMA band.

The NIA vide its clause 2.3 on Technology has also stated that: “*There are no restrictions on the technology to be adopted for providing services within the scope of the service license using spectrum blocks allotted through this auction.*”

Therefore, we believe that non-charging of spectrum usage charge on the combined holding i.e. GSM+CDMA or 800 MHz +

900 MHz + 1800MHz and instead charging the spectrum usage charge separately on the GSM and CDMA holding, results in loss of revenue to the exchequer but amounts to discrimination between GSM and CDMA operators.

NIA has not addressed this anomaly and continues with separate Spectrum Usage Charges of CDMA and GSM spectrum which results in a situation where an operators is able to hold two different spectrum i.e. GSM and CDMA without attracting the cross holding restrictions as mandated under two separate UASL licenses having the administratively allocated spectrum.

Spectrum usage charges slabs/ rates are as per Government decision from time to time.

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63. Clause 3.7 Page No. 34-35 (Spectrum usage charges):

The Conditions mentioned with respect to Spectrum Usage Charges is currently sub-judice and shall be subject to final outcome of Court proceedings and hence any participation to the auction during the pendency of the proceedings should in no event be construed as having given up on any of these issues. The DoT is requested to kindly take note of the same.

Spectrum usage charges slabs/ rates are as per Government decision from time to time.

DoT is therefore requested to clarify that as the matter is sub-judice, the Spectrum Usage Charges applicable have to abide by the outcome of the Court proceedings?

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64. Clause 3.7 Page No. 34-35 (Spectrum usage charges):

It has been indicated that *“while computing the annual spectrum charges - Applicable Adjusted Gross Revenue shall be computed in accordance with the provisions of the relevant service licence.”*

Although the AGR definition is available for the present UASL/CMTS license, but it is neither available for “Unified License” nor for a new type of UAS license without spectrum.

Also, TRAI in its recommendations on ‘Guidelines for Unified License/ Class

License and Migration of existing licenses' dated 16-04-2012 have recommended that only the revenue from the wireless services shall count towards AGR calculation for the limited purpose of calculation of spectrum usage charge.

We presume that the DoT will apply and charge Spectrum Usage Charges only on the revenues earned from the services using the spectrum. Please clarify?

No. Applicable Adjusted Gross Revenue shall be computed in accordance with the provisions of the relevant service licence. Also please see the amendment to NIA.

65. Clause 3.7 Page No. 34-35 (Spectrum Usage Charges)

The auction of spectrum in 1800 MHz and 800 MHz band is to obtain the market determined price of spectrum. Therefore, it is important that all the operators participating in auction are compared similarly basis the total cost of spectrum. In the present auction of Spectrum, the cost of spectrum has two components:

- a) One time charges for Spectrum
- b) Recurring Spectrum Usage Charges

While the participants are only being compared basis the one-time charges for spectrum, no consideration is given to the differential spectrum usage charges being charged for the spectrum, which is also a substantial component of the cost of ownership of spectrum.

The Spectrum Usage charges for the auctioned spectrum have been proposed as an escalating rate from 3-8% depending upon the total spectrum held by the operator and the spectrum being allocated through auction will be included along with the administratively allocated spectrum for determining the slab for payment of Spectrum Usage Charges.

The Spectrum Usage Charges proposed in the NIA is in complete contrast to its press release dated 31st Oct 2008, the recommendations of TRAI dated 23rd Apr 2012, the policy adopted during the 3G/BWA auction and international best practices.

DoT vide its Press Release dated 31st Oct, 2008 on “DOT Stand on access service licensing” had stated on record that:

“In case spectrum is auctioned, it would not have been possible to charge the higher spectrum usage charges of the order of 2-6% and maintenance and administration cost which is typically of the order of 0.5% to 1% could be recovered in a judicial manner.”

TRAI vide its recommendations dated 23-04-2012 also stated the following w.r.t. Spectrum Usage Charges:

“3.152 The Authority is of the view that once spectrum is obtained through an open auction, the other charges should not have any further element of collecting the rent for assignment of spectrum. Any such charge should be only to cover the administrative costs attendant with resource management. As all spectrum in future shall be acquired through auction, the Authority would like the Spectrum Usage Charges to be minimal at 1% of the Adjusted Gross Revenue. The guidelines for Unified Licence already stipulate that only the revenue accrued through wireless services shall be taken into consideration for the purpose of levy of Spectrum Usage charges.

3.153 In respect of licensees who have a mix of administratively assigned spectrum and spectrum acquired through auction, the principle for levy of Spectrum usage charges shall be on lines similar to the 3G spectrum i.e., the spectrum holder will continue to pay the SUC as applicable on the spectrum acquired through administrative process. However, in their case, the AGR will be the total AGR earned through spectrum acquired through auction and administratively acquired spectrum. In the event the spectrum holder, who is in category 2 or 3 pays the current auction determined price for the spectrum that is administratively assigned, then it will be entitled to the payment of Spectrum usage charges at the rate of 1% of the AGR.”

While the above recommendations on

Spectrum Usage Charges were sent to TRAI for reconsideration, TRAI again recommended for a fixed percentage as Spectrum Usage charges vide the following recommendations:

“...The holders of the 3G spectrum are liable to pay minimum spectrum charges @3% of AGR. Since it is not feasible to segregate the revenues earned from spectrum in the 800/900/1800 MHz band and 3G spectrum, there can be a situation where operators also holding 3G spectrum, migrate from spectrum usage charge of 3% or more to 1% of AGR. Besides possible risk of arbitrage, it may be construed as changing the NIA conditions.

In view of the above, the Authority is in favour of modifying the recommendation in Para 3.154 and retaining the levy of Spectrum usage Charge (SUC) at 3% instead of 1%. All the other conditions regarding the SUC will remain same.”

However, the decision of DoT, to add the spectrum being allocated through auction in the administratively allocated spectrum, for determining the slab for payment of Spectrum Usage would lead to a situation where both the new and existing operators pay the same one time charges determined via auction; but an Existing Operator already having an existing revenue stream from the existing spectrum would be required to pay 1-2 % extra revenue share on in addition to 5-8% on the additional/new revenue generated from the spectrum allocated via auction. On the other hand, the new operator with no revenue stream would be required to pay only @3-4% on the revenues earned using the spectrum allocated via auction. The table below compares the difference in cost of ownership of spectrum between new and existing operator:

S No	Charges	New Operator	Existing Operator
A	One time charges for spectrum determined through auction	Same	Same

B	Additional Spectrum Usage Charges on “Revenues from the existing spectrum (Both 2G and 3G)”	Nil as the new operator has no present AGR	<u>1% of the present AGR</u> in case the operator is allocated 1 block of 1.25 MHz <u>2% of the present AGR</u> in case the operator is allocated 2 blocks of 1.25 MHz
C	Spectrum Usage Charges on “Revenues from the Spectrum being assigned via this auction.”	3-4%	5-8%

The escalating spectrum Usage Charges for the Spectrum obtained by auction lead to wide variation in the total cost of ownership of spectrum being allocated through this auction between the existing operators viz-a-viz the new entrants (operators)

- a) Additional spectrum usage charge on the revenues earned using the existing spectrum (as indicated at ‘B’ in table above) would tantamount to imposition of additional cost only on the existing operators. In many cases, it would be substantial as compared to the reserve price. Therefore, we would request DoT to correct this error which is leading to a huge discrimination between the new entrant and existing operators.
- a) and b)
No change in NIA conditions.
- b) To remove the discrimination on account of “Additional Spectrum Usage Charge on revenues from existing spectrum” (as indicated at ‘B’ in table above), we would suggest non-inclusion of quantum of spectrum allocated via auction for the purpose of determination of slabs for the Spectrum Usage Charge.

66. Clause 4.5 Page No. 46-48 (Payment Terms)

As per the NIA, the Successful Bidders shall be able to opt for deferred payment subject to the following conditions:
“An upfront payment of 33% in the case of 1800MHz spectrum and 25% in the case of

No change in the NIA conditions.

800MHz spectrum of the final bid amount of one time charges for the spectrum be made within 10 days of declaration of successful bidder and final price;”

DoT may kindly rectify this to avoid any discriminatory while fixing the differential upfront payments, for spectrum in 1800 MHz band spectrum in 800 MHz band.

67. Clause 2.3 Page No. 21 (Technology)

Clause 23.1 of the existing UAS License states:

“23.1 The Licensee shall provide the details of the technology proposed to be deployed for operation of the service. The technology should be based on standards issued by ITU/TEC or any other International Standards Organization/ bodies/Industry. Any digital technology having been used for a customer base of one lakh or more for a continuous period of one year anywhere in the world, shall be permissible for use regardless of its changed versions. A certificate from the manufacturers about satisfactory working for a customer base of one lakh or more over the period of one year, shall be treated as established technology”

Clause 2.1 and 24.1 of the existing CMTS license states:

“2.1 The licensee shall be permitted to provide, in its area of operation, all types of mobile services including voice and non-voice messages, data services and PCOs utilizing any type of network equipment (however, the technology must be digital), including circuit and/or packet switches, that meet the relevant International Telecommunication Union (ITU)/Telecommunication Engineering Center (TEC) standards. Provided that a pilot project may also be approved and licensed for any period by the Licensor for inducting a new Technology....

Clause 24.1 The Bidders shall specify the details of the technology (which shall always be digital), quality of service and

other performance parameters of the system proposed to be deployed for operation of the service. The technology should be based on standards issued by ITU/TEC or any other International Standards Organization/bodies and the licensee shall seek the approval of the licensor before deployment of such technologies. Any digital technology having been used for a customer base of one lakh or more for a continuous period of one year anywhere in the world, shall be permissible for use regardless of its changed versions. A certificate from the manufacturers about satisfactory working for a customer base of one lakh or more over the period of one year shall be treated as established technology.”

The above clauses of the UAS/ CMTS license clearly state that the licensee is allowed to deploy any technology be it for the Access Network, Transport Network or the Core Network.

Similarly, the clause 2.3 on Technology states: *“There are no restrictions on the technology to be adopted for providing services within the scope of the service license using spectrum blocks allotted through this auction.”*

The above clause 2.3 on technology in the NIA as well as the present license conveys that the technology neutrality enshrined in the license is not only limited to the core network but also includes the radio access network using the spectrum. Thus, the term liberalization of the spectrum used in NIA is already a subset of overall technology neutrality available to the licensee. Hence an operator having a CMTS/UAS license is not required to get its present spectrum liberalized and therefore no question of any payment for the same.

Therefore, DoT may ensure that the artificial distinction between the overall technology neutrality defined in the UAS/ CMTS License, the Clause 2.3 of the NIA and the proposed technology neutrality of access network/spectrum (which is also being termed as liberalization of spectrum) is rectified.

The existing spectrum holdings are not liberalised.

68. Clause 2.3 Page No. 21 (Technology):

The reserve price of 800 MHz has been reduced from 2 times to 1.3 times (i.e. by 35%) the reserve price of 1800 MHz on pretext that spectrum less than 5 MHz cannot be used in a so called liberalised manner.

No change in NIA conditions.

In the auction of spectrum in 1800 MHz band, the existing operator has the option of participating wherein they may be allocated upto a maximum of 2.5 MHz.

If the existing operator uses the 1.25 MHz/ 2.5 MHz of spectrum in 1800 MHz band assigned via this auction in a non-liberalised manner, DoT may kindly clarify that the existing operator will be required to pay 35% less than the final discovered price of 1800 MHz?

69. Clause 5.5, 6.5 Page 70-71, 101-102 (Information Policy)

a) In the session on Auction Rules dated 20th Sep, 2012, the Auctioneer confirmed that they will provide information on top-up blocks used in last completed clock round. It is therefore requested to add this information in information policy list?

No change in information policy.

b) Please provide an extensive overview of the format and information contained in the files that will be available for download to bidders during the 1800 MHz/ 800 MHz auctions in India.

This will be provided in the EAS Manual.

70. The existing UAS/ CMTS licensees have been allocated spectrum basis the Subscriber Linked Criteria.

DoT may kindly clarify; whether at the time of extension of license, the existing operators will be allowed to continue with the total amount of spectrum assigned to them basis the subscriber linked criteria?

The terms and conditions of renewal will be provided in due course.

71. TRAI vide its recommendations in May, 2010 has recommended that:

“...Government should reassign spectrum but only upto the prescribed limits or the amount of spectrum assigned to the licensee before the renewal, whichever is less. Spectrum assigned to the licensee in excess of the prescribed limit, if any, shall be withdrawn. The spectrum will be assigned at the ‘current price’”

The prescribed limit has been defined by TRAI as 8 MHz for all circles except Mumbai & Delhi where it is 10 MHz.

In case the above TRAI’s recommendations are accepted by DoT, the existing operators will be allocated a maximum of 8 MHz of spectrum in all circles. While the price charged by DoT on extension will be for so called liberalised spectrum (as discovered via the present auction), however, all spectrum being allocated on extension cannot be used in a liberalised manner. This will be due to spectrum not being allocated in multiples of 5 MHz. DoT may clarify:

- a) Whether it will consider reducing the price of spectrum which cannot be used in a liberalised manner? No change in NIA conditions.
- b) Whether it will consider allocation of spectrum in multiples of 5 MHz to facilitate liberalised use? No change in NIA conditions.

72. The company is required to submit share holding pattern along with net worth and paid up capital. Vide a note below, it has been indicated that the details to be provided as on the date of application. In this regard, we would like DoT to kindly clarify/confirm the following:-

- a) As per clause 35 of the listing agreement, a listed company whose shares are frequently traded on stock exchanges is required to submit its shareholding pattern to the stock exchanges on quarterly basis within 21 days from the end of the quarter. Please confirm that the Share holding pattern as submitted to stock exchange as on 30th Sep, 2012 will be accepted. No change in NIA condition.
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- b) In case of a listed company, clause of 41 of the listing agreement with stock exchange requires the listed company to file the quarterly audited results within 45 days from the end of the quarter. This implies that net worth and paid up capital as on 30th Sep, 2012 will only be available around 15th Nov, 2012. Therefore, please confirm that the last audited net worth & paid up capital i.e. as on 30th June, 2012, will be accepted by DoT.
- Please see the amendment to the NIA.

73. It is requested to clarify that:

- i) Net worth of promoters holding 10% or more paid-up equity capital in the applicant company shall be considered for the purpose of issuance of Unified License (Access Services) also, on the same lines as permitted for participation in spectrum auction; and/or
- No. Please refer to Section 3.3 sl. no. 6 of the NIA as also Section 4.2.3 (d) bullet 4.
- ii) Operating losses shall not be considered while calculating the net-worth of the company.
- Operating losses will be considered while calculating the net-worth of the company.

74. i) The original entry level Pan India license fee of Rs.1,506.82 crore (along with interest from the date of payment ;of such license fee) which was paid for acquiring the licenses, which are quashed by the Hon'ble Supreme Court for no reason attributable to a licensee, should be allowed to be set off against the earnest money required to be paid for participating in the new auction and against the successful bid amount, in the event of a successful bid. In the event there would be any shortfall in the money required to be paid by xxx on successful bid and the licensee fee already paid to you in respect of the quashed 21 UASL, xxx shall obviously pay such additionally.
- A set-off is allowed against the Earnest Money and the payment due in the event of spectrum being won in this auction. The total amount of such set off shall be limited to the total entry fee paid by the entity for all its licenses which have been quashed by the Supreme Court. No interest will be due on this amount.
- ii) The bank guarantees originally submitted with the DoT in respect of the 21 USA licenses, which are
- Required bank guarantees in the event of winning of spectrum/ acquisition of Unified License (Access Services) will need to be

quashed by the Hon'ble Supreme Court for no reason attributable to xxx, should be allowed to be used for the acquisition and allotment of new licenses and spectrum towards the requirement of the same, in the event of a successful bid by xxx. In the event there would be any shortfall in the bank guarantees required to be submitted by xxx on successful bid and the bank guarantees already submitted with DoT in respect of the quashed 21 UASL, xxx shall obviously submit such bank guarantees additionally.

furnished.

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75. i) We would like to seek clarity with regards to Government's position on levying "One Time Charge" on the incumbent Operators before the auction, so that we could arrive at a well-informed decision with regards to our participation in the auction. This cannot be clarified at this stage.
- ii) The price already paid by xxx at the time of issuance of licenses in 2008 should be adjusted in totality towards the auction price in case we are successful in auction else it should be refunded in totality. (Not to be linked Circle wise). Please refer to response to query at Sl.no. 74.
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ANNEXURES

Annexure – 1

			Normal Schedule		Examples of Full Prepayment on different dates											
Rate of Interest 9.75%					On 25/12/2013		On 25/12/2014		On 25/12/2015		On 25/12/2016		On 25/12/2020		On 25/12/2023	
Date	Years	Disc Rate	Payment	PV	Payment	PV	Payment	PV	Payment	PV	Payment	PV	Payment	PV	Payment	PV
12/25/2012	0	1.0000	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00
12/25/2013	1	0.9112	-	-	735.33	670.00	-	-	-	-	-	-	-	-	-	-
12/25/2014	2	0.8302	-	-	-	-	807.02	670.00	-	-	-	-	-	-	-	-
12/25/2015	3	0.7565	129.93	98.29	-	-	-	-	885.70	670.00	129.93	98.29	129.93	98.29	129.93	98.29
12/25/2016	4	0.6893	129.93	89.56	-	-	-	-	-	-	829.46	571.71	129.93	89.56	129.93	89.56
12/25/2017	5	0.6280	129.93	81.60	-	-	-	-	-	-	-	-	129.93	81.60	129.93	81.60
12/25/2018	6	0.5722	129.93	74.35	-	-	-	-	-	-	-	-	129.93	74.35	129.93	74.35
12/25/2019	7	0.5214	129.93	67.75	-	-	-	-	-	-	-	-	129.93	67.75	129.93	67.75
12/25/2020	8	0.4751	129.93	61.73	-	-	-	-	-	-	-	-	544.04	258.46	129.93	61.73
12/25/2021	9	0.4329	129.93	56.24	-	-	-	-	-	-	-	-	-	-	129.93	56.24
12/25/2022	10	0.3944	129.93	51.25	-	-	-	-	-	-	-	-	-	-	129.93	51.25
12/25/2023	11	0.3594	129.93	46.69	-	-	-	-	-	-	-	-	-	-	248.32	89.24
12/25/2024	12	0.3275	129.93	42.55	-	-	-	-	-	-	-	-	-	-	-	-
12/25/2025	13	0.2984	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total			1,629.31	1,000.00	1,065.33	1,000.00	1,137.02	1,000.00	1,215.70	1,000.00	1,289.39	1,000.00	1,523.69	1,000.00	1,617.77	1,000.00

Annexure – 2

			Normal Schedule		Examples of Partial Prepayment					
Rate of Interest 9.75%					1 instalment prepaid on 25/12/2015		2 instalments prepaid on 25/12/2017		2 instalments prepaid on 25/12/2022	
Date	Years	Disc Rate	Payment	PV	Payment	PV	Payment	PV	Payment	PV
12/25/2012	0	1.0000	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00
12/25/2013	1	0.9112	-	-	-	-	-	-	-	-
12/25/2014	2	0.8302	-	-	-	-	-	-	-	-
12/25/2015	3	0.7565	129.93	98.29	248.32	187.84	129.93	98.29	129.93	98.29
12/25/2016	4	0.6893	129.93	89.56	-	-	129.93	89.56	129.93	89.56
12/25/2017	5	0.6280	129.93	81.60	129.93	81.60	356.19	223.70	356.19	223.70
12/25/2018	6	0.5722	129.93	74.35	129.93	74.35	-	-	-	-
12/25/2019	7	0.5214	129.93	67.75	129.93	67.75	-	-	-	-
12/25/2020	8	0.4751	129.93	61.73	129.93	61.73	129.93	61.73	129.93	61.73
12/25/2021	9	0.4329	129.93	56.24	129.93	56.24	129.93	56.24	129.93	56.24
12/25/2022	10	0.3944	129.93	51.25	129.93	51.25	129.93	51.25	356.19	140.49
12/25/2023	11	0.3594	129.93	46.69	129.93	46.69	129.93	46.69	-	-
12/25/2024	12	0.3275	129.93	42.55	129.93	42.55	129.93	42.55	-	-
Total			1,629.31	1,000.00	1,617.77	1,000.00	1,595.71	1,000.00	1,562.11	1,000.00

Annexure – 3

Rate of Interest 9.75%			Case 1 - as per NIA		Change in Period		Correct	
Date	Years	Disc Rate	Payment	PV	Payment	PV	Payment	PV
12/25/2012	0	1.0000	330.00	330.00	330.00	330.00	330.00	330.00
12/25/2013	1	0.9112		-	-	-	-	-
12/25/2014	2	0.8302		-	-	-	-	-
12/25/2015	3	0.7565	142.60	107.87	-	-	129.93	98.29
12/25/2016	4	0.6893	142.60	98.29	142.60	98.29	129.93	89.56
12/25/2017	5	0.6280	142.60	89.56	142.60	89.56	129.93	81.60
12/25/2018	6	0.5722	142.60	81.60	142.60	81.60	129.93	74.35
12/25/2019	7	0.5214	142.60	74.35	142.60	74.35	129.93	67.75
12/25/2020	8	0.4751	142.60	67.75	142.60	67.75	129.93	61.73
12/25/2021	9	0.4329	142.60	61.73	142.60	61.73	129.93	56.24
12/25/2022	10	0.3944	142.60	56.24	142.60	56.24	129.93	51.25
12/25/2023	11	0.3594	142.60	51.25	142.60	51.25	129.93	46.69
12/25/2024	12	0.3275	142.60	46.69	142.60	46.69	129.93	42.55
12/25/2025	13	0.2984		-	142.60	42.55		-
Total			1,756.00	1,065.33	1,756.00	1,000.00	1,629.31	1,000.00

Annexure – 4

<i>Schedule A: Charges for GSM operators</i>	
<i>Spectrum Slab</i>	<i>% of AGR</i>
<i>Up to 4.4 MHz</i>	<i>3%</i>
<i>Up to 6.2 MHz</i>	<i>4%</i>
<i>Up to 8.2 MHz</i>	<i>5%</i>
<i>Up to 10.2 MHz</i>	<i>6%</i>
<i>Up to 12.2 MHz</i>	<i>7%</i>
<i>Up to 15.2 MHz</i>	<i>8%</i>

<i>Schedule B: Charges for CDMA operators</i>	
<i>Spectrum Slab</i>	<i>% of AGR</i>
<i>Up to 5 MHz</i>	<i>3%</i>
<i>Up to 6.25 MHz</i>	<i>4%</i>
<i>Up to 7.5 MHz</i>	<i>5%</i>
<i>Up to 10 MHz</i>	<i>6%</i>
<i>Up to 12.5 MHz</i>	<i>7%</i>
<i>Up to 15 MHz</i>	<i>8%</i>