

Auction of 3G and BWA Spectrum

Queries & Responses

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

Queries post 1st January, 2010

Important Notice

This document has been prepared on behalf of the President of India by the Department of Telecommunications, Ministry of Communications & Information Technology, Government of India in connection with the proposed allocation of spectrum in the 2.1GHz and 2.3GHz bands by auction.

The document is for information purposes only and has no binding force. It is made available on the express understanding that it will only be used by the Recipients for the sole purpose of assisting these Recipients in deciding whether they wish to proceed with a further investigation of possible participation in the Auction(s). The document is not intended to form any part of the basis of any investment decision or other evaluation or any decision to participate in the Auctions and should not be considered as a recommendation by the Government or its advisers to any Recipient to participate in the Auctions. In the event of any difference between this document and the provisions of the Notice (or any other applicable laws, regulations or other statutory provisions), the latter are definitive and take precedence.

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This document outlines the Government's expectations in relation to the proposed Auctions. The Government reserves the right, in its absolute discretion, at any stage, to withdraw its proposal to conduct the Auctions or any part thereof or to terminate further participation in the proposed Auctions by any entity, to change the structure and timing of the proposed Auctions, to refuse entry to any entity into the Auctions or to vary any other terms of spectrum allocation at any time without giving any reason whatsoever.

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No	Query	Response
1.	<p>Bidder X is contemplating to participate in the BWA auctions as a foreign entity.</p> <p>We were wondering if you could tell us whether a 100% foreign investor could participate as an New Entrant Applicant in the auction with an undertaking to introduce an Indian shareholder pursuant to the allocation of a spectrum. This would give us more time to select the right Indian partner if we were to wait until we are a Winning Bidder.</p> <p>Besides it seems that the only FDI restriction provided by the FIPB is related to the ISP license A terms which only apply when a Winning Bidder is granted the ISP license A.</p> <p>Also as an ISP license A and assuming that the licensee is not rolling out an international gateway it will not be required any Indian ownership. Is that the way we should read it?</p>	<p>Please refer Section 3.3.1 of the Notice Inviting Applications. A 100% foreign investor would be allowed to participate in the Auctions with the requisite undertaking to obtain the relevant licence should it be successful in the Auctions. The foreign investor will need to have an Indian partner in the licensed entity to meet the FDI requirements.</p> <p>Please refer the “Guidelines and General Information for Grant of Licence for operating Internet Services” and amendments thereof issued by the Government of India, Ministry of Communications & IT, Department of Telecommunications with respect to FDI guidelines for internet services.</p>

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No	Query	Response
2.	<p>As per clause 6 (a) of the application form, the company is required to submit the shareholding pattern.</p> <p>If the bidding entity is a listed company and whose shares are frequently traded on the stock exchanges. As per the Stock Exchange Listing Agreement conditions, the company is required to submit its shareholding pattern to the stock exchanges on quarterly basis and presently the last submitted shareholding pattern is as on December 31, 2009, which is also in public domain.</p> <p>The shareholding pattern dt. December 31, 2009 will also synchronize with the paid capital details provided in the last audited financial statements.</p> <p>In the light of the above submission, please confirm that in case of a listed company the shareholding pattern as on December 31, 2009 will be accepted & treated as "current information".</p>	<p>Yes. However please notify any significant changes in the shareholding of the Promoters in the Company since this date. Please also notify change in shareholding of any shareholder who held and/ or now holds more than 10% equity stake (directly or indirectly) in the Company.</p>
3.	<p>Would like to know can a single company make more than one application in ensuing 3G auctions.</p>	<p>No. Only a single application can be submitted by the Group Bidding Entity in respect of all the eligible companies within a Group.</p>
4.	<p>With reference to the Notice Inviting Applications for 3G & BWA spectrum Auction clarity is required on the following:</p> <p>Q1. As per the format of Joint undertaking (Format No. C.8 &9), 2 “Directors & Authorized Representatives” are required to sign this undertaking on behalf of “Group Bidding Entity” as well as “Associated Licensee”. Please confirm that the Term “Director & Authorized Representatives” means that the person, who are signing the document have to be on the board of the respective companies?</p>	<p>Q1. Yes.</p> <p>Q2. There should be a Power of Attorney/ Board resolution authorising the concerned person to sign the Application, including the relevant undertakings etc.</p> <p>Q3. Yes.</p> <p>Q4. Authorised signatories are not required to be Primary and Alternative. Bidders have been provided flexibility to provide for an alternative Authorised Person (see response to Q6 below). There should be Power of Attorney in favour of both the primary Authorised</p>

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No	Query	Response
	<p>Q2. If yes to Q1, please confirm that for the purpose of signing this undertaking, does that Director need any Power of Attorney and / or Board Resolution in his favour?</p>	<p>Person and the alternative Authorised Person, if any.</p>
	<p>Q3. If yes to Q2, please confirm that whether said PoA and / or Board Resolution need to be submitted along with the application?</p>	<p>Directors & Authorized Representatives of the Applicant company will also be authorised signatories with respect to the Application. There should be Power of Attorney/ Board resolution in favour of each of the authorised signatories.</p>
	<p>Q4. If yes to Q3, please confirm that the Authorised Signatories (Primary & Alternative) can be different from “Directors & Authorized Representatives” and separate PoA for these people is required to be submitted (2 PoA for Authorized Signatories i.e. Primary & Alternative as well as 2 PoA for “Directors & Authorized Representatives” for the joint undertaking).</p>	<p>Q5. Yes.</p>
	<p>Q5. Please also confirm that for the purpose of signing of the ownership compliance (C. 10 & C11), the above rules will apply?</p>	<p>Q6. It is clarified that Clause 5 of the Application format (page no. 79 of the Notice Inviting Applications) refers to the Authorised Person and not the Authorised signatory. An Authorised Person is the nominee of the Company who has been duly authorised to act on behalf of the Company for the purposes of the Auction. She/ he need not be the same as the person signing the Application.</p>
	<p>Q6. Reference clause 5 of the application format (page no. 79) regarding for Primary & Alternative Authorized Signatories. Please confirm whether a single & combined one Power of Attorney can be submitted for both signatories OR two separate Power of Attorneys will be required to be submitted?</p>	<p>A single Power of Attorney can be submitted giving details of both the primary Authorised Person as well as the alternative Authorised Person.</p>

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No	Query	Response
Queries received after 1st March		
5.	<p>Section 1.4</p> <p>Clauses in NIA: The timetable set out in the NIA says that the start of the BWA Auction will be 2 days from the day of the close of the 3G auction.</p> <p>Queries: 1) Does this 2 days include non-working days? 2) Further, notwithstanding non-working days, is it a correct interpretation of this statement that there will be a single day of no auction between the day of the end of the 3G Auction and the day of the start of the BWA auction.</p>	<p>1) This would be 2 calendar days. In case the day falling after 2 calendar days from the day of the close of the 3G Auction is a public holiday or a Saturday or Sunday, the BWA Auction would start from the next working day.</p> <p>2) Yes, subject to such a day being a working day.</p>
6.	<p>Section 5.3.9 & 6.3.9</p> <p>Clauses in NIA: 1) The Notice mentions that Clock Rounds will typically only be scheduled between the hours of 09:00 and 19:30 on Monday through Saturday. 2) Further, Clock Rounds will not be shorter than 20 minutes, and the time between the end of a round and the start of the next will not be less than 20 minutes (so the complete cycle of a round will not be less than 40 minutes). 3) The notice also mentions that it is expected that during the early rounds of the Auction, Clock Rounds will run for one hour.</p> <p>Queries: 1) This represents a considerably more condensed timetable than was envisaged in previous notice of December 2008. This is of particular concern as condensing the timetable increases the risks to participants in the auction by reducing the time available to analyse results and decide upon bids across the 22 service areas.</p>	<p>1) The time indicated denotes the minimum time periods only. For initial rounds as well as for rounds which follow a change in auction activity requirement, it is envisaged that the time periods shall be greater. In other rounds also, the time period provided will be adjusted depending on the level of activity in the Auctions so that Bidders have adequate time for preparation.</p> <p>2) This will depend on the level of activity in the Auctions.</p>

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No	Query	Response
	<p>2) Once these early rounds have been completed, how many Clock Rounds do you expect to typically complete in a day?</p>	
7.	<p>Section 5.3.9 & 6.3.9</p> <p>Clauses in NIA: NIA mentions that the Auction Administrator reserves the right, inter alia, to extend the number of hours in the day during which rounds will be scheduled or to run rounds on any day once the Auction commences.</p> <p>Queries: 1) Under what circumstances would the hours be extended; would rounds run on Sundays or on national holidays? 2) Were the hours to be extended or were rounds to be run on Sundays or on national holidays, how much advance notice would bidders be provided?</p>	<p>1) Such steps would be taken in exceptional circumstances, which are not currently envisaged. However, the Government reserves the right to continue with the Auction on Sundays or on national holidays, if it deems fit.</p> <p>2) Bidders will be intimated 2 calendar days in advance in case rounds are to be run on Sundays or on national holidays.</p>
8.	<p>Section 5.3.9 & 6.3.9</p> <p>Clauses in NIA: 1) The Auction Administrator will not grant any additional Extension Budget to one or more Bidders unless there is compelling evidence of technical failures affecting multiple bidders. 2) A Bidder may defer the original scheduled finishing time of any one Clock Round by at most 60 minutes</p> <p>Queries: 1) If by any chance, during the auction process system hangs with the session not being terminated, will it be possible to connect with the auction site from another system? 2) What alternate options are available for bidders to submit bids in case of system/ technical failure? As we understand that it is not possible to submit the bid by fax. 3) In case of technical/system failure affecting a single bidder, such bidder can</p>	<p>1) Yes. Please refer the EAS Manual that will be provided to applicants in this regard.</p> <p>2) There are no alternate options for submission of bids. This has been done to ensure confidentiality and integrity of the process. Bidders are advised to make alternate standby arrangements for internet connection and log-in machine (multiple systems/ locations) in case the primary connection/ system is not available. It may be noted that a Bidder can install its Certification Authority Certificate and Cryptographic Authentication token on multiple systems, though at any given time it can log-in to the EAS from only one of these systems.</p> <p>3.1) No additional budget will be provided for such issues. Bidders have the sole responsibility to ensure availability of internet connectivity, log-in machine and other systems and</p>

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No	Query	Response
	<p>at best log complaint with the technical helpdesk. in such a scenario:</p> <ul style="list-style-type: none">- 3.1) Will the extension budget of the bidder be extended for the time taken by technical helpdesk to resolve the issue?- 3.2) What will happen in case more than 60 minutes are taken to resolve the complaint logged by such single bidder with technical helpdesk? Will such bidder will not be able to further participate in the auction process?	<p>software required to connect to the EAS. In case of issues at the Auction Administrator's end, it is envisaged that the process would be halted temporarily for all the Bidders.</p> <p>3.2) Please see response to 3.1. Note that the EAS algorithm will process such a situation as equivalent to the Bidder not having put in any new Bid in that round. Subject to the other Auction Rules, the Bidder may continue to participate in subsequent rounds.</p>
9.	<p>Section 4.3 &D.2</p> <p>Will detailed security and privacy settings for the Internet Browser be mentioned in the EAS Manual? Request to provide such settings to the participant bidders at earliest for them to prepare accordingly.</p>	<p>The EAS Manual will have a description of the system settings required by the Bidders. The EAS Manual will be provided to all the Applicants upon submission of Application.</p>
10.	<p>Section 4.3</p> <p>Will there be sufficient redundancy in terms of number of phone lines to report problems to the technical helpdesk?</p>	<p>Yes.</p>

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No	Query	Response
11.	Annexure C.1 & C.2 Clause 6(a) Clauses in NIA: As per clause 6(a), net worth and paid up capital of the promoter/ partner/ shareholder in the company is required to be given. As per response to query no. 333 (3) net worth and paid up capital of the individual promoter/ partner/ shareholder is required to be given to the extent these are required to meet the specified net worth criteria in the UAS guidelines. Queries: In case the net worth and paid up capital of the applicant is already meeting the specified net worth criteria in the UAS guidelines, then is it sufficient to write "Not Applicable" in the columns of Net worth and Paid up capital for each promoter/ partner/ shareholder. Please confirm.	Yes.
12.	Annexure C.1 & C.2 Clause 8 Clauses in NIA: As per clause 8, net worth and paid up capital of the common parent in the associated licensees is required to be given similar to format as per point 6(a). Queries: In case the net worth and paid up capital of the associated licensee is already meeting the specified net worth criteria in the UAS guidelines, then is it sufficient to write "Not Applicable" in the columns of Net worth and Paid up capital for the common parent. Please confirm.	Yes.

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No	Query	Response
13.	<p>Annexure C.1 & C.2 Clause 5</p> <p>Clauses in NIA: As per clause 5, authorised person specimen signature needs to be counter-signed by the authorised signatory. As per response to query no. 335(2), the authorised person could also be an authorised signatory.</p> <p>Queries: If one person is nominated as authorised person and authorised signatory, then can the same person counter sign his own specimen signature in the capacity of authorised signatory (which means both the signatures would be same).</p>	<p>Signature of the Authorised Person should be counter-signed by any other authorised signatory, in case the Authorised Person is also an authorised signatory for the purpose of the Application.</p>
14.	<p>Annexure C.1 & C.2 Clause 12</p> <p>Clauses in NIA: As per clause 12, net worth of the Company is required to be provided.</p> <p>Queries: In the definition of net worth as per UASL licence, can the following be included in net worth: - ESOP - Share application money</p>	<p>Please refer the “Guidelines For Unified Access Services Licence” issued by the Government of India, Ministry of Communications and Information Technology, Department of Telecommunications in this regard, as per which net-worth shall mean as the sum total, in Indian Rupees, of paid up equity capital and free reserves.</p>
15.	<p>Annexure C.1 & C.2 Clause 11 & 12</p> <p>Clauses in NIA: As per clause 11 and 12, paid up capital and net worth of the company is required to be given respectively.</p> <p>Queries: (a) Whether there is requirement to give paid up capital and net worth of associated licensee also (b) If yes to (a) above, then under which clause of the application form this information should be provided.</p>	<p>(a) Yes, to the extent these are required to meet the UAS licence criteria.</p> <p>(b) Under clauses 11 and 12 respectively.</p>

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No	Query	Response
16.	<p>There is a possibility of group companies having overlapping UASL licenses in some circles. This is allowed as per the license clause 1.4(ii) Note.</p> <p>Query -1 for 3G Auction</p> <p>Under Group Bidding Entity (GBE) concept, Associated Licensee & GBE need to execute joint undertaking authorising GBE to bid on behalf of Associated Licensee for service areas mentioned therein. One of the company is made a GBE and the other as Associate licensee. The GBE and associate licensee can give, in the undertaking, the list of all the licenses held by them including the overlapping circles.</p> <p>In the event of successful bidding whether:</p> <p>a) allocation of spectrum can be interchanged between GBE & Associated Licensee.</p> <p>b) For all circles for which the associate licensee has executed undertaking, does the spectrum need to be taken by associate licensee only?</p> <p>c) For overlapping circles, can the GBE take a final call to keep spectrum with itself or assign spectrum to the Associate licensee on a circle by circle basis.</p> <p>Query -2 for BWA Auction</p> <p>Similarly in case of BWA Auction, GBE could be an ISP Category A Licensee and have Associated Licensee's operating in 22 service area under UASL with some overlapping circles.</p> <p>In the event of successful bidding whether:</p> <p>a) allocation of spectrum can be interchanged between the ISP Licensee as GBE and Associated Licensee's as UASL?</p> <p>b) the circles for which Associated</p>	<p>1 (a) In case both the GBE and an Associated Licensee (as per the dispensation in the UAS licence clause cited above) hold UAS/ CMTS licence for the same service area, the GBE will have the flexibility of either taking the spectrum in that service area by itself or nominating the relevant Associated Licensee for the same. However, this one-time nomination needs to be done prior to the allocation of spectrum by the WPC, and provided the relevant Associated Licensee has submitted the Joint Undertaking as per format C.8 of the Notice along with the Application.</p> <p>1 (b) Yes, unless both the GBE and the Associated Licensee (as per the dispensation in the UAS licence clause cited above) hold UAS/ CMTS licence for the same service area, in which case the procedure will be as described in sub-part 1 (a).</p> <p>1 (c) Yes, however subject to the restrictions described in sub-part 1 (a) and to any relevant condition of the Notice.</p> <p>2 (a) Yes, the GBE may nominate one of the Associated Licensees to whom the spectrum is to be allocated by WPC. However, this one-time nomination needs to be done prior to the allocation of spectrum by the WPC, and provided the relevant Associated Licensee has submitted the Joint Undertaking as per format C.9 of the Notice along with the Application.</p> <p>2 (b) Yes. If there are multiple Associated Licensees in the same service area, the GBE has to make a one-time nomination of the Associated Licensee to whom the spectrum needs to be allocated (in case the GBE is declared Successful Bidder in that service area) prior to the allocation of spectrum.</p>

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No	Query	Response
	<p>Licensee has executed undertaking need to be taken by them only?</p> <p>c) In case of overlapping circles of the Associate licensee's, can the GBE take a final call to assign spectrum to each Associate licensee on a circle by circle basis.</p>	<p>2 (c) Yes, however subject to the restrictions described in sub-parts 2 (a) and 2 (b) and to any relevant condition of the Notice.</p>
17.	<p>1) Net Worth: Line Item (6)(a) of the Application for participating in auction of radio spectrum in 2.1GHz band</p> <p>The Table in Line (6)(a) contains a column titled “Net Worth”. Kindly clarify whether Net Worth of Promoters and/or Shareholders is required to be mentioned even if the Applicant Company’s own net worth is sufficient for UASL licenses. In case the applicant company’s own net worth is sufficient for UASL licenses then can it just mention its own net worth instead of individual net worth of its promoters + shareholders?</p> <p>2) Net Worth: Line Item (6)(a) of the Application for participating in auction of radio spectrum in 2.1GHz band</p> <p>If a company holds UASL in only 15 circles and wants to bid for all 22 circles, then in that case does the net worth to be reported in line item 6(a) have to be sufficient for UASLs in 15 circles or an equivalent amount corresponding to the requirement for all 22 circles?</p> <p>3) Net Worth: Line Item (10) of the Application for participating in auction of radio spectrum in 2.1GHz band</p> <p>Do we need to specify the “net worth required” for existing licenses only or for existing +prospective licenses for the Applicant Company proposes to bid?</p> <p>4) FIPB Approval: Line Item (13) of the Application for participating in auction</p>	<p>1) Net worth of Promoters and/ or Shareholders is not required to be mentioned if the Applicant Company’s own net worth is sufficient for UASL licenses.</p> <p>2) It should be sufficient for meeting the requirement for all the 22 circles.</p> <p>3) It should be specified for service areas where licence is held already as well as prospective service areas for which the Applicant proposes to bid. Please note however that award of UAS licence in the prospective service areas where Bidder is successful in the Auctions but does not have a licence will be done through a separate distinct and independent process with its own application and eligibility requirements.</p> <p>4) Copy of the complete FIPB application may be submitted.</p> <p>5) Yes.</p>

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No	Query	Response
	<p>of radio spectrum in 2.1GHz band</p> <p>In case the Applicant Company has applied for FIPB clearance but the same is pending, does it need to attach a copy of the complete FIPB application OR will the acknowledgement letter in respect of the application suffice?</p> <p>5) POA for Directors: Form C.1, line item (16) , Form C.4</p> <p>Whether POA (in addition to Board resolution) is required for the Directors who will be signing the joint undertakings as per format C.4? (since Point No. 16 of Format C.1 states POA for the authorized signatories of any other company that is required to sign any attachment to the Application is also required (such as signing of format C.4 by the directors))</p>	
