

**No. 1000/12/2013-WF/Auction
Government of India
Ministry of Communications & IT
Department of Telecommunications
(WPF Wing).**

Dated 15-01-2014

Subject: Second Supplementary Queries and Response in respect of NIA for Spectrum Auction scheduled in February 2014.

The Second Supplementary Queries and Response in respect of NIA (dated 12-12-2013) , for Auction of 1800 MHz band and 900 MHz band is hereby enclosed. All amendments and responses to queries, issued in respect of NIA dated 12-12-13, form part of the NIA.

S/d
Director(WF)

Auction of Spectrum in 1800MHz and 900MHz Bands

Second Supplementary Queries & Responses To Notice Inviting Applications Dated 12th December 2013

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

15th January, 2014

No.	Query	Response
1.	<p><u>Auction of spectrum currently held by existing licensees and existing license terms.</u></p> <p>a. The NIA proposes auction of spectrum currently held by existing licensees. We understand that current licensees have legal and contractual right over existing spectrum even beyond the initial license period of 20 years, as per their existing license terms & conditions.</p> <p>b. Post auction, a situation may arise that a bidder other than the existing licensee, may win the entire or part of spectrum currently held by an existing licensee. This will create a situation where if the spectrum is won by someone other than the existing licensee, duplicate rights will be created over the same asset.</p> <p>c. DoT needs to clarify as to how does it propose to resolve this situation ?</p> <p>d. We understand that the matter of extension licenses is before the TDSAT and it may happen that the existing licensee retains its rights over the spectrum proposed to be auctioned beyond the expiry of the initial 20 year license period. In such a situation if the existing licensee asserts his right over existing spectrum, how will the DoT compensate the winner in the auction for the investments made by it for the spectrum, the capex, the initial losses if any and the opportunity cost of investment so made?</p> <p>Hence, it is suggested that any spectrum held by licensees of expiring licenses is not auctioned till the matter is finally</p>	<p>All queries have been answered, may refer to Amendment No.2 and Queries & Response dated 02-01-2014 and Supplementary Queries & Response dated 13-01-2014.</p> <p>Applications are due today, i.e. 15-01-2014 by 5 PM, as per NIA Amendment No.1 and Amendment No.2.</p>

No.	Query	Response
	<p>adjudicated by the TDSAT and Supreme Court (in case of appeal).</p>	
2.	<p><u>Payment Terms for spectrum to be vacated by Renewal Licensees</u></p> <p>In the ensuing auctions 2 kinds of spectrum are being auctioned. One is the spectrum which is available with DoT and the same will be made available to the winners immediately post the auction after they fulfil the necessary procedural requirements. However, in case of the 3 metros the 900 MHz spectrum and some 1800 MHz spectrum which is being auctioned is currently not available with DoT. It can be made available to the winner in the auction only post the expiry of the licenses in Nov'14, which is 10 months later (as per DoT's stated policy this period could be as long as 18 months, which would have been the case if there was any participation in the auction in Mar'13). The winners of the spectrum to be vacated by the renewal licensees are being asked to pay for the spectrum much before the same is available with DoT for allocation, which is not correct. It is not fair and there is no rationale to ask the winners to pay simultaneously for spectrum becoming available at different timings with a long gap in between. Hence, the following is suggested.</p> <p>a. In case of 900 MHz where the effective date is the date of expiry of existing license and also where the operator chooses to get the 1800 MHz spectrum won in auction on the date of expiry of license, the payment should be required on the date of expiry of license. This should apply to all winners of 900 MHz (whether</p>	

No.	Query	Response
	<p>license expiring or not), as they will be NOT be able to use the spectrum won in this auction till the date of expiry of the relevant license.</p> <p>Even for 1800 MHz if the operator whose license is expiring does not bid for it and that spectrum is won by another operator, then also the current operator will not vacate the spectrum till the expiry of license. Hence, all spectrum associated with expiring licenses (900 or 1800 MHz) should have the effective date as the date of expiry of the relevant license.</p> <p>b. This price can be escalated by 10% p.a. (as is the rate applicable for deferred payment option) from the 10th day after the completion of auction till the date of expiry of license (when payment will be made). This will ensure that there is no price advantage to the bidder who is paying later and protects the NPV for the Government.</p> <p>c. A condition of securing the upfront payment by way of a Bank Guarantee can also be put up, which will address any concerns of a bidder defaulting at a later date.</p> <p>There is no way that payment can be asked for something today, when DoT is not in a position to deliver the spectrum now. DoT will be able to deliver the spectrum only when the license expires. <u>The auction is being conducted in advance only for administrative convenience and this cannot be used to cause undue financial hardship to winners in the auction by being forced to pay several months in advance of the spectrum actually being made available.</u></p>	

No.	Query	Response
3.	<p><u>Combined bidding for bands with different economic values (contiguous and non-contiguous spectrum).</u></p> <p>The current auction design requires a participant to bid for spectrum bands with different economic values, where the bidder could be forced to accept allocations which it is not interested in as per following 3 scenarios –</p> <p>a. 5 MHz Non-contiguous spectrum, where the bidder actually is interested only in 5Mhz contiguous spectrum band i.e. the bidder either wants 5 MHz contiguous spectrum or else wants no spectrum allocation.</p> <p>b. Allocation of spectrum for part of the circle (service area), where the bidder is interested only in spectrum across the circle.</p> <p>c. Spectrum allocation of a partial quantity less than what it has bid for. This is very critical for applicants who bid for 5 MHz, which is the minimum quantity required for launching services in a new technology, and who is allotted a quantity of less than 5 MHz which is of no value to it.</p> <p>There has never been a situation in the past, where a bidder has been forced to take a lesser quantity at a given price, than what the bidder was bidding for. In the 3G auction one could either get 2X5 MHz or nothing. In the auctions held in Nov’12 the NIA clearly stated that “An Existing Licensee who has bid for 2 blocks in the last completed Clock Round, cannot be allotted less than 2 blocks as a Provisional Winning Bidder. As a consequence of this condition, in case there is an Existing Licensee who has bid for 2</p>	

No.	Query	Response
	<p>blocks, but can only get one as a consequence of ranking rules, then he will not be declared as a Provisional Winning Bidder.”</p> <p>All the above 3 situations are grossly unfair and can be easily addressed through the following mechanism –</p> <p>(i) Products (spectrum bands) , which have different economic values should be categorized separately and the bidder should be allowed to bid separately for each (as bidder bids separately for each circle and also bids separately for 900 MHz and 1800 MHz concurrently).</p> <p>The following 4 categories need to be created –</p> <ul style="list-style-type: none"> ☐ Contiguous spectrum across circle ☐ Contiguous spectrum not available across circle ☐ Non-contiguous spectrum across circle ☐ Non-contiguous spectrum not available across circle <p>This is easy to do and will result in a fair auction design. This will address issues “a” and “b” above.</p> <p>(ii) The condition which was there in Nov’12 auction should be repeated in this auction also as under -“An Existing Licensee who has bid for 2 blocks in the last completed Clock Round, cannot be allotted less than 2 blocks as a Provisional Winning Bidder. As a consequence of this condition, in case there is an Existing Licensee who has bid for 2 blocks, but can only get one as a consequence of ranking rules, then he will not be declared as a Provisional Winning Bidder.”</p>	

No.	Query	Response
	<p>There is no reason to change the condition in the current auction. This will address issue “c” above.</p>	
4.	<p><u>Bidding for minimum 5 MHz of 1800 MHz by “bidders whose licenses are due for expiry”</u></p> <p>Clause 2.1 (a) (II) states – “Minimum number of blocks to be bid shall be 25 in 1800 MHz band for new entrant while existing licensee shall bid for minimum of 3 blocks in 1800 MHz band.” Also 3.2 (iii) states “Bidders whose licenses are due for expiry in 2014 and their spectrum put to auction will also be treated as 'New Entrants'.”</p> <p>This condition is OK for 900 MHz, where every operator whose license is expiring is currently holding spectrum in excess of 5 MHz. However, the above clauses would also erroneously imply (although that may not be the intention) that a bidder whose license is expiring and who currently holds 1800 MHz band spectrum significantly less than 5 MHz and is only interested in renewing his existing spectrum holding will be forced to bid for a minimum of 5 MHz in 1800 band. Hence, for a bidder whose license is expiring, the minimum bid should be 3 blocks in 1800 MHz band and not 25 blocks as currently implied.</p>	
5.	<p><u>Point No. 7 – Amendment No. 2 to NIA [Clause 3.6.1, (iii), Page 18 of NIA]</u></p> <p>As per amendment No. 2 to NIA, for the said amendment the last paragraph states as under:- “All existing Access Service licensees shall be treated as ‘New Entrant’ for the bidding in those</p>	

No.	Query	Response
	<p>frequency bands in which they do not hold spectrum at present in that particular service area”</p> <p>Further, Clause 3.2 (Associated Eligibility Conditions) point no. (i) states that:-</p> <p>“(i) Existing Unified Licence (Access Service)/ Existing UASL/CMTS /UL licensees shall be treated as ‘New Entrant’ in those service area(s) for the frequency bands in which they do not hold spectrum at present. In other words, UAS/CMTS/UL(AS)/UL licensees who hold spectrum only in a particular Service Area are also allowed to participate in the auction as ‘New Entrant’ in that service area for the frequency band in which they do not hold spectrum at present*. Their eligibility to bid for spectrum blocks in that particular service area will be that of a new entrant. They will also need to comply with conditions for spectrum allotment and other prescribed conditions such as rollout obligations, FBG etc.</p> <p>* For this Purpose 1800 MHz and 900 MHz Bands are considered as same band”</p> <p>a. As per above Clause 3.2, if an existing Access Service License provider who holds spectrum in 1800MHz in a particular service area bids for spectrum in 900 MHz in that particular service area or vice versa, then he is NOT treated as “New Entrant” (as 1800 MHz and 900 MHz are treated as same band).</p> <p>b. However, as per Amendment No. 2 to NIA Clause 3.6.1 (iii)</p>	

No.	Query	Response
	<p>the last two lines (mentioned above) contradicts condition 3.2 of the NIA.</p> <p>Kindly confirm that, if an existing Access Service Licensee holding spectrum in 1800 MHz in a particular service area bids for spectrum in 900 MHz in that particular service area or vice versa, then the Applicant Company would NOT be treated as “New Entrant”.</p>	
6.	<p>Query No. 93 – Incomplete amendment</p> <p>Query No. 93 was as under</p> <p>Page 68, Table 5-F,</p> <p>The price increment cap has been set equal to the reserve price. Both the absolute amount of the price caps and the ratio to reserve price is higher than previous auctions. Please clarify if this is intentional.</p> <p>Response of DoT</p> <p>Please Refer Amendment No. 2 to NIA.</p> <p>The amendment is incomplete as Table 5-F had two parts. The first part was “Proportionate Price Increment Rule” which has been amended to define the excess price in terms of 1 MHz blocks, instead of 0.2 MHz blocks. However, the second part of the table which talks about “Maximum Price Increment per Block” (to which this query pertains) is still based on a block size of 0.2 MHz and the same has NOT been revised based on a block size of</p>	

No.	Query	Response
	<p>1 MHz. The comparison with Nov'12 auction and the correct situation is tabulated below –</p>	
7.	<p><u>Liberalization of Spectrum</u></p> <p>Clause 2.3 provides as under –</p> <p>“Existing CMTS/ UAS/UL licensees can liberalise their existing spectrum holding in 1800MHz band for the balance validity period of spectrum assignment after payment of auction determined price prorated for the balance validity period of the Spectrum Assignment.”</p> <p>The above mentions only about payment of auction determined price without giving any credit for the pro-rata entry fee paid by the licensee at the time of acquiring the license. Please confirm that the payment for liberalization will be calculated as under –</p> <p>Liberalization Payment = $\frac{\text{Auction determined price} - \text{Entry Fee}}{\text{Balance Validity Period}} \times \text{Total Validity Period of Spectrum Assignment}$</p>	
8.	<p><u>Query No. 187 remains unanswered</u></p> <p>Query Number 187 was as under –</p> <p>“Further DoT had in January, 2013 issued letters to licensees for levy of one time spectrum charges. This demand also included “one time charge for the balance valid period of license effective from 1.1.2013”. This demand is currently under litigation.</p>	

No.	Query	Response
	<p>However, in case this amount of one time spectrum charges becomes payable, then please confirm that on payment of such onetime spectrum charges, the quantum of spectrum on which such charges are paid will be deemed to be liberalized and no further action will be required by the licensee to liberalize that spectrum on which such payment is made.”</p> <p>The response by DoT was “Refer section 2.3 of NIA”. However, the answer is not to be found in section 2.3 (relevant portion was reproduced above in Point 9). Hence, we request confirmation that in case the one time spectrum charges are paid in accordance with the letter issued by DoT in January, 2013 and any changes made by way of a judicial decision, such spectrum on which the one time spectrum charges are paid will be considered as liberalized.</p>	
9.	<p><u>Query no. 202 - Roll Out Obligations</u></p> <p>Query Number 202 was as under –</p> <p>This clause does not mention the roll out obligations in case the spectrum won in this auction is deployed for LTE technology. We presume that the roll out obligations would be the same as for the BWA (LTE) auction. Please confirm.</p> <p>DoT response in saying that ‘the roll out Obligations is self explanatory” is puzzling and erroneous. Please reconsider whether an operator in a given service area having LTE roll-out in 2300 MHz and another operator doing LTE roll-out in 1800 MHz should have different roll out obligations/ time period for roll-out</p>	

No.	Query	Response
	<p>obligations ?</p> <p>The rollout obligations for WCDMA/ LTE have been specified by DoT in the past. In case any operator is going to utilize the spectrum being auctioned now for rolling out same technology, then how can a different set of roll-out obligations be imposed for same technologies. This situation is most disturbing and immediate DoT correction is required.</p> <p>We strongly feel that the roll out obligations should be Technology based rather than spectrum band based as the spectrum has now been liberalized and can be used to roll out any technology.</p>	
10.	<p><u>Point No. 6 – Amendment No. 2 to NIA [Clause 3.2]</u></p> <p>Refer fresh NIA amendment on “lock in”. The amendment wording is not very clear. Pl. confirm the following:</p> <p>An existing operator, who is more than 3 years old in service operation, would be now subject to fresh restriction?</p>	
11.	<p><u>Query no. 179 & 180</u></p> <p>Query Number 179 and 180 was as under –</p> <p>(a) If no applications or bids are received in the auction for any of the service area in any specific band, will the government reduce the reserve price, as done previously in the case of 1800 MHz and 800 MHz auctions?</p>	

No.	Query	Response
	<p>(b) If there is some unsold spectrum in 1800/900 MHz but price is established, will the Government later allocate spectrum on auction basis or administrative basis at the price discovered through the auction? If administrative basis, when would application be received?</p> <p>DoT response is not clear. In past the spectrum price has undergone a change for service areas where no demand was seen. Subsequently fresh price has been indicated in present NIA. In view of the same, DoT response is necessary.</p>	
12.	<p><u>Query no. 182</u></p> <p>Query Number 182 was as under -The counting of 20 years should be done from the date of allowing commercial usage of spectrum and not from the date of Lol. Please confirm?</p> <p>DoT response needs reconsideration. DoT is collecting the payments immediately on conclusion of auction. However past experience suggests that spectrum allotment usually happens months later. In view of the same, the DoT ought to count the 20 year period from date of permitting commercial usage.</p>	
13.	<p><u>Query no. 183</u></p> <p>Query Number 183 was as under -Section1.3 talks about applicability of spectrum caps. In order to remove any uncertainty, we would request the DoT to please specify the number of block each existing operator can bid for in each service</p>	

No.	Query	Response
	<p>area considering the current allocation of spectrum?</p> <p>We are not clear on the spectrum held by each licensee, particularly in view of spectrum surrender by some licensees. In view of same , DoT response is solicited again.</p>	
14.	<p><u>Query no. 176</u></p> <p>Active and passive sharing are allowed as a policy. However no license amendment has happened on these till date. Please indicate when the license amendment would be issued? It is recommended that the same be done before start of the auction, so that bidders have clarity on use of Active sharing to plan for bidding. No DoT policy has been released on active sharing of spectrum. DoT may pl. confirm as to which policy it is referring to, in its response.</p> <p>No satisfactory / clarificatory response provided by DoT on following critical queries – Request DoT to please re-consider and provide clear response on these queries</p>	
15.	<p><u>Query no. 168</u></p> <p>The TRAI & DoT have in the past justified higher reserve price on account of contiguous liberalized spectrum. In case such contiguous spectrum is not available, please confirm the revised price at which non contiguous spectrum would be available for auction.</p>	
16.	<p><u>Query no. 171</u></p>	

No.	Query	Response
	<p>Kindly 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 or 2.5 or 5 MHz) in any frequency band for any category of operator, will always be allocated through auction. If not, then please inform what can be the other ways of allocating spectrum.</p>	
17.	<p>Query no. 172</p> <p>Kindly confirm that DoT would not administratively allocate any spectrum or change the price of spectrum through administrative mechanism in future.</p>	
18.	<p>Query no. 177</p> <p>NTP 2012 has stated in its objectives that a simplified Merger & Acquisition regime in telecom service sector would be put in place while ensuring adequate competition. In view of the same, please clarify the M&A policy before auction so that Bidders can make informed decision.</p>	
19.	<p>Query no. 181</p> <p>The NIA proposes to use the auction price as the market price, which is fine where the demand is equal to supply. However, in case only a part of the spectrum put up for auction is taken up at reserve price, it should not be treated as the market price. Kindly clarify the policy in this regard and the rationale of using the high reserve price as a measure of market price in a case where the demand is less than supply.</p>	

No.	Query	Response
20.	<p data-bbox="310 256 485 285">Query no. 219</p> <p data-bbox="310 326 863 355">Auction being conducted without Policy clarity</p> <p data-bbox="310 396 1094 464">The government is currently in the process of finalizing policies on the following subjects –</p> <ul data-bbox="310 500 1073 837" style="list-style-type: none"><li data-bbox="310 500 1073 529">a. Spectrum Usage Charges (SUC) as per TRAI recommendations<li data-bbox="310 565 722 594">b. Mergers and Acquisitions Policy<li data-bbox="310 630 632 659">c. Spectrum Trading Policy<li data-bbox="310 695 632 724">d. Spectrum Sharing Policy<li data-bbox="310 760 1073 837">e. Roadmap for further Spectrum Auctions as also suggested by TRAI <p data-bbox="310 878 1094 1154">There are other points also, but the above points have a significant bearing on the value of the spectrum which is being auctioned. Hence, the auction should be conducted after these matters have been decided and the final schedule of auctions should be fixed after these decisions are taken. Please clarify the rationale for rushing the auction without clarity on the above major policy matters.</p>	