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Executive Summary

I. Growth of broadband services

The explosive growth of telecommunications, together with the massive rise in internet usage, has fuelled the demand for rapid, cost-effective broadband access solution. Recognising the potential of Broadband service in the growth of GDP and enhancement in quality of life through societal applications like tele-education, tele-medicine, e-governance, entertainment etc., as well as employment generation by way of high speed access to information and web based communication, Government finalised the Broadband Policy 2004. Broadband Wireless Access (BWA) has considerable advantage over wire line broadband as it eliminates the need for costly wire line infrastructure and can bring high speed data and video services to every user within the range of a base station.

The Telecom Regulatory Authority of India (TRAI), giving its recommendations on the methodology to be adopted for the allotment of 3G spectrum in 2006, offered its suo moto recommendation on BWA services where it advocated an auction process for the allotment of radio frequency spectrum for operating the service. DoT in pursuance of the TRAI recommendation conducted an auction in May/June 2010 where 44 bands of BWA spectrum in 22 service areas were sold.

II. Significance of this audit

The auction of BWA spectrum, conducted simultaneously with 3G spectrum in May/June 2010, was the maiden attempt by the Government to discover a market value for radio frequency bands, demand for which have grown rapidly with the technological developments in the communication sector. The auction was to be an enabling tool for the Government to achieve its targets envisioned in the Broadband Policy. Nearly, five years have elapsed since the completion of the auction process and therefore, it was felt that an assessment of the auction in terms of its success in achieving the objectives set for it was important.

III. How this Report is organised

Chapter I present overview of the Broadband sector in India along with a brief description on how the wireless broadband technology works and the latest trends in the technological space. Chapter 2 highlight the salient features of the recommendations of TRAI with respect to BWA spectrum auction, conditions of DoT's Notice Inviting Application (NIA) for the auction and

audit observations on the deficiencies in deciding various prerequisites of the auction. In Chapter 3 we have described the auction process, behaviour of various bidders during different stages of auction till declaration of winners and audit observations/comments on the various activities involved in the conduct of the auction. Events post completion of the auction is discussed in Chapter 4. We have tried to assess the financial impact of the various gaps in the efficient implementation of the auction strategy in Chapter 5.

IV. Major findings

(i) Inconsistencies in the recommendations of TRAI with respect to determining the eligibility criteria of bidders, reserve price etc.

TRAI giving its views on the eligibility of bidders for participation in the auction of BWA spectrum recommended that UAS/CMTS licensees/operators and Category A & B ISP licensees should be eligible for participation in the auction of BWA spectrum for circle-wide deployments. This specification, treating Category A & B ISP licensees at par with UAS/CMTS licensees/operators for BWA auction was not supportive to the cause of ensuring level playing field for all participants because as per DoT's conditions net worth of the company was an important consideration for grant of for UAS licensees, but for issue of ISP licensees (Category A/B) net-worth of the licensee was not an entry condition at all. The eligibility to obtain an ISP license did not specify any economical/ technological parameters or even experience in information technology or telecommunication services was also not required. Therefore, placing two types of licensees in the same bracket for the purpose of BWA spectrum when conditions for obtaining their respective basic license itself were different affected the principle of level playing field for all participants.

(Para..2.7.1.)

(ii) Financial capabilities of bidders were not considered while fixing Reserve Price

TRAI while approving the proposal of the DoT to increase the *reserve price to Rs. 780 crore for Pan India BWA Spectrum* did not recommend steps to ensure that only those players capable to pay the high spectrum acquisition fee should participate in the auction. Allowing ISPs without any significant equity capital, net-worth and also track record of providing service effectively/successfully and expecting them to raise a minimum reserve price of Rs. 780 crore for a Pan India allotment of BWA spectrum was farfetched and beat the whole objective to

provide a fair and transparent environment promoting / facilitating fair competition in BWA spectrum auction. *(Para.2.7.2.)*

(iii) No Lock-in-period for ISP bidders in the auction of BWA spectrum

DoT had prescribed a lock in period of the three years for the share-holding of the UAS/CMTS licensees in April 2009 after obtaining the recommendations from TRAI on the subject. However no such lock in period was prescribed for the ISP licensees. DoT had been prescribing lock-in-period in the telecom licenses since 1994 and had continued till 2004. The Lock in period was reintroduced for UAS licensees in 2009. The DoT however failed to insert Lock-in period clause in the NIA to have uniform system for all sets of bidders- UASL/CMTS operators and ISP licensees. *(Para.2.7.5.)*

(iv) Absence of due diligence in DoT for processing applications, facilitating entry of dummy/front companies in the auction

The Application Screening Committee (ASC) or the Inter-Ministerial Committee (IMC) formed for effective oversight of the auction failed to recognize the discrepancies in the financial standings of the participating companies in terms of their net-worth. A screening and approving process conducted with due diligence would have ensured that only serious players with sound financial background took part in the auction. Moreover, the various Committees formed for overseeing the auction failed to decode various signals that were available during the processing of applications pointing to possible manipulation of the bidding by certain Companies *(Para 2.7.6.)*

(v) Major alterations in the BG submitted by a bidder went unnoticed

One of the bidders, Infotel had submitted a bank guarantee (BG) of ₹252.50 crore for participation in the auction. The BG had a major alteration in the name of the beneficiary. The name IBSPL was handwritten in ink on the body of the BG erasing a name written earlier. Interestingly, the net-worth of the Company was only ₹2.49 crore when it entered the auction fray. This bidder ultimately became the lone pan-India winner of BWA spectrum. The alterations which should have given a lead to DoT Management on the background/ intentions of the bidder were not followed up. The determined bid by Infotel, read along with their net-worth, would have given sufficient hints to the Management about the intentions of the Company. *(Para.2.7.8.)*

(vi) Infotel dominated throughout the auction process

Infotel, a loss making ISP, ranked 146th in the list of 164 ISPs with total gross revenue of Rs 14.78 lakh in 2009-10, was declared Pan India winner of BWA spectrum defeating the multinational participants viz Qualcomm, Vodafone etc, established Indian telecom service providers (TSPs) like Bharti Airtel, Idea, RCL and TTSL promoted ISPs etc.

As per auction bid data put on DoT website, Infotel was the only bidder to have bid for all 22 SAs right from the first round of the auction until the last round of the auction. No other bidder, howsoever large it was, bid for more than 12 SAs in a round. Infotel was the provisional winner ranked No.1 in bidding in almost all the rounds (99.96 percent) in all the SAs throughout the auction. The domination of Infotel in the auction was so complete that the second rank bidder (Airtel) had bid for 607 rounds (24 percent) only. In 1120 rounds (43.51 percent) out of 2574 rounds of BWA spectrum auction, Infotel was the single bidder in various SAs.

(vii) Release of Confidential Information by the Infotel or its insider

In course of auction, a prominent financial newspaper (Economic Times) on 10th June 2010 (15th day of auction) published a front page story about the likely entry of Reliance Industries Limited (RIL), into the telecom sector through a takeover of the winning bidder of the BWA spectrum and about the likelihood of takeover of Infotel. It was also published that “Himachal Futuristic’s arm Infotel is seen as a prime target for RIL. With the bids for All India BWA Spectrum touching Rs 12,257 crore on Wednesday (9th June 2010), the HFCL may not have funds to bid for more” It was therefore reasonable to conclude that this news item would influence the bidding behaviour of other bidders in the on-going auction proceedings. The leakage of confidential information had its impact immediately. India’s No 1 UASL Bharti Airtel which was competing for Delhi and Mumbai since the initial rounds withdrew from the bidding for these metros on 10th June within hours of the publication of news item. The e-auction thereafter ended on the forenoon of 11th June 2010 after 117 rounds.

It is apt to refer in this context the provisions of paragraph 6.6 of the NIA on “Collusion and other prohibited behaviour” which stated that “the Government of India reserves the right to disqualify any bidder that releases confidential information¹ with the effect or intention of modifying the bidding behaviour of other pre-qualified bidders”. It was therefore evident that Infotel had violated this provision as their continued participation (as on 9th June 2010), which was ought to be known to them only, was leaked to outsiders/other bidders through newspaper

¹ Confidential information means any non-public information, which, if known to other bidders, would be likely to affect the price that other bidders would be prepared to bid in the auctions or the bidding strategy that other bidders would adopt. Such confidential information shall include (but not necessarily be limited to) the Bidder’s business case, auction strategy and the highest price it is willing to bid for spectrum in any service area. (Clause 4.1.1 of the NIA)

so as to influence the bidding behaviour of other bidders and was therefore liable to be disqualified immediately.

(viii) The lone Pan-India winner Infotel was sold to RIL on the day of closure of auction

News of possible takeover of Infotel by M/s RIL was reported by leading media houses in the country even before the completion of the auction. Promoter of Infotel himself had gone public with the news. These revelations and the bidding behaviour of Infotel would indicate that the bidding of a small ISP- Infotel was dictated by M/s RIL and these companies shared information and strategies about the auction. This act on the part of Infotel along with leakage of confidential information regarding continued participation of Infotel in the auction on 15th day confirmed the clear violation of the confidentiality conditions of the NIA. Thus, a company which had not participated in the auction became the pan-India spectrum holder.

(Para.3.11.)

(ix) Post auction permission for Reliance Jio to provide voice services

M/s RIL who had taken over the ISP Infotel in 2010 was permitted to step into voice telephony sector also in 2013 on payment of Rs. 1658 crore, which was a price discovered in 2001 for the issue of CMTS licenses. Post auction authorization of this nature for a band of spectrum which was put to auction as for data services only, raise doubts about the propriety of the decision. Again, by deciding to impose the price of 2001 in 2013 for this authorization, DoT failed to factor the tremendous changes that had happened in the sector during the intervening 12 years.

(Para..4.3)

(x) Financial implications

Various decisions of DoT with regard to the auction of BWA spectrum and the actions of the pan-India winner of the spectrum definitely had financial implications. We have tried to assess the impact of these decisions by attempting to put an economic value to them. Losses to the public exchequer were gains to certain private companies.

(i) The decision to charge Rs.1,658 crore as entry fee for an ISP licensee for obtaining permission to provide Pan India mobile voice service using BWA spectrum was taken on the premise that UAS/CMTS Licensees had paid an entry fee of Rs.1,658 crore for obtaining the respective licenses, while the maximum entry fee for an ISP license was just Rs.30 lakh. DoT however ignored the fact that the price was basically discovered in 2001 through the bidding for the 4th Cellular licenses and the market conditions have since changed drastically and needed to be modified to reflect the present value. A most conservative calculation considering the cost inflation index, the price of the license in 2013 should have been at least Rs.3847 crore.

By allowing IBSPL, now Reliance Jio Infocomm to migrate to voice at the price fixed for Mobile license in 2001 of Rs 1658 crore, the Company was allowed undue advantage of Rs 2189 crore on the price of license alone.

(ii) Besides, DoT's decision to allow ISP licensees with **BWA spectrum** to provide voice services had narrowed down the major advantage of 3G spectrum, and made BWA spectrum, with potential to provide LTE/4G service a better option to the telecom service provider. Had the spectrum blocks been specified and declared as liberalized spectrum blocks i.e. open for all technology / services in the NIA in February 2010, the bidders would have taken informed decision for putting up their bid and the market discovered price would have been significantly higher for 3G and BWA spectrum. IBSPL, now Reliance Jio Infocomm, with, Pan India BWA spectrum was accorded gain of Rs 20,653 crore being the difference of the proportionate prices for 20 MHz block size in 2.1 GHz spectrum band (3G spectrum) and 2.3 GHz spectrum band (BWA spectrum).

(iii) Within hours of winning the BWA spectrum, Infotel had sold 95% of its shares at Rs 4800 crore thereby converting the Company into a subsidiary of the RIL. Infotel changed from a Private limited company (Infotel Broadband Services Pvt. Ltd.) to Public Limited Company (Infotel Broadband Services Ltd.) on 17 June 2010. In the bargain the company could sell its 95 % stakes for a price of Rs 4800 crore without making any investment in the company.

(iv) The Government, while allowing voice telephony to Reliance, has not revised the Spectrum Usage Charges (SUC) matching with what is being paid by the other operators who provide voice telephony. While UAS licensees pay 3% to 5% depending on the quantum of spectrum they hold, Reliance would pay just 1% of its revenue. This would not only disturb the level- playing field and provide undue advantage to Reliance, but also cause huge loss of revenue to the Government over license period.

(v) Failure to set aside additional 100 MHz spectrum for BWA/4G services

In September 2006, the DoT had already assigned 100 MHz spectrum in 3.3 GHz band to seven ISPs² in FDD mode for various cities across the country. TRAI had recognised (2006) that existing operators³ having city-wise allocation of spectrum in 3.3-3.4 GHz band had not expanded the broadband services in rural areas and therefore recommended for Circle wide deployment of BWA spectrum. In July 2008, TRAI again recommended for auction of available spectrum in 3.3 -3.4 GHz after shifting the allottees to 2.5-2.69 GHz band for BWA services. It was observed that some of the city based allottees like Bharti Airtel still continue to have spectrum in the 3.3-3.4 GHz band while some others like BSNL have surrendered them several

² VSNL/TTSL, Spectranet, RCIL, Dishnet, Sify, BSNL, Bharti

³ VSNL/TTSL, BSNL, Bharti, RCIL, SIFY, Spectranet & Dishnet DSL; 9 out of 153 ISPs

years ago. Despite that, DOT has not auctioned the available spectrum in 3.3 GHz band even after six years. Considering proportionate price received for 20 MHz BWA spectrum in 2.3 GHz band was Rs 12847.77 in the 2010 auction, the price of 100 MHz spectrum in 3.3 GHz band would have been a significant sum. Making available spectrum for auction as designed in TRAI recommendations could have resulted in receipt of more money to the exchequer.

(vi) Surrender of allotted BWA spectrum by BSNL and MTNL

BSNL and MTNL, were allotted BWA spectrum in 2.5 -2.6 Band in August 2008. MTNL was allotted a block of 20 MHz of unpaired spectrum each in Delhi and Mumbai and BSNL was allotted 20 MHz unpaired spectrum in each of the remaining 20 service areas. They were required to pay amounts matching the price paid by the successful bidder for the BWA airwaves in the service areas in the 2010 spectrum auction. BSNL had paid Rs 8,313.8 crore, while MTNL paid Rs 4,534 crore, in June 2010. BSNL ultimately surrendered spectrum in six service areas i.e., Gujarat, Maharashtra, Andhra Pradesh, Karnataka, Tamil Nadu and Kolkata, and has been assured a refund of Rs. 6724 .51 crore in form of adjustment of their dues on account of license fee and spectrum usage charges in the coming years while, MTNL surrendered the spectrum in both the Metros and has been assured refund of the whole amount of Rs 4533.97 through proceeds from bonds to be issued by them on the backing of sovereign guarantee of the Government of India in January 2014.

The suo moto allotment of BWA spectrum to the two PSUs, without assessing their actual requirement or their fiscal constraints, has resulted in 20 MHz of BWA spectrum, which could have been put up for auction, with a discovered value of Rs. 11258.48 remaining unused for over six years. Thus the nation has not been able generate economic benefits out the BWA spectrum for this period. Further, MTNL has also had an unwarranted financial burden by way of payment of interest since June 2010 while BSNL has also suffered due to dip in their reserve due to payment of Rs 8313 crore in 2010.

Audit findings discussed in this Report would prove that the strategies recommended by TRAI and selectively accepted and implemented by DoT defeated the objectives set forth by Government while deciding to auction BWA Spectrum. The transparency of the auction process was vitiated by the entry of a front bidder on behalf of a hidden large corporate, whose identity was not disclosed by the front company before commencement of the auction. This hidden corporate appeared to have enabled the front company to submit the EMD to the DoT, which the front company would have found extremely difficult to submit on their own, otherwise. Only on the backing this hidden business conglomerate, the front company, which hardly had the capacity to run the broadband services even in a service area on its own, bid for all service areas from the first round of the auction till the last round of the auction. This illegitimate relationship

between Infotel and RIL in the back of DoT and all other competitors has vitiated the sanctity of the entire auction process.

Gaps in the eligibility conditions and distortion brought in by the front company has badly delayed roll out of the Broadband services considerably and consequently the utilisation of spectrum has been minimal in the last four and half years. Another objective for the BWA Auction was to stimulate competition in the sector. By allowing this small front company Infotel to bid for all SAs, on behalf of their hidden masters (RIL) and allowing them to set the price, the objective of the Auction to stimulate competition in the sector was defeated as they have wiped out the competition and Infotel has become virtually the monopoly by winning Pan-India spectrum. Thus, the expected surge in the competition in the sector has not fructified. Surrender of the BWA spectrum by MTNL and BSNL in metros and Category A service areas has also diminished the competition in the Broadband sector.

Thus the only gains which had been boasted by the DoT of maximising the revenue (raising 7.34 times of reserve price of the spectrum) has also proved to be pyrrhic and short term only. Thus the Government has not been able to achieve its primary stated objectives of the auction even after nearly four and half years.

Chapter 1

Broadband scenario in India

1.1. Introduction

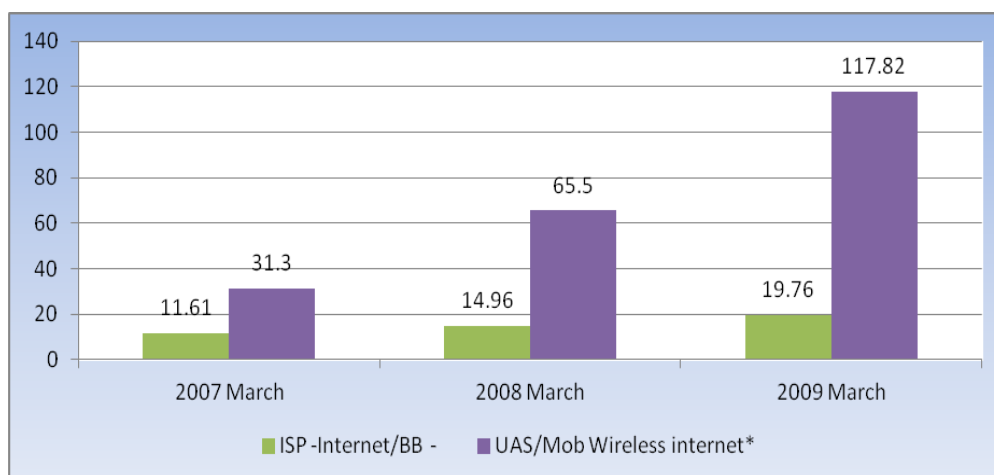
Recognising the potential of Broadband (BB) internet service in the economic growth and enhancement in quality of life through societal applications like tele-education, tele-medicine, e-governance, entertainment etc., as well as employment generation by way of high speed access to information and web based communication, Government approved the Broadband Policy 2004. The Policy defines broadband services as “ an ‘always on’ data connection that is able to support interactive services including internet access and has the capability of minimum download speed of 256 kilobits per second (kbps) to an individual subscriber from the Point of Presence(PoP) of the service provider.” The Policy visualised creation of infrastructure for broadband services through various access technologies like Optical Fibre, Digital Subscriber Lines (DSL) on copper loop, Cable TV network, Satellite media and Terrestrial Wireless along with future technological options.

The Broadband Policy 2004 had set the following milestone for expanding the broadband subscriber base to 20 million by 2010.

Year	Internet subscribers	Broadband subscribers
2005	6 million	3 million
2007	18 million	9 million
2010	40 million	20 million

In August 2006, there were 1.72 million broadband subscribers out of 7 million internet subscribers of 153 internet service providers (ISPs) in the country. Of these, 95 percent subscribers were catered by 10 large ISPs (incl. 4 CMTS/UAS Licensees and PSUs BSNL & MTNL) in 2006.

The following data illustrates the Internet/BB subscriber base of ISP/UAS licensees during March 2007-2009:



1.2. Growth in Internet/ BB Subscriber base

The following trend in the subscriber base of internet / broadband service was noticed during the period 2004-05 to 2008-09:

(In millions)

Service	Dec 2004	Mar 2005	Mar 2006	Mar 2007	Mar 2008	Mar 2009
Internet	5.45	5.55	6.94	9.27	11.09	13.54
Broadband	0.05	0.18	1.35	2.34	3.87	6.22
Wireless internet*				31.30	65.50	117.82

*Service provided through GSM/CDMA networks

Cable Modems, DSL technologies, fibre and wireless were the mode of service. DSL facilitating easy deployment on existing copper pairs going to subscriber's premises was being predominantly used. The subscriber base for the Broadband had been largely concentrated in urban areas. Most (96 %) of the broadband subscribers were provided service with connection speed of 256 kbps, while 3 % had 512 kbps speed and 1 % had speed of more than 1 mbps. One of the key factors inhibiting BB growth was the constraint on last mile access and most fixed networks being incapable of supporting BB service.

1.3. Advent of Broadband Wireless Access

The explosive growth of telecommunications, together with the massive rise in internet usage, has fuelled the demand for rapid, cost-effective broadband access solution. This demand is not only from operators rolling out new networks but also from mature networks. **Broadband Wireless Access (BWA)** has considerable advantage over wire line broadband systems provided

on cable network or Digital Subscriber Lines (DSL), as it eliminates the need for costly wire line infrastructure and can bring high speed data and video services to every user within the range of a base station. BWA offers effective, economic and secure high-speed wireless communications solutions to Telecom Service Providers, Internet services provider, Governments, Institutes, Healthcare and Enterprises. The acceptance of the Broadband Wireless Access technology is due to the benefits it offers in terms of fast, easy and cost effective deployment, unsurpassed flexibility and reduced cost of ownership. With Smart phones getting affordable and adept at supporting 3G networks and Wi-Fi tethering, service expectations of existing and potential broadband subscribers are on the rise. The difference in ARPU in favor of wireless connections and the differential in the cost involved when compared to wire line makes BWA technologies, a preferred mode of service for any service provider.

Whereas cable and DSL technologies utilize Frequency Division Duplex (FDD), Wireless BB utilize Time Division Multiplexing technology to support and provide bandwidth-hungry applications such as Video Conferencing, Multimedia Email, Interactive Gaming, Online Banking, and other applications on the horizon for business and residence alike.

1.4 4G LTE- the present scenario in wireless

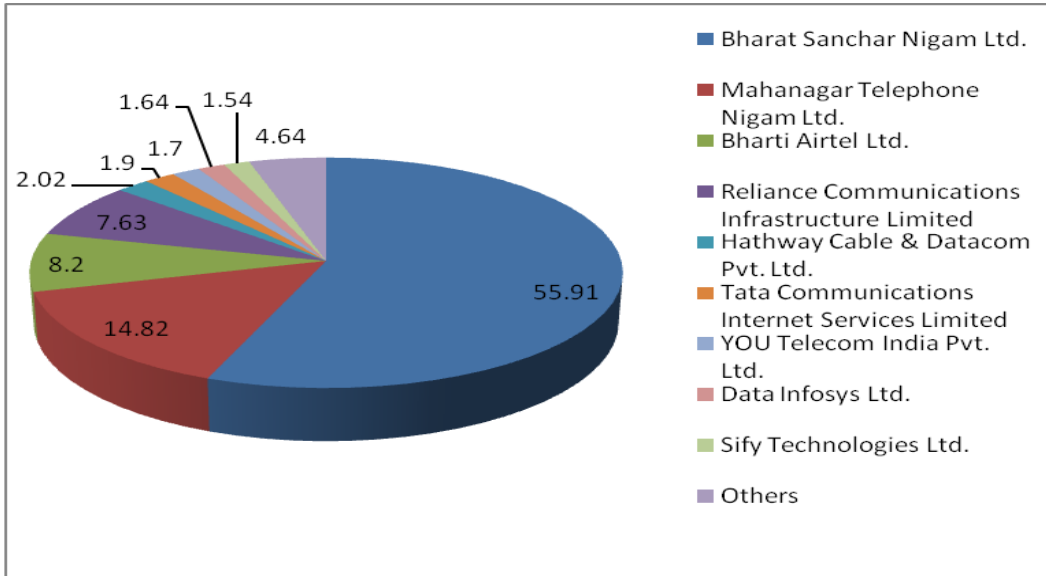
The latest wireless communication standard, Long Term Evolution (LTE), is popularly called the fourth-generation standard (4G). LTE allows for much faster data connectivity and the data transmission will be uniform no matter where a user is located. Along with faster data transmissions, voice quality will also be better on 4G. There are different variations of LTE, and while most countries in the world use FD-LTE (Frequency-Division Long-Term Evolution), carriers in India use the TD-LTE (Time-Division Long-Term Evolution) standard. TD-LTE use the same frequency band, whereas the FD-LTE standard allocates two different frequencies, one for transmitting data and the other for receiving it. The TD-LTE operates in the frequency band 2.3–2.4 GHz, and comes under LTE Band 40.

1.5 Broad band Scenario – in the pre-auction period

There were 162 ISPs as on 31 December 2009 in the country. 9 ISPs including 2 PSUs accounted for more than 95 % internet subscribers as of 31.12 2009 in the country. In September 2006, the DoT had already assigned about 100 MHz spectrum in 3.3 GHz band to seven ISPs⁴ in FDD mode for various cities across the country. The annual usage charge for this spectrum was based on the MCW formula, which depended on bandwidth, number of carriers, and distance. These operators had no roll out obligations for coverage of rural areas.

⁴ VSNL/TTSL, Spectranet, RCIL, Dishnet, Sify, BSNL, Bharti

Top ISPs having more than 1% Market Share (as on 31.12.2009)



1.6 Subject matter of the Audit Report

In India, the auction for award of two blocks of 20MHz (un-paired) in 2.3 GHz band in 22 service areas (SAs) was done in March-June 2010. It was announced that two PSUs, BSNL and MTNL which had been given one block of 20 MHz in 2.5 GHz band in 22 SAs in 2008 would also have to match the winning price in the auction. The audit of auction of BWA spectrum through the records of DoT was taken up in 2013 and based on initial findings, audit notes were issued in September and November 2013 to the Department of Telecommunication (DoT). The response of DoT was received in December 2013/January 2014. After further verification of the replies of the DoT, the draft audit report was issued to the Secretary, DoT through a demi-official letter in May 2014, requesting, inter-alia, that the matter should be investigated. In their reply to the draft audit paragraph (July 2014), DoT stated that the auction was conducted in the most transparent way and there was no requirement of any investigation. After receipt of reply from DoT, Audit thereafter conducted the analysis of the BWA Data files submitted by the auctioneers and put on DOT website and the final audit findings are summarised in the succeeding paragraphs. The response of DoT has been included, wherever, required.

CHAPTER 2

Auction of BWA spectrum

2. Prelude to the Auction of BWA spectrum

In pursuance to the decision of the Government of India to award 3G Spectrum to the telecom operators, the Department of Telecommunications (DoT) sought recommendations from the Telecom Regulatory Authority of India (TRAI), in May 2006, on the methodology to be adopted for allotment of 3G spectrum and its pricing aspects. Following due process, TRAI submitted its recommendations on allocation and pricing of spectrum for 3G and broadband wireless access (BWA) services in September 2006. While doing so, the TRAI also offered suo moto its recommendations on the spectrum for BWA services, in accordance with the provisions under Sec 11 (1) (a) (Viii) of the TRAI Act. This was consistent with the TRAI's view that the consumers must get the benefit of new technology and have the flexibility to choose from the range of technologies, with the intention to boost broadband penetration in the country, especially in the rural areas.

2.1 TRAI Recommendations 2006

The recommendations of the TRAI issued in September 2006, on allocation and pricing of spectrum for 3G and BWA services, were basically on the consideration that the 3G spectrum was meant for voice telephony as well as data applications, while BWA spectrum was meant for faster diffusion of broadband/data services only. The principles behind the recommendation included maximising consumer interest, efficient use of spectrum, aiding growth in sector, enhancing competition keeping level playing field etc.

Cognizant to the pitfalls that could result consequent to the auction of BWA spectrum, TRAI stressed on the need to ensure participation of only serious and long-term players in the auction and had then opined - *“Given that spectrum is a valuable and scarce resource, it is necessary to ensure that only serious and long-term players have access to it. This is especially true since ISP licenses are only Re. 1, and non-serious players might be able to delay allocation or hoard spectrum. Hence, it is necessary to ensure that only serious and well-established ISPs acquire spectrum, because only they will probably have the capacity to invest in and deploy BWA networks”*.

2.2 Important recommendations of TRAI on the criteria to be adopted in connection with eligibility, price and frequency allotment for 3G/BWA spectrum were –

- At least 200 MHz of spectrum should be made available for BWA services to accommodate growth requirements until 2007, and additional 100 MHz of spectrum should be earmarked by 2010;
- Operators with (the then) current city-based spectrum assignments in the 3.3-3.4 GHz should be given the option to migrate to circle wide operations by Dec 2006, and the DoT should then allocate this spectrum for BWA technologies;
- 200MHz of spectrum in the 3.3-3.4 GHz and 3.4-3.6 GHz bands may be allocated to 13 operators in contiguous blocks of 15MHz each. The majority of BWA spectrum as identified should be allocated for circle level deployments among UASL/CMTS operators, and Category A and B ISPs. One block of BWA spectrum was to be earmarked for smaller ISPs for city based allocations.
- **Reserve price** for BWA spectrum should be fixed in 'such a way' that it is affordable enough to all interested and qualified operators to acquire the spectrum but at the same time, high enough, so as to dissuade non-serious players. The price was to be such that it encourages efficient use and roll out of spectrum allotted.

Some important recommendations of TRAI particular to **Auction of BWA spectrum** were as in table below:

	3G	BWA
Eligibility for participation	UASLs ⁵ and CMSPs ⁶ ;	UASLs, CMSPs and ISPs ⁷ ;
Reserve price	Rs 1050 crore for a PAN India (23 circles) slot;	Rs 142 crore for a Pan India slot, along with performance guarantee of Rs 71 crore;
Block size	2x5 MHz (paired) spectrum block was considered suitable for 3G services as this would be used mainly for voice and data services;	15 MHz (unpaired) block was considered suitable for BWA services as the same was calculated on data service requirements only;

⁵ Unified Access Service Licenses;

⁶ Cellular Mobile Service Providers

⁷ Internet Service Providers Category A & B; ⁵ Microwave Formula

- Effective circle-wide spectrum acquisition fee for Metros and A class circles for 15 MHz of BWA spectrum were to be Rs.10 crore, for B class circles Rs. 5 crore and for C class circles Rs.2 crore.
- DoT to charge **an annual spectrum fee @ 1 % of AGR**, which is to be added to the current applicable slot of spectrum fee that the operator is paying.

2.3 Roll out obligation

The TRAI aimed at preventing hoarding and ensuring that operators would roll out services in such a way so as to encourage efficient use of spectrum by weeding out non-serious players and encouraging rural network deployments.

The roll out obligations recommended were as below:-

Timeline	License Area/coverage		
	Metros	Category A,B,C	Local operators/Captive networks
2years		25% rural SDCAs	
5years	90 %	50% rural SDCAs	90% area

Incentives recommended in case a BWA operator in a Metro or local area or A, B, C category service area fulfils the obligation, included return of Performance Bank Guarantee (PBG) furnished by them and allowing them to continue operations. In case of failure, PBG had to be encashed and the spectrum assignment cancelled.

2.4 Spectrum use rights

TRAI recommended that BWA spectrum licenses should be of five year duration and renewable up to 20 years upon payment of spectrum acquisition fee every five years, subject to fulfilling of terms and conditions of the license.

2.5 Follow through on the TRAI recommendations in DoT

- The recommendations of the TRAI were examined by a high-level committee of the DoT and based on their views, the Telecom commission (TC), discussed the issues related to the

award of BWA spectrum in June 2007. The DoT thereafter issued 'broad guidelines on allocation of spectrum' in November 2007 whereby,-

➤ on the basis of the recommendation of the Wireless Adviser, the block size for allotment of BWA spectrum was increased from 15 MHz to 20 MHz block and

➤ The reserve price of BWA spectrum was linked to the price (one-fourth of the per MHz price) of 3G spectrum.

ii In July 2008, a reference was sent back to TRAI for clarifications on issues like eligibility criterion, spectrum pricing etc. The TRAI gave its views on those issues and simultaneously gave their recommendations on "Allocation and Pricing for 2.3-2.4 GHz, 2.5-2.69 & 3.3-3.6 GHz bands" in July 2008.

iii Accordingly, revised guidelines for auction and allotment of spectrum for BWA services were issued on August 01, 2008, followed by issue of clarifications/amendments to the guidelines on 11 September 2008. The information memorandum (IM) for auction of 3G and BWA spectrum was issued on 12 December 2008 and the auction time table was announced on 15 December 2008 for commencing the auction of 3G spectrum from 16th January 2009. As a large number of stakeholders requested for more time to study the IM in the pre-bid conference, the auction time table was revised and thereafter it was changed several times due to administrative reasons.

2.6 Issue of Notice Inviting Applications –

Notice Inviting Applications (NIA) was released by DoT, in February 2010, calling for response from eligible bidders for participation in the auction of 3G and BWA spectrum to be held separately. The important objectives of the auction were:-

- Obtain market determined price for the spectrum through a transparent process;
- Ensure efficient use of spectrum and avoid hoarding;
- Stimulate competition in the sector;
- Promote roll out of 3G and Broadband services
- Maximize revenue proceeds
- Resolve congestion issues related to the 2G mobile services network

2.6.1 Important conditions/information in the NIA

i. On eligibility /reserve price /spectrum availability

The eligibility criteria/reserve price and frequencies of spectrum available for auction of 3G/BWA spectrum were as shown below:-

	3G	BWA
Eligibility for participation	Only UAS ⁸ and CMTS licensees;	Any entity holding UAS/ CMTS license or *ISP (category 'A' or 'B') license
Reserve price	Rs. 3500 crore for a Pan India block (22 Circles) of 2x5 MHz (paired) 3G spectrum in 2.1 GHz.	Total Rs. 1750 crore for a Pan India block (22 circles) of 20 MHz (unpaired) of BWA spectrum in 2.3 MHz.
Spectrum Blocks available for auction	3 Blocks (17 circles); 4 Blocks (5 Circles); BSNL along with MTNL had already been allotted a Pan India slot in 2.1 GHz in 2008 with the condition that they will pay the winning price in the auction.	2 Pan India Blocks (22 circles); BSNL along with MTNL were already allotted a Pan India slot in 2.5 GHz in 2008 with the condition that they will pay the winning price in the auction.

* Any entity that held a UAS/CMTS/ISP (Category A or B) licenses or gives an undertaking to obtain a UAS/ISP (Category A) license through a New Entrant Nominee UAS/ISP licensee, before starting telecom operations, as per the DoT guidelines, was also eligible to participate in the auction for BWA spectrum.

The eligibility criteria for BWA auction thus implied that UAS/CMTS licensees, which must have a minimum net worth of ₹1380 crore⁹ were treated at par with an ISP licensee, having *no requirement of net worth in terms of eligibility*. As a result, an ISP licensee (Category A & B) was eligible for participation in the auction for Pan India BWA spectrum, provided they comply with other conditions viz EMD etc.

ii. Confidentiality

An important condition in the NIA was on confidentiality. This prohibited **bidders and insiders from conveying any confidential information to any other person, including any other bidder or its insiders:**

⁸ An entity that has previous experience of running 3G telecom services either directly or through a majority-owned subsidiary; and (b) gives an undertaking to obtain a UAS licence through a New Entrant Nominee UAS Licensee as per DoT guidelines before starting telecom operations can bid for 3G Spectrum.

⁹ For a Pan India UAS license

○ As per the condition, bidders were not entitled / permitted to disclose the status of their participation, including whether they continue to bid in any or all service areas, in any of the auctions, until the completion of the auction.

○ Government of India/ DoT reserved the right to disqualify any bidder that colludes or attempts to collude with another bidder in determining its bids during the auction.

○ Release of confidential information with the effect or intention of modifying the bidding behavior of other pre-qualified bidders was liable to invite disqualification.

Important conditions of confidentiality
<ul style="list-style-type: none"> • Confidential information means any non-public information if known to other bidders would be likely to affect the price that the other would bid or the strategy he would adopt;
<ul style="list-style-type: none"> • Confidential information included Bidder's business case, auction strategy, highest price it is willing to bid in any service area etc;
<ul style="list-style-type: none"> • Any party to whom confidential information is disclosed is deemed as an <i>insider</i>;
<ul style="list-style-type: none"> • Bidders and insiders were not authorized to convey confidential information to any other person including another bidder or his insider;
<ul style="list-style-type: none"> • Bidders were not permitted to disclose the status of their participation i.e., whether they continue to bid in any or all service areas until the completion of the auction;

While responding to the NIA and participating in the auction, the prospective bidders were required to give an undertaking / certificates regarding their compliance to the conditions in the Notice and-

➤ **All the bidders were to certify / ensure that they and all of their insiders /Associate licensees comply, with the terms and conditions in the Notice.**

➤ The undertaking required the participants to also appraise DoT promptly in case of any change in the information submitted by them as part of the application.

In cases of non-compliance to any of the conditions in the NIA, the Government reserved the right to summarily disqualify any prequalified bidder **at any stage of the Auctions or after the auctions is completed** on ground of misrepresentations, noncompliance with the auction rules etc. All applicants had also certified that if any averment made/ information furnished as part of the application was found incorrect, then their applications and spectrum, if awarded on the basis of such application shall be cancelled.

2.7 AUDIT FINDINGS

Audit scrutiny of the records relating to the auction of BWA spectrum , TRAI recommendations and action thereof taken by DoT revealed inadequacies and the observations thereon are as below:-

2.7.1 Inconsistency in TRAI's recommendations

In compliance to TRAI Act, the Authority had made recommendations on the terms and conditions for allocation /pricing of BWA spectrum. The objective to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition, however, took a severe beating with the lack of clarity and consistency in the recommendations on BWA spectrum allocation.

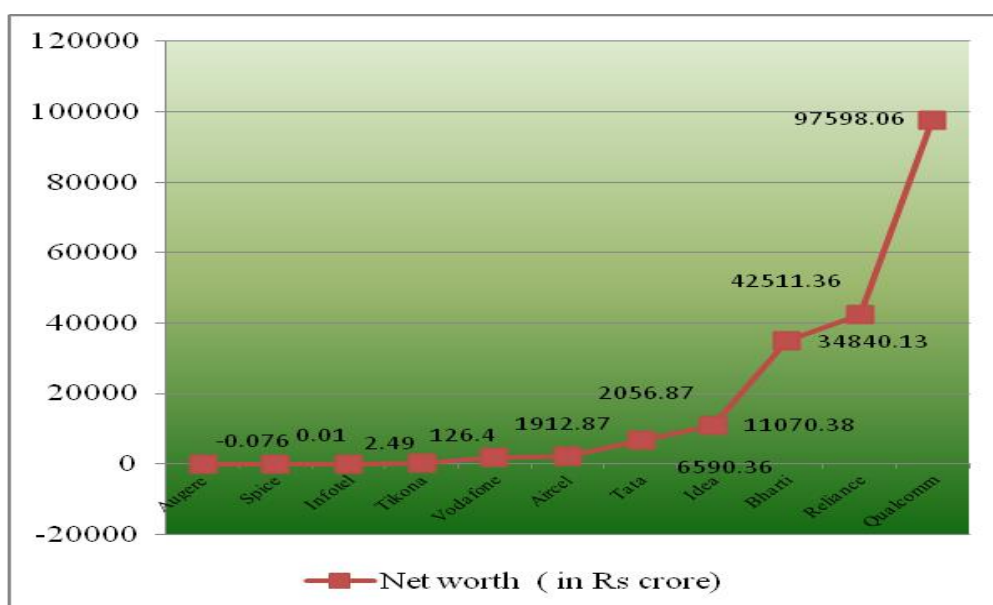
2.7.1.1 Eligibility Criterion

The TRAI had recommended that UAS/CMTS licensees/operators and Category A & B ISP licensees should be eligible for participation in the auction of BWA spectrum for circle-wide deployments.

This recommendation treating Category A & B ISP licensees at par with UAS/CMTS licensees/operators for BWA auction which was accepted by DoT also, we observed, conferred eligibility to bid on even small bidders contrary to the stated objective of restricting the auction to only “ serious and long-term players”. This was because as per extant rules, for UAS licensees, DoT has specified a net worth of Rs.30/50/100 crore for C/B/A - Metro service areas respectively, but for ISP licensees (Category A/B) net-worth of the licensee was not an entry condition at all. The eligibility to obtain an ISP license did not specify any economical/ technological parameters or even experience in information technology or telecommunication services was also not required. Hence any Company registered in India under the Companies Act 1956, could apply and obtain an ISP license. *Considering the fact that the scarce spectrum which was to serve as a tool to meet the vision of the Government, as stated in the preamble to the Broadband Policy 2004, was to be handed over to the winner in the auction, it was important that technical competence including a minimum experience and financial credentials of the prospective winner should have been an important consideration for determining the eligibility for participation in the auction.* Therefore, the regulator should have prescribed financial conditions/norms so as to ensure participation of only serious players in the auction. Incidentally, 80 % of Category A ISPs during 2006 had a negligible subscriber base (<10000).

By TRAI's own admission, top 10 ISPs including UAS & CMTS licensees alone accounted for 95 percent of market share of the broadband services in August 2006. TRAI had also accepted in their report, the need to ensure that *only serious and well-established ISPs acquire spectrum, as only they will probably have the capacity to invest in and deploy BWA network*. However, the Regulator did not prescribe any stringent eligibility criterion (on net-worth or significant paid up capital requirement) for the ISPs. TRAI, by not differentiating licensees based on financial standing and performance, in effect had permitted ISP licensees without any significant equity capital, net-worth or appreciable track record in providing service, to participate in the BWA spectrum Auction. This had resulted in participation of newly created low net-worth front/Dummy companies.

Participants in the auction and comparison of net worth



At least two Indian applicant Companies were incorporated after the submission of the TRAI's recommendations, out of which one was finally declared the only Pan India winner of the BWA spectrum in the auction.

The TRAI did not do a rethink and revise the eligibility criterion in July 2008 too, while giving their recommendations on Allocation and Pricing for 2.3-2.4 GHz, 2.5-2.69 & 3.3-3.6 GHz bands- even though Internet Service Providers of India (ISPAI) in a submission had requested TRAI "to rule out non-serious players/hoarding" and consider 'net-worth/ usage of spectrum/subscriber base criteria' for allotment of spectrum.

DoT taking a stand that its decisions were in the nature of Government Policy and as such cannot be subjected to any other observations, said (August 2014) that the objectives of the auction, as stated in clause 1.2 of NIA, included ‘stimulate competition in the sector’ and ‘maximise revenue proceeds from the Auctions’ and the department has acted in true spirit to meet all the objectives set by the Government. DoT also justified its actions as well as that of TRAI by stating that the decision regarding the eligibility criteria was taken through the transparent process including consultation process conducted by the TRAI and held the view that had the Government put restriction on the eligibility criteria, the bids would have been lower. Moreover DOT in NIA had set a high value of EMD to ensure only serious people take part. These actions, it was informed sufficiently took care of non-serious players.

DoT’s responses to the audit observations were way off the mark as Audit was not commenting on the policy as such. Audit had highlighted the serious inadequacies in ensuring the effective implementation of policy as envisaged in the Broadband Policy 2004 vis-a-vis determining eligibility conditions fixed for BWA spectrum auction. Audit felt that allowing participation of ISP (A&B) licensees along with UASL/CMTS operators without prescribing appropriate minimum financial criterion was itself inconsistent with the policy of restricting the auction to “serious and long-term players” and could permit unhealthy financial deals which beat the very objectives of fair, transparent and competitive bidding process for obtaining market determined price of spectrum on a level playing field.

2.7.1.2. Deviation in the eligibility criterion fixed for 3G and BWA spectrum

As per the conditions in the NIA, the eligibility criterion for taking part in the auction for 3G spectrum specified that all new bidders, other than CMTS/UAS licensees, must have previous experience of running 3G telecom services anywhere either directly or through a majority-owned subsidiary in the world, yet the new bidders vying for BWA spectrum, as per the same NIA, did not require prior experience of having run a network. With the UASL/CMTS operators made eligible for participation in the auction of BWA spectrum, along with category A & B ISPs, with no eligibility restriction based on paid up capital/net-worth or technical experience etc., the criteria fixed turned out to be the weak facilitating front/proxy bidders participating in the auction for BWA spectrum. It also risked the roll out obligation expected from the winner in the auction and bidding with a view to hoard spectrum.

DoT referring to the auction as a Policy decision of the Government which do not come under the ambit of CAG's Audit, in its reply, explained the substantial value difference among the bands of spectrum in 3G and BWA and validated TRAI stand to recommend different eligibility criteria.

Audit in no way was under the assumption that 3 G and BWA spectrum are similar vis-a-vis their inherent qualities, affordability, competitive dynamics, international benchmarks or economic value. In comparing the eligibility criterion fixed for participating in 3G/BWA, we were trying to make it evident that though UAS/CMTS licensees, who had certain preset financial parameters to attain for obtaining the licenses, were allowed to participate, inclusion of ISP licensees with no minimum net worth conditions and pre-requisite prior experience of running a BWA service to fulfil for the obtaining licenses, in the eligible group for participating in the BWA auction had the effect of diluting a fair and transparent policy environment and promotion of a level playing field facilitating fair competition. Since 3G was an established technology and BWA was an upcoming and evolving technology, it was reasonably expected that the eligibility conditions for potential bidders for BWA would be rather stiffer at least in terms of technical experience if not in financial strength also.

Audit noted that this weakness in the eligibility criterion allowed a newly formed company with little experience or financial strength to win the auction and soon thereafter sell to another company, which had not participated in the auction.

2.7.2 High Reserve Price

With an intention to dissuade non-serious players, encourage efficient spectrum use and roll out, TRAI in September 2006, had recommended a *high reserve price (Rs 142 crore for Pan India BWA Spectrum) and spectrum acquisition fee of Rs 10 crore for Metros and A class circles for 15 MHz of BWA spectrum, Rs 5 crore for B class circles and Rs 2 crore for C class circles*. In July 2008, TRAI agreed to the proposal of the DoT to increase the *reserve price to Rs 780 crore for Pan India BWA Spectrum*.

The Regulator did not recommend steps to ensure that only those players capable to pay the high spectrum acquisition fee should participate in the auction. Thus the responsibility of ensuring that financially and technically strong companies alone participate in the auction fell on DoT. Allowing ISPs without any significant equity capital, net-worth and also track record of providing service effectively and expecting them to raise a minimum reserve price of Rs 780 crore for a Pan India allotment of BWA spectrum in July 2008 was highly optimistic, farfetched

and beat the whole objective to provide a fair and transparent environment promoting and facilitating fair competition in BWA spectrum auction.

DoT responding to audit observations stated that the reserve price was determined on the basis of the recommendations of TRAI and all participants including Infotel deposited the auction discovered amount with DOT along with other ISPs like Tikona, Augere etc.

Audit while accepting the fact that all participants deposited the auction discovered amount, deems it fit to highlight the unhealthy situation of denial of level playing field in the fixing of a high reserve price when licensees with low financial capabilities (Net worth-with less than Rs 3 crore) were allowed to bid at par along with Companies with high net worth of more than Rs 30,000 crore. It also led to a peculiar situation where rather high reserve price of Rs 1750 crore did not deter bidders having net-worth below Rs 3 crore. Further, such low net-worth bidder succeeded in outbidding big companies with high net-worth of more than Rs 30,000 crore and sold the auctioned spectrum to a non-participant third party soon after winning the auction. These facts speak for themselves and clearly point to the high probability of the e-auction process having been vitiated by participation of a front company set up by the Company that eventually acquired the spectrum without participation in the auction, as stated in the succeeding paragraphs.

2.7.3 TRAI did not change the eligibility criterion for the participating in the BWA auction even when the available Spectrum for Circle-wide deployments was drastically reduced

In the report issued in September 2006, on allocation and pricing of 3G and BWA Spectrum, TRAI had noted that the penetration of Internet and broadband in India had remained low¹⁰ despite the proactive measures taken by the Government and had acknowledged that, it was necessary to accelerate the growth of broadband so as to achieve the target of 20 million broadband subscribers by 2010. They also had recognised that existing operators¹¹ having city-wise allocation of spectrum in 3.3-3.4 GHz band had not expanded the broadband services in rural areas. Therefore with the intention to aid expansion of internet /BB services to rural / remote areas, TRAI recommended for Circle wide deployment of BWA spectrum. It was then envisaged that at least 200 MHz of spectrum in the 3.3-3.4 GHz and 3.4-3.6 GHz bands should be made available for BWA services to accommodate growth requirements until 2007 and also earmark an additional 100 MHz of spectrum by 2010. BWA spectrum was to be allocated to 12 operators in contiguous blocks of 15MHz each for circle level deployments and one block of BWA spectrum was to be earmarked for smaller ISPs for city based allocations. In July 2008, in

¹⁰ 1.72 million Broadband subscribers out of 7 million internet subscribers.

¹¹ VSNL/TTSL, BSNL, Bharti, RCIL, SIFY, Spectranet & Dishnet DSL; 9 out of 153 ISPs

view of the technological changes in the international arena , TRAI modified its earlier report and recommended auction of available spectrum in 2.3 -2.4 GHz and 2.5-2.69 GHZ band for BWA services, after making time bound efforts to get the re-farming of spectrum done in the 2.5-2.69 GHz band. The Regulator was aware that only 40 MHz spectrum, enough for allocation to 5-6 operators was available in the 2.3 and 2.5 GHz band. TRAI however still recommended that all the Category A & B ISPs (193 in numbers- A-78 & B-115) should be eligible for participation in auction.

Audit observed that TRAI did not factor the impact of the minimal availability of BWA spectrum vis-a-vis. the demand for it. With already 10-12 large CMTS/UASL operators¹² in most of the circles interested, the high reserve price made it extremely difficult, if not impossible, for even any basic¹³ Category A ISP player, leave aside category B ISP licensees, to compete in the auction. Further, when the number of slots for BWA spectrum was again reduced to 4¹⁴ in August 2008 and subsequently to 2 in February 2010, TRAI did not make any attempt to revisit the situation.

As on March 2010, there were 164 ISPs and 103 Broadband service providers catering to 16 million subscribers in the country, who were, as per the eligibility criterion, qualified to take part in the auction. The reality that only two of those licensees¹⁵ took part in the auction clearly indicated the weakness of implementing an all-inclusive policy. Further only one of them, Infotel submitted EMD of Rs 252.50 crore indicating their inclination for Pan India BWA spectrum. As explained in the succeeding paragraphs, Infotel was a newly created ISP with meagre resources and hence, also could hardly afford the quantum of EMD on its own. It would be apparent from our subsequent findings that Infotel appeared to have acted as a front company of a non-participating large corporate to participate in the auction. The eligibility conditions drawn for the auction of a scarce natural resource thus was not realistic and supportive to ensure fairness to all the participants.

DoT in its reply stated that there was no link between number of blocks put up for the auction and eligibility criterion because it was being done as per the Government policy and that participation in 3G/BWA spectrum auction was open to even non-licensee company. Pointing out that auction was limited to available resources and there was no net worth requirements as per licensing conditions of ISP licenses, DoT opined that just because a small company took part in auction and was able to raise requisite finances, the auction cannot be considered rigged.

¹² Nearly all these operators have ISP licenses or have promoted companies that have ISP licenses.

¹³ The operator which provides internet services only.

¹⁴ The guidelines for auction of BWA spectrum were released, which showed availability of 4 blocks only.

¹⁵ Excluding UASL promoted ISPs;

There was nothing to substantiate the Audit observation. It was also stated that all successful participants including Infotel had deposited the auction discovered amount with DOT along with other ISPs like Tikona etc.

Failing to restrict the auction process to be only between serious bidders and still expecting the small companies to raise a minimum reserve price of ₹1750 crore for a Pan India allotment on the part of DoT was being highly optimistic, farfetched and in no way promoted fair competition with a level playing field. The fact that only 2 basic ISPs¹⁶ applied for participation in the BWA auction of which only one-Infotel opted for Pan India slot demonstrated the effect of the disparity. Even Infotel appeared to be a front company, acting on behalf of their masters as is evident from our audit findings in the subsequent pages. ***This made the auction a contest between unequal players and credentials of a bidder in providing service or his intent for expansion of service took a back seat.*** This also resulted in a front company, with no track record of efficiently providing service or having any serious intent for expansion of service, bidding for the scarce natural resource.

The following facts speak for themselves:

- there was negligible participation of ISP Licensees in the auction as only one basic ISP out of 164 ISPs as on 31 March 2010, applied for Pan India participation in the auction;
- The sole ISP Licensee bidding for a Pan India slot, did not have either technical experience or financial wherewithal to participate in such a high stake auction but it outbid MNC and established Indian telecom companies and raised the 'requisite finance' by selling itself on the date of completion of auction to a third party, establishing itself as a proxy bidder;

We feel that the eligibility conditions drawn for the auction of a scarce natural resource should have been more rigorous, effective and realistic. To just aspiring by keeping lofty objectives of the auction to 'stimulating competition in the sector' and 'maximising revenue proceeds from the Auctions' at the cost of a fair and transparent auction process was unacceptable. To find out whether it was deliberately done, Government should get the matter investigated so as prevent recurrence of such events and fix responsibilities on the erring officials.

¹⁶ Excluding UASL promoted ISPs

2.7.4 In effectiveness of DoT in processing TRAI recommendations and making requisite viable decisions based on real-time circumstances

The recommendations of the TRAI on the auction of BWA spectrum were examined by the High Powered Committee of the DoT, Telecom Commission, Empowered Group of Ministers (EGoM) etc., yet they did not co-relate the non-availability of adequate spectrum to the possibility of stiffer competition or consider the impact a high reserve price may have on the weak eligibility criterion prescribed for participation in the auction. Ministry of Finance proposed a further increase in the reserve price to ₹2020 crore for a Pan India slot of BWA spectrum and finally the EGoM constituted for overseeing the auction of 3G/BWA spectrum finalised the reserve price for a Pan India slot of 20 MHz BWA spectrum at ₹1750 crore i.e. one fourth of the reserve price fixed for 3G spectrum.

Thus, despite the inability to make available spectrum in 2.5- 2.69 GHz and 3.3-3.4 GHz bands for allocation for BWA services due to various reasons and placing only two blocks of 20 MHz spectrum in 2.3 GHz for auction, DoT did not review the eligibility conditions for potential bidders to ensure that only serious players participate in the auction. DoT had in effect brought in participants from low (ISPs with low net worth) to high (UAS Licensees with high to very high net worth) financial capacities participating under uniform prescribed financial conditions in the auction. DoT also did not go back to the TRAI to seek their guidance, as provided under the provisions of the TRAI Act , when it was clear that the number of blocks of BWA spectrum available for auction, was being drastically reduced to just two in each Circle.

Audit found that none of the authorities- High level committee of the DoT, the Telecom Commission, Ministry of Finance and EGoM, could detect the inconsistencies and flaws in the report of the TRAI and the proposal of the DoT in the BWA auction. Even when the reserve price of one block of Pan India BWA spectrum was raised to RS.1750 crore in the NIA, no corresponding action to introduce financial capability criterion (higher equity capital/net-worth) or subscriber based criterion/performance based criterion so as to ensure only serious players took part in the auction. This had contributed to compounding the slip-up and making the situation worse. The eligibility criteria as was recommended by the TRAI remained unchanged.

DoT in reply to the audit observation stated (August 2014) that a high value of EMD was set to ensure that only serious people take part and that there was no further need for anyone including inter- ministerial panel to have any doubt. It further mentioned that the eligibility criteria and other conditions of the NIA were shown to CAG as well as CVC.

DoT however did not specify as to how the bidders with little or negligible net-worth were expected to provide high value EMDs without resorting to unethical practices. Further, fixing a uniform high value EMD for all prospective participants with divergent financial capabilities in the auction under the guise of providing equal opportunity, was lopsided and proved to be counter-productive, as was evident from the facts stated in the succeeding paragraphs.

High Level Committees responsible for scrutinizing applications and monitoring the auction process		
Name of Committee	Functions	Composition
Committee of Secretaries	To monitor the auction process and approve the final results;	Cabinet Secretary, Secretary Planning Commission, Secretary Telecom, Finance Secretary
Inter- Ministerial Committee (IMC)	To oversee the auction, including approval of NIA, pre-approving bidders, monitoring the auction, approving the provisional results of the auction;	Member (F), Chairman, Wireless Advisor, Senior Officers from the DoT, Departments of IT, IPP, and EA
Application Screening Committee (ASC)	To scrutinize the applications and screen them for approval of IMC;	Wireless Advisor, Joint Secretary (T) and Director (Wireless Finance)

As regards DoT's assertion that the eligibility criteria and other conditions were shown to CAG as well as CVC, it was true that a representative of the CAG was invited for the demo presentation session on 6th April 2010. However, mere presence of a representative of the CAG in the mock/demo presentation session on invitation, in-midst of a large gathering cannot be construed as an approval of eligibility criteria and other conditions of the NIA by CAG. The very fact that by that time, bidders had already been pre-approved by the IMC and final list of bidders had already been announced on DoT website makes it clear that DoT did not expect any observations from the guests, but it was more of exposure session for other Government officials. The mock/demo auction presentation was restricted to the procedures of the auction process. The presentation did not cover the issues like the basis of fixation of eligibility criterion of the bidders, their net-worth, TRAI's recommendations etc. In their invitation also, DoT had not requested the audit to vet or pre-audit the auction process. Therefore, the claim of the DoT that audit did not raise any issue in course of presentation was without any foundation and untenable.

2.7.5 No Lock-in-period for ISP bidders in the auction of BWA spectrum

Lock-in-period for maintaining share-holding pattern is usually provided in the telecom licenses to prevent entry of non-serious players, fly-by-night operators, collusive biddings and windfall gains etc. The DoT had prescribed a lock in period of the three years for the share-holding of the UAS/CMTS licensees in April 2009 after obtaining the recommendations from TRAI on the subject. However no such lock in period was prescribed for the ISP licensees though they were made entitled to bid for BWA spectrum whose reserve price (Rs 1750 crore) was higher than the entry fee of Rs 1658 crore for UAS licenses. As a result, there was discriminatory treatment for the two classes of bidders- UAS/CMTS operators and ISP licensees- bidding for the award of BWA spectrum. Incidentally, the DoT had been prescribing lock-in-period in the telecom licenses since 1994 and had continued this practice till 2004. The Lock in period was reintroduced for UAS licensees in 2009. The Lock-in-period clause has also subsequently been included in the subsequent three auctions held in 2012-14. DoT however failed to insert Lock-in period clause in the NIA to have uniform system for all sets of bidders- UASL/CMTS operators and ISP licensees. As a result, a small ISP licensee with meagre presence in the communication space, ranked 150th in the list of ISP as on 31 December 2009, entered the BWA auction as a proxy bidder, selling itself within hours of completion of the auction to a company that did not participate in the auction, as discussed in the succeeding paragraphs. Presence of this proxy bidder having no technical or financial standing, acting for an undeclared anonymous principal as revealed by subsequent development, misled the other bidders about the true nature of competition and thus vitiated the competitiveness of the auction process.

DoT in its reply to the audit observation stated that lock-in-period was prescribed for UAS/CMTS license holders and not auction of spectrum. This was clarified by DoT in its Queries and Response issued in connection with the auction of 3G and BWA spectrum. It was also informed that lock-in-period was never part of the ISP licensing frame work and the conditions of NIA were found to be adequate by CAG.

The reply is not acceptable in view of the very fact that Lock-in-period clause was again included in the subsequent three auctions for 2G spectrum in 800 MHz, 900MHz, 1800 MHz bands held in 2012-14 which substantiates the relevance of having such a condition. Further the logic for insertion of lock-in-period for share-holding is same whether for UAS licenses or spectrum being auctioned. The successful bidder should be a long-term serious player, itself interested in and capable of meeting the service delivery/roll-out obligations. The auction was not meant to pass on precious natural resources for a party to hoard and trade.

2.7.6 Absence of due diligence in DoT for processing applications, facilitating entry of dummy/front companies in the auction

Subsequent to putting out the NIA, and receiving and processing application from the aspirants, 11 applicants (9 Indian & 2 foreign companies) were found eligible to participate in the auction. Of 9 Indian companies, four bidders were UAS licensees, two bidders were ISP licensees promoted by existing UAS licensees, two ISP licensees and one new Indian company. While the eight bidders (4 UASL bidders, both UASL promoted ISP licensees, one ISP licensee and one foreign company) submitted their bid for 22 circles, three other bidders (1 ISP licensee, 1 new Indian company and one foreign company) submitted their bids for some of the circles only.

Their details as on 31.03.2009 are as under:

(Rs in crore)

Sl. No	Pre-approved applicants	Status/ License held	Paid up capital	Net worth (NW)	EMD	% of EMD of NW
1	Infotel Broadband Service Private Ltd- (Infotel)	ISP	2.51	2.49	252.5	10141
2	Tikona Digital Networks Private Ltd- (Tikona)	ISP	133.30	126.40	161.25	128
3	Qualcomm incorporated	New Entrant (Foreign)	40800.37	97598.06	252.5	0.26
4	Augere (Mauritius) Ltd (Augere)	New Entrant (Foreign)	0.037	-0.076	67.5	-88815
5	Bharti Airtel Ltd (Bharti)	UASL/ISP	1898.48	34840.13	252.5	0.72
6	Aircel Ltd (Aircel)	UASL/ISP	243.24	2056.87	252.5	12.27
7	Reliance WiMax Limited (Reliance)	ISP promoted by a UASL	1032.01	42511.36	252.5	0.59
8	Tata Communications Internet Services Ltd (Tata)	ISP promoted by a UASL	285.00	6590.36	252.5	3.8
9	Vodafone Essar Limited (Vodafone)	UASL/ISP	414.09	1912.87	252.5	13.2
10	Idea Cellular Limited- (Idea)	UASL	3100.10	11070.38	252.5	2.3
11	Spice Internet Service Provider Pvt Ltd- (Spice)	ISP –new entrant	0.01	0.01	42.50	425000

The above information on the applicants indicated their financial capability but, even though records indicate that applications for participation in the auction were scrutinised by the ASC under the chairmanship of Wireless Adviser and the IMC under the chairmanship of Member (Finance) DoT meticulously. Minor errors like typographical mistakes, absence of signature of authorised signatories/company secretaries at various places etc were got rectified. However, the examination of eligibility was so mechanical that the wide disparity in the

financial standings of the potential bidders was ignored since as per the prescribed eligibility criterion, any ISP holder of whatever financial standing was eligible to bid. No effort was made to do the background verification of the prospective bidders so as to ascertain whether they had the financial strength or technical competence to roll out the services within stipulated period.

Audit found that at least two Indian bidders and one foreign company with very low equity capital and negligible net-worth (Less than Rs 3 Crore) and having no prior experience of provision of telecom services/ BWA spectrum network applied for participation in the auction and their bids were approved by the ASC and IMC without calling for any additional information from these firms. It was thus not clear as to how the members of the ASC satisfied themselves about financial capabilities of these firms to ensure that they would be able to pay the auction bid amount particularly when the reserve price itself was several hundred times of their net-worth. Though the NIT had permitted the DoT to call for any additional information or documentation at the pre-qualification stage from the applicants, if required, neither ASC nor IMC solicited any further information from these 3 bidders to satisfy themselves about the financial capabilities of these applicants.

Neither the ASC nor the IMC scrutinised and analysed the background, experience and financial capabilities of applicant companies to satisfy themselves that all applicants were financially capable and technically viable reputed telecom companies with bonafide intention to participate in the auction. Due diligence in screening and approving applications would have ensured that only serious players with sound financial background took part in the auction.

Indications which should have raised red flag to the High Power committee in DoT or IMC, with likely impact on fair and transparent auction process and ultimately an environment of level playing field and fair competition, as identified by Audit are as follows:

2.7.7 Source of funding for Payment of EMD by the small Companies

As per the NIA eligible applicants were required to furnish Earnest Money Deposit (EMD), based on the service areas they planned to bid for, in the form of Bank Guarantee (BG) prior to the auction. Disproportionately large amount of EMD furnished by the some of the applicants, as compared to their net-worth should have been red-flagged as a clear signal for presence of proxy bidders in the auction. Thus, a reality check on the net-worth of some of the applicants and the EMD paid by them would have given sufficient signals to DoT to raise doubts on their intentions.

The data in the table clearly indicates that smaller companies (Infotel, Spice, Augere) with meagre finances (net-worth less than Rs 3.00 crore) and applicants like Qualcomm Inc, Reliance WiMax Ltd, Bharti Airtel Ltd etc., who had considerable financial backing (More than Rs 30,000.00 crore) were treated equals on a supposedly level playing turf. Determining the financial capabilities of each of applicant companies was an important requirement to confirm the possibility of realisation of winning bid amount. However no such due diligence was done by either ASC or IMC. This was also important from the angle of Foreign Exchange Management Act (FEMA) and Prevention of Money Laundering Act.

Further, Audit had also observed the following:-

- M/s Spice Internet Service Provider Pvt Ltd (Spice), which was established only on 12 March 2010, i.e., barely a week before the submission of the application for auction and had an equity capital of only Rs 1.00 lakh, submitted EMD of Rs 42.50 crore (4250 times their net worth), for participation in the auction.
- A relatively new ISP licensee, M/s Infotel Broadband Service Private Ltd. (Infotel) with a net-worth of Rs 2.49 crore was ranked 146th in the list of ISPs as on March 2010. They furnished an EMD of Rs 252.5 crore, which was more than 100 times their net worth. Infotel, incorporated in February 2007, was a Pan India ISP license holder since November 2007. The company had started its commercial business from 1-4-2009 and had only **one Leased line subscriber** as on March 2010. It had only earned Rs 14.78 lakh revenue during 2009-10.

Other important details on Infotel that were available in the public domain for verification by the ASC and IMC were as follows:-

- As on 31.03.2009, the Company had an authorized share capital of Rs 3 crore, paid up capital of Rs 2.51 crore and no reserves or surplus. **The cash and bank balance of the company was Rs 18 lakh only.** Of this, Rs 11 lakh was tied up as 100 % margin money for the bank guarantee (BG) of Rs 10 lakh given by the firm to the DoT for ISP license. Records furnished to audit did not indicate the extension of the PBG/FPG submitted to DoT as of 31st March 2010 beyond initial periods.
- The promoter of IBSPL was M/s Infotel Digicomm Pvt Ltd (IDPL), which was incorporated in March 2007 and held 99.99 percent share of the Infotel in March 2010. As on 31 March 2009, the equity capital and net-worth of IDPL was Rs 6.00 lakh and Rs 8.55 lakh respectively. The company did not have any fixed assets as on 31 March 2009 and had earned revenue of Rs 2.59 crore primarily from other income with the net profit of Rs 42.80 lakh only in 2009-10. The audited accounts of the IDPL for 31 March 2010 indicated that they had given

100 % margin money in form of fixed deposit of Rs 25.00 lakh as security against issuance of BG for Rs 25.00 lakh

- Infotel had submitted to the DoT on 19th March 2010, the due EMD of Rs 252.50 crore in form of Bank Guarantee(BG) (from Axis Bank), along with the application for the auction. Audit found that there **was no disclosure on the margin money** paid by Infotel against the above BG in their annual accounts for the financial year 2009-10. Incidentally, the Company along with its promoter IDPL had paid hundred per cent margin money for getting bank guarantee of much smaller amount like Rs 10 lakh and Rs 25 lakh respectively as per disclosures in their annual accounts.

High powered committees of the DoT however did not appear to do requisite due diligence and pre-approved these small bidders for participation in the auction.

2.7.8 Major alterations in the BG submitted by Infotel was overlooked

The BG of Rs 252.50 crore from Axis Bank was submitted by Infotel on 19th March 2010 for participation in the BWA auction. . Apart from highly unusual fact of a Company with a net worth of only Rs 2.49 crore securing a BG, more than 1500 times of the company's annual turnover and hundred times their net worth without margin money, Audit also observed that the BG had a major alteration in the name of the beneficiary. The name of the Infotel was found handwritten in ink on the body of the BG erasing a computer printed name earlier.

In the light of the above facts, Audit observed that the financial capability of the small bidders and their promoters should have been a major concern for IMC, especially in the event of the comparatively **high EMD**, so as to ensure funding plan of the company and also ascertain the eventual receipt of EMD/bid amount. DoT however, made no efforts to determine whether the participating bidders would indeed be able even to remit the bid amount on closure of the auction process or abide by the roll out obligation. The Committee also did not analyse the financial conditions (audited annual accounts etc) and capabilities of the applicants and their promoters, though a representative from the financial branch was heading the committee to examine the eligibility criterion of the applicants. This was also required from angle of Foreign Exchange Management Act, Prevention of Money laundering Act etc. particularly when it was evident that these two firms would not be able to generate funds from normal business operation in such a short time.

Indications DoT should have been alert to

- **Infotel, an ISP ranked 146th in the list of 164 ISPs as on March 2010, submitted an EMD of Rs. 252.5 crore in form of BG, which was more than 100 times their net worth.**
- The BG submitted by Infotel contained visible signs of alteration in the name of the beneficiary. There was no proof of payment of margin money either in their annual account as was done for other BGs.
- Infotel with a net worth of Rs 2.49 crore, applied for bidding for Pan India spectrum in the auction. The minimum reserve price of the Pan India BWA spectrum was Rs 1750 crore.
- High powered Committees did not satisfy themselves as to how Infotel has managed to obtain high value EMD with such meagre resources. ASC & IMC also did not enquire as to how would Infotel be able to pay the minimum reserve price of Pan India Spectrum.
- **Infotel was the only basic ISP¹⁷ which applied for Pan India BWA spectrum in the auction.**

Importantly, the alteration in the BG was a clear indication of existence of an apparent unethical strategy by Infotel. It was therefore evident that the bidder had either been acting as a front company on behalf of a hidden bidder or taken assistance of a third party in obtaining the BG for the auction which went against the sanctity and transparency of the auction process. Incidentally, the annual report of RIL, which subsequently bought the 95% stake in the Infotel on the last date of auction, showed significant transactions (investments of Rs 2250 crore purchased and sold) with the Axis Bank during 2010-11.

DoT responded to the above audit observations stating the following:

- The NIA for the auction of BWA spectrum, was prepared based on TRAI recommendations and views of Ministry of Finance, and had the approval of the Inter Ministerial Committee.
- The condition in the NIA on obtaining EMD in the form of BG was an effective deterrent for non-serious players in the auction.
- The Audit observation on low Net Worth or equity of a Company in connection with the eligibility criterion was not applicable as it was not a prescribed condition for participating in auction.
- The auction was well documented/transparent and the receipts there from had exceeded expectations.

¹⁷ Excluding UASL promoted ISPs

Pre- Approved Bidders by DoT

Spice Internet Pvt Ltd

- Incorporated on 12 March 2010;
- equity capital of Rs 1.00 lakh;
- submitted EMD of Rs 42.5 crore (4250 times their net worth),

Infotel Broadband Serv. Pvt Ltd.

- Incorporated in February 2007, and a Pan India ISP licensee since November 2007.
- Started its business from 1-4-2009, had **one Leased line subscriber** as on March 2010 and earned Rs 14.78 lakh revenue in 2009-10.
- As on 31.03.2010, it had paid up capital of Rs 2.51 crore and no reserves or surplus.
- The cash and bank balance of Infotel was Rs 18 lakh. Of this, Rs 11 lakh was tied up as 100 % margin money for the BG of Rs 10 lakh.
- The promoter of IBSP, IDPL was incorporated in March 2007 and held 99.99 % share of the Infotel in March 2010.
- As on 31 March 2009, the equity capital and net-worth of IDPL was Rs 6.00 lakh and Rs 8.55 lakh respectively. It did not have any fixed assets as on 31 March 2009.

- Receipt of BG from AXIS bank was a normal financial practice and was an issue between bank & company. There were many instances where overwriting was there in checks & drafts issued from banks. However these were there as per extant rules at that time. Now RBI doesn't permit this sort of overwriting. The money got transferred to Government account. Just overwriting doesn't prove that Infotel was ineligible for participation in the Auction.

The reply of DoT, though technically correct, was substantively flawed. It has been detailed above that the examination of eligibility of applicants by DoT was so mechanical, that the wide disparity in the financial standings of potential bidders was ignored. The DoT went ahead with the TRAI recommendation to allow any ISP license holder to bid irrespective of its financial or technical competence. It is emphasized that the unsolicited TRAI recommendation on BWA auction (September 2006) was not binding on DoT. In fact, no TRAI recommendation is binding on DoT. The Government is expected to consider TRAI recommendations and take appropriate decisions and own responsibility for the same. Thus, DoT was not bound to accept whatever eligibility conditions for BWA auction were recommended by TRAI. Audit observations on the BGs furnished by bidders and their net worth were not on mere technicalities but emphasizing lack of due diligence in ensuring the participation of only serious and capable bidders in the auction. Even at the belated stage of screening of applications, tell-tale signs of presence of non-serious, non-capable bidders should have attracted attention and warranted a rethinking on the eligibility conditions. The conditions of auction of BWA spectrum as a matter relating to the implementation of a Government policy which envisaged allotment of a valuable natural resource was an important ingredients of the auction process. Dilution of the process was improper as its effectiveness was connected with the efficient use of a valuable natural resource of the country. Audit observations were not on the banking procedures or technicalities in it but on the underlying lack of due diligence in the verification of applications for determining eligibility of participants. DoT did not give any justification as to how the Committee could satisfy itself that a newly created company with the net-worth of Rs 2.49 crore and annual turnover of less than Rs15 lakh would indeed be able to pay even the minimum reserve

price (Rs 1750 crore) of Pan India BWA spectrum in the auction. Similarly the BG of Rs 42.50 crore submitted by the newly incorporated firm Spice Internet Pvt Ltd with the equity capital of Rs 1.00 lakh failed to raise any red flags within DoT. The IMC did also not do requisite verification about them.

The flaws in determination of eligibility of participants for the auction of BWA spectrum and deficiencies in the processing of applications were effectively exploited by a small ISP with only one subscriber in 2010 with apparent connivance of a non-participant bidder to take part in the auction, win Pan-India spectrum and sell the company on the date of closure of the auction to make windfall gains as discussed in the succeeding chapters.

Chapter 3

BWA auction and results

3.1. Accepting the recommendation of TRAI that the allocation of BWA spectrum should be through an auction process, DoT released the Notice Inviting Applications (NIA) in February 2010 calling for application from eligible bidders for participation in the auction of 3G and BWA spectrum to be held separately.

3.2 Objectives of the auction

As per the NIA spectrum in the 2.3 GHz and 2.5 GHz band (BWA) was to be auctioned and the objectives of the auction were set as follows:

- Obtain a market determined price of 3G/ BWA spectrum through a transparent process;
- Ensure efficient use of spectrum and avoid hoarding;
- Stimulate competition in the sector;
- Promote rollout of 3G and Broadband services;
- Maximize revenue proceeds from the Auctions;
- Resolve congestion issues related to second generation (“2G”) mobile services.

Of these objectives, the first five objectives were related to the auction of BWA spectrum

3.3. Salient features of the auction

The auction was to be a two-stage simultaneous ascending e-auction of all 22 service areas, run over the Internet. Its important features were:

- Stage one was a Clock stage, which consisted of number of clock rounds to determine the winner for each circle and Stage 2 was for Frequency identification and band allocation.
- In the first clock round, Bidders were allowed to bid as per their eligibility points based on their EMD. Accordingly, a Bidder who wished to bid for one block in all 22 SAs had to pay an EMD of Rs. 252.5 crore and started in the first round with the maximum possible Initial Eligibility of 350 points.
- For subsequent clock rounds, the Auction Administrator announced the Auction Activity Requirement that applied to that Clock Round which varied from 80% of eligibility points up to 64 round, 90% from 65th round to 81st round and 100% from 82nd round.
- In the Clock stage each bidder will bid for a generic block i.e., a single 20 MHz spectrum block and will consist of a number of rounds.

- Bidders could accept or reject the price posted in each round.
- The first clock round start with reserve price fixed by the Government for each SA and clock round prices for subsequent rounds depended upon the demand for blocks in that SA.
- Activity Rules of the bidding, implemented through an ‘eligibility point’ system prohibited bidders waiting till the end of the auction to bid on their target service areas.
- A bidder cannot bid for more service areas than its eligibility points allow. Bidder’s earnest money deposit determined its eligibility to bid in the first round and in the subsequent rounds the eligibility to bid was determined by the bidding activity in the previous round.
- Provisional winners are declared at the end of each round
- Simultaneous auction involving all service areas remain in play until the end when demand is no more than the number of available lots in every service area.
- Bidders were able to access the Electronic Auction System (EAS)¹⁸ using standard web-browsing software.

M/s NM Rothschild & Sons (India) Private Limited and DotEcon Limited were the auctioneers for the e-auction.

3.4. Participants and their eligibility points

The participation of the bidders was dependent on the amount of EMD deposited by them, which was then allotted the eligibility points commensurate with the EMD submitted by them. The maximum amount of EMD fixed for all 22 SAs was Rs 252.50 crore and the maximum allotted eligibility points was 350.

Accordingly, a Bidder who wished to bid for one block in all 22 SAs had to pay an EMD of Rs. 252.5 crore and start in the first round with the maximum possible Initial Eligibility of 350 points.

9 Indian Bidders (including 6 UAS licensees or UAS promoted ISPs) and 2 foreign Bidders (eleven in all) applied for participation in auction of for 2 Pan India slots (44 Blocks) BWA spectrum in March 2010.

¹⁸ EAS was a designated computer resource for receiving of electronic records under the provision of Section 13 (2) of the Information Technology Act 2000.

The eleven bidders had deposited EMD as follows:

Sl. No	Name of the Company	EMD (in Rs. crore)	Initial eligibility Points
1	Infotel Broadband Service Private Ltd-(Infotel)	252.5	350
2	Tikona Digital Networks Private Ltd-(Tikona)	161.25	248
3	Qualcomm incorporated	252.5	350
4	Augere (Mauritius) Ltd	67.5	102
5	Bharti Airtel Ltd	252.5	350
6	Aircel Ltd	252.5	350
7	Reliance WiMax Limited	252.5	350
8	Tata Communications Internet Services Ltd	252.5	350
9	Vodafone Essar Limited	252.5	350
10	Idea Cellular Limited	252.5	350
11	Spice Internet Service Provider Pvt Ltd	42.50	64

Of 11 approved bidders, eight bidders had submitted maximum amount of EMD i.e. Rs252.50 crore while remaining three bidders Tikona, Augere and Spice submitted EMDs of Rs 161.25 crore, Rs 67.50 crore and Rs 42.5 crore respectively. Infotel was the only basic ISP which had submitted the EMD of Rs 252.50 crore to be eligible to bid for Pan India spectrum. All other bidders which submitted the EMD for Rs 252.50 crore were either UASL operators or UASL promoted ISPs or a foreign MNC. The auction was able to attract two foreign bidders, one of which was a major telecom MNC with the net-worth of Rs 97598 crore

3.5. Oversight

Government of India constituted an Inter-Ministerial Committee (IMC) consisting of senior officers from the departments of Information Technology, Industrial Policy and Promotion, Economic Affairs, DoT etc., under the chairmanship of the then Member (Finance) of the DoT to oversee the auction process. The final auction results were to be declared after the provisional results recommended by the IMC after scrutinizing the audit trails were approved by the Committee of Secretaries (CoS), consisting of the Finance Secretary, Secretary Planning Commission and Secretary DoT, under the chairmanship of the Cabinet Secretary of the Government of India.

3.6 Auction results

The auction of BWA spectrum¹⁹ was conducted over 16 days (from 24th May, 2010 to 11th June, 2010) and involved 117 rounds of bidding across service areas. All the 44 blocks that were put up for auction, across the 22 service areas in the country, were sold. The provisional results were announced on 11th June 2010.

Infotel won Pan India BWA spectrum (one block each in 22 SAs) and the remaining 22 blocks were divided between 5 winners:--

Bidder	No of Service Areas won	Bid amount (in crore)
Infotel Broadband Services Pvt. Ltd. (Infotel) - ISP	PAN India (all 22 service areas)	12847.77
Bharti Airtel - UASL	4	3314.36
Aircel - UASL	8	3438.01
Qualcomm ²⁰ - MNC new entrant	4	4912.54
Tikona - ISP	5	1058.2
Augere - Foreign new entrant	1	124.66

3.6.1 Companies which did not win

It is pertinent to note that Infotel had succeeded on a turf where four major UASL operators or their promoted ISPs, which were in telecom sector for more than a decade, could not win BWA spectrum for even in a single circle.

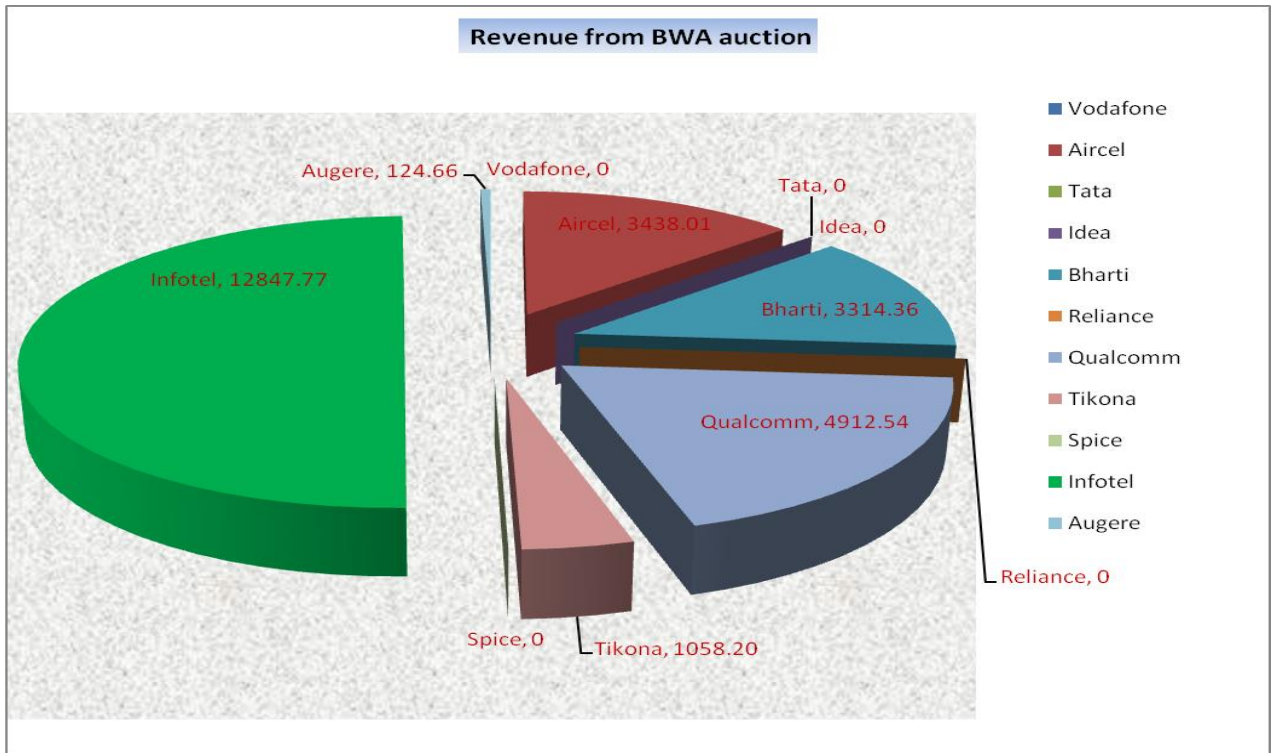
NAME OF UASL OPERATORS OR THEIR PROMOTED ISPs	NET WORTH (Rs. In crores)
Reliance WiMax Limited-ISP promoted by RCL, a UASL	42511.36
Tata Communications Internet Services Ltd- ISP promoted by TTSL, a UASL	6590.36
Vodafone Essar Limited-UASL/ISP	1912.87
Idea Cellular Limited- UASL/ISP	11070.38

Infotel was the only Internet service provider who had bid and won BWA spectrum for all the service areas at a winning price of Rs.12847.77 crore (more than 5000 times of their net-worth).

¹⁹ The pan-India auction price for 2x5 MHz paired 3G spectrum in 2.1 GHz Band was Rs 16750.58 crore.

²⁰ Qualcomm & Augere were the foreign companies which participated as New Entrants.

Operators wise bid amounts received from the auction are shown the in the chart below:



3.7 Analysis of Auction Data

a. Dominance of Infotel in the Auction Process

Infotel, a loss making ISP, with one subscriber and total gross revenue of Rs 14.78 lakh in 2009-10, was declared Pan India winner of BWA spectrum defeating the multinational participants viz Qualcomm, Vodafone etc, established Indian telecom service providers (TSPs) like Bharti Airtel, Idea, RCL and TTSL promoted ISPs etc.

Infotel bid for all the 22 Service Areas right from the first round on the first day of Auction

In the initial clock rounds, the auctioneer had kept auction activity requirement at 80 percent, meaning thereby that bidders were required to bid, using at least 80 percent of their eligibility points, for service areas in these clock rounds. For example, a bidder with 350 eligibility points was required to bid for service areas in a round so as to use at least 280 eligible points to maintain their 350 eligibility points for bidding in future rounds. If the bidder did not maintain activity requirement at 80 percent in their bidding, their eligibility points would decrease proportionately for the future rounds.

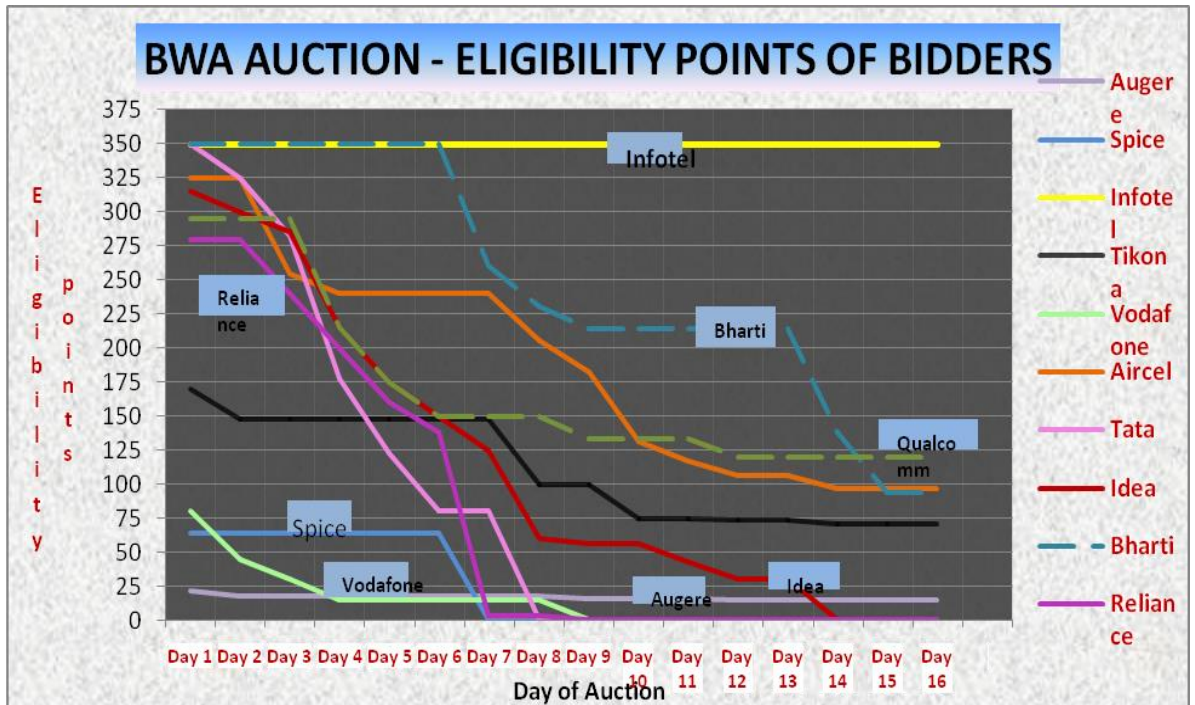
In the first round of auction on 24th May 2010, out of 8 bidders that had 350 eligibility points, only 3 bidders utilised more than 280 eligibility points to be able keep their 350 eligibility points for future rounds. Of these 3 bidders, two of them- Bharti Airtel Ltd and Tata Communications Internet Service Pvt Ltd utilised 284 eligibility points. Infotel was the only

bidder which used their full eligibility points of 350 in the first round by bidding for all service areas. From the 8th round on the 2nd day of auction, only two bidders- Infotel and Bharti were left with 350 eligibility points to bid in the auction.

In 48th round and onwards, Infotel was the only bidder, which maintained the 350 eligibility points so as to be able to bid for all SAs in the future rounds in the auction.

Audit thus found that out of the established TSPs, only Bharti and Tata could maintain the eligibility points of 350 points upto 47th round and 7th round respectively, but in respect of remaining bidders, the eligibility points kept on decreasing right from the end of 1st round.

Qualcomm, the MNC with significant financial resources, also did not keep its maximum eligibility points of 350 beyond the first round and slowly tapered it down to 120 in the last round of the auction.



Other winning bidders viz., Bharti and Aircel, which had started the auction with 350 eligibility points, were left with 94 and 97 points only in the last round of the auction.

Exceptional bidding activity of Infotel

The bidding pattern of Infotel threw up the following facts:

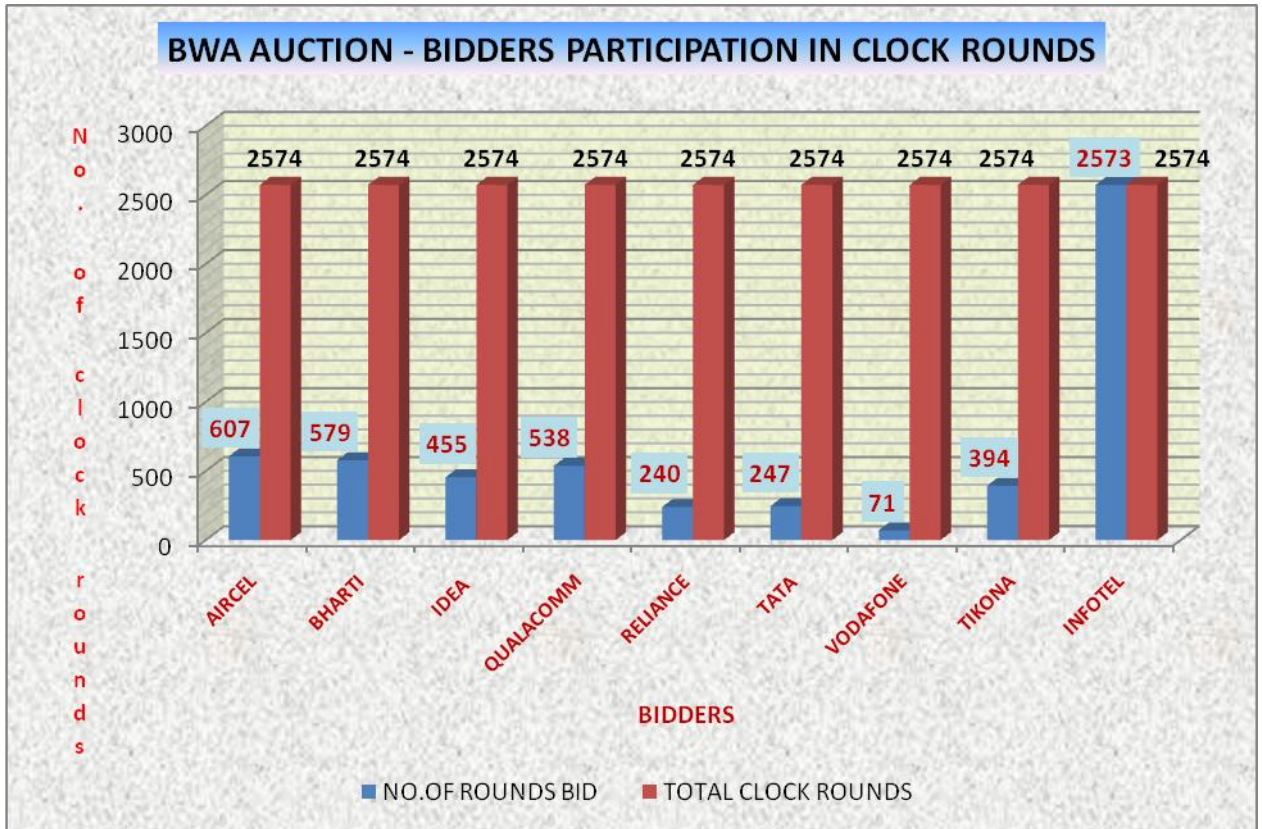
- They bid for all the 22 Service Areas right from the first round of the first day and continued to either bid or maintain their bid for all SAs in all clock rounds till the end of the auction;
- They always maintained 350 eligibility points with themselves irrespective of the bidding activity requirement, whether it was either 80% or 90% or 100% so as to be able to bid for all SAs in all the 117 rounds throughout the auction. They were the only bidder to have done so.

- Infotel's bidding activity was always 100% throughout the auction, even when the bidding requirement was lower at 80 % or 90%, which indicated no shortage of financial resources for a company which had very meagre net-worth. Thus, Infotel alone bid for all the 22 SAs in almost all rounds on all days. None of the other bidders bid for more than 12 SAs on any day.
- No other bidders matched this feat even in 50 % rounds of either of the 3G or BWA spectrum auction.
- Major TSPs like Vodafone, Tata, and Reliance who had paid the maximum EMD of Rs 252.50 crore for participating in all the 22 SAs, stopped bidding for the SAs on 2nd June 2010 i.e. on the 8th day of auction.
- No other bidder, howsoever big it was, came even near to Infotel in bidding activity in either of the auctions. Infotel dominated the auction process of BWA spectrum totally.

Infotel was provisional winner ranked No.1 in almost all the rounds

As per auction bid data provided by auctioneers and put on DoT website, Infotel was declared provisional winner ranked No.1 in almost all the bid rounds (99.96 percent) for all the SAs throughout the auction. In BWA auction, 2574 bid rounds were held i.e. 117 clock rounds for 22 SAs each in 16 days. Infotel were the only bidder who had either raised a bid or maintained the bid of previous clock round in 2573 rounds in the auction. The domination of Infotel in the auction was so complete that the second rank bidder (Aircel) had bid for 607 rounds (24 percent) only.

Against the sterling winning performance of Infotel in all the 22 SAs they had participated and bid for, well established TSPs having significant net worth and huge subscriber base like Bharti Airtel won in only 4 SAs out of 18 SAs they had bid for and Aircel won in 8 SAs (including small SAs like Assam, Bihar, NE, J&K, Orissa etc.) against 19 SAs they bid for. Tikona won in 5 small SAs and Augere in 1 SA viz., MP. Qualcomm, a multi-national company with net worth of Rs 97598 crore, could win only 4 SAs including Delhi and Mumbai SAs against 13 SAs they had bid for.



Infotel was the only bidder in 43.5 % of auction rounds

In 1120 bid rounds (43.51 percent) out of 2574 bid rounds of BWA spectrum auction, Infotel was the single bidder in the various SAs, which indicated their dominant bidding behavior against powerful competitors, besides their earnest desire to have a Pan India license for BWA spectrum at any cost. Aircel had participated in 607 bid rounds, Bharti in 579 rounds and Qualcomm in 538 rounds in the auction. It was therefore evident that the bidding behavior of Infotel was highly unusual and extremely disproportionate to their financial means (net-worth) in comparison to other well-known bidders, some of whom were top TSPs and world leaders.

Bidding behaviour of Infotel (Net-worth-Rs 2,49 crore)	
Out of 2574 rounds of auction, Infotel was the single bidder in 1120 rounds (43.5%) for various SAs. Out of the maximum of 117 rounds for a SA , they were the single bidder in :-	
99 rounds- for West Bengal, 83 rounds for HP, 80 rounds for J&K and NE, 73 rounds for Orissa, 72 rounds for Gujarat, 71 rounds for Rajasthan, 46 rounds for MP and Haryana, 38 rounds for AP,	63 rounds for Assam, 60 rounds for Bihar, 57 rounds for Maharashtra, 56 rounds for Kolkatta, 52 rounds for Punjab, 50 rounds for UP (W), 49 rounds in UP(E), 25 rounds for Kerala and 20 rounds for Karnataka.

- The auction rules provided that simultaneous auction involving all SAs would remain in play until the end when demand was no more than the number of available slots in every SA. Infotel had won 13 SAs before the final round (117th) and won the remaining 9 SAs in 117th round on 11.6.2010. The provisional result was however announced after end of the auction on 11th June 2010.
- Infotel had even offered higher bid than the winning price (Bids never matched by another bidder) in 7 SAs viz., Maharashtra, Kolkatta, Punjab, Karnataka, UP(W), West Bengal, Andhra Pradesh i.e. 15 crores more in Karnataka and 10 crores more in AP than the winning bid.

Table below shows the stunning winning performance of Infotel:

SA	Won in.....round	Date	Winning amount crores	Bid in	Max. Bid offered	Co-winner-Rank No-2
Maharashtra	60	2.6.2010	915.64		924.79	Bharti
Kolkatta	98	8.6.2010	523.20		528.43	Bharti
Punjab	98	8.6.2010	332.27		335.59	Bharti
Bihar	107	9.6.2010	99.28			Aircel
Orissa	107	9.6.2010	63.63			Aircel
Karnataka	111	10.6.2010	1543.25		1558.68	Bharti
UP(W)	113	10.6.2010	183.87		185.70	Tikona
Rajasthan	114	10.6.2010	97.32			Tikona
West Bengal	114	10.6.2010	70.97		71.67	Aircel
Gujarat	116	10.6.2010	613.85			Tikona
AP	116	10.6.2010	1059.12		1069.71	Aircel
Kerala	116	10.6.2010	258.67			Qualcomm
HP	116	10.6.2010	20.66			Tikona
Delhi	117	11.6.2010	2241.02			Qualcomm
Mumbai	117	11.6.2010	2292.95			Qualcomm
TN	117	11.6.2010	2069.45			Aircel
Haryana	117	11.6.2010	119.9			Qualcomm
UP(E)	117	11.6.2010	142.5			Tikona
MP	117	11.6.2010	124.66			Augere
Assam	117	11.6.2010	33.02			Aircel
NE	117	11.6.2010	21.27			Aircel
J&K	117	11.6.2010	21.27			Aircel
		TOTAL	12847.77			

The above data clearly revealed that only one bidder - Infotel- had approached the auction with full determination to win a Pan-India BWA Spectrum licence at any cost, though they did not appear to have such financial resources from their normal business operations. Even their promoters with a meagre net worth, did not possess any significant financial clout. The exceptional and highly unusual pan India bids of Infotel right from the first round till the last round of the auction and their shocking win over major established TSPs having pan-India presence did not show any dearth of financial resources and was an aberrant behaviour, highly disproportionate to their known sources of business/income, or their declared financial capability or proven performance records. Further analysis of the bidding behaviour of other participants revealed that it was Infotel alone which had bid in a manner which could not be explained keeping their known sources of financial resources. All other bidder's behaviour appeared to be reasonable and normal. The bidding behaviour of all the participants in the e-auction is depicted in the table below and also in Annexure - III:

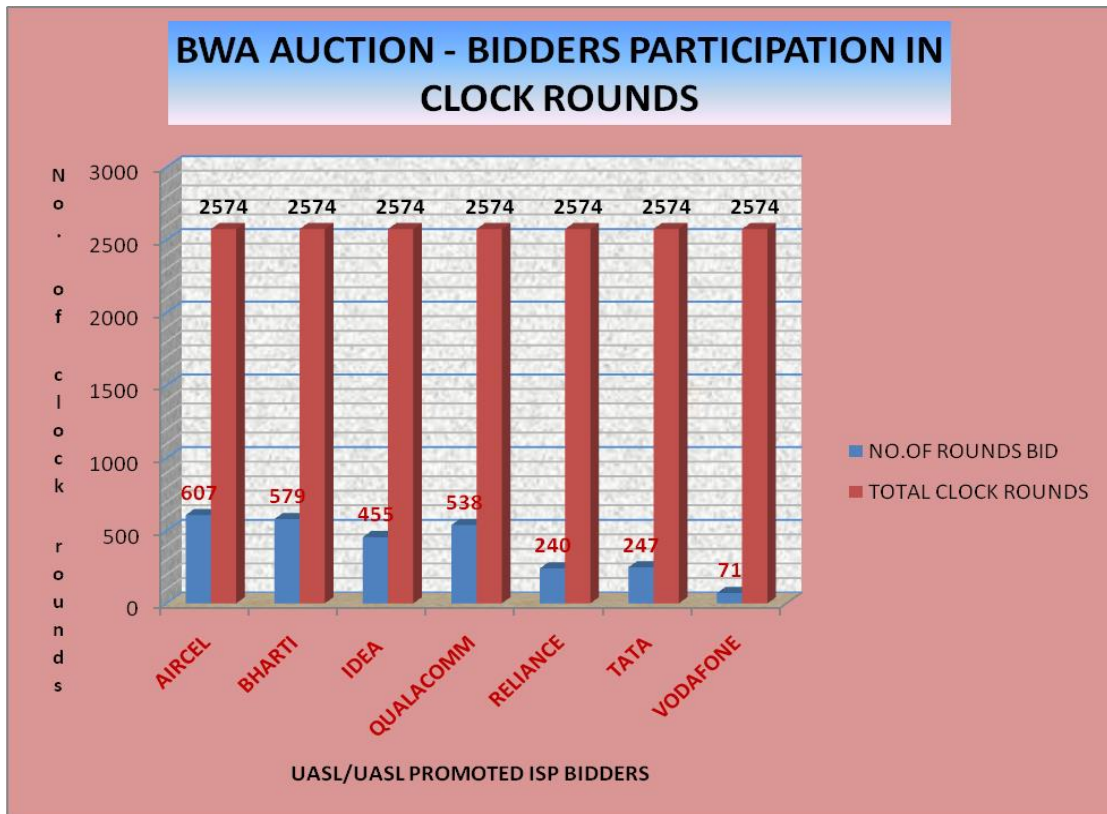
PATTERN OF BID

(Bid amount in crores of Rs.)

Licensee	Vodafone	Aircel	Tata	Idea	Bharti	Reliance	Qualcomm	Tikona	Spice	Infotel	Augere
SAs not bid	17	3	8	5	4	7	12	5	20	Nil	17
Net worth (Rs. in crores)	1912.87	2056.87	6590.36	11070.38	34840.13	42511.36	97598.06	126.4	0.01	2.49	0
Delhi	272.96	1072.96	1152.96	1192.96	2121.02	1132.96	2241.02	1412.71	1012.96	2241.02	No BID
Mumbai	No BID	1424.17	1152.96	1172.96	2252.95	1132.96	2292.95	1478.81	1012.96	2292.95	No BID
Kolkata	396.28	186.28	326.28	366.28	523.2	406.28	406.28	437.49	No BID	523.2	No BID
Maharashtra	No BID	906.58	652.96	612.96	915.64	632.96	552.96	No BID	No BID	915.64	No BID
Gujarat	No BID	566.93	444.7	No BID	444.7	332.96	424.7	613.85	No BID	613.85	No BID
Andhra Pradesh	No BID	1059.12	472.96	631.52	894.39	592.96	572.92	193.6	No BID	1059.12	No BID
Karnataka	212.96	938.54	772.96	832.96	1543.25	812.96	1527.98	212.96	No BID	1543.25	No BID
Tamil Nadu	No BID	2069.45	763.17	1023.17	1748.2	923.17	1197.95	1043.17	No BID	2069.45	No BID
Kerala	106.98	258.67	138.45	116.98	165.5	139.83	258.67	No BID	No BID	258.67	No BID
Punjab	273.15	146.28	196.28	206.28	332.27	210.42	No BID	277.88	No BID	332.27	No BID
Haryana	No BID	No BID	No BID	102.33	No BID	No BID	119.9	77.57	No BID	119.9	No BID
Uttar Pradesh (E)	No BID	109.21	69.54	122.81	135.61	75.26	No BID	142.5	No BID	142.5	No BID
Uttar Pradesh (W)	No BID	176.71	114.42	155.33	140.9	No BID	No BID	183.87	No BID	183.87	No BID
Rajasthan	No BID	No BID	No BID	89.92	No BID	60.6	No BID	97.32	No BID	97.32	80.03
Madhya Pradesh	No BID	No BID	No BID	103.35	No BID	68.22	No BID	103.35	No BID	124.66	124.66
West Bengal	No BID	70.97	No BID	No BID	No BID	No BID	No BID	60	No BID	70.97	No BID
Himachal Pradesh	No BID	18.21	No BID	No BID	17.69	No BID	No BID	20.66	No BID	20.66	20.46
Bihar	No BID	99.28	16.05	86.08	98.3	16.85	No BID	97.33	No BID	99.28	50.69
Orissa	No BID	63.63	15.15	55.08	63	15.6	No BID	58.83	No BID	63.63	47.58
Assam	No BID	33.02	No BID	28.23	26.89	No BID	No BID	No BID	No BID	33.02	No BID
North East	No BID	21.27	No BID	No BID	18.03	No BID	No BID	No BID	No BID	21.27	No BID
Jammu & Kashmir	No BID	21.27	No BID	No BID	18.03	No BID	No BID	No BID	No BID	21.27	No BID
Total winning bid amount	0	3438.01	0	0	3314.34	0	4912.54	1058.2	0	12847.77	124.66
SAs Won	NIL	8	NIL	NIL	4	NIL	4	5	NIL	22	1
LEGEND		A CATEGORY			Winner BID						
		B CATEGORY			NO BID						
		C CATEGORY			Loser BID						

b. Bidding behaviour of major UAS licenses in comparison with Infotel

➤ Though all the service areas were up for bid in the auction, none of the participants except Infotel bid for all 22 SAs i.e. a pan India spectrum license. Most of the other bidders primarily concentrated on the Metro and A category SAs in the initial rounds. It was Infotel alone which bid for all SAs right from the first round of the auction. Bidding behaviour of seven established telecom service providers in the Country in the BWA spectrum is depicted in the chart given below:



➤ India’s largest telecom service provider Bharti Airtel Ltd gave a stiff competition to the Infotel and other bidders. They maintained their maximum eligibility points of 350 points up to 47 rounds and thereafter gradually brought it down to 230 eligibility points in 53rd clock rounds. They maintained their eligibility points of 230 point till 65th clock rounds. When the bidding activity requirement was increased to 90 % in 66th round, Bharti’s eligibility points got reduced to 214 points, which they maintained till 103 rounds. Thereafter they scaled it down to 94 points by the end of the auction in 117 rounds. Bharti had gone up to the maximum total bid of Rs 9117.66crore in 101st round before going down to Rs 3314.36 crore in the 117 rounds.

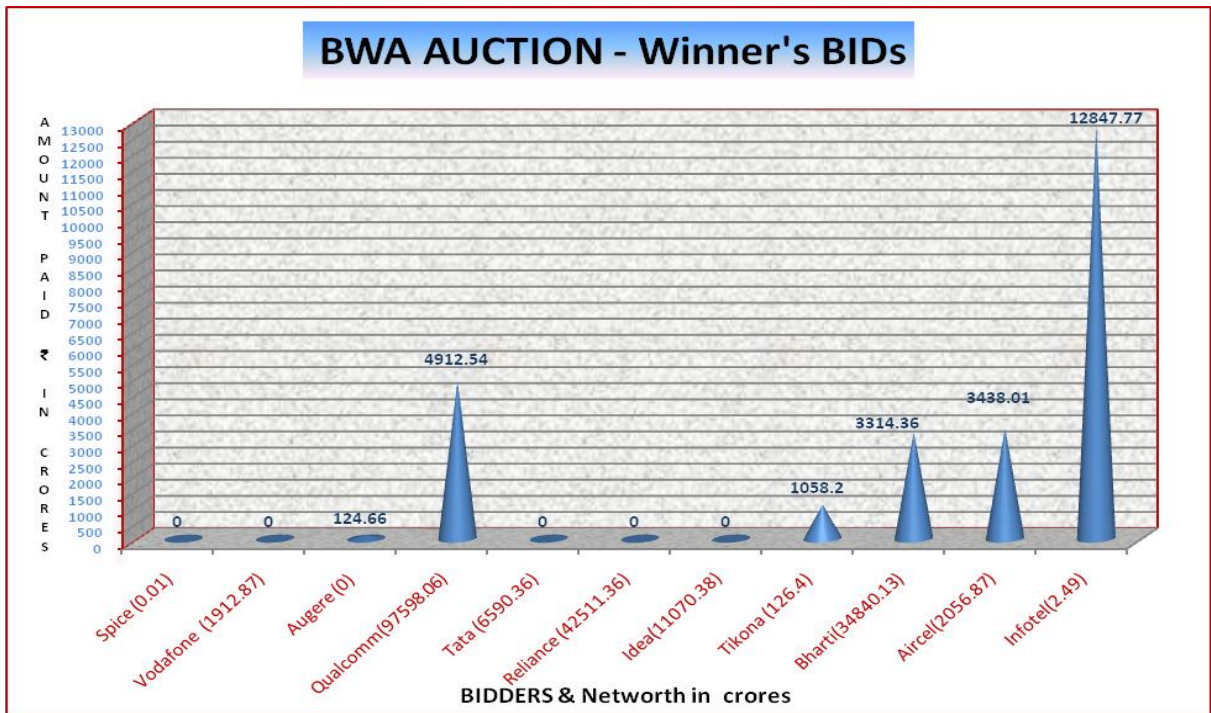
➤ Major TSPs Vodafone and Idea along with TTSL and RCL promoted ISPs, which had submitted the maximum EMD of Rs 252.50 crore and also had maximum 350 eligibility points

in the first round of auction quit the auction in the second week of the auction without winning any spectrum. While Vodafone, TTSL and RCL promoted ISPs quit by the 8th day, Idea left the auction in 103 round (Day 13) of the auction.

➤ Another major UASL Aircel Ltd had maintained its eligibility points of 240 from 17th round to 61st round before tapering down to 97 points in 117th round of the auction.

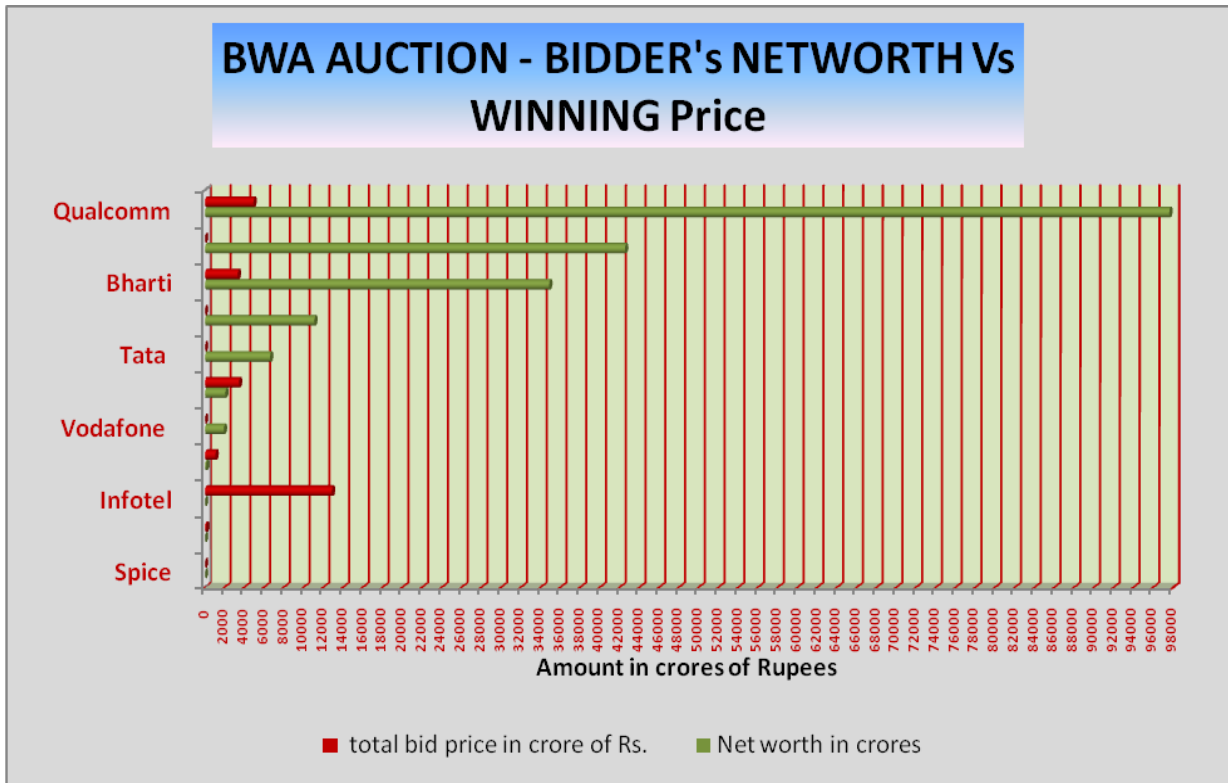
c. Bidding behaviour of Bidders vis-à-vis their net worth

➤ Audit analysed the bidding behaviour of all participants and compared their bid amounts with their net worth and found that while the Pan India winner Infotel, a tiny newly formed ISP, had bid more than 5000 times of their net worth, other participants with much higher net worth and financial capabilities had bid quite reasonably in comparison to their financial strengths.

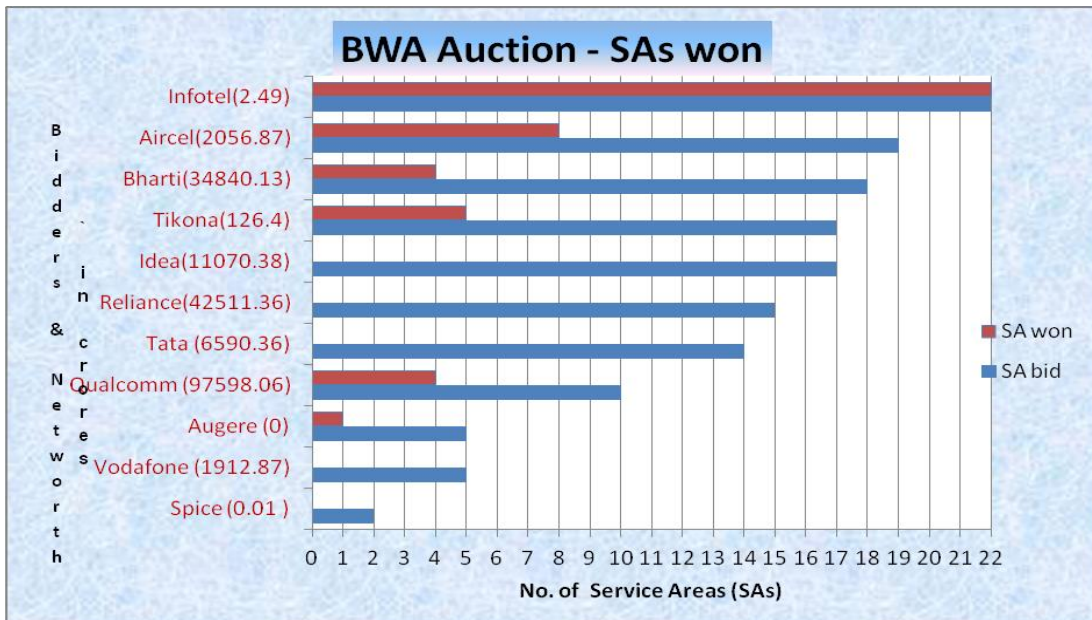


➤ While the MNC Qualcomm bid for 5 percent of their net-worth, Indian largest TSP Bharti went up to 10 percent of their net worth. Even Aircel only bid up to 1.7 times of their net-worth. The other ISP Tikona, which participated in the auction, went up to bid for 8 times their net-worth.

➤ Bidding behaviour of the participant companies and their financial worth is shown below:



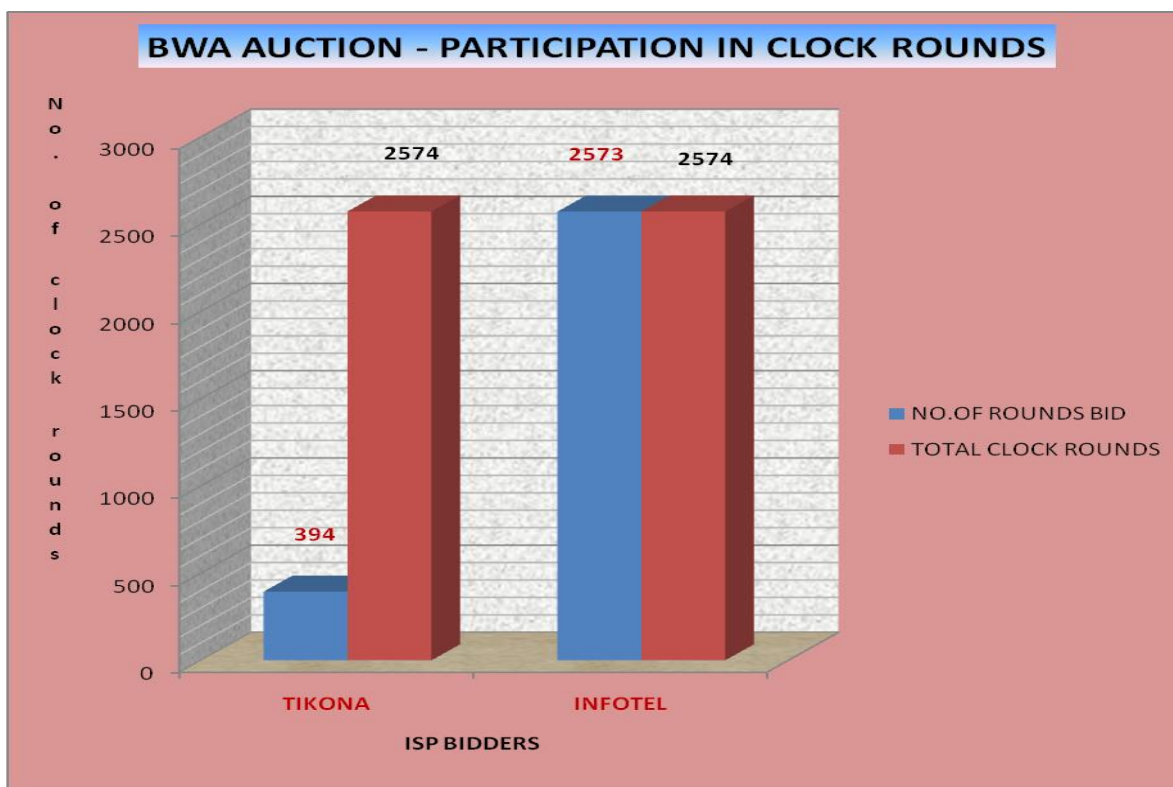
➤ A comparison of the bidding behaviour of Infotel along with other participants in the auction relating to the success rate in SAs they bid for is depicted below:



d. Bidding behaviour of ISP bidders

Two basic ISPs only applied for participation in the auction. While Infotel applied for all 22 SAs with the EMD of Rs 252.50 crore, Tikona submitted the EMD of Rs 161.25 crore indicating

their inclination to bid for a few circles only. In the auction, Infotel was the Pan India winner having declared provisional winner ranked 1 in 2573 bids (99.96 %) in 117 rounds on 16 days of auction process. Tikona did not bid in 7 service areas and was the winner in 5 SAs viz Gujarat, UP (E), UP (W), Rajasthan and HP. Data shown in the diagrams illustrates the bidding behaviour of the two ISP participants in the BWA auction:



➤ In course of auction process, Tikona was declared Provisional winner Ranked 1 in 5 bids (4 times for HP and once in MP SA). Two UASL RCL and TTSL promoted ISPs also participated in the auction. Though both of them submitted EMD for 252.50 crore showing their inclination for Pan India BWA spectrum, they did not win the spectrum in any SA. While Reliance bid for 14 SAs in the auction, TTSL promoted ISP bid for 12 SAs. Both bidders however withdrew from the auction by 7th day i.e. 1st June 2010.

3.8 Pattern of 3G bidding

The auction for BWA spectrum was conducted after the third generation spectrum (3G) auction. Significantly, there was no single pan-India winner for 3G spectrum despite the fact that the bidding was between established service providers vying for premium 3G spectrum. Analysis of the bid data of 3G auction revealed that at least six out of the nine bidders participated competitively in all 183 rounds of the auction and won 3G spectrum between 9 to 13 SAs. They all started with 350 eligibility points in the first round of the auction and were left with 142-270 eligibility points in the last (183) round of the auction.

It was therefore apparent that bidding behaviour of Infotel in the BWA spectrum was the only aberrant and exceptional behaviour in the entire auction process, which was further confirmed from their behaviour in post auction period. The following chart depicts the results of 3G auction.

The above illustration when compared with BWA bidding would reveal that BWA auction unlike in 3G auctions, saw pre-determined and predatory behaviour on the part of Infotel which seemed to be acting at the behest of its hidden master to win a pan-India spectrum from the very onset of the auction. As evident from the diagram above, in 3G auction no single operator could win spectrum pan-India even though all the major UAS licensees had participated in the auction.

Post auction conduct of Infotel, as discussed in the succeeding Chapter, indicated a covert /overt assistance of a third party in its bidding for a pan - India spectrum. Thus, deficiency in the design of eligibility criteria for participation in the auction for BWA spectrum has resulted in participation of a front company, which was sold on the last day of the auction, resulting into wind fall gains, using a natural resource which is a scarce national asset.

The abnormal bidding pattern of a comparatively low net worth Company in the midst of telecom giants and their shocking success in winning the PAN India is also evident from the unfolding of later events.

3.9 Release of Confidential Information by the Infotel or its insider

In course of auction, a prominent financial newspaper (Economic Times) on 10th June 2010 (15th day of auction) published a front page story about the likely entry of Reliance Industries Limited (RIL), India's largest private sector company, into the telecom sector through a takeover of the winning bidder of the BWA spectrum. The newspaper also mentioned about the likelihood of takeover of Infotel. It was stated in the news item that the RIL board had met recently to approve the plan of take over. It was also published that "Himachal Futuristic's arm Infotel is seen as a prime target for RIL. With the bids for All India BWA Spectrum touching Rs 12,257 crore on Wednesday (9th June 2010), the HFCL may not have funds to bid for more" It was therefore reasonable to conclude that this news item would influence the bidding behaviour of other bidders in the on-going auction proceedings. The leakage of confidential information had its impact immediately. India's No 1 UASL Bharti Airtel which was competing for Delhi and Mumbai since the initial rounds withdrew from the bidding for these metros on 10th June within hours of the publication of news item. The e-auction thereafter ended on the forenoon of 11th June 2010 after 117 rounds.

The above-mentioned news item also tried to convey the confidential information that Infotel, a tiny ISP was still in the run in collaboration with RIL when very few bidders were left in the fray as under normal circumstances one would tend to believe that all small bidders would have exited the auction process by then (14th Day of auction) and only major UASL and MNCs were expected to be slugging it out. In contrast all bidders who had quit by that time were either UASL like Vodafone, Idea or UASL (TTSL and RCL) promoted ISPs and Spice, a newly created ISP.

It is apt to refer in this context the provisions of paragraph 6.6 of the NIA on “Collusion and other prohibited behaviour” which stated that “the Government of India reserves the right to disqualify any bidder that releases confidential information²¹ with the effect or intention of modifying the bidding behaviour of other pre-qualified bidders”. It was therefore evident that Infotel had violated this provision as their continued participation (as on 9th June 2010), which was ought to be known to them only, was leaked to outsiders/other bidders through newspaper so as to influence the bidding behaviour of other bidders and was therefore liable to be disqualified immediately. As per paragraph 4.1.1, on “Confidentiality”, bidders and insiders were prohibited from conveying any confidential information to any other person, including any other bidder or its insiders. Bidders were also not permitted to disclose the status of their participation, including whether they continue to bid in any or all service areas, in any of the auctions, until the completion of the auction. However, DoT did not take any action to investigate the release of the confidential information and the highly unusual bid activity of Infotel.

In their reply, DoT admitted that RIL was at the best an insider of the Infotel but did not think it fit to get the matter investigated. The contention of DoT is bizarre and highly questionable. RIL could not be the insider of a small company of Infotel. It would be other way round- Infotel was a front company of RIL. The relationship between RIL and Infotel needed to be investigated by an independent agency as the sequence of events clearly suggest that Infotel with a net-worth of Rs 2.49 Crore was put up as a front company by RIL, India’s largest private sector company to participate in the auction on their behalf. Even if for argument sake it is accepted that RIL was insider of Infotel, neither they nor Infotel were permitted to release confidential information or disclose the status of their participation, including whether they continue to bid in any or all service areas, in any of the auctions, until the completion of the

²¹ Confidential information means any non-public information, which, if known to other bidders, would be likely to affect the price that other bidders would be prepared to bid in the auctions or the bidding strategy that other bidders would adopt. Such confidential information shall include (but not necessarily be limited to) the Bidder’s business case, auction strategy and the highest price it is willing to bid for spectrum in any service area. (Clause 4.1.1 of the NIA)

auction. Thus Infotel was liable to be summarily disqualified before or after the auction was completed in terms of 4.2.1 of the NIA.

3.10 Approval of the Provisional results of Auction by IMC without scrutiny of audit trails

The IMC met on 11th June 2010 at 3.00 pm to approve the provisional results of the auction of BWA spectrum. The final winning bid for Rs12847.77 crore was submitted by the Infotel, a small ISP. As per prescribed procedure, the provisional result of the auction was to be submitted to the IMC chaired by Member (F), Telecom Commission, along with audit trails of the auction history to be submitted by the auctioneers for their scrutiny. The comments of the auctioneers, including recommendations, if any were also to be made available to the committee.

While approving the provisional results, the IMC did not appear to do any scrutiny of the audit trails submitted by the auctioneers, as per records provided to audit. Had the audit trails given by the auctioneers been scrutinised, the IMC would have become aware of the abnormal bidding behavior of the Infotel right from the 1st round of the auction till the end of the auction. As the capability of the bidder to pay the bid amount was limited, especially when the unusually high bid on the part of Infotel was very evident, the IMC would have been duty bound to ascertain whether Infotel was a proxy bidder for someone else and ascertain the identity of the principal behind the proxy bidder. Further, the fact that the winner was a small Company with a net worth of just Rs 2.5 crore and their limited financial capacity could hinder their paying the high bid amount, did not seem to have been a concern enough for the IMC. Even though, at that juncture, the IMC should have satisfied itself that the bidding was in a fair and transparent manner and the winner would indeed be able to pay to the Government of India, the bid amount within the stipulated 10 days. Even after the takeover of Infotel was announced by RIL in the evening on 11th June 2010, the members of the IMC did not consider it necessary to examine the impact of this development on the objectives of the auction and find it judicious enough to satisfy themselves that the auction process was concluded in a fair and transparent manner with no rigging through collusion and in conspiracy with a hidden bidder.

The IMC therefore appeared to have failed in discharge of its responsibilities relating to oversight of the auction process.

3.11 Infotel sold the company after Provisional Results of Auction were declared on 11th June 2010

Immediately after completion of auction of spectrum in the F/N on 11th June 2011, the company increased the authorised share capital by 2000 times from Rs.3 crore to Rs 6,000 crore at an extra ordinary general meeting, called at the short notice of a day, of the shareholders of the company in the afternoon on 11 June 2010, a few hours after closure of the auction of BWA

spectrum and initially issued the 75 percent share to the Reliance Industry Ltd (RIL), a listed company, thereby giving the control of the company to the latter and making itself a subsidiary of the RIL even before the increase in the authorized share capital of the IBSPL was registered by the ROC. A week later, the Infotel was made a Public Limited company and, the share of the RIL was increased to 95 % in the Infotel. RoC Chandigarh registered the Infotel as Public Limited company on 19 July 2010.

3.12 RIL announced the takeover of the Infotel, hours after closure of the BWA auction, confirming proxy and collusive bidding by Infotel

In matter of hours after completion of auction process, RIL announced that they had entered into an agreement to acquire a substantial stake in Infotel and would own 95 % of the equity at Rs 4800 crore, making the Infotel a subsidiary of the RIL. It was therefore quite apparent that the Infotel was in serious consultation with the RIL for quite some time when the auction process was still on. As a matter of fact, Mr Anant Nahata, the promoter- Director of the IBSPL, who had also submitted the application on the behalf of IBSPL for participation in auction, went on electronic media in an interview with a prominent financial news channel on 11th June 2010 to confirm that they had been in talks with the RIL during the course of auction process and that was the reason for swift sale of the company on the date on which the auction was completed. This was in gross violation of the confidential clause of the NIT which had prohibited bidders and insiders from conveying any confidential information to any other person, including any other bidder or its insiders. Bidders were also not permitted to disclose the status of their participation, including whether they continue to bid in any or all service areas, in any of the auctions, until the completion of the auction. Further, the take- over was announced even before the final results were approved by the competent authority of the Government of India.

3.13 DoT did not brief the CoS regarding the RIL's takeover of Infotel and results of verification of audit trails at the time of approval of the provisional results

Again, the High Powered Committee of Secretaries consisting of the Finance Secretary, Secretary Planning Commission and Secretary, DoT, under the chairmanship of the Cabinet Secretary for Auction of 3G and BWA spectrum met on Saturday, 12th June 2010 to consider the recommendation of the IMC for approval of the Provisional results of the auction of BWA spectrum. It was informed that the "auctioneer was satisfied with the conduct of the auction process and throughout the auction and there were no indications of any collusive or coordinated bidding". The Committee was also informed that the details of the BWA auction including the provisional results were scrutinized by the IMC and recommended for approval. Issues that High Power Committee failed to notice and act upon were:

- The Pan India winner was an unknown small Indian company, with little technical experience and financial strength to fulfill the objectives of the BWA auction in the telecom sector;
- The winning bid (Rs.12847.77 crore) was submitted by a tiny ISP with a meager resources (net-worth of only Rs.2.5 crore, one subscriber and turnover of less than Rs 15 lakh) and hence their financial capability to pay the bid amount which was disproportionately high to their declared financial background. This was particularly important since four major telecom operators, viz., Vodafone, Idea, RCL promoted ISP and TCL promoted ISP, had exited the auction without winning bid for any service area.
- RIL announced the takeover of IBSPL, the lone Pan India bidder of the BWA spectrum on the afternoon of 11th June 2010, the date of completion of the auction and was covered widely in the electronic media on 11th June and print media on 12 June 2010.

The turn of events immediately after the completion of the auction process were obvious signals which should have prompted DoT Management and the High Power Committee to get the whole process examined to confirm that the rules of the game were not violated at any stage. The CoS also did not obtain the report of scrutiny of audit trails submitted by the auctioneers from the IMC before approving the provisional results of the auction.

DoT in reply to the audit observations stated that the electronic auction system was not breached and at the end of auction, there were 5 operators fighting for the spectrum in BWA. It was also stated that the concerned authorities transparently shared & approved the auction results through a well-defined process and there was no case to disqualify any bidder. The fact that the entire bid amount was received in the stipulated time frame and there was no litigation in this case substantiated that the auction was conducted meticulously and in a transparent manner, it was informed. On the issue of taking over of Infotel by RIL and the failure to take notice of apparent manipulation, DoT informed that infusion of equity is permitted as per prevailing guidelines and there was no need for DoT to brief CoS or any other agency in this matter. DoT also took the stand that there was nothing in the NIA or in auction rules to take notice of any such activity and all that was written in press.

DoT's justifications were self-serving and not convincing because a small ISP with negligent presence in the sector being able to attract substantial equity infusion on the strength of their winning BWA spectrum, and the admission of its promoter that talks were on with RIL even during the auction process were clear indications that the confidentiality of the auction process had been violated to make unfair gains to the winner. The explanation that the NIA or auction rules did not provide for taking notice of such activities and all that was written in press

was unacceptable as it amounted to taking shelter behind technicalities to evade responsibility for facilitating entry of a company that did not participate in the bidding in the telecom sector.

3.14 Apparent rigging of the auction through violation of the auction conditions/rules by the Infotel

DoT was monitoring the auction process closely through IMC. As per auction procedures, the auctioneer was required to give daily progress reports on the auction, which was to be analysed by the IMC. The all-out stunning bidding by Infotel a small company right from 1st round on the first day till the last round on the last day of the auction beyond their known sources of funds/means would have been evident, had the IMC scrutinized the BWA auction data and audit trails provided by the auctioneers on 11th June 2010 to them before or even after the approval of the provisional results of the auction. Even auctioneers failed to notice the aberrant behavior of the Infotel in comparison to other bidders. It was obvious to any observer that the bidding of Infotel was inconsistent with their financial capabilities. This should have raised alarm bells regarding possible breach of conditions on confidentiality in the NIA and also likely violation of FEMA and other related Acts of the country. DoT, however, did not apply due diligence and look into the extraordinary behavior of Infotel in the bidding for signs of colluding with a third party or acting as a proxy bidder on behalf of another company.

Release of confidential information with the effect/ intention of modifying bidding behavior was prohibited as per the auction conditions and bidders and insiders were prohibited from conveying any confidential information to any other person, including any other bidder or its insiders. Bidders were also not permitted to disclose the status of their participation, in bids in different service areas until the completion of the auction. Despite being made aware of the progress of auction DoT/IMC/CoS did not consider it fit to investigate the unusual bid activity of the Infotel which pointed to the possibility of violation of confidentiality condition.

In reply, DoT stated that bidders withdrawing their bids are normal for any auction and that it could not indicate collusion. Denying any malpractices in the auction process, DoT also informed that none of bidders had violated of the conditions of NIA.

Further, because of the better NIA conditions, auction rules and a transparent process, 7.34 times the reserve price could be received through the auction.

Though it is accepted that the auction fetched a price several times higher than the reserve price, the subsequent events revealed that the very basis of fixing lower reserve price for BWA spectrum (one-fourth of the 3G spectrum reserve price) was overturned with the resultant creation of an apparent monopoly in 4G spectrum based services. Further, one of the prime objectives of the auction – “Obtain market determined price for the spectrum through a

transparent process” took a severe beating as the Pan India winner of the BWA spectrum, **Infotel**, a newly created tiny ISP with Rs 14.78 lakh revenue and one subscriber, adopted highly questionable methods- presenting an altered EMD with apparent support from a hidden third party, bidding for all SAs from the first round of the auction until last round of the auction as a front company based on apparent tie up with the non participant big private sector company, thereby defeated the well established UASL bidders and telecom MNC. The entire auction process appears to be rigged by the Infotel in collusion with the RIL. Even other objectives of the BWA spectrum do not appear to have achieved as the prime objective of the TRAI’s recommendation in 2006 was to take broadband internet services to the rural and remote areas of the country. In the last four and half years, 4G services have been started only in a few cities by a few operators. As a result, the revenue from spectrum sold has been minimal. Moreover, the Government had to agree to refund the auction price of more than Rs 11000 crores in January 2014 to the BSNL and MTNL. Thus, confining the success of the auction for a valuable natural resource, to mere finances without ensuring transparency, equity and actual service roll out is a clear frustration of the Policy goals and not acceptable in a democratic society, especially when it is conducted by a Government Department. Further, events that unfolded post completion of the auction proved that Infotel was a party in conspiracy and rigging of the auction process for obtaining a pan-India spectrum allotment for a non-participant Company.

3.15 Audit observations : On analysing the events narrated above, Audit observed that:

a. The confidentiality clause of the NIA prohibited bidders from disclosing the status of their participation, including whether they continue to bid in any or all service areas, in any of the auctions, until the completion of the auction. The said condition of the NIA also prohibited bidders and insiders from conveying any confidential information to other persons. The revelations of the Promoter of Infotel that he was in talks with RIL during the auction process and release of confidential information in the print media regarding their continued participation in the auction up to 14th day clearly established that RIL had a dictating influence on the bidding behaviour of Infotel and they together were responsible for influencing the bidding behavior of other bidders which was as such a breach of the confidentiality clause of the NIA.

b. All the information on the intentions of Infotel and the strategy of RIL that were available in the public domain were sufficient materials to invoke the attention of DoT Management and to raise doubts on the adherence to the confidentiality conditions by the winner of Pan India BWA Spectrum licence. But the IMC, despite all the above facts being available did not find it judicious to satisfy them selves that the auction process was concluded in a fair manner. Had DoT scrutinized the audit trails provided by the auctioneers and, investigated the

Unusual behaviour of Infotel

- Submission of EMD of Rs 252.50 crore- a highly disproportionate sum as compared to their net-worth (Rs 2.49 crore) ;
- No mention of margin money against the EMD of Rs 252.50 crore in notes to the accounts whereas 100% margin money paid against BG of Rs 10 lakh was mentioned;
- Alteration of EMD at the place of name of the beneficiary;
- Infotel's bid (Rs 12847.77 crore) was 5000 times of their net-worth;
- Infotel bid for all service areas in almost all rounds of auction;
- Infotel was Provisional winner Ranked 1 in 2564 out of 2574 auction rounds;
- Admission of the promoter of Infotel that they were in talks with RIL in course of the auction process;
- Release of the Confidential information regarding continued participation of Infotel on the 14th day of auction;
- Infotel sold 95 % share of the company within hours of the completion of the Auction;

issue of take-over of the Infotel by the RIL within hours of the completion of the auction of the BWA spectrum, the leakage of confidential information, breach of confidentiality clause, collusion of bidding etc would have become evident and thereby DoT could have restored the sanctity and transparency of the auction process by cancelling the allotment of Pan-India spectrum to the Infotel and forfeiting their BG.

Responding to the above observations, DoT replied (July 2014) that there was nothing on record to show that Infotel have violated any of the NIA conditions including confidentiality conditions. DoT also stated that as the participants were in compliance with the published NIA conditions formed by the Government, there was no reason for the ASC and IMC to intervene. Breach of confidentiality clause by any bidder was not observed. As per clause 4.1 of NIA 'insiders' were permitted for a bidder and one 'insider' cannot share any information with any other bidder or 'insider of that bidder with respect to bidding. The role of RIL can at best be termed as that of an 'insider' as defined in the NIA. As regards the takeover of Infotel by RIL it was informed that the deal between Infotel and RIL was a case of equity infusion and not sale. Infusion of equity was permitted as per Companies Act and the guidelines of DoT and there was no violation by Infotel of any of the terms and conditions of the NIA and the Auction Rules.

The admission of the DoT that RIL was an insider of the Infotel defies logic and reasoning. While Infotel was a newly created ISP with Re 2.49 crore net worth, one subscriber and a turnover of less than Rs 15 lakh, RIL was the largest private sector company of the country with turnover of over Rs 400000 crore. It was therefore apparent that Infotel acted as a front company of the RIL rather than RIL being the insider of the Infotel. Even conceding that RIL was the insider of the Infotel, they were forbidden from leaking the confidential information regarding bidding status of the Infotel to the media so as to influence the bidding behaviour of the other participants like Bharti Airtel. Thus collusion of Infotel with RIL right since submission of the application for the auction in March 2010 till completion of the auction needed to be thoroughly investigated by an independent agency and if found guilty, allotment of the BWA spectrum should be cancelled along with criminal proceedings to be launched against them for breach of trust, misrepresentation of facts with a view to make pecuniary gains.

Viewing the conditions in the NIA in a very literal sense, without imbibing the spirit behind their incorporation in the Notice or their relevance in the conduct of the auction in a transparent and fair manner, was not acceptable. We feel that an outsider, a large Company, liaising with a pre-qualified bidder Company during the auction process with an interest to acquire the same have had an impact on the whole bidding process. As per the conditions in the NIA, confidential information is 'any information if known to other bidders would be likely to affect the price that the other bidders would be prepared to bid and would include auction strategy, highest price it is willing to bid'. The strategic alliance between Infotel and RIL having an adverse impact on the bidding pattern and its transparent conduct on other bidders cannot be ruled out. By stating that RIL could at best be termed as an 'insider', DoT has admitted that they were aware of a tie-up between these two companies and thus a possible breach of the conditions of confidentiality in the NIA. DoT should also fix responsibility on the members of the ASC and IMC for the lapses committed by them in course of the oversight of the auction process.

Chapter 4

Events Post Auction

Obtaining a market determined price for BWA spectrum through a transparent process was an important objective of the Government while deciding to take the auction route. As the administrative agency responsible for implementing Government policies on telecom matters, DoT was responsible for designing and conducting the auction in a manner conducive to the achievement of the objectives. It was thus important to ensure that the participants and ultimate winners of the auction had bona fide intentions of rolling out services using the allotted spectrum and also to put in adequate mechanism to monitor the activities of the bidders.

Therefore, it was imperative, on the part of IMC, to be vigilant for signs which could suggest possibility of undesirable or prohibited activities. The bidding pattern of Infotel as discussed in Chapter 3 of this Report and the events that unfolded post closure of the auction, as detailed below, indicated that the Infotel was bidding at the behest of another Company and its highly abnormal bidding behavior had influenced the decisions of other qualified bidders.

4.1 Infotel sold 95 % of the shares to RIL for an unfair gain

Major developments during 10-12 June 2010	
Date	Activity
9 June 2010	110 rounds of auction were completed. Pan India spectrum price reached Rs12257 crore. The company worst affected was Infotel, aiming for Pan India spectrum.
10 June 2010 Morning edition	A prominent financial newspaper publishes a front page story about likely entry of RIL into telecom sector through take-over of winner of BWA auction. Infotel was named for takeover. It was also made clear that they were still in the run and they had the backing of RIL.
10 June 2010	Bharti was competing for Delhi and Mumbai SA since beginning. They withdraw from bidding for Delhi after 111 round, followed by withdrawal from Mumbai in 115th round.
11 June 2010 FN	Results of e-auction announced in the forenoon.
11 June 2010 3 pm	IMC approves provisional results of auction, apparently without scrutinising the audit trails provided by the Auctioneers.
11 June 2010 4 pm	Infotel calls EGB to raise authorized capital from Rs.3 crore to Rs. 6,000 crore.
11 June 2010 Evening	RIL confirms take-over of 95 % shares in Infotel at Rs 4800 crore through a press release.
11 June 2010 Evening	Mr. Anant Nahata, the Promoter- Director of the Infotel confirmed on CNBC that the Company was in talk with RIL in between the auctions/since beginning of the auction.
12 June 2010 11.30 AM	CoS met to approve the provisional results of BWA spectrum, as recommended by the IMC. CoS approved it and the final results were announced.

After the increase in the authorized share capital of the IBSP from Rs. 3 crore to Rs.6000 crore on 11th June 2010, Infotel went ahead and allotted 74.90 lakh shares (75%) amounting to Rs.7.49 crore to RIL even before the alterations in the memorandum of association of the company was registered by the Registrar of the Companies. Consequent upon increase in the authorised share capital of the Company was registered by the Registrar of Companies (RoC), neither the registration letter of the ROC certifying the altered Memorandum of Agreement (MOA) nor the date of allotment of these shares, was put on the website of the ROC. On 17th June 2010, at a meeting held on short notice, RIL representative claimed that they owned 75 % of the shares of the Infotel. Infotel then authorized its Board of Directors to further issue and allot 475 crore equity share of Rs.10/- each amounting to Rs. 4750 crore to RIL and 25 crore equity share of Rs.10 (Rs.250 crore) to Infotech Digicomm Pvt. Ltd., aggregating to the equity capital of Rs.5, 000 crore of the Infotel. The equity capital of Infotel has since increased in phases to Rs 30,000 crore.

The company also decided to change from a Private limited company (Infotel Broadband Services Pvt. Ltd.) to Public Limited Company (Infotel Broadband Services Ltd.) on 17 June 2010. This was registered by the RoC, Chandigarh only on 19 July 2010. Thus, within hours of the winning the BWA spectrum, Infotel had sold 95% of its shares at Rs. 4800 crore thereby converting the Company into a subsidiary of the RIL²².

4.2. Lack of effective Oversight of the DoT officials later on also

Even when the matter regarding the change of the share-holding pattern of the company was reported by the Infotel to the DoT on 22 June 2010 within a few days of BWA auction following an agreement with RIL on 16 June 2010, the DoT did not choose to investigate the matter as to whether there was any semblance of collusion in bidding pattern during auction process and whether any breach of confidentiality clause of the NIT had taken place. It was particularly surprising because the audit trails given by the Auctioneers was already available with them. It would have taken a couple of days, if not few hours to scrutinise the bidding behaviour of Infotel. It was of utmost importance to do so as one of the primary objectives of the auction was obtaining a “market determined price of BWA spectrum through a transparent process”. Had the DoT investigated the issue of take-over of the Infotel by the RIL within hours of the completion of the auction of the BWA spectrum, the leakage of confidential information, breach of confidentiality clause, collusion of bidding etc would have become evident and thereby DoT could have restored the sanctity and transparency of the auction process by cancelling the allotment of Pan-India spectrum to the Infotel and forfeiting the BG.

²² The Company was subsequently renamed as Reliance Jio Infocomm Pvt. Ltd in 2013.

Further when the change in the Nature of the company from a Private Ltd company to the Public Ltd Company was reported to the DoT in the September 2010, the DoT called for other relevant information including share holding pattern of the company before and after the change in the name of the Company. The Infotel, by then a subsidiary of the RIL, did not furnish the requisite details for more than a year. It was only after a year, the DoT realized that the Infotel had not submitted the details. In pursuance to the reminder from the DoT in October 2011, the Infotel furnished the requisite information in November 2012 i.e. well after two years from the date of solicitation of the information.

Even when the information was furnished by the Infotel to the DoT in November 2012, it was not examined by the DoT. As the Infotel, by then a subsidiary company of the RIL, had not revealed the fact that the share holding pattern of the Infotel had undergone major changes within hours/ days after the auction of BWA spectrum i.e. share holding pattern of Infotel (99.99 % share with IDPLC in March 2010 had been reduced to 5 % in June 2010), DoT was not able to detect these changes and the request of the change of the name of the company was accepted in January 2013.

DoT has not investigated the issue even when the audit note on the inadequacy of the eligibility criterion and the issue of major change-over in the share-holding pattern of IBSPL within days of the auction of the BWA spectrum was submitted to them in September 2013. DoT also did not scrutinise the audit trails submitted by the Auctioneers either before the declaration of the provisional results or after the auction. Hence DoT did not take any action to restore the sanctity and transparency of the auction process of the BWA spectrum by cancelling the allotment of the spectrum and levying exemplary punishment/or prosecuting the company for the criminal offences under IPC.

4.3. Post auction Permission to provide Voice services on BWA spectrum

In August 2008, DoT had issued detailed guidelines for auction and allotment of spectrum for BWA services wherein clause 3.1 stipulated that “*Spectrum shall be auctioned in the 2.5 GHz and 2.3 GHz bands for data services....*” During the legal vetting of NIA for auction of 3G and BWA spectrum it was also indicated by the Department of Legal Affairs (notes dated 20.01.2010) that “*DoT proposes to publish NIA for auction of 3G and BWA spectrum. 3G telecom services would enable transmission of voice, data, picture etc., whereas BWA will enable transmission of data, picture etc. only.*”

In contravention to the TRAI recommendation and also the conditions in the NIA issued by DoT in connection with the 3G/BWA auction, DoT, in the period post auction, permitted

ISPs to provide mobile voice service using BWA spectrum. This resulted in ISP licensees (with BWA spectrum) being at par with UAS/CMTS licensees with 3G spectrum.

The post auction interpretation altered a fundamental distinction between 3G and BWA spectrum justifying their separate auction and this not only vitiated the BWA auction per se but also resulted in non-transparent entry of a new telecom player having a virtual monopoly in 4G/BWA telecom service without paying matching contribution to the public exchequer. This is unfair, non-transparent and inappropriate, as explained under:

4.4. Infotel requested for allocation of MCC and MNC Codes in August 2011

In August 2011 IBSPL requested for allocation of Mobile Country Code (MCC) and Mobile Network Code (MNC) Codes on the plea that the same will be pre-requisite for providing various data and multimedia BWA services using LTE Technology. In this regard the comments of TEC were sought by the DoT. TEC held that- “the capability of LTE technology (to be used for providing services using BWA Spectrum) are much wider in scope than what is permitted in the ISP license and since LTE is a technology, which can be used for providing full-fledged mobile services along with high speed data services, it is possible for an ISP license to use LTE for both internet services as well as full-fledged mobile services using LTE subscriber terminal. Currently full mobile services were permitted under UASL license category only. Therefore these aspects may be examined by DoT.....” A committee was formed during November 2012 under chairmanship of Advisor (Technology) to examine the issues related to allocation of MCC & MNC codes to ISPs holding BWA spectrum but the issue was not finalized till date. Meanwhile Reliance Jio Infocomm Limited (Formerly, Infotel) were granted Unified License(UL) on 21.10.2013 and subsequently the MCC and MNC codes were issued to Reliance Jio on 12th Dec 2013.

In reply it was stated that-

- (i) MCC and MNC are part of International Mobile Subscriber Identity (IMSI) and are essential for various functions including subscriber identification, network identification, roaming, mobility etc. These codes are essential for any subscriber terminal in an LTE network, **even for data only services**. The TEC observations were in line with above and the matter was referred back to DOT to evaluate the licensing angle.
- (ii) Although allocation of MCC and MNC codes can technically enable an operator to set up a Public Land Mobile Network (PLMN), no operator could have offered services beyond the scope of respective license.

(iii) It is further to state that Testing Resource allocation for new technologies is a well-known standard procedure in DOT. These resources have been allocated in past to MTNL for testing IS95 technology. Even spectrum has been allocated to test various technologies from time to time for testing.

(iv) The committee examined all the issues and MCC and MNC codes were allocated to the BWA spectrum holders.

This indicates that Infotel initially tried to get the permission to provide voice services, post auction, through the request for allocation of MCC and MNC Codes. The observations of TEC proved that Infotel had entered the auction arena with the ultimate intention of providing voice services also and DoT by putting a condition that only data services can be provided with BWA spectrum failed to put forth the full potential of the spectrum before the prospective bidders. After getting setback on this issue due to TEC remarks, it now got the opportunity to capture Pan India mobile voice telephony with 20 MHz BWA spectrum through getting UL. Therefore, whether the full value of the spectrum was realised in the auction or not cannot be assured.

4.5. Permission to provide Voice services on BWA spectrum post its auction

In April 2012 TRAI had furnished recommendations on Guidelines for Unified Licence/Class Licence and migration of existing licensees. This was deliberated by DoT Committee under Chairmanship of Member (Technology) and subsequently by Telecom Commission. It was decided that clarification may be sought regarding process for liberalization of the spectrum won through auction for 3G and BWA as well as for separate guidelines for migration from respective license to UL. TRAI's clarifications dated 12.05.2012 on this issue was again deliberated by DoT committee under chairmanship of Member (Technology). The DoT Committee held (August 2012) that ***3G/BWA spectrum was not sold as a liberalized spectrum*** and held that had the Spectrum Blocks been specified and declared as liberalized spectrum blocks, the bidders would have taken informed decision for putting up their bids and the market discovered price would have been different and **post auction decisions of such nature will not be appropriate**. These recommendations were considered by the Telecom Commission and it was decided (September 2012) that, given the complexities of UL regime, further detailed analysis and deliberations were required. It was felt that there were serious implications in the implementation of the framework recommended by TRAI due to complexities including eligibility requirements for new entrants as well as for migration of existing licensees for services other than access service. Accordingly, another committee under

Adviser (T) was constituted on 18th September.2012 to go into the issue and suggest the way forward.

The issues were however not finalised until January 2013. On 25th January 2013, it was decided to expand the existing committee by including all the senior officers of the DoT i.e. Members of the Telecom Commission in DoT namely M(S), M(F), M(T) & Chairman TC²³ along with AS(T) and Sr. DDG (TEC) so as to expedite the process. Order for the same was issued on 11th February.2013 which was however made effective retrospectively from 25th January.2013.

The Committee under the Chairmanship of Secretary (T), on the issues pertaining to migration of ISPs to UL in their report (on 13 Feb 2013), felt that there was no bar or any issue in migration of an ISP License to the new UL subject to the fulfilment of eligibility criteria. The Committee took the note of the fact that an ISP licensee which migrate to UL including access service, would be entitled to provide voice services and recommended *“for migration of ISP licensee with BWA spectrum to Unified License(UL) with authorisation of providing access services, which would enable them to provide mobile voice service using BWA spectrum, an additional fee equal to the difference between the entry fee for Unified Access Services License (UASL) and entry fee of ISP Category ‘A’ should be levied, apart from the entry fee as applicable for migration of ISP licensee to UL”*. The Telecom Commission on 18th February 2013 agreed with the recommendations of DoT Committee and the aforesaid recommendation was approved by Hon’ble MoC&IT on 5th March 2013. Accordingly, *“Guidelines for grant of Unified License”* was issued on 19th August 2013.

Accordingly, RIL was given authorization to provide voice services also, hitherto provided by UAS/CMTS licensees, on payment of an entry fee which was the difference between the entry fee for participation in the 3G/BWA auction in 2010 and entry fee for UAS/CMTS licensees fixed in 2001 for the 4th Cellular licenses. RIL paid RS.1658 crore in August 2013 and became a Unified Licensee (UL).

The decision to grant permission to an ISP licensee with BWA spectrum to operate in the voice telephony space also post auction of the BWA spectrum, despite reservations raised on its propriety by a Committee headed by Member (T) of DoT in August 2012, was taken ignoring the following important factors.

a. The entry fee i.e. RS.1658 crore was basically discovered in 2001 through the bidding for the 4th Cellular licenses. Market conditions since then have changed drastically, and hence this price should have been modified to reflect the present value. Taking into account the cost

²³ Chairman TC and Secretary DoT were due to retire on 31 March 2013.

inflation in the economy for the period from 2001 to 2013 the value of license would have been at least RS.3655²⁴ crore. Significantly, the Telecom Commission did not factor the 4:1 disparity in the reserve price of 3G and BWA spectrum that would impact the auction outcomes.

b. The DoT committee under chairmanship of Secretary (T) dated 13.02.2013, had noted that noted that the concept of liberalization of spectrum was not mentioned in NIA of 3G/BWA auction and this concept has been introduced after TRAI recommendations on auction of spectrum of April 2012. But this issue was not considered for arriving at the additional fee to be levied for migration of ISP licensee to UL. This was important because the difference between the proportionate prices for 20 MHz band size in 2.1 GHz spectrum band (3G spectrum) and 2.3 GHz spectrum band (BWA spectrum) was RS. 20653 crore as per 2010 auction price. The ISP licensees, with the permission to offer voice telephony with the BWA spectrum won in 2010 auction, were thus brought at par with UAS/CMTS 3G spectrum winners. Infotel, now Reliance Jio Infocomm, were the biggest gainers as they got an advantage of RS.22842 crore i.e. the difference of the proportionate prices for 20 MHz block size in 2.1 GHz spectrum band (3G spectrum) and 2.3 GHz spectrum band (BWA spectrum) plus the Net Present value of the entry fee for UASL at the end of FY 2009-10 (*Rs 20653 crore Plus Rs 3847²⁵ crore- Rs 1658 crore*) due to the policy change introduced after completion of the BWA auction. Had the Spectrum Blocks been specified and declared as liberalized spectrum blocks i.e. open for all technology/services in the NIA in February 2010, the bidders would have taken informed decision for putting up their bid and the market discovered price would have been significantly different for 3G and BWA spectrum.

c. Another important issued which DoT did not consider while permitting voice telephony to ISP licensees was the difference in the rate of Spectrum Usage charges (SUC). While UASL/CMTS pay SUC for the quantity of spectrum they hold for voice services and an additional 1% SUC for BWA services, an ISP with BWA spectrum need to pay SUC for BWA spectrum only i.e., only 1% even though the services they could provide include voice also. This was discriminatory in nature and amounted to denial of level playing field for UAS/CMTS licensees.

The biggest beneficiary in the process was RIL as they were the only ISP licensee holding 20 MHz of Pan-India BWA spectrum. After three years of auction, the Company which was initially an ISP licensee was catapulted to a unified licensee who could offer both voice and BWA services with the spectrum they won in the auction.

²⁴ *There have been several sales of equity of new CMTS/UAS licensees in the last 7-8 years. The market prices have been several times, the price discovered in 2001.*

²⁵ *Net Present value calculation was based on Prime Lending Rates (PLRs) of State Bank of India (SBI) for a period of 8 years (2002-03 to 2009-10) to workout average prime lending for the said period and the same has been estimated as 11.09%.*

On this being pointed out by audit, it was replied that the issues raised related to the Policy decisions of the Government of India and does not come under the ambit of Audit as such. DoT further stated that Technology evolution in the telecom sector is a continuous process and technology and systems keep on evolving. The various policy decisions are taken after taking into consideration the relevant technologies existing at the moment. Explaining the recommendations of the DoT Committee, it was stated that the DoT committee arrived at the view that since the NIA permitted both UAS licensee and ISP licensee to participate in the BWA spectrum auction or a non-licensee to participate in the auction and acquire either UAS or ISP license subsequently, there were no inherent limitations in so far as the use of BWA spectrum in providing voice services is concerned. Had the successful bidder of pan India BWA spectrum obtained the UAS license, he would have become eligible to use BWA spectrum to provide any of the services permitted under UASL including full mobile voice service. The views of TRAI (May 2012) in response to DoT's reference was also quoted to justify the decision. DoT also informed that as per the "Guidelines for grant of Unified License" dated 19.08.2013, the allocation of spectrum has been de-linked with the license and the pan India Unified License (UL) covering all services comes at a cost of only Rs.15 Crore as entry fee.

The reply was not convincing to us due to the following reasons: -

- At the outset, it is clarified that Audit has not questioned the policy per se, but only pointed out the gaps in the inputs that went into the formulation of the Policy. Audit has examined and assessed the correctness of the information or inputs that went into the framing the policy along with issues involved in implementing the policy.
- DoT's explanations quoting TRAI's views of May 2012 was flawed because TRAI's conclusion that "*the BWA spectrum assignee, whether holding a UAS licence or ISP licence, can migrate and obtain unified licence and the scope for provision of services would be uniform under the Unified Licence*" cannot be construed as an authorization for implementation of UL system which was introduced as part of Telecom Policy – 2012, with retrospective effect. Moreover, DoT should have been alert to the fact that the types of services that can be offered dictate the price of spectrum allotted through an auction process. Clause 3.1.2 (NIA document dated 25.02.2010), clearly stipulated that "*Services can only be offered subject to the terms and conditions of the licence obtained by the operator. Award of spectrum does not confer a right to provide any telecom services, and these are governed by the terms and conditions of the licence obtained by the operator.*"
- Two high-powered DoT Committees under the chair-person ship of Member (T) and Adviser (T) did not accept the arguments of TRAI for more 8 months. It was only when all five

member of TC including chairman i.e. Secretary DoT joined the Committee, this decision went through.

➤ Since BWA spectrum was not liberalised, hence converting BWA spectrum allotted in 2010, through an auction process, as ‘liberalized’ spectrum post auction cannot be justified and the same has resulted in undue favour to the ISP licensee with 20 MHz pan India BWA spectrum i.e. Reliance Jio Infocomm.

4.6 Spectrum usages rights and roll out obligations

Considering that BWA technologies were new in market and the high cost of acquiring spectrum for the license period of 20 years could affect the goal of keeping the cost for the service low, TRAI had recommended terms to emphasis / encourage its quick deployment and use. Accordingly, TRAI recommended that the **BWA spectrum licenses was to be valid for 5 years, renewable up to 20 years upon payment of spectrum acquisition fee every five years** and satisfaction of relevant terms and conditions in the license.

Further to ensure that operators used the allocated spectrum efficiently, TRAI found it relevant to impose some minimum obligation to prevent hoarding / inefficient use and incentives as reward for efficient use of spectrum. The recommendations of the Authority specified roll out obligations to cover -

- 25% rollout in rural SDCAs in the A, B, C Circles **within 2years** of allotment and
- 90% rollout in Metros and 50% in rural SDCAs **within a time line of 5 years**’
- 90% rollout **within 5years** to Local operators /captive network service providers

DoT, however in the NIA for the auction of BWA spectrum had specified the right to use the BWA spectrum **for 20 years** from the effective date of allotment, unless revoked or surrendered earlier. This revision of the right to use spectrum for 20 years, with an expansive roll out obligation of 5 years has resulted in BWA spectrum remaining mostly unutilised since allotment in 2010.

The roll-out status of service by the successful bidders is as detailed below:

Bidder>	Aircel	Bharti	Qualcomm	Tikona	Infotel	Augere
SAs won	8	4	4	5	22	1
Total Bid price	3438.01	3314.36	4912.54	1058.2	12847.77	124.66
Status of service provision as on October	July/August 2014- launch announced in 6 service areas	Service rolled out Kolkata- APRIL 2012 Punjab – March 2013	100% business sold to Airtel on 18.10.2013	Announced rollout in 2014	Announced rollout by late 2014 /early 2015	No rollout announced

2014	not rolled out	Karnataka April 2012 Maharashtra April 2012				
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The status /plan of roll out of service by the winning parties show that except for Bharti Airtel who had rolled out service within two years of the auction / allotment, none of the other winners of BWA spectrum could provide service. Thus one of the prime objectives of the auction i.e. to promote roll out of broadband services has largely remained unachieved as Bharti Airtel has only rolled out the services in a few cities till now. Aircel and Tikona have also just started in their services. As a result, the economic benefits of circle –wide deployments have not accrued to the nation.

4.7 Achievement of objectives of auction of BWA spectrum

Government had announced five major objectives while deciding to allot BWA spectrum through an auction process. These objectives were interlinked and as such achievement or fall out of one had an impact on others. Maximising revenue from the auction should ideally be from market discovered price arrived through transparent and competitive bidding. Roll out of services using spectrum would insulate from possible hoarding and thus would stimulate competition. Ultimately, all the objectives need to be achieved in cohesive manner because revenue maximisation can be achieved only when the product auctioned has a technology that would satisfy the market aspirations. In a highly vibrant telecom sector where market aspirations drive advancements, it is important to balance all these factors in the auction design.

Important objectives of BWA auction

- Obtain market determined price of spectrum through transparent process
- Ensure efficient use of spectrum and avoid hoarding;
- Stimulate competition in the sector;
- Promote Roll-out of Broadband services
- Maximize revenue from the auction

Audit findings discussed in this Report would prove that the strategies recommended by TRAI and selectively accepted and implemented by DoT defeated the objectives set forth by Government while deciding to auction BWA Spectrum. The transparency of the auction process was vitiated by the entry of a front bidder on behalf of a hidden large corporate, whose identity was not disclosed by the front company before commencement of the auction. This hidden corporate appeared to have enabled the front company to submit the EMD to the DoT, which the front company would have found extremely difficult to submit on their own, otherwise. Only on the backing this hidden business conglomerate, the front company, which hardly had the capacity to run the broadband services even in a service area on its own, bid for all service areas

from the first round of the auction till the last round of the auction. This illegitimate relationship between Infotel and RIL in the back of DoT and all other competitors has vitiated the sanctity of the entire auction process.

Efficient use of spectrum and avoidance of hoarding was an ideal objective to follow. However, gaps in the eligibility conditions and distortion brought in by the front company and the back door entry of a new entrant (RIL) in the telecom sector has badly delayed roll out of the Broadband services considerably and consequently the utilisation of spectrum has been minimal in the last four and half years. Another objective for the BWA Auction was to stimulate competition in the sector. By allowing this small front company Infotel to bid for all SAs, on behalf of their hidden masters (RIL) for a disproportionate sum via-a-vis their own net worth and allowing them to set the price, the objective of the Auction to stimulate competition in the sector was defeated as they have wiped out the competition and Infotel has become the monopoly by winning Pan-India spectrum. Thus, the expected surge in the competition in the sector has not fructified. The entry of Qualcomm , one of the large MNC in the Indian telecom sector had given rise to a hope of significant FDI in the telecom sector in foreseeable future but due to apparent rigging of the auction by the Infotel/RIL duo, they have also exited the sector. Surrender of the BWA spectrum by MTNL and BSNL in metros and Category A service areas has also diminished the competition in the Broadband sector.

Thus the only gains which had been boasted by the DoT of maximising the revenue (raising 7.34 times of reserve price of the spectrum) has also proved to be pyrrhic and short term only as made out in the chapter on financial implications suggests. Thus the Government has not been able to achieve its stated objectives of the auction even after nearly four and half years.

Chapter 5

Financial Implications

There is no doubt that the sanctity of auction for BWA spectrum was vitiated by Infotel in coordination with the India's largest private sector company RIL. There is already admission

of the MD of the Infotel that they were in talk with RIL since the beginning of the auction. Infotel had no financial strength to bid for Pan India spectrum i.e. for all 22 service areas from the first round till the last round of the auction. It is however difficult to estimate the implications of the decisions taken by the DoT on the auction proceeds. What would have been the auction proceeds if the auction was held in a transparent manner, is a difficult to estimate. What would have happened, had the Infotel been asked right questions on relevant issues i.e. what was the source of funding for the BG, how were they proposing to get funds for meeting the reserve price of Pan India spectrum etc. If DoT would have asked these questions before pre-approving the Infotel, perhaps Infotel would not have been so blatant and dominant player in bidding. In that eventuality, perhaps Bharti and Idea would have filled up the Infotel's position. It is a fact that Bharti's bid went up to in excess Rs 9000 crore until 101th rounds before coming down finally to Rs 3350 crore. We have to also keep in mind that there has not been much roll out of 4G/BWA services in the last 52 months. The nation has therefore lost considerably on this count. We however feel estimation of the impact on the basis of assumptions using econometric models would not be appropriate in the given scenario. We have therefore decided to make estimates of impact of the facts, wherever possible and leave other areas for authorities/agencies to put a number after due investigations.

5.1. Undue advantage to RIL at the cost of the exchequer

The auction for 3G and BWA spectrum were concluded during May-June 2010. Infotel, which held an ISP A category License since 2007 after paying entry fee of Rs 30 lakh, emerged as the only company which acquired pan-India BWA/4G spectrum outbidding major telecom MNCs and established Indian TSPs. The gaps in fixing the eligibility criterion and in the monitoring of the auction process by DoT, had enabled RIL, a company which had no transparent, legitimate and declared association with any bidder in the fray for BWA spectrum before the auction process, to influence the bidding behaviour of a small ISP, Infotel during the auction process and ultimately take over the Company on the date of completion of auction process. They thus could make a calculated back door entry into the telecom/wireless BB sector under the brand name Reliance Jio Infocomm.

Actions of DoT subsequent to the completion of auction had an adverse impact on the exchequer as discussed below:-

5.2 The price for migration of ISPs to UL was at a rate discovered in 2001

In 2013, the Government allowed RIL to migrate to Unified License (UL) and provide voice telephony (which was earlier prohibited), on payment of an entry fee of Rs 1,658 crore, which was the price fixed for providing mobile telephony in 2001.

The decision to charge Rs 1,658 crore as entry fee for an ISP licensee for obtaining permission to provide Pan India mobile voice service using BWA spectrum was approved by the DoT High-Powered Committee, Telecom Commission and the MOC&IT, as a means to fill the gap between the eligibility criterion stipulated for participation in the 3G / BWA auction in 2010. The fact considered for taking the decision was that UAS/CMTS Licensees had paid an entry fee of Rs. 1,658 crore for obtaining the respective licenses, while the maximum entry fee for an ISP license was just Rs.30 lakh. DoT Committee, Telecom Commission and the MOC&IT however ignored the fact that the price was basically discovered in 2001 through the bidding for the 4th Cellular licenses and the market conditions have since changed drastically and needed to be modified to reflect the present value. Neither the DoT Committee/TC under the Chairmanship of the Secretary DoT nor the MOC&IT felt the need for revision of the price in 2013, in spite of the Hon'ble Supreme Court of India cancelling 122 licenses granted in 2008 on the basis of the same entry fee stating that it was impossible for them to approve the action of the DoT applying a price discovered in 2001 for licences issued in 2008. In this connection, it was noticed that in the recommendation of DoT committee under chairmanship of Secy (T) dated 13.02.2013, it was observed that the concept of liberalisation of spectrum was not mentioned in NIA of 3G/BWA auction and this concept has been introduced after TRAI recommendations on auction of spectrum of April 2012. But this issue was overlooked while arriving at the additional fee to be levied for migration of ISP licensee to UL.

A conservative calculation considering the cost inflation index, the price of the license in 2013 should have been at least Rs.3847²⁶ crore. Had the Spectrum Blocks been specified and declared as liberalized spectrum blocks i.e. open for all technology/services in the NIA in February 2010, the bidders would have taken informed decision for putting up their bid and the market discovered price would have been significantly different for 3G and BWA spectrum.

By allowing Infotel, now Reliance Jio Infocomm, to migrate to voice at the price fixed for Mobile license in 2001 of Rs 1658 crore, the Company was allowed at least undue advantage of Rs 2189 crore on the price of license alone.

Besides the advantage in the cost of migration, we observe that Reliance Jio benefitted in a big way by getting into voice telephone space possessing only BWA spectrum. In the deliberations prior to auction and subsequently in the NIA for 3G/BWA spectrum, DoT had made it clear that the auction / allotment of 3G 'was to *enable transmission of voice, data, picture etc., whereas BWA would enable transmission of data, picture only*'. DoT's decision to allow ISP licensees with **BWA spectrum** to provide voice services had narrowed down the

²⁶ There have been several sales of equity of new CMTS/UAS licensees in the last 7-8 years. The market prices have been several times, the price discovered in 2001.

major advantage of 3G spectrum, and made BWA spectrum, with potential to provide LTE/4G service a better option to the telecom service provider. Audit feels the post auction interpretations and interventions have vitiated the sanctity of the entire auction process for reasons stated below.

Had the spectrum blocks been specified and declared as liberalized spectrum blocks i.e. open for all technology / services in the NIA in February 2010, the bidders would have taken informed decision for putting up their bid and the market discovered price would have been significantly higher for 3G and BWA spectrum. Infotel, now Reliance Jio Infocomm, with Pan India BWA spectrum was accorded gain of Rs 20,653 crore being the difference of the proportionate prices for 20 MHz block size in 2.1 GHz spectrum band (3G spectrum) and 2.3 GHz spectrum band (BWA spectrum).

DoT stated that spectrum in 2.1 GHz and 2.3 GHz could not be compared and priced at the same rate as their characteristics was different and hence spectrum in 2.3 GHz would be cheaper. The stand of DoT was not vindicated by their own actions in the past. BSNL and MTNL were given BWA spectrum in 2.5 GHz but they were made to pay same rate which were paid by the winners of the auction of BWA spectrum in 2.3 GHz.

Thus, DoT has provided the undue advantage of Rs 22842 crore by permitting the voice services to Reliance Jio Infocomm.

5.3 Unfair gain to Infotel

Within hours of winning the BWA spectrum, Infotel had sold 95% of its shares at Rs 4800 crore without making any investment in the company, thereby converting the Company into a subsidiary of the RIL. Infotel changed from a Private limited company to Public Limited Company on 17 June 2010. Thus, a company with a meagre net worth of Rs 2.5 crore by virtue of holding an ISP license could participate in the BWA auction and manipulate the loopholes in the auction process which enabled it to strike deal with a major non-participating Company RIL. It was evident that Infotel was a proxy company bidding on behalf of RIL. In the bargain the company could sell its stakes for a premium price. DoT on its part oblivious to the surreptitious dealings, allowed a valuable natural resource allotted to a licensee with the intention of supporting the Government's initiatives espoused in the broadband policy 2004 , to be traded for mercenary gains. RIL has also given a board level position to the representative of Infotel and has been awarding significant work orders to Infotel's other sister concerns since 2010. As a result of which, these companies have started earning significant profits since 2010;

5.4 Undue benefit to RIL on payment of lower Spectrum Usage charges

Spectrum usage charges (SUC) are payable based on the Adjusted Gross Revenue (AGR) from wireless service. DoT vide its 3G/BWA “NIA” dated 25.2.2010 and subsequent amendment in the UAS licence dated Sep 01, 2010, has mandated licensees using BWA spectrum to pay 1% of applicable AGR as annual SUC.

The Government, while allowing voice telephony to Reliance Jio, has not revised the SUC, on the recommendations of the TRAI, matching with what is being paid by the other UASL/CMTS operators who provide voice telephony. While UAS/CMTS licensees pay 3% to 5% depending on the quantum of spectrum they hold, Reliance Jio would pay just 1% of its revenue. This would not only disturb the level- playing field and provide significant undue advantage to Reliance Jio, but also cause huge loss of revenue to the Government over 20 year license period.

DoT stated that the SUC rate @ 1 % of AGR was notified for BWA spectrum in the NIA of the auction and hence any increase in SUC rates subsequently would have resulted into post-facto change of the provisions of NIA, violating the binding terms of contract by the Government. The stand of the DoT was contradictory to their earlier stand when they made major changes in the post auction period when they allowed voice services on BWA spectrum. DoT has taken inconsistent stand, benefitting the Reliance Jio in both ways, firstly by permitting them to provide voice service in the post auction period and secondly by vehemently opposing the recommendations of the TRAI to enhance the SUC charges of the BWA spectrum, post auction from 1% to 3 % to make an uniform rate of SUC charges for all telecom operators. Thus the Company has managed to obtain the benefits on both counts.

5.5. Failure to set aside additional 100 MHz spectrum for BWA/4G services

In September 2006, the DoT had already assigned 100 MHz spectrum in 3.3 GHz band to seven ISPs²⁷ in FDD mode for various cities across the country. TRAI had recognised (2006) that existing operators²⁸ having city-wise allocation of spectrum in 3.3-3.4 GHz band had not expanded the broadband services in rural areas. Therefore with the intention to aid expansion of internet /BB services to rural / remote areas, TRAI recommended for Circle wide deployment of BWA spectrum. It was then envisaged that at least 200 MHz of spectrum in the 3.3-3.4 GHz and 3.4-3.6 GHz bands should be made available for BWA services to accommodate growth requirements until 2007. In July 2008, in view of the technological changes in the international arena, TRAI again recommended auction of available spectrum in

²⁷ VSNL/TTSL, Spectranet, RCIL, Dishnet, Sify, BSNL, Bharti

²⁸ VSNL/TTSL, BSNL, Bharti, RCIL, SIFY, Spectranet & Dishnet DSL; 9 out of 153 ISPs

3.3 -3.4 GHz after shifting the allottees to 2.5-2.69 GHz band for BWA services, after making time bound efforts to get the re-farming of spectrum done in the 2.5-2.69 GHz band.

In July 2008, DoT decided to auction the available spectrum in 3.3-3.4 GHz separately after shifting the city based spectrum allottees to 3.4-3.6 GHz band. Despite that, DOT has not made serious efforts to shift other city based allottees to 3.4-3.6 GHz bands and auction the available spectrum in 3.3 GHz band even after six years. It was observed that some of the city based allottees like Bharti Airtel, Aircel etc still continue to have spectrum in the 3.3-3.4 GHz band while some others like BSNL have surrendered them several years ago. Further inspite of Supreme Court judgment in February 2012 to auction spectrum, some of these Private operators viz Bharti etc have been given extension for holding the spectrum in 3.3 GHz band without payment of any additional price for the spectrum until now. Considering proportionate price received for 20 MHz BWA spectrum in 2.3 GHz band was Rs 12847.77 in the 2010 auction, the price of 100 MHz spectrum in 3.3 GHz band would have a significant sum. Making available spectrum for auction as designed in TRAI recommendations could have resulted in receipt of substantial revenue to the public exchequer.

5.6 Surrender of allotted BWA spectrum by BSNL and MTNL

The PSUs, BSNL and MTNL, were allotted BWA spectrum in 2.5 -2.6 Band in August 2008. MTNL was allotted a block of 20 MHz of unpaired spectrum each in Delhi and Mumbai and BSNL was allotted 20 MHz unpaired spectrum in each of the remaining 20 service areas. They were required to pay amounts matching the price paid by the successful bidder for the BWA airwaves in the service areas in the 2010 spectrum auction. BSNL had paid Rs 8,313.8 crore, while MTNL paid Rs 4,534 crore, in June 2010 putting a heavy burden on their books. Both companies offered to surrender their spectrum and sought refunds of payments made.

BSNL ultimately surrendered spectrum in six service areas ie., Gujarat, Maharashtra, Andhra Pradesh, Karnataka, Tamil Nadu and Kolkata, and has been assured a refund of Rs. 6724 .51 crore in form of adjustment of their dues on account of license fee and spectrum usage charges in the coming years while, MTNL surrendered the spectrum in both the Metros and has been assured refund of the whole amount of Rs 4533.97 through proceeds from bonds to be issued by them on the backing of sovereign guarantee of the Government of India. The approval for refund of the whole amount of Rs 11258.48 has been issued by the Cabinet in January 2014.

The suo moto allotment of BWA spectrum to the two PSUs, without assessing their actual requirement or their fiscal constraints, has resulted in 20 MHz of BWA spectrum, which could have been put up for auction, with a discovered value of Rs. 11258.48 remaining unused for over six years. Thus the nation has not been able generate economic benefits out the BWA spectrum for this period. Further, MTNL

has also had an unwarranted financial burden by way of payment of interest since June 2010 while BSNL had also suffered initially due to dip in their reserve due to payment of Rs 8313 crore in 2010 and later was forced to borrow funds. Thus the nation has lost in several forms due to inadequacies in the recommendations of the TRAI and their selective implementation which has resulted into vitiation of the sanctity of transparency of the auction process for the BWA spectrum.

Chapter 6

Conclusion

A well-designed auction is the most efficient way to allocate national resources to those who can use them effectively. Auction design obviously, should induce competitive bidding in transparent way and should raise revenue in a fair manner, especially when a natural resource like spectrum is being auctioned.

6.1. The BWA auction conducted by DoT in May-June 2010 had left some major loop holes in the design vis-a-vis framing of eligibility criterion, lock in periods etc., which was exploited by an ISP licensee, Infotel, enabling it to negotiate and strike deal with a third party, RIL, prior to and during the course of conduct of auction, bid for and win pan-India 20MHz BWA Spectrum and within hours of closure of the auction process, transfer the allotted spectrum to RIL by transforming itself to be its subsidiary company. DoT could not decode the tell- tale signs of the complicity, even when the ISP with negligent net worth could obtain the requisite bank guarantee from an established private sector bank, manage to hold its bid for all 22 service areas in each round of auction consistently throughout the 16 days of bid and finally obtain pan India allotment of BWA spectrum at a whopping bid price of Rs 12847.77 crore, 5000 times their net worth.

The weakness in the eligibility conditions had facilitated an adroit ISP, to barter /transfer its license with the allotted spectrum to qualify another Company to make a back door entry into telecom business sector earning considerable financial gains. A non-participant company RIL could also exploit the loophole left by the DoT in the eligibility criterion, lock in periods etc., for obtaining BWA spectrum, by acquiring a winning company Infotel within hours of closure of the auction process, through concerted bidding, collusion and sharing the confidential information in the course of auction process in violation of Auction Conditions/Rules. Even auctioneer has not done justice to itself by giving a certificate that there were no indications of any collusive or coordinated bidding, overlooking the dominant abnormal bidding behaviour through apparent collusion and sharing of the confidential information by the Infotel with a corporate giant RIL in the course of the auction process. The Government should get the matter investigated even at this juncture, fix responsibilities on the bidders, which violated the auction conditions/rules prescribed in the NIA and if considered necessary, cancel the allotment of the BWA spectrum along with exemplary punishment on the colluding firms so as to restore the trust and faith in the auction system.

6.2 The Telecom Commission, the highest decision-making body of the communications ministry, allowed ISP license holders with BWA spectrum/4G airwaves to bundle voice

services on the same frequencies on payment of an additional Rs 1,658 crore, a price determined 12 years ago in 2001 for CMTS licenses, for a pan-India permit. Although there are several holders of 4G airwaves, Reliance was the sole company with a pan-India BWA allotment. This decision for migration to unified Licence, was made without considering the conditions stipulated at the time BWA spectrum was auctioned in 2010. With LTE being a popular choice for BWA, the service would be serving the same market segment as 3G. The undue advantage enjoyed by Reliance Jio Infocomm, due to the above, in monetary terms, as worked by us came to Rs 22842 crore. In allowing ISP to provide voice service using BWA spectrum without any change in the rate of levy of SUC has also resulted in significant undue advantage to RIL as they would be paying SUC at lower rates for 20 years for the voice services than other UAS/CMTS licensees providing the same service.

6.3 The apparent rigging in the auction of the BWA spectrum has also harmed the Central PSUs- BSNL and MTNL considerably. The high price of BWA spectrum determined in the auction and charged from the BSNL and MTNL by DoT in June 2010, had resulted in 20 MHz of BWA spectrum in 8 major SAs, with a discovered value of Rs. 11258.48 crore, being surrendered by the 2 PSUs, in early 2014, leaving Reliance Jio as the only Pan India Broadband service provider in the country. Thus while the nation lost the economic value of these spectrum for the last six years, the Government had to agree to refund of Rs. 11258.48 crore back to these two PSUs. These PSUs also lost significant amount as interest to the financial banks during 2010-14, though they did not derive any gain out of the natural resource. As a consequence, BSNL and MTNL, which accounted for nearly 70 percent of the internet subscribers in the country, have virtually left Reliance Jio as the only Pan India Broadband service provider in the country.

6.4 Telecommunications industry operates in a highly dynamic and complex environment in terms of preferences and technologies. For any economy, telecommunications is an enabling factor and therefore policy regime for its development has to be the top agenda for the policy-makers. A lot depends upon the long term policy landscape and hence the quality of inputs that goes into the formulation of policies and the steps taken for its implementation in a fair and transparent manner plays a big role in the development of competitive environment and imbuing of confidence amongst operators to continue investing in the sector with assurance of reasonable returns on their investment.

Regulatory and Licensing framework cannot always work in sync, thus, even with a predictable policy framework. The BWA spectrum auctions in 2010 had claimed to have earned aggregated significant revenue for the government but considering the slow and sluggish growth in the sector in last four years, negligible receipts on account of spectrum

usage charges from the winning firms due to inordinate delay/ non-commencement of the services in most of the service areas of the country, followed by refund of Rs 11258.48 crore to the BSNL and MTNL, the initial gains have appeared to be pyrrhic only. The questionable unethical interventions of a hidden large corporate in the auction process through a front company has robbed the country of the fruits of FDI, which though initially attracted a large MNC to the country, which have since left the sector by transferring the spectrum to the existing TSP. Thus the auction has failed to create maximum social value out of the resource input. Failure to put in conditions limiting time for spectrum holding and rollout service, to minimise hoarding / maximise utility is evident from the post-auction conduct of the licensees but is also indicative that the auction design could have been better. This belief is reiterated by the fact that quite a few operators have not been able to launch the services in many service areas and are becoming potential acquisition targets. When growing economic development of the country is putting tremendous pressure on telecommunications requirements, and its geographic vastness makes the use of wireless technologies very essential, effective execution of managing spectrum should be linked to a well-researched roadmap which could instil trust in licensees and bring customer satisfaction.

Director General of Audit

ANNEXURES

Annexure 1

BWA AUCTION PROCESS

The auction of BWA spectrum (BWA auction) was conducted from 24th June 2010 to 11th June 2010 for 16 days after the completion of auction of 3G spectrum (3 G auction) on 19th May 2010. Both 3 G auction and BWA auction were ascending e-auctions, conducted over the Internet. Bidders were required to access the Electronic Auction System (“EAS”) to be used for participation in the Auctions using standard web browsing software.

The Auctioneer – The Auctioneer consisted of NM Rothschild & Sons (India) Private Limited and DotEcon Limited. M/s Rothschild managed the overall process and was the primary point of contact with DoT. They were entrusted with the work of clarifying regulatory context and other valuation-affecting matters with DoT, writing bidding documents and updating it for further auctions, marketing the opportunity to potential participants. M/s DotEcon designed the auction rules based on DoT requirements, provided the platform for conducting the e-auction, user documentation and executed *the e-auction process*.

Spectrum put forth for BWA Auction - Two blocks of unpaired, 20MHz spectrum per 22 Service Area (SA) throughout the country involving the right to use spectrum at specified frequencies in the 2.3GHz band (subject to fulfilment of eligibility conditions, relevant licence conditions and any particular conditions related to specific frequency blocks) for a period of 20 years (from the date of award of right to commercially use the allocated spectrum block) were offered for award. These spectrum usage rights were awarded separately for specific service areas.

Two Stages of Auction - Winning Bidders of a spectrum block in each service area were to be determined in the first stage, a **Clock Stage**, which allocated spectrum blocks simultaneously for the service area(s). The Clock Stage consisted of a number of rounds (the “Clock Rounds”). This Clock Stage established a common Winning Price for all blocks within a service area, and the Winning Bidders in each service area; in the second stage called **Frequency Identification Stage**, specific frequencies identified automatically by the Electronic Auction System were to be assigned for the Winning Bidders identified as per the outcome of the Clock Stage.

The Clock Stage - During BWA Auction, 117 clock rounds were held for 16 days in which 11 bidders participated. These Clock Rounds were generally scheduled to begin between the

hours of 09.00 and 19.30 Indian Standard Time on Monday through Saturday, except national holidays.

These clock rounds were designed to stop once

- (i) for every BWA service area where spectrum was being auctioned, the number of Bids at the prices set in the last completed Clock Round was less than or equal to the number of blocks available; and
- (ii) There were no opportunities for Bidders to increase their demand in accordance with the Activity Rules. i.e. maximum activity requirement was 100%

In each Clock Round, Bidders were told the Clock Round price of a block in each of the BWA Service Areas. They were informed about their eligibility points to enable them to bid SAs, their ranking, provisional winning price, total number of bids received, aggregate demand/excess demand details of last completed clock round to enable them to opt for decision to Bid at a price equal to the current Clock Round price for that area. If a Bidder was a Provisional Winning Bidder for a service area in the last completed Clock Round, and the Clock Round price in the current Clock Round was equal to that in the last completed Clock Round, the Bidder was not required to exercise their option to bid or not in respect of that Clock round.

Activity Rules of the Clock rounds - Bidders were able to bid for at most one generic block in each service area. Bidders were allowed to switch Bids across service areas from one round to the next subject to certain limitations.

The Round 1 of the BWA auction commenced with a reserve price fixed by the Government for a single block in each SA and this price varied as given in the table below. Further the bidder were required to submit Earnest Money Deposit (EMD) fixed for each SA and were allotted eligibility points commensurating with the EMD submitted as given in the table.

Category of Service Area	Service Areas	Reserve Price	EMD per Service Area	Number of Eligibility Points associated with a block in each SA
A	Delhi, Mumbai, Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Tamil Nadu	Rs.160 crore	Rs.20.00 crore	32
B	Kolkatta, West Bengal, Haryana, Kerala, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh (W), Uttar Pradesh (E)	Rs.60 crore	Rs.10.00 crore	12
C	Assam, Bihar, Himachal Pradesh, Jammu & Kashmir, Orissa, North East	Rs.15 crore	Rs.3.75 crore	3

In the first round, Bidders were allowed to bid as per their eligibility points as per their EMD. Accordingly, a Bidder who wished to bid for one block in all 22 SAs had to pay an Earnest Money Deposit of Rs. 252.5 crore and started in the first round with the maximum possible Initial Eligibility of 350 points.

For subsequent clock rounds, the Auction Administrator announced the Auction Activity Requirement that applied to that Clock Round which varied from 80% of eligibility points up to 64 round, 90% from 65th round to 81st round and 100% from 82nd round.

From the 2nd clock round till the final 117th round, the eligibility points of each Bidder was calculated as follows:

- ✓ If the Bidder's activity in a Clock Round is equal to or greater than its Activity Requirement, then the Bidder's eligibility in the next Clock Round remained the same.
- ✓ If the Bidder's activity in a Clock Round is less than the Bidder's Activity Requirement for that Clock Round, then the eligibility of the Bidder in the next Clock Round was calculated as activity level in the current Clock divided by the Auction Activity Requirement, rounded down to the nearest whole number:

Clock Round Price – The first clock round started with reserve price fixed by the Government for each SA and clock round prices for subsequent rounds depended upon the demand for blocks in that SA. The price increment based on demand was given as follows:

Excess Demand	Price increment as a percentage of Previous clock round price	Maximum price increment per round
-1,-2	0%	Rs.20 crores for Delhi, Mumbai & Category A; Rs.10 crores for Kolkatta & Category B; Rs.3.75 crores for Category C;
0	1%	
1	1%	
2	5%	
3 or more	10%	

Provisional Winning Bidders and Winning Prices – The Provisional Winning bidders and Winning Prices in each service area were to be determined as follows:

- for each Bidder, only the highest Bid (if any) submitted by that Bidder for a block in that service area during any completed Clock Round was to be considered;

- the highest Bid (if any) of each Bidder was ranked in descending order of value and then, if necessary, tie-breaking criteria as below was to be applied:
- where there was a tie according to the first criterion, tied Bids were to be ranked in ascending order according to the Clock Round when the Bid was to be submitted (i.e., Bids submitted in earlier Clock Rounds took precedence);
- where there was a tie according to the first two criteria, tied Bids were to be ranked in descending order according to the total value of Bids submitted by the Bidder across all service areas in the Clock Round including any Provisional Winning Bids at the start of that Clock Round.
- Where there was a tie according to the first three criteria, ties were to be broken according to a random index assigned to the Bid in that service area when it was received by the EAS.

Since two blocks per SA were put to auction, the first 2 Bids in that service area according to this ranking became Provisional Winning Bids and the Provisional Winning Price in that service area was the lowest value amongst the Provisional Winning Bids.

This Clock Stage of BWA Auction, established one Bidder viz., M/s Infotel Broadband Service Private Limited as winner for Pan-India (one block in all 22 SAs) and 5 other bidders viz., Aircel Limited, Augere(Mauritius) Limited, Bharti Airtel Limited, Qualcomm Incorporated, Tikona Digital Networks Private Limited for few SAs each for the other block of spectrum.

Public information available about BWA Auction

The Department of Telecommunications website www.dot.gov.in contains the following files of BWA auction which contains Auction bid data.

- **BWA Auction Bidder Activity** – containing information on eligibility points of all bidders in all SAs in all rounds
- **BWA Auction Bid data** – containing details of Rank, Provisional Winning Bid at the start and end of each clock round and bid decision of of all bidders in all SAs in all rounds
- **BWA Auction Bids by Service Area** – containing details of bid amount in each round of each bidder in each Service area and Total value of Bidder's bids
- **BWA Auction Bid Rankings** – containing almost similar details of file of BWA auction bids by Service Area file
- **BWA Auction Aggregate data by Service Area File** – containing details of clock round price, aggregate demand and excess demand in all rounds of all Service Area.

Annexure II

DAY 1: 24.5.2010 (Clock Rounds 1 to 5)

- Infotel was the only bidder who bid for all 22 SAs and maintained their bids for all 22 SAs in the all 5 rounds on the first day, making their intention clear for a Pan India slot. Other low net-worth bidders viz Spice bid for 2 SAs only in all 5 rounds while Augere bid for 4 SAs only in the first round, followed by bid for only one SA in 3rd or 5th round;
- No other bidder bid for more than 12 SAs;
- Bharti bid for 12 metro/Class A and B category SAs in the 1st round, followed by 3-9 SAs in the next 4 rounds, Vodafone bid for only 2 SAs in the 1-5th round;
- Highest net-worth bidder Qualcomm bid for 8 metro/Class A category SAs only in all 5 rounds; None except Infotel bid in 5 SAs-Haryana, Himachal Pradesh, Assam, North East, Jammu & Kashmir SAs on the first day of the auction;

DAY 2: 25.5.2010 (Clock Rounds 6 to 10)

- Infotel bid for all 22 SAs and maintained their bid for all 22 SAs in the 6-10 rounds. No other bidder, howsoever high their net-worth be, bid for more than 12 SAs on the 2nd day;
- Other low net worth bidder reduced their bids to one or zero bid on Day 2 while Spice maintained bidding for 2 SAs on Day 2;
- High net-worth bidders viz Bharti, Qualcomm continued to bid for 1-10 SAs on the 2nd day. Vodafone also continued to bid for 2-3 SAs only on the Day 2;
- None except Infotel bid in 7 SAs-Rajasthan, West Bengal, Himachal Pradesh, Assam, Orissa, North East, Jammu & Kashmir SAs on the 2nd of the auction;

DAY 3: 26.5.2010 (Clock Rounds 11 to 16)

- Infotel continued their bid or maintained their bid for all 22 SAs during 11-16 rounds on the third day. No other bidder bid for more than 12 SAs on the Day 3;
- Low net-worth other bidders Spice and Augere continued to bid up to 2 SAs only on Day 2. Even Vodafone bid up to 3 SAs only on Day 3;
- High net worth other bidders Bharti, Qualcomm, Reliance, Idea & Tata continued to bid up to 12 SAs in a round on Day 3;
- None except Infotel bid in 7 SAs- Rajasthan, Haryana, West Bengal, Himachal Pradesh, Assam, North East, and Jammu & Kashmir SAs on the 3rd day;

DAY 4: 28.5.2010 (Clock Rounds 17 to 24)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 17-24 rounds on the 4th day;
- ONLY INFOTEL BID for 10 SAs: Gujarat, Haryana, UP(E), Rajasthan, West Bengal, Himachal Pradesh, Orissa, Assam, North East, J&K SAs;
- Low net-worth other bidders Spice and Augere continued to bid up to 2 SAs only on Day 4. Even Vodafone bid for 1 SA only on Day 4;
- High net worth other bidders Bharti, Qualcomm, Reliance, Idea & Tata continued to bid up to 12 SAs in a round on Day 4;

DAY 5: 29.5.2010 (Clock Rounds 25 to 34)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 25-34 rounds on the 5th day;
- Low net-worth other bidders Spice continued to bid for 2 SAs only on Day 5. Even Vodafone bid for 1 SA only on Day 5. Augere did not bid for even 1 SA on Day 5;
- High net-worth other bidders Bharti, Reliance, Idea & Tata continued to bid up to 10 SAs in a round on Day 5;
- Highest net worth bidder Qualcomm reduced their participation to 5 SAs only on Day 5;

DAY 6: 31.5.2010 (Clock Rounds 35 to 44)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 35-44 rounds. ONLY INFOTEL bid in Gujarat, WB, HP, Assam, NE and J&K SAs;
- Low net-worth other bidders Spice continued to bid for 2 SAs only on Day 6. Even Vodafone bid for 1 SA only. Augere bid for 2 Category B & C SAs in 3 rounds only;
- High net-worth other bidders Bharti, Idea, Aircel etc continued to bid up to 10 SAs on Day 6 but slowly shifted their bid from Metro/Category A circles to Category B circles also;
- Qualcomm bid for 3-6 SAs only on Day 6. Reliance and Tata reduced their bids to 2 SAs;

DAY 7: 1.6.2010 (Clock Rounds 45 to 52)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 45-52 rounds on the 7th day. ONLY INFOTEL bid in Kolkata, MP, Bihar, Orissa, J & K SAs;

- Low net-worth other bidders Spice **exited** the auction on Day 7. Even Vodafone bid for 1 SA only on Day 7. Augere also did not bid on Day 7;
- High net-worth other bidders Bharti, Idea, Aircel etc continued to bid up to 10 SAs on Day 7 but slowly shifted their bid from Metro/Category A circles to Category B circles also;
- Qualcomm bid for 3-6 SAs only on Day 7. Reliance and Tata reduced their bids to 2 SAs on Day 7 and **exited** the auction after 50th round;

DAY 8: 2.6.2010 (Clock Rounds 53 to 62)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 53-62 rounds on the 8th day;
- ONLY INFOTEL maintained its bid in 8 SAs- Karnataka, Kerala, West Bengal, HP, Bihar, Orissa, Assam and NE;
- Highest matching bids for Maharashtra were received from Bharti and Infotel on this day which became the winning bid; While Infotel offered a price more than the winning bid on this day and maintained thereafter throughout, but none other bid for Maharashtra after this day;
- In J & K, while Infotel maintained its bid in all rounds, Aircel bid in one round. No other bidder offered their bid;
- High net worth bidders remaining in the Auction-Bharti, Qualcomm, Idea bid for up to 5 SAs on Day 8;
- Vodafone continued to bid for 1 SA in the initial rounds on Day 8 and exited from the auction by the end of the day;

DAY 9: 3.6.2010 (Clock Rounds 63 to 68)

- Infotel continued to be the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 63-68 rounds on the 9th day;
- Only Infotel bid in 7 SAs- Kolkata, Maharashtra, UP (E), West Bengal, HP, NE and J&K;
- Of the remaining six other bidders, High net worth bidder Bharti, continued to bid for 0-5 SAs on Day 8. They also started bidding for Category C SAs during the day for the first time. Qualcomm bid for 2-5 SAs on Day 9;

DAY 10: 4.6.2010 (Clock Rounds 69 to 77)

- Infotel continued to be the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 69-77 rounds on the 10th day;
- Only Infotel maintained its bid in 8 SAs-Kolkata, Maharashtra, AP, Punjab, WB, HP, NE and J&K;

- Bharti continued to bid for 2-4 SAs including category C SAs. Qualcomm also continued to bid for 1-4 SAs;

DAY 11: 5.6.2010 (Clock Rounds 78 to 82)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 78-82 rounds on the 11th day;
- Bharti bid for 2-4 SAs in the first 3 rounds but bid for 13 SAs including 6 Category C SAs in the last round of the day. Qualcomm also continued to bid for 1-4 SAs;
- Augere (0-2 SAs), Tikona (0-3 SAs) also bid on Day 11;
- Aircel bid for 1-9 SAs including 7 category C SAs on the Day 11;

DAY 12: 7.6.2010 (Clock Rounds 83 to 92)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 83-92 rounds on the 12th day;
- Bharti bid for 7-13 SAs including 6 Category C SAs on the Day 12. However, Qualcomm bid for 5 SAs on the Day 12;
- Augere (2 SAs), Tikona (2-4 SAs) also bid on Day 12;
- Aircel bid for 6-10 SAs including 6-7 category C SAs on the Day 12;

DAY 13: 8.6.2010 (Clock Rounds 93 to 102)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 93-102 rounds on the 13th day;
- Bharti continued to bid for up to 13 SAs including 6 Category C SAs on Day 13, Qualcomm also continued to bid for 5 SAs including 2 metros Delhi & Mumbai on Day 13;
- Augere (2 SAs), Tikona (2-3 SAs) also bid on Day 13;
- Aircel bid for 5-8 SAs including 6 category C SAs on the Day 13;

DAY 14: 9.6.2010 (Clock Rounds 103 to 110)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 103-110 rounds on the 14th day;
- Bharti bid for 2-3 SAs only on Day 14, Qualcomm also continued to bid for 1-4 SAs on Day 14;
- Augere (2 SAs), Tikona (2-3 SAs) also bid on Day 14;
- Aircel bid for 7-9 SAs including 7 category C SAs on the Day 14;

DAY 15: 10.6.2010 (Clock Rounds 111 to 116)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 111-116 rounds on the 15th day;

- **High net worth bidder Bharti stopped bidding for all SAs including metros on Day 15.** Qualcomm however continued to bid for 3-4 SAs;
- Augere (0-2 SAs), Tikona (0-3SAs) also bid on Day 15;
- Aircel bid for 1-9 SAs including 7 category C SAs on the Day 15;

DAY 16: 11.6.2010 (Clock Round 117)

- Infotel was the only bidder which either bid for all 22 SAs or maintained their bid for all 22 SAs during 117 round and emerged Pan India Winner on the 16th day;
- High net worth bidder Qualcomm continued to bid for 3 SAs on Day 16 and emerged as winner for 4 SAs;
- Bharti did not bid on the Day 16 but based on the earlier bids, was declared winner for 4 SAs;
- Augere bid for 1 SA and emerged winner for the same SA on Day 16. Tikona bid for 3 SAs and emerged as winner for 5 SAs on Day 16;
- Aircel bid for 6 SAs including 5 category C SAs on the Day 16 and emerged winner for 8 SAs including 5 category C SAs;

ANNEXURE – III

BIDDERS PARTICIPATION IN SERVICE AREAs – CATEGORY "A" – TOP 3 SAs

LEGEND :

	BID/MAINTAIN BID		NO BID		WINNER'S MAX.BID
	LOSER'S MAXIMUM BID		WINNER'S BID AMOUNT		

TREND OF BID FOR DELHI SERVICE AREA

Bidder name	Networth in crores of Rs.	DAY OF BID – June 2010															
		DAY 1 24th	DAY 2 25th	DAY 3 26th	DAY 4 28th	DAY 5 29th	DAY 6 31st	DAY 7 1st	DAY 8 2nd	DAY 9 3rd	DAY 10 4th	DAY 11 5 th	DAY 12 7th	DAY 13 8th	DAY 14 9th	DAY 15 10th	DAY 16 11th
LOW NETWORK COMPANIES (Below Rs.100 crore)																	
Augere	-0.076																
Spice	0.01						1,1012.96										
Infotel	2.49																2,241.02
MEDIUM NETWORK COMPANIES (Between Rs.100 crore and 1000 crore)																	
Tikona	126.40											1,1412.71					
HIGH NETWORK COMPANIES (Above Rs.1000 crore)																	
Vodafone	1912.87		272.96														
Aircel	2056.87							1,072.96									
Tata	6590.36							1,152.96									
Idea	11070.38								1,192.96								
Bharti	34840.13															2121.02	
Reliance	42511.36							1,132.96									
Qualcomm	97598.06																2,241.02

TREND OF BID FOR MUMBAI SERVICE AREA

Bidder name	Networth in crores of Rs.	DAY OF BID – June 2010															
		DAY 1 24th	DAY 2 25th	DAY 3 26th	DAY 4 28th	DAY 5 29th	DAY 6 31st	DAY 7 1st	DAY 8 2nd	DAY 9 3rd	DAY 10 4th	DAY 11 5th	DAY 12 7th	DAY 13 8th	DAY 14 9th	DAY 15 10th	DAY 16 11th
LOW NETWORK COMPANIES (Below Rs.100 crore)																	
Augere	-0.076																
Spice	0.01						1,012.96										
Infotel	2.49																2,292.95
MEDIUM NETWORK COMPANIES (Between Rs.100 crore and 1000 crore)																	
Tikona	126.40											1,478.81					
HIGH NETWORK COMPANIES (Above Rs.1000 crore)																	
Vodafone	1912.87																
Aircel	2056.87											1,424.17					
Tata	6590.36							1,152.96									
Idea	11070.38							1,172.96									

TREND OF BID FOR KERALA SA

Bidder name	Networth in crores of Rs.	DAY OF BID – June 2010															
		DAY 1 24th	DAY 2 25th	DAY 3 26th	DAY 4 28th	DAY 5 29th	DAY 6 31st	DAY 7 1st	DAY 8 2nd	DAY 9 3rd	DAY 10 4th	DAY 11 5th	DAY 12 7th	DAY 13 8th	DAY 14 9th	DAY 15 10th	DAY 16 11th
LOW NETWORTH COMPANIES (Below Rs.100 crore)																	
Augere	-0.076																
Spice	0.01																
Infotel	2.49																258.67
MEDIUM NETWORTH COMPANIES (Between Rs.100 crore and 1000 crore)																	
Tikona	126.40																
HIGH NETWORTH COMPANIES (Above Rs.1000 crore)																	
Vodafone	1912.87		106.98														
Aircel	2056.87																258.67
Tata	6590.36						138.45										
Idea	11070.38			116.98													
Bharti	34840.13								165.5								
Reliance	42511.36					139.83											
Qualcomm	97598.06																258.67

TREND OF BID FOR UP(W) SA

Bidder name	Networth in crores of Rs.	DAY OF BID – June 2010															
		DAY 1 24th	DAY 2 25th	DAY 3 26th	DAY 4 28th	DAY 5 29th	DAY 6 31st	DAY 7 1st	DAY 8 2nd	DAY 9 3rd	DAY 10 4th	DAY 11 5th	DAY 12 7th	DAY 13 8th	DAY 14 9th	DAY 15 10th	DAY 16 11th
LOW NETWORTH COMPANIES (Below Rs.100 crore)																	
Augere	-0.076																
Spice	0.01																
Infotel	2.49															183.87	185.7
MEDIUM NETWORTH COMPANIES (Between Rs.100 crore and 1000 crore)																	
Tikona	126.40															183.87	
HIGH NETWORTH COMPANIES (Above Rs.1000 crore)																	
Vodafone	1912.87																
Aircel	2056.87									176.71							
Tata	6590.36						114.42										
Idea	11070.38								155.33								
Bharti	34840.13								140.9								
Reliance	42511.36																
Qualcomm	97598.06																

BIDDERS PARTICIPATION IN SERVICE AREAs – CATEGORY "C"- TOP 3 SAs

TREND OF BID FOR BIHAR SA

Bidder name	Network in crores of Rs.	DAY OF BID – June 2010															
		DAY 1 24th	DAY 2 25th	DAY 3 26th	DAY 4 28th	DAY 5 29th	DAY 6 31st	DAY 7 1st	DAY 8 2nd	DAY 9 3rd	DAY 10 4th	DAY 11 5th	DAY 12 7th	DAY 13 8th	DAY 14 9th	DAY 15 10th	DAY 16 11th
LOW NETWORKTH COMPANIES (Below Rs.100 crore)																	
Augere	-0.076											50.69					
Spice	0.01																
Infotel	2.49													99.28	99.28	99.28	
MEDIUM NETWORKTH COMPANIES (Between Rs.100 crore and 1000 crore)																	
Tikona	126.40													97.33			
HIGH NETWORKTH COMPANIES (Above Rs.1000 crore)																	
Vodafone	1912.87																
Aircel	2056.87																99.28
Tata	6590.36			16.05													
Idea	11070.38												86.08				
Bharti	34840.13																
Reliance	42511.36						16.85										
Qualcomm	97598.06																

TREND OF BID FOR ORISSA SA

Bidder name	Network in crores of Rs.	DAY OF BID – June 2010															
		DAY 1 24th	DAY 2 25th	DAY 3 26th	DAY 4 28th	DAY 5 29th	DAY 6 31st	DAY 7 1st	DAY 8 2nd	DAY 9 3rd	DAY 10 4th	DAY 11 5th	DAY 12 7th	DAY 13 8th	DAY 14 9th	DAY 15 10th	DAY 16 11th
LOW NETWORKTH COMPANIES (Below Rs.100 crore)																	
Augere	-0.076												47.58				
Spice	0.01																
Infotel	2.49													63.63	63.63	63.63	
MEDIUM NETWORKTH COMPANIES (Between Rs.100 crore and 1000 crore)																	
Tikona	126.40													58.83			
HIGH NETWORKTH COMPANIES (Above Rs.1000 crore)																	
Vodafone	1912.87																
Aircel	2056.87																63.63
Tata	6590.36			15.15													
Idea	11070.38												55.08				
Bharti	34840.13													63			
Reliance	42511.36						15.6										
Qualcomm	97598.06																

TREND OF BID FOR ASSAM SA

Bidder name	Networth in crores of Rs.	DAY OF BID – June 2010															
		DAY 1 24th	DAY 2 25th	DAY 3 26th	DAY 4 28th	DAY 5 29th	DAY 6 31st	DAY 7 1st	DAY 8 2nd	DAY 9 3rd	DAY 10 4th	DAY 11 5th	DAY 12 7th	DAY 13 8th	DAY 14 9th	DAY 15 10th	DAY 16 11th
LOW NETWORTH COMPANIES (Below Rs.100 crore)																	
Augere	-0.076																
Spice	0.01																
Infotel	2.49																33.02
MEDIUM NETWORTH COMPANIES (Between Rs.100 crore and 1000 crore)																	
Tikona	126.40																
HIGH NETWORTH COMPANIES (Above Rs.1000 crore)																	
Vodafone	1912.87																
Aircel	2056.87																33.02
Tata	6590.36																
Idea	11070.38													28.23			
Bharti	34840.13												26.89				
Reliance	42511.36																
Qualcomm	97598.06																

Note : 1. The Bid amounts are in crores of Rupees

2. On each day of auction, more than one clock round was held except on Day 16. Bid in even one clock round in a day is taken as bid for the day.

Annexure - IV

Bank guarantee furnished by M/s Infotel Broadband Services Pvt. Ltd.

Sr. No. 501375 Page 1 of 1



AXIS BANK LIMITED

AXIS BANK LIMITED
Credit Management Centre-MUMBAI CMC
NARIMAN POINT, MUMBAI (MH)
GROUND FLOOR, ATLANTA
NARIMAN POINT
MUMBAI-400021

Ref. No :CMC/MUM/APR/8944/09-10
Date:17-03-2010

To,

JOINT SECRETARY (TELECOM), SANCHAR BHAYA
DEPT OF TELECOMMUNICATIONS - AUCTION TEA
ROOM NI 319, 20 ASHOKA ROAD,
NEW DELHI

Dear Sirs,

BG No. : 01730100000955
Date of Issue : 17-03-2010
Amount of BG : Rs. 2,52,50,00,000.00 (RUPEES TWO HUNDRED FIFTY TWO CRORES FIFTY LAKHS ONLY)
Expiry Date : 31-12-2010
Claim Expiry Date : 30-06-2011
Name and Address of the Applicant: M/S Infotel Broadband Services Private Limited
C-157, Phase-VII, Industrial Area, Mohali, Punjab, India.

We forward herewith the Escrow Inland Bank Guarantee in original issued by us in your favour.

The above Guarantee is issued subject to the condition that the Bank's liability is restricted to the amount mentioned in the said Guarantee.

Please Note:

The beneficiary in their own interest should verify the genuineness of this guarantee from the Zonal office of the bank at the following address

AXIS BANK LIMITED
WESTERN ZONAL OFFICE
3RD FLR, RNA CORPORATE PARK, NR CHEENA COLLEGE
KALANAGAR, BANDRA (EAST),
MUMBAI-400051

FOR AXIS BANK LIMITED

AUTHORISED SIGNATORY

NAME: Arun Rane
SS No. Aest. Vice President (5897)

Encl: Bank Guarantee Number 01730100000955



FOR AXIS BANK LIMITED

AUTHORISED SIGNATORY

NAME: AJAY UDGIRKAR
SS No. Signature No : 3185



Excerpts from Annual Accounts of Infotel Broadband Services Pvt. Ltd.

Extract from the Notes to the Annual Accounts for the financial year 2008-09

4. Contingent liabilities not provided for:

Particular	Year ended March 31, 2009	Year ended March 31, 2008
Guarantees given by banks on behalf of the Company (Margin Money kept by way of Fixed deposits Rs. 18,00,000)	11,00,000/-	1800,000/-
Total (RS)	11,00,000/-	18,00,000/-

At per our report of even date
For Atal Kishoretha & Co.
Chartered Accountants

[Signature]
Partner
Membership No.



For and on behalf of the Board

[Signature]
Suresh Kumar
Director

[Signature]
Kunal Sharma
Director

Place: Mohali
Date: 05.04.2009

Extract from the Notes to the Annual Accounts for the Financial Year 2009-10

SCHEDULE K

NOTES ON ACCOUNTS

1. The Company was incorporated on 15th February 2007 and has obtained Internet Service Provider (ISP) License from Department of Telecommunications, Government of India on 16th November 2007.

During the Current year the company has commenced the commercial operations of the Internet services on 1st April 2008.

2. Previous year figures relating to Balance sheet are regrouped, reworked, rearranged and reclassified wherever necessary.

3. The Company has undertaken Broadband Wireless Access - Wimax Project, the expenses relating to which are included under Project Development Expenditure.

Details of the Project Development Expenditure (included under Capital Work in Progress) is given below.

(Fig in Rupees)

	As at 31st March 2010	As at 31st March 2008
Opening Balance	48,883,806	42,177,284
Salary	-	6,688,297
Rent	-	6,000
Vehicle Hire Charges	-	102,818
Bandwidth Expenses	-	378,048
Traveling & Conveyance	-	148,783
Professional charges	12,764,878	181,446
Telephone Expenses	-	31,408
Auditors Remuneration	-	10,000
Staff Welfare	-	287,033
General and Administrative Expenses	-	238,041
Bank Charges & Commissions	555,356	187,142
Local Telephone	-	(882,786)
Bandwidth Income	-	81,193
Miscellaneous Income	-	(81,193)
	<u>63,303,430</u>	<u>48,883,306</u>
Capitalized during the year	<u>27,128</u>	
	<u>63,378,213</u>	<u>48,883,306</u>



Handwritten signatures and initials.

4. Contingent Liability not provided for -

In respect of Bank Guarantees.

- submitted to Department of Telecommunications (DOT), Government of India Rs.254,60,00,000 (Previous Year Rs.2,10,00,000)
- submitted to Sales Tax authorities Rs.4,00,000 (Previous Year Rs.1,00,000)

5. Payment to auditors (on accrual basis, excluding service tax)

Particulars	Year ended 31 st March 2010	Year ended 31 st March, 2009
Audit fees	60,000	60,000
Total (Rs.)	60,000	60,000

6. Segment Reporting:

The Company has one business segment i.e. providing "Internet Services" in India. Accordingly the disclosure as per Accounting Standard 17 issued by the Institute of Chartered Accountants of India and prescribed by Companies (Accounting Standard Rules, 2008) is not applicable.

7. Earnings per Share (EPS)

Net Profit/(Loss) after tax as per Profit and Loss account (Rs.)	(8,807,881)
Weighted Average number of shares	25,10,000
Basic and Diluted Earnings per share (Rs.)	(3.95)

Handwritten signature/initials



P.S.D. Delhi-2013

Excerpts from Annual Accounts of Infotel Digicomm Pvt. Ltd – the holding company of Infotel Broadband Services Private Ltd.

Extract from Notes to Accounts – Balance Sheet as on 31.3.2010

SCHEDULE 9

NOTES TO ACCOUNTS

1. Nature of Operations

The company was incorporated on 19th March 2007 with the main objects to carry on the business to provide and operate Telecommunication Services.

2. Contingent Liability not provided for

Particulars	Year ended March 31, 2010	Year ended March 31, 2009
100% Margin Money given by the Company on behalf of Smart Broadband Services Private Limited as security against issuance of Bank Guarantee. (Margin Money kept by way of Fixed Deposit)	25,00,000 /-	25,00,000 /-

CNBC TV 18 11th June 2010 : Excerpts from the interview with Infotel Promoter Mr. Ananth Nahata

[Print This Page](#)

Was in talks with RIL during BWA auctions: Anant Nahata

Reliance Industries has acquired a 95% stake in Infotel, the one player that's won a pan-India licence for broadband wireless access spectrum in the auction that closed today.



Commenting on the same, Infotel Promoter Anant Nahata says, "When the bid (BWA auction) prices started becoming high, we realised that we need to talk to a strategic partner. So we were talking to Reliance somewhere in between the auction. So it's not something, which has happened in one day."

He further says big opportunities exists for the broadband business. "Subscriber penetration is under 1% currently." He hopes to launch WiMax services by early next year."

A pan-India rollout will need substantial capex, he states. "We will have to balance between price and services offered."

He aims to collaboratively build value. "RIL is looking at enterprise, corporate clients."

Here is a verbatim transcript of the exclusive interview with Anant Nahata on CNBC-TV18. Also watch the accompanying video.

Q: Let me begin by asking you, not only have you won the licenses, but you actually sold the company on the same day. Tell us about what this deal is?

A: It's not on the same day. When the bid prices started becoming high, we realised that we need to talk to a strategic partner. So we were talking to Reliance somewhere in between the auction. So it's not something, which has happened in one day.

Q: The press release talks about an equity infusion in the fresh equity of Rs 4,800 crore and 95% stake. So let me first ask you why give 95% because this was a company that you setup two years back and if this is the fresh equity infusion, what are the arrangements for the payment of the spectrum fee?

A: I do not have any trouble with the valuation. It's a very big project and the bid price is also around Rs 13,000 crore. Our aim is to collaboratively build value in the company. So, I am not uncomfortable with giving 95% at this point and having as partner like Reliance is definitely a big thing for us also.

PAGEBREAK

Q: The payment for the spectrum fee that will have to be made and we now know that it will have to pay within ten day from Monday. What are the arrangements going to be?

A: At this time, all I can say that the payment for spectrum will be made in time.

Q: You will be left with 5%. Will you have any board level position or any other role to play in the company?

A: It will become clear with subsequent time.

Q: The HFCL group and your father Mr Mahendra Nahata has built up this company. HFCL was itself registered in 1987, known as a turnkey telecom equipment player, also bid for licences many years back. Do you see any synergies between HFCL as a group, in terms of business areas that it

th RIL during BWA auctions: Anant Nahata



SNAPSHOTS FROM THE INTERVIEW

